

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20230012061

APPLICANT REQUESTS:

- dismissal of all alleged charges
- removal of General Officer Memorandum of Reprimand (GOMOR)
- reimbursement of overpayments taken from his military monthly pay and entitlements
- reinstatement of his promotion to sergeant first class (SFC)/E-7

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

DD Form 149 (Application for Correction of Military Record) (online)

FACTS:

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

2. The applicant states:

a. He would like the dismissal of all alleged charges, removal of GOMOR issued by former 81st Readiness Division (RD) Commanding General (CG) Major General (MG) JCS__, which was unfair, reimbursement of overpayments taken from his military monthly pay and entitlements and reinstatement of his promotion to SFC.

b. Undue Command Influence (UCI) and Retaliations as a result of a direct threat conveyed by former 1st Mission Support Command (1MSC), CG Brigadier General (BG) JWJ__ during an open-door policy on 17 December 2020. The former 1st MSC Command Sergeant Major (CSM) RBB__, 311th Quartermaster (MA) Company Commander, Captain/CPT LMR__ and him were sitting at CG's conference office table. During the meeting, BG JWJ__ conveyed a direct threat towards him: "This thing your wife is doing can directly affect your career and yours as well CPT." His civil rights were violated, and regulatory procedures were not obeyed as established in the military regulations and policies.

c. The applicant's DD form 149 states he provides a rebuttal document, Qualitative Management Program (QMP) submission, awards, and decorations. However, they are not available for review with application.

3. The applicant's service record shows:

a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of the United States), in which he enlisted in the U.S. Army Reserve (USAR) on 20 January 1994.

b. He entered active duty for training on 5 July 1994. He was honorably released from active duty for training on 6 April 1995 and transferred to the USAR. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 9 months, and 2 days net active service.

c. He enlisted in the Regular Army on 20 March 2000, and reenlisted on 7 August 2003 for 4 years.

d. Orders 191-0002, 10 July 2007 shows the applicant was discharged from the Regular Army.

e. The applicant enlisted in the U.S. Army National Guard on 26 July 2007.

f. He entered active duty for training on 20 March 2000. He was honorably discharged on 6 August 2007 and transferred to the USAR. His DD Form 214 shows he completed 7 years, 4 months, and 17 days net active service.

g. DD Form 215 (Correction to DD Form 214), 26 November 2008 for period ending 6 August 2007. It corrected 12e (Total Prior Inactive Service) to 0005 04 28.

h. NGB Form 22 (Report of Separation and Record of Service), 5 May 2009 shows the applicant was honorably released from the ARNG and transferred to the USAR.

i. He enlisted in the USAR on 20 January 2015.

j. Orders B-01-200453, 27 January 2022 shows the applicant was promoted to SFC/E-7, with an effective date of 1 February 2022, with a date of rank of 1 February 2022.

k. Memorandum, Subject: General Officer Letter of Reprimand, 15 February'2022 shows:

(1) An Army Criminal Investigative Division (CID) investigation report found the applicant wrongfully appropriated overseas housing allowance (OHA) entitlements in

violation of the Uniform Code of Military Justice (UCMJ). The evidence also support that he submitted fraudulent leases to the housing office to obtain OHA in excess of what he was entitled to and made false statements to the Criminal Investigative Division (CID) investigators.

(2) He was reprimanded. The letter goes to say that he exhibited poor judgement as a noncommissioned officer (NCO). He abrogated his duties and responsibilities as a Soldier and leader, and breached the Army values. His conduct has been prejudicial to the good order and discipline of the command, and unbecoming an NCO who is expected to set the example.

(3) The applicant acknowledged receipt of the memorandum on 15 February 2022.

l. Orders B-01-200453R, 15 February 2022 revoked the applicant's promotion to SFC/E-7.

m. Memorandum, Subject: Filing Determination of Reprimand, 10 March 2022 shows the GOMOR would be permanently placed in the applicant's Army Military Human Resource Record (AMHRR).

n. On 1 October 2021, the applicant entered active duty. His DD Form 214 shows he was honorably retired on 31 August 2023 in the rank of staff sergeant/SSG/E-6. His DD Form 214 also shows he was retired for sufficient service for retirement. He completed 10 years, and 11 months net active service. He was awarded or authorized:

- Army Commendation Medal with V device
- Army Commendation Medal (2nd award)
- Joint Service Army Achievement Medal
- Army Achievement Medal (3rd award)
- Public Health Service Outstanding Unit Citation
- Army Good Conduct Medal (6th award)
- Army Reserve Component Achievement Medal (3rd award)
- National Defense Service Medal with bronze service star
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- Noncommissioned Officer Professional Development Ribbon (3rd award)
- Army Service Ribbon
- Overseas Service Ribbon (5th award)
- Armed Forces Reserve Medal
- Armed Forces Service Medal with M device and 10-year bronze hourglass
- Marksman Marksmanship Qualification Badge with Rifle Bar

- Driver and Mechanic Badge with driver-wheeled vehicles (s) clasp

o. The Retirement accounting Statement, 6 April 2024, shows the applicant has 27 years qualifying for retirement and 8113 points creditable.

p. The applicant's record is void of any nonjudicial punishments, courts-martial, or any developmental counseling statements, as well as the details of the applicant's reduction in rate other than has already been provided.

4. Army Regulation (AR) 635-5 (Separation Documents) in effect at the time states for block 4a (Grade, Rate or Rank) 4b (Pay Grade) enter the grade or rank at the time of separation.

5. Army Regulation 37-104-4 (Military Pay and Allowances Policy) states, only the Director, Defense Finance Accounting Surface (DFAS)–IN may make settlement actions affecting the military pay accounts of Soldiers as a result of correction of records by the ABCMR per provisions of AR 15–185.

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 carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request and available military records, the Board determined based on the severity of the offense and the absence of character letters of support to attest to the applicant's post service rehabilitation, there is insufficient evidence to support the applicant contentions.

2. Dismissal of All Alleged Charges – The Board found the applicant's request for dismissal of all alleged charges is not supported by the evidence. The Board note, the General Officer Memorandum of Reprimand (GOMOR), dated 15 February 2022, was issued following a substantiated investigation by the Army Criminal Investigative Division (CID). The investigation determined that the applicant wrongfully appropriated Overseas Housing Allowance (OHA) entitlements by submitting fraudulent lease documents and making false statements to CID investigators. The Board acknowledged the applicant's actions constituted serious violations of the Uniform Code of Military Justice (UCMJ) and reflect a breach of integrity and trust expected of a noncommissioned officer. The Board agreed these charges were not arbitrary or unsubstantiated, and therefore, dismissal is not warranted.

3. Removal of General Officer Memorandum of Reprimand (GOMOR) -The Board determined the GOMOR was issued in accordance with Army regulations and based on credible and substantiated findings. The applicant’s misconduct, fraudulent submission of lease documents and false statements demonstrates a significant lapse in judgment and a failure to uphold Army values. The Board agreed, the GOMOR serves as an appropriate administrative measure to document and address this misconduct. Furthermore, removal of the GOMOR would undermine the integrity of the Army’s disciplinary process and fail to hold the applicant accountable for actions unbecoming of a senior NCO. Therefore, relief is denied.

4. Reimbursement of Overpayments Taken from Military Pay and Entitlements - The found the applicant’s request for reimbursement of overpayments is without merit. The Board noted, the overpayments were the result of the applicant’s own misconduct, specifically the wrongful appropriation of OHA entitlements. Based on this, recovery of these funds is consistent with Department of Defense and Army financial regulations, which mandate recoupment of improperly received funds. The Board agreed, granting reimbursement would effectively reward fraudulent behavior and contradict established policy. As such, the request for relief is denied.

5. Reinstatement of Promotion to Sergeant First Class (SFC)/E-7- Based on the preponderance of evidence the applicant’s promotion to SFC/E-7 was revoked on 15 February 2022, the same date the GOMOR was issued. The revocation was a direct consequence of the substantiated misconduct and was executed in accordance with Army promotion policies, which require Soldiers to maintain exemplary conduct and integrity. The Board found the applicant’s actions demonstrated a failure to meet the standards expected of a senior NCO, and reinstating the promotion would be inconsistent with Army values and leadership expectations. Therefore, the request for reinstatement is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRBoaANT 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.

//SIGNED//

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-8 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for block 4a (Grade, Rate or Rank) 4b (Pay Grade) enter the grade or rank at the time of separation.

3. Army Regulation 600-8-19 (Enlisted Promotions and Reductions). This regulation prescribes enlisted promotion and demotion (previously known as reduction) functions. It is linked to the AR 600-8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support promotions and demotions. Chapter 1, paragraph 20 (Erroneous promotions and de facto status) states:

- a. Instruments announcing erroneous promotions will be revoked. When a Soldier

has been erroneously promoted and has received pay at the higher grade, a determination of de facto status may be made only to allow the Soldier to keep any pay and allowances received at the higher grade.

b. De facto status may be granted by the promotion authority or higher CDR after legal review by the servicing Staff Judge Advocate's office. A U.S. Property and Fiscal Officer is the final approval authority for Title 32 ARNG personnel for all grades. In determining whether a Soldier is entitled to de facto status, a factual evaluation must be made to determine whether-

- (1) A promotion order/instrument has been issued.
- (2) The Soldier occupied the higher grade in good faith.
- (3) The Soldier actually discharged the functions of the higher grade.
- (4) There is no absolute statutory bar to his or her receipt of the pay at the higher grade.

4. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's 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 (Appeals).

c. Paragraph 7-2 (Policies and Standards) states that once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

d. Paragraph 7-3c (Filing Authority to Redress Actions) states an officer who directed filing an administrative memorandum of reprimand, admonition, or censure in the AMHRR may request its revision, alteration, or removal, if evidence or information indicates the basis for the adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide a copy of the new evidence or information to the Department of the Army Suitability Evaluation Board to justify the request.

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. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service-related documents deemed necessary to store by the Army.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides 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 another authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) shows memorandums of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

6. Department of Defense (DOD) Instruction 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), 8 August 2023, establishes policy, assigns responsibilities, and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DOD law enforcement activity (LEA) reports and indexing them in the Defense Central Index of Investigations (DCII).

a. Public Law 106-398, section 552, and Public Law 116-283, section 545, codified as a note in Title 10, U.S. Code, section 1552, establish procedures for DOD personnel through which:

(1) covered persons titled in DOD LEA reports or indexed in the DCII may request a review of the titling or indexing decision; and

(2) covered persons titled in DOD LEA reports or indexed in the DCII may request their information be corrected in, expunged, or otherwise removed from DOD LEA reports, DCII, and related records systems, databases, or repositories maintained by, or on behalf of, DOD LEAs.

b. DOD LEAs will title subjects of criminal investigations in DOD LEA reports and

index them in the DCII as soon as there is credible information that they committed a criminal offense. When there is an investigative operations security concern, indexing the subject in the DCII may be delayed until the conclusion of the investigation.

c. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Judicial or adverse administrative actions will not be taken based solely on the existence of a DOD LEA titling or indexing record.

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DOD LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion of their information in the DOD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DOD LEA report, DCII, and any other record maintained in connection with the DOD LEA report when:

(a) probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred;

(b) probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense; and

(c) such other circumstances as the DOD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs 3.2.a.(1) and (2).

(2) In accordance with Public Law 116-283, section 545, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DOD LEA head or designated expungement official will also consider:

(a) the extent or lack of corroborating evidence against the covered person with respect to the offense;

(b) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and

(c) the type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

7. 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. 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.

a. A memorandum of reprimand may be filed in a Soldier's AMHRR 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 AMHRR, the recipient's submissions are to be attached. Once filed in the AMHRR, the reprimand and associated documents are permanent unless removed in accordance with chapter 7.

b. Paragraph 7-2 provides that once an official document has been properly filed in the AMHRR, 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 AMHRR.

c. Only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the AMHRR. Such 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.

8. Army Regulation (NGR) 135-80 (Qualifying Service for Retirement) is the regulation that implements statutory authorities governing the granting of "retired pay" to Soldiers and former Reserve Components Soldiers. On the effective date of granting of retired pay, in the highest grade (temporary or permanent) satisfactorily held by him during his or her entire period of service multiplied by a number equal to the number of years, and any fraction thereof, on the basis of 360 days per year.

a. If the soldier was transferred to the Retired Reserve or discharged on or after 25 February 1975, the retired grade will be that grade which an enlisted Soldier held while on active duty or in an active reserve status for at least 185 days or six calendar months.

b. Service in the highest grade will not be deemed satisfactory and the case will be forwarded to the Secretary of the Army's Ad Hoc Review Board for final determination of the soldier's retirement grade if, during the mandatory review of the soldier's records by the Retired Activities Directorate, it is determined that any of the following factors exist:

- Revision to a lower grade was expressly for prejudice or cause, due to misconduct, or punishment pursuant to Article 15, UCMJ, or court-martial; or
- There is information in the soldier's service record to indicate clearly that the highest grade was not served satisfactorily

//NOTHING FOLLOWS//