

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20230011156

APPLICANT REQUESTS: reconsideration of his previous request for:

- removal of the general officer memorandum of reprimand (GOMOR), 21 October 2015, from his Army Military Human Resource Record (AMHRR)
- removal of the DA Form 67-10-3 (Strategic Grade Plate (O6) Officer Evaluation Report (OER)) covering the period 17 July 2015 through 24 November 2015 from his AMHRR
- repeal of the Army Grade Determination Review Board (AGDRB) decision that he did not serve satisfactorily in the rank/grade of colonel (COL)/O-6
- restoration of his retired rank/grade to COL/O-6
- 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) with Continuation Sheet, 4 July 2023 (11 pages).

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170001817 on 13 September 2019.

2. The applicant states reconsideration is appropriate based on new evidence or argument not presented in the original application. He became aware of the critical additional facts that form the basis of this request years after filing his original application before the Board and after he had been informed that his case had made it to an ABCMR analyst.

a. Additionally, he renews and maintains his objections to the original Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation that served as the sole predicate for each of the series of actions taken against him, caused irreparable harm by preventing meaningful employment, and caused continuous emotional distress.

b. Lieutenant General (LTG) [REDACTED] then the I Corps Commanding General, LTG [REDACTED] then The Judge Advocate General, and COL [REDACTED] then the I Corps Staff Judge Advocate (SJA), were threatened by his success as a leader and his strengths in caring for people where they failed. He raised serious issues of impropriety to their attention, in which they were directly implicated, and they acted upon the threat they believed he posed to them. Rather than address their conduct, they exaggerated and exploited the matter related to his alleged maltreatment of one subordinate in order to discredit him and removed him from his position to prevent repercussions against themselves. In essence, he was a "whistleblower" and they retaliated against him. Captain (CPT) [REDACTED] whom he allegedly maltreated, was not the complainant who began the process, rather it began with COL [REDACTED] speaking with LTG [REDACTED] and then LTG [REDACTED] whereby they agreed that LTG [REDACTED] would exercise command authority over the matter.

c. He observed ethical improprieties being committed on multiple occasions by LTG [REDACTED]. Accordingly, he brought these concerns to LTG [REDACTED] and COL [REDACTED] who were unwilling to address these issues and sided with LTG [REDACTED]. He further addresses retaliation and personal bias issues with COL [REDACTED], LTG [REDACTED], and LTG [REDACTED] (see attached continuation sheet).

d. Conclusion.

(1) LTG [REDACTED], LTG [REDACTED], and COL [REDACTED] were all aware of whistleblower protections and the issues surrounding retaliation against individuals' raising issues of misconduct. Whether or not they consciously acknowledged his status as a whistleblower, they took steps to prevent him from raising issues and discredit him. They took what was an isolated matter of a communication challenge after a stellar career, exaggerated it to represent misconduct, piled on allegations after he exercised his sacred right to defend himself against an allegation he believed to be untrue, and exploited this opportunity to pile on a series of adverse, consequential actions. Their actions caused this matter to drag on for almost 8 months, all while he was continuously isolated, under considerable stress, and suffering irreparable harm to his professional and personal lives.

(2) He now challenges the actions taken against him, all based on the same deeply flawed, biased, and unreliable Army Regulation 15-6 investigation, and motivated by whistleblower retaliation and personal bias. These officers saw him as a threat because of ongoing ethical and professional concerns he had raised, issues he believed he was professionally obligated to raise. They were widely known as highly political officers who engaged in self-promotion and focused on their own images, and in the case of LTG [REDACTED] with a record of retaliation. Consequently, this matter should have been forwarded to the Commander, U.S. Army Forces Command, and his SJA to be handled at that level, not handled at I Corps. If he had known or anticipated what

would be an ensuing "smear campaign," he would have likely made such a request at the time. Unfortunately, what he has instead is a litany of actions intended to have the cumulative impact of ending his professional life because he spoke truth to power. He was investigated and reprimanded for what was an isolated instance of a communication challenge. He was punished for defending himself, despite doing so professionally. He did not deserve the ensuing "death penalty" to his professional career arising from the series of actions and preventing him from obtaining meaningful full-time employment, which he still does not have.

3. He was appointed as a Regular Army commissioned officer in the Judge Advocate General Corps on 26 May 1992 and entered active duty on 5 July 1992. He was promoted to the rank/grade of COL/O-6 effective 1 April 2012.

4. He became the subject of an Army Regulation 15-6 investigation on 2 October 2015 while serving as the 7th Infantry Division (ID) SJA. An investigating officer (IO) was appointed on 2 October 2015 to investigate the facts and circumstances regarding allegations that he sexually harassed, fraternized, or otherwise engaged in unprofessional conduct toward CPT [REDACTED] a subordinate judge advocate in his office. The IO was directed to address the following questions at a minimum:

a. Did the applicant sexually harass CPT [REDACTED] Refer to Army Regulation 600-20 (Army Command Policy), paragraphs 7-4, 7-5, and 7-6 for the definition of sexual harassment.

b. Did the applicant fraternize with CPT [REDACTED] in violation of Army Regulation 600-20, paragraph 4-14b?

c. Did the applicant otherwise engage in unprofessional conduct toward CPT [REDACTED]

d. Did the applicant sexually harass, fraternize, or engage in unprofessional conduct with any other subordinates in the 7th ID Office of the Staff Judge Advocate (OSJA)?

5. The Headquarters, I Corps G-3, memorandum (Army Regulation 15-6 Investigation – (Applicant)), 16 October 2015, with allied documents shows the IO completed the investigation and determined the following:

a. Summary. Based on a preponderance of the evidence, he found the applicant sexually harassed CPT [REDACTED] fraternized with CPT [REDACTED] and engaged in unprofessional conduct toward CPT [REDACTED] all in violation of Army Regulation 600-20. Specifically, he found that the applicant initiated unwelcomed sexual advances and offered favors that resulted in a negative impact on CPT [REDACTED] work performance and, to a lesser degree, that of the 7th ID OSJA. He further found the applicant

knowingly gave false information to him under oath during his interview. His detailed findings and recommendations are contained below.

b. Findings.

(1) Did the applicant sexually harass CPT [REDACTED] He found that the applicant did sexually harass CPT [REDACTED] on at least three instances beginning in December 2014.

(2) Did the applicant fraternize with CPT [REDACTED] He found that the applicant did fraternize with CPT [REDACTED] on multiple occasions.

(3) Did the applicant otherwise engage in unprofessional conduct toward CPT [REDACTED] He found that the applicant did engage in unprofessional conduct toward CPT [REDACTED] through sexual harassment of and fraternization with him.

(4) Did the applicant sexually harass, fraternize, or engage in unprofessional conduct with any other subordinates in the 7th ID OSJA?

(a) Sexual Harassment. He found no evidence to indicate the applicant sexually harassed any subordinate in the 7th ID OSJA other than CPT [REDACTED] Therefore, he did not find that the applicant sexually harassed any other subordinates within the 7th ID OSJA.

(b) Fraternization. While he suspects that the applicant did fraternize with other subordinates, the evidence is insufficient to support this conclusion with a finding of fraternization. Therefore, he did not find that the applicant fraternized with other subordinates within the 7th ID OSJA.

(c) Unprofessional Conduct. The applicant's frequent texting to his subordinates on a variety of personal (non-work related) matters crossed the boundaries of professionalism expected of a COL communicating with CPTs who he senior rates. The texts were akin to what peers would send to each other, not to what a senior officer would send to junior officers in his unit. For this reason, he found that the applicant engaged in unprofessional conduct with other subordinates within the 7th ID OSJA.

c. Recommendations. He recommended:

(1) issuance of a GOMOR to the applicant for sexually harassing and fraternizing with CPT [REDACTED] He did not recommend Uniform Code of Military Justice action, as this would bring additional attention and further embarrassment to CPT [REDACTED] whom he characterizes as a cooperative yet hesitant witness;

(2) removal of the applicant from his position as the 7th ID SJA; and

(3) not placing the applicant in the position of SJA again.

6. The DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) shows the appointing authority (LTG [REDACTED]) approved the findings and recommendations of the Army Regulation 15-6 investigation on 21 October 2015.

7. He was reprimanded in writing by LTG [REDACTED] Commanding General, I Corps, on 21 October 2015, wherein he stated:

You are hereby reprimanded for sexual harassment, fraternization and making a false official statement. An AR [Army Regulation] 15-6 investigation determined that between the period of December 2014 and September 2015, you sexually harassed and fraternized with CPT [REDACTED] one of your subordinate officers. Additionally, during the investigation you knowingly provided false information to the investigating officer in order to minimize your culpability.

Your actions fall well below the standards expected of any commissioned officer, but particularly a senior leader and a Staff Judge Advocate. You have failed in your duties and in my expectations of you. You have exploited your position of power to harass a junior officer who depends on you for leadership and guidance. Your actions reflect a total disregard for Army Values. As a result, I question your ability to serve and to lead as a Staff Judge Advocate.

This memorandum of reprimand is imposed as an administrative measure and not as punishment under the UCMJ [Uniform Code of Military Justice]. In accordance with AR [Army Regulation] 600-37, Unfavorable Information, para[graph] 3-4, 19 Dec[ember 19]86, I am considering whether to direct this memorandum of reprimand be filed permanently in your Official Military Personnel File. Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal. You will be provided, by separate cover, a copy of the evidence which forms the basis for this memorandum of reprimand. You will immediately acknowledge receipt of this memorandum of reprimand by executing the enclosed acknowledgement in accordance with AR [Army Regulation] 600-37, para[graph] 3-6. You will forward any matters you wish me to consider through your chain of command within seven (7) calendar days from the receipt of this memorandum.

8. The applicant acknowledged receipt of the GOMOR on 26 October 2015 and elected to submit matters in rebuttal.

9. His memorandum for the I Corps Commanding General (Response to Issuance of GOMOR), 9 November 2015, with auxiliary documents, requested withdrawal of the GOMOR and replacement with a letter of concern or another form of counseling the I Corps Commanding General deemed appropriate. He understood from reviewing the Army Regulation 15-6 investigation that the matter stems from problems with his leadership and communication styles of which he was previously unaware. The investigation contains some very useful information that he intended to process and use to make some necessary adjustments in his communication and leadership styles. He asked that the commanding general not allow a singular, isolated problem to erase his lifetime of honorable service. He also wanted to establish very clearly that he is not homosexual as there was a theme in the investigation indicating he was interested in a sexual relationship with CPT [REDACTED] which was absolutely false, as he is not homosexual and neither is CPT [REDACTED]. He has never sought a sexual relationship with any member of his own organization in his entire career spanning almost 24 years, let alone with a subordinate. He did not sexually harass or fraternize with CPT [REDACTED]. He also denied having lied to the IO.

10. After carefully considering the matters submitted in rebuttal, the I Corps Commanding General directed permanently filing the GOMOR in the performance folder of his AMHRR on 18 November 2015.

11. A review of the applicant's AMHRR revealed the GOMOR and allied documents are filed in the performance folder.

12. His records contain the contested OER covering the period 17 July 2015 through 24 November 2015, a 4-month period. The OER addressed his duty performance as the 7th ID SJA. The reason for submission is shown as "Relief for Cause." Major General [REDACTED] the 7th ID Commanding General, served as both his rater and senior rater. Major General [REDACTED] digitally signed the OER as both rater and senior rater on 14 March 2016. The applicant digitally signed the OER on 8 April 2016. The contested OER shows in:

a. Part II (Authentication), block d (This is a referred report, do you wish to make comments?), a checkmark was placed in the appropriate block, signifying to the applicant that he was receiving a referred report. In that same block, a checkmark was placed in the "Yes" block, indicating the applicant wished to make comments;

b. Part II, block f1 (Supplementary Review Required?), a checkmark was placed in the "Yes" block;

c. Part II, block f2 (Name of Reviewer), does not list a reviewer;

d. Part II, block f5 (Comments Enclosed), a checkmark was placed in the "No" block;

e. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes (Rater)), block c(1) (Character), his rater commented: "A TJAG [The Judge Advocate General] directed investigation revealed that [Applicant] was involved in a SHARP [Sexual Harassment/Assault Response and Prevention Program] related incident involving one of his subordinate officers";

f. Part IVc(2) (Provide Narrative Comments which Demonstrate Performance and Potential Regarding Strategic Competencies in the Rated Officer's Current Duty Position), his rater commented: "I am serving as both rater and senior rater in accordance with AR [Army Regulation] 623-3 [Evaluation Reporting System], para[graph] 2-20. Support form not used due to reason for submission"; and

g. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), his senior rater marked "Unsatisfactory" and entered the following comments:

Excellent performance in the technical aspects of being an SJA. [Applicant] is a true military law expert. Unfortunately, his performance was overshadowed by an incident of sexual harassment of a subordinate officer. This incident has caused me to lose faith and confidence in his ability to serve as the 7th ID SJA, and thus I directed the relief for cause. No potential for future service or promotion.

13. The applicant acknowledged receipt of the OER and submitted a memorandum in rebuttal to the contested OER's contents (Comments in Response to Referred OER – (Applicant)), 21 January 2016, wherein he stated:

- the investigation that forms the basis for his removal, rating, and the comments in this evaluation is fundamentally flawed
- he did not sexually harass CPT [REDACTED]
- communication challenges and misunderstandings arose during his tenure as the SJA
- his intentions were rooted in a commitment to develop his subordinates and build a cohesive and effective team
- up through now he has accomplished this with unmitigated success, earning a reputation in the Judge Advocate General Corps as one of the Corps' strongest leaders and teachers
- he asks that this isolated misunderstanding and flawed investigation not serve as the basis for his evaluation
- he did not sexually harass a subordinate, specifically not CPT [REDACTED]

- CPT [REDACTED] did not file a complaint and stated he never had any interest in being part of an Army Regulation 15-6 investigation
- the investigation lacks sufficient facts upon which to base an allegation of sexual harassment
- two text conversations are separated by significant amounts of time and require several layers of assumptions and inferences to reach the point of being sexual
- neither he nor CPT [REDACTED] are homosexual, both acknowledged the text messages were intended as humor, and the text messages had absolutely no sexual meaning
- the IO failed to interview several key individuals who would have greatly contributed to the investigation
- he requested to check the "Retain as Colonel" block if the OER is imposed as a relief for cause
- he requested that the OER not be imposed as a relief for cause with any sexual harassment language
- his voluntary retirement is pending and this OER as written serves no purpose

14. The memorandum from the Commanding General, 7th ID, for the Commander, U.S. Army Human Resources Command (Request for Headquarters, Department of the Army (HQDA), Supplementary of OER for (Applicant) 17 July 2015 through 24 November 2015), 17 February 2016, requests that HQDA conduct the required supplementary review of the contested OER since there was no U.S. Army officer above him in his organization or chain of supervision.

15. The HQDA supplementary review is not available for review.

16. The applicant's records are void of documentation and he did not provide any evidence showing a Commander's Inquiry was requested or conducted. Additionally, there is no evidence that he appealed the contested OER to the U.S. Army Human Resources Command and/or the Officer Special Review Board.

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

18. On 5 April 2016, the AGDRB considered his voluntary retirement request and the grade determination request submitted by the U.S. Army Human Resources Command. The Deputy Assistant Secretary of the Army (Review Boards) determined his service in the rank/grade of COL/O-6 was not satisfactory and directed his placement on the Retired List in the rank/grade of lieutenant colonel/O-5.

19. Directorate of Human Resources, Military Personnel Division, Joint Base Lewis-McChord, Orders 102-00020 (Corrected Copy), 11 April 2016, retired him in the

rank/grade of lieutenant colonel/O-5, having a previous rank of COL, effective 30 April 2016 and placed him on the Retired List effective 1 May 2016.

20. He retired effective 30 April 2016 by reason of sufficient service for retirement. His DD Form 214 (Certificate of Release of Discharge from Active Duty) shows he completed 23 years, 9 months, and 26 days of active service.

21. On 13 September 2019, the ABCMR denied his request for removal of the GOMOR and contested OER from his AMHRR, repeal of the AGDRB determination, and restoration of his retired rank/grade to COL. After reviewing the application and all supporting documents, the Board found that relief was not warranted.

a. The Board concluded the available evidence did not show the GOMOR was untrue or unjust. The GOMOR-imposing authority had available to him the findings of a well-documented investigation that clearly supported the action taken against the applicant. The applicant was afforded due process and the GOMOR-imposing authority acted within his authority, both in imposing the GOMOR and in determining the GOMOR would be filed in the applicant's record.

b. The Board concluded the available evidence did not support a recommendation to remove the contested OER. The Board found no evidence that established clearly and convincingly that the presumption of regularity should not be applied to the OER. The Board found no evidence of administrative error or factual inaccuracy in the contested OER. The Board found the OER represented the considered opinions and objective judgment of the rating officials at the time of preparation.

c. In the absence of a basis for removing the GOMOR or the contested OER from his records, the Board agreed that the record supports the decision to place him on the Retired List in the grade of O-5.

22. A review of his AMHRR shows ABCMR Docket Number AR2017190009236, 13 September 2019, is filed in the restricted folder.

23. He did not provide any evidence showing he filed a whistleblower complaint of reprisal with the Department of Defense or Department of the Army Inspector General (IG). On 4 December 2023, a request to the U.S. Army IG Agency for any records pertaining to the applicant failed to locate any IG records.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, a majority of the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The applicant submitted new arguments with his request for reconsideration claiming he was retaliated against for being a whistleblower. Other than his statement attached to the application, the applicant did not provide evidence of making protected communications. He did not provide evidence the unfavorable personnel actions he experienced were in response to making a protected communication. There is no record of the applicant making a complaint to the Department of the Army Inspector General.

3. A majority of the Board reviewed the new arguments and again concluded the preponderance of the available evidence did not show the GOMOR was untrue or unjust. A majority of the Board reached the same conclusion with regard to the contested OER, determining there is insufficient new evidence that would support changing the decision in the previous consideration of this case. A majority of the Board reviewed the investigation, which was prompted by the report of a junior officer of the applicant's comments, texts, and behavior towards another junior officer, and concluded it was conducted in accordance with applicable law and regulation. The findings were supported by the preponderance of the evidence and no error or injustice occurred when the applicant subsequently received a GOMOR and relief for cause OER.

4. In view of the above, a majority of the Board also determined the record continues to support the decision to place him on the Retired List in pay grade O-5. A majority of the Board reviewed the investigation and considered the applicant's conduct toward the junior officer he targeted for "mentoring" and concluded the preponderance of the evidence showed his service in the grade of O-6 was not satisfactory. The Board also considered all submissions by the applicant both during service and in connection with his ABCMR applications and did not find them persuasive.

5. The member in the minority found the applicant's argument to have merit and found the course of action taken in response to the allegations against him to be overly harsh. The member in the minority determined the GOMOR and contested OER should be removed from the applicant's AMHRR, and his record should be corrected to show he was placed on the Retired List in pay grade O-6.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20170001817 on 13 September 2019.

3/6/2025

X [REDACTED]

CHAIRPERSON
[REDACTED]

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

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) establishes procedures for investigations and boards not specifically authorized by any other regulation or directive. The primary function of any preliminary inquiry, administrative investigation, or board of officers is to ascertain facts, document and preserve evidence, and then report the facts and evidence to the approval authority. It is the duty of the IO or board to thoroughly and impartially ascertain and consider the evidence on all sides of each issue, to comply with the instructions of the appointing authority, to make findings that are warranted by the evidence, and, where appropriate, to make recommendations to the approval authority that are consistent with the findings.
 - a. Paragraph 1-6 states a preliminary inquiry is a procedure used to ascertain the magnitude of a problem, to identify and interview witnesses, to summarize or record

witnesses' statements, to determine whether an investigation or board may be necessary, or to assist in determining the scope of a subsequent investigation.

b. Paragraph 1-12 states this regulation does not require that a preliminary inquiry, administrative investigation, or board of officers be conducted before taking adverse administrative action, such as relief for cause, against an individual.

3. Army Regulation 600-20 (Command Policy), in effect at the time, prescribed the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, Army Equal Opportunity Program, and Army Sexual Harassment/Assault Response and Prevention Program (formerly the Army Sexual Assault Victim Program).

a. Paragraph 4-14b (Relationships between Soldiers of Different Grade) states Soldiers of different grades must be cognizant that their interactions do not create an actual or clearly predictable perception of undue familiarity between an officer and an enlisted Soldier, or between a noncommissioned officer and a junior enlisted Soldier. Examples of familiarity between Soldiers that may become "undue" can include repeated visits to bars, nightclubs, eating establishments, or homes between an officer and an enlisted Soldier, or a noncommissioned officer and a junior enlisted Soldier, except for social gatherings, that involve an entire unit, office, or work section. All relationships between Soldiers of different grades are prohibited if they:

(1) compromise, or appear to compromise, the integrity of supervisory authority or the chain of command;

- (2) cause actual or perceived partiality or unfairness;
- (3) involve, or appear to involve, the improper use of grade or position for personal gain;
- (4) are, or are perceived to be, exploitative or coercive in nature; or
- (5) create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission.

b. Paragraph 7-4 (Definition).

(1) Sexual harassment is a form of gender discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature between the same or opposite genders when:

- (a) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;
- (b) submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person; or
- (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

(2) Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a Soldier or civilian employee is engaging in sexual harassment. Similarly, any Soldier or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.

c. Paragraph 7-5 (Categories of Sexual Harassment).

(1) Verbal. Examples of verbal sexual harassment may include telling sexual jokes; using sexually explicit profanity, threats, sexually oriented cadences, or sexual comments; whistling in a sexually suggestive manner; and describing certain attributes of one's physical appearance in a sexual manner. Verbal sexual harassment may also include using terms of endearment such as "honey," "babe," "sweetheart," "dear," "stud," or "hunk" in referring to Soldiers, civilian co-workers, or family members.

(2) Nonverbal. Examples of nonverbal sexual harassment may include staring at someone (that is, "undressing someone with one's eyes"), blowing kisses, winking, or licking one's lips in a suggestive manner. Nonverbal sexual harassment also includes printed material (for example, displaying sexually oriented pictures or cartoons); using sexually oriented screen savers on one's computer; or sending sexually oriented notes, letters, faxes, or email.

(3) Physical Contact. Examples of physical sexual harassment may include touching, patting, pinching, bumping, grabbing, cornering, or blocking a passageway; kissing; and providing unsolicited back or neck rubs. Sexual assault and rape are extreme forms of sexual harassment and serious criminal acts. When these acts occur, report them in accordance with the procedure outlined in chapter 8 and appendix H of this regulation.

d. Paragraph 7-6 (Types of Sexual Harassment).

(1) Quid Pro Quo. "Quid pro quo" is a Latin term meaning "this for that." This term refers to conditions placed on a person's career or terms of employment in return for favors. It includes implicit or explicit threats of adverse action if the person does not submit to such conditions and promises of favorable actions if the person does submit to such conditions. Examples include demanding sexual favors in exchange for a promotion, award, or favorable assignment; disciplining or relieving a subordinate who refuses sexual advances; and threats of poor job evaluation for refusing sexual advances. Incidents of quid pro quo may also have a harassing effect on third persons. It may result in allegations of sexual favoritism or general discrimination when a person feels unfairly deprived of recognition, advancement, or career opportunities because of favoritism shown to another Soldier or civilian employee on the basis of a sexual relationship. An example would be a Soldier who is not recommended for promotion and who believes that his/her squad leader recommended another Soldier in his/her squad for promotion on the basis of provided or promised sexual favors, not upon merit or ability.

(2) Hostile Environment. A hostile environment occurs when Soldiers or civilians are subjected to offensive, unwanted and unsolicited comments, or behaviors of a sexual nature. If these behaviors unreasonably interfere with their performance, regardless of whether the harasser and the victim are in the same workplace, then the environment is classified as hostile. A hostile environment brings the topic of sex or gender differences into the workplace in any one of a number of forms. It does not necessarily include the more blatant acts of quid pro quo; it normally includes nonviolent, gender-biased sexual behaviors (for example, the use of derogatory gender-biased terms, comments about body parts, suggestive pictures, explicit jokes, and unwanted touching).

4. Army Regulation 600-37 (Unfavorable Information) provides that 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.

a. 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 Official Military Personnel File (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.

c. 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. Only memoranda of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder. Normally, such appeals will be considered only from Soldiers in grades E-6 and above, officers, and warrant officers. The above documents may be appealed on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met. Appeals approved under this provision will result in transfer of the document from the performance folder to the restricted folder of the OMPF.

e. Appeals submitted under this provision will normally be returned without action unless at least 1 year has elapsed since imposition of the memorandum and at least one evaluation report, other than academic, has been received in the interim.

5. 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, including the OMPF. Table B-1 states a memorandum of reprimand is filed in the performance folder of the OMPF unless directed otherwise by an appropriate authority.

6. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policy and tasks for the Army's Evaluation Reporting System, including officer, noncommissioned officer, and academic evaluation reports focused on the assessment of performance and potential.

a. Chapter 4 (Evaluation Report Redress Program) states the Evaluation Report Redress Program consists of several elements at various levels of command. 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.

b. Paragraph 4-7 (Policies) states evaluation reports accepted for inclusion in the official record of a Soldier 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. 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. The determination regarding adequacy of evidence may be made by the HQDA Evaluation Appeals Branch. Appeals based on administrative error only will be adjudicated by the HQDA Evaluation Appeals Branch. Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are substantive in nature and will be adjudicated by the Army Special Review Board. These are generally claims of an inaccurate or an unjust evaluation of performance or potential or claims of bias on the part of the rating officials.

c. Paragraph 4-11 (Burden of Proof and Type of Evidence) states to justify deletion or amendment of a report, the applicant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action was 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 applicant.

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

a. Paragraph 2-28 provides that:

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

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

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

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

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

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

8. Department of Defense Directive 7050.06 (Military Whistleblower Protection) implemented the provisions of the Military Whistleblower Protection Act as codified in Title 10, U.S. Code, section 1034.

a. The directive established that:

(1) members of the Military Services (referred to in this directive as "service members") are free to make protected communications;

(2) no person will restrict a service member from making lawful communications to a member of Congress or an IG;

(3) service members will be free from reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication; and

(4) no person may take or threaten to take an unfavorable personnel action or withhold or threaten to withhold a favorable personnel action in reprisal against any service member for making or preparing to make, or being perceived as making or preparing to make a protected communication.

b. Protected communications are defined as:

(1) any lawful communication to a Member of Congress or an IG; and

(2) a communication in which a member of the Armed Forces communicates information that the member reasonably believes evidence a violation of law or regulation, including:

- a law or regulation prohibiting sexual harassment or unlawful discrimination
- gross mismanagement
- gross waste of funds or other resources
- an abuse of authority
- a substantial and specific danger to public health or safety

c. Reprisal is defined as "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication."

d. A "personnel action" is any action taken that affects, or has the potential to affect, the military member's current position or career. Personnel actions include promotions; disciplinary or other corrective actions; transfers or reassignments; performance evaluations; and any other significant changes in duties or responsibilities inconsistent with the military member's grade.

//NOTHING FOLLOWS//