

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20230011313

APPLICANT REQUESTS:

- Removal of the DA Form 1059 (Service School Academic Evaluation Report), 14 September 2007 from his Army Human Resource Record (AMHRR)
- Redaction of the phrase "he was then assigned to the United States Army Corps of Engineers (USACE) in November and was removed in June, due to personality conflicts affecting the USACE permanent full-time staff" from the DA Form 67-9 (Officer Evaluation Report (OER)) for the period ending 17 November 2012
- Personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record) (Removal of DA Form 1059)
 - Medical document
 - DA Form 2173 (Statement of Medical Examination and Duty Status)
 - Memorandum Surgery Rehabilitation
 - DA Form 3349 (Physical Profile)
 - Memorandum Line of Duty (LOD)
 - DA Form 1059 (Service School Academic Evaluation Report)
 - U.S. Army Engineer School Standard Operating Procedure (SOP)
- DD Form 149 (Removal of DA Form 67-9 (OER))
 - DA Forms 67-9
 - Memorandum Evaluation Report Appeal
 - Letter regarding Reprisal Complaint

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, in regards to removal of the DA Form 1059, in effect, the DA Form 1059 is currently inaccurate since it is in violation of the Engineer Captain Career Courses' Academic SOP and Army Regulation 635-1 [sic] which requires that block 11 (Performance Evaluation) be left blank. However, "failed to achieve course standards" is checked. Furthermore, the comments should read "released from student status through no fault of his own due to disqualifying injury in the LOD and recommended for reinstatement in the course." Additionally, the rater failed to address the extenuating circumstances surrounding the initial and subsequent test failures which resulted in the LOD investigation into the right triceps tendon rupture, during combatives training which disqualified him from graduation due to physical disability and lead to the 6 September 2007 medical drop recorded on the DA Form 2173 (Statement of Medical Examination and Duty Status). The current comments are inaccurate, deceptive, and unjust since they reflect non-graduation or disenrollment from the course due to academic deficiency instead of physical disability. The rogue DA Form 1059 must be either corrected, redacted, or deleted entirely from his AMHRR. This injustice aggravates his post-traumatic stress disorder (PTSD).

3. The applicant states, in regards to redaction of a phrase from DA Form 67-9 (OER), in effect, the phrase "he was then assigned to the United States Army Corps of Engineers (USACE) in November and was removed in June, due to personality conflicts affecting the USACE permanent full-time staff" should be redacted. Negative comments can be supported by written counseling from the rating periods. The rater failed to conduct a proper initial (written) counseling in order to establish expectations/standards for the rating period. The rater failed to conduct periodic counseling sessions, during the rating period. Annual OERs are not for counseling the rated Soldier. There was no "personality conflict" issue. There was a sexual harassment issue. The assertion the applicant was removed from USACE due to a "personality conflict" is misleading and subjective. This injustice aggravates his PTSD.

4. The applicant provides the following documents:

a. A medical document, 1 August 2007, shows the applicant had a possible right triceps rupture.

b. DA Form 2173 (Statement of Medical Examination and Duty Status), 6 September 2007, shows on 1 August 2007, the applicant suffered a right triceps tendon repair. He was an Army National Guard (ARNG) officer in an active duty training status. The training began on 13 July 2007 and was to end on 14 December 2007. The surgery and convalescence leave will cause him to be medical dropped from the Engineer Captain Career Course. The injury was found to be in the LOD.

c. DA Form 3349 (Physical Profile), 10 September 2007, shows the medical condition as right triceps rupture. The profile was temporary with an expiration date of 10 December 2007.

d. Self-authored memorandum to U.S. Army Human Resources Command (AHRC), 10 September 2013, Evaluation Report Appeal for 1 December 2011 through 17 November 2012 states:

(1) He appeals the evaluation report 1 December 2011 through 17 November 2012. The appeal is based on claims of both administrative and substantive error. The senior rater's comments contain the following errors: "in spite" and "intermediate" which are both misspelled.

(2) The substantive error involves an unfortunate incident at the USACE where he was forced to write a letter of complaint to a female full-time staff member concerning sexual harassment and workplace bullying. Therefore, the rater's comment "he was then assigned to the USACE in November and was removed in June due to personality conflicts affecting the USACE permanent full-time staff" is misleading since it insinuates he was relieved for misconduct, is libelous since it sullies his reputation, and is detrimental to his career advancement.

(3) The facts are that he acted as a whistleblower and the USACE leadership orchestrated his transfer by requesting, through his Kansas ARNG leadership, that he be asked to not return. It was not a simple matter of "personality conflict". Therefore, it follows that the senior rater's allusion to the incident.

(4) He requests the removal of the entire evaluation report from his AMHRR. The entire removal is the justified corrective action.

e. Letter from the Office of the Inspector General, 26 November 2014, states, in pertinent part, the letter is to update him on his inquiry into the reprisal complaint he filed under the Military Whistleblower Protection Act. Over 180 days have passed since he completed his Whistleblower Questionnaire. The complexity and circumstances surrounding the case contributed to this delay. They anticipate the investigation will be complete within the next 180 days. The completed investigation is not available for the Board's review.

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

a. NGB Form 22 (Report of Separation and Record of Service) shows he was enlisted in the ARNG from 11 October 2002 through 19 August 2004. He was honorably discharged from the ARNG for appointment as a commissioned or warrant officer.

b. NGB Form 337 (Oaths of Office) shows he took the oath of office in the ARNG on 20 August 2004.

c. DA Form 1059, 26 July 2006, shows he achieved course standards at the Engineer Officer Basic Course from 20 March 2006 through 26 July 2006.

d. DA Form 1059, 14 September 2007, shows he failed to achieve course standards at the Engineer Captain Career Course from 16 July 2007 through 14 September 2007. He failed four critical events and performed marginally on other events. The stress of tests and presentations, in conjunction with his lack of tactical background, impacted the quality of his work. He demonstrated a lack of command presence and tactical proficiency in the course. He should be allowed to return to the course after completion of focused unit retraining to expand his tactical background.

e. DA Forms 67-9 (OER) show he was rated from:

(1) 28 September 2010 through 30 November 2011 his rater rated his performance and potential for promotion as outstanding performance, must promote. His senior rater rated him as best qualified.

(2) 1 December 2011 through 17 December 2012 (the OER in question) his rater rated his performance and potential for promotion as satisfactory performance, promote with the statement "he was then assigned to USACE in November and was removed in June due to personality conflicts affecting the USACE permanent full-time staff". His senior rater rated him as best qualified.

(3) 18 December 2012 through 18 June 2013 his rater rated his performance and potential for promotion as outstanding performance, must promote. His senior rater rated him as best qualified.

f. Memorandum notification of eligibility for retired pay for non-regular service (20 Years), 10 October 2014, notified him he completed the required years of service and will be eligible for retired pay, upon his application, at age 60.

g. NGB Form 22 (Report of Separation and Record of Service) shows he was honorably transferred to the retired reserve on 27 April 2015. He became medically disqualified for further military service.

h. His service record is void of documentation showing he was injured, during his Captain Career course. It is void of information showing why he was removed from USACE.

6. 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.

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. Based upon the available documentation showing the applicant’s dismissal from the Captain Career Course being related to duty performance and not related to any injury or medical condition, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the requested 1059.

Additionally, based upon the contested OER comment being supported by a comment entered by the Senior Rater, the Board concluded there was insufficient evidence of an error or injustice warranting a change or removal fo the contested OER.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	: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.

X //SIGNED//

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.
 - 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.

3. 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 including academic evaluation reports.

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. Paragraph 3-52 (Academic Evaluation) stated the DA Form 1059 is used to report the performance of students attending Army service schools, Department of Defense schools, U.S. Army Reserve schools, NCO academies, allied nation schools, and Reserve Component chaplain candidates for training, as well as formal school status as prescribed below.

f. 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.

Army Regulation 623-3 (Evaluation Reporting System), effective 10 August 2007, prescribed the policies for completing evaluation reports that support the Evaluation Reporting System, including academic evaluation reports.

a. Paragraph 3-52 (Academic Evaluation) stated the DA Form 1059 is used to report the performance of students attending Army service schools, Department of Defense schools, U.S. Army Reserve schools, NCO academies, allied nation schools, and Reserve Component chaplain candidates for training, as well as formal school status as prescribed below.

b. Paragraph 6-7 stated an evaluation report accepted for inclusion in the official record of a rated Soldier's OMPF is presumed to:

- be administratively correct
- have been prepared by the proper rating officials
- represent the considered opinion and objective judgment of the rating officials at the time of preparation

c. Paragraph 6-7f stated an appeal will be supported by substantiated evidence. An appeal that alleges a report is incorrect or inaccurate or unjust without usable supporting evidence will not be considered.

d. Paragraph 6-7h(3) stated:

(1) Appeals based on alleged administrative errors in those portions of a report previously authenticated by the rated Soldier will be accepted only under the most unusual and compelling circumstances. Correction of minor administrative errors seldom serves as a basis to invalidate an evaluation report. Removal of a report for administrative reasons will be allowed only when circumstances preclude correction of errors, and then only when retention of the report would clearly result in an injustice to the Soldier.

(2) Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are substantive in nature and will be adjudicated by the Department of the Army Office of the Deputy Chief of Staff, G-1, 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.

4. 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. Chapter 7 contains the policy for appeals and petitions for removal of unfavorable information from official personnel files. It states 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. It further stipulates only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the OMPF.

//NOTHING FOLLOWS//