

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20230012100

APPLICANT REQUESTS: removal of the DA Form 1059 (Service School Academic Evaluation Report), 13 March 2014, from her Army Military Human Resource Record (AMHRR) or archival of the DA Form 1059.

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)
- Headquarters, U.S. Army Sergeants Major Academy, Fort Bliss, Memorandum (Letter of Transmittal), 13 March 2014
- Headquarters, U.S. Army Sergeants Major Academy, Fort Bliss, Memorandum (Acknowledgement of Receipt for DA Form 1059, Service School Academic Evaluation Report, (Applicant)), 13 March 2014
- DA Form 1059, 13 March 2014
- Postal Service Form 3811 (Domestic Return Receipt), undated

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 she was a single parent of teenage son who was having mental health issues and she was working a lot of hours in her civilian job when she received the lack of progress dismissal from the Sergeants Major Course. She decided to retire from the U.S. Army Reserve and requested withdrawal from the Sergeants Major Course for retirement. Transfer to the Retired Reserve normally takes about 1 month, but it took more than 4 months to process her request, which resulted in her being dropped from the course. This is the only blemish on her record and she would like the DA Form 1059 removed or archived. Her withdrawal was delayed due to untimely approvals to complete a valid withdrawal from the course. She submitted everything needed and if the transfer had taken place within the normal time frame, she would not have an unsatisfactory evaluation in her records.

3. She enlisted in the Regular Army on 18 May 1988. She was honorably discharged from active duty on 29 July 1996 and transferred to the U.S. Army Reserve. She was promoted to master sergeant/E-8 effective 1 December 2008.
4. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 21 June 2012, notified her that she completed the required qualifying years of service for retired pay upon application at age 60.
5. U.S. Army Human Resources Command Orders A-02-202326, 7 February 2012, ordered her to active duty for operational support effective 23 February 2012 for a period of 128 days in support of Operation Enduring Freedom with duty in Afghanistan.
6. She was released from active duty on 20 January 2013. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) for this period shows she completed 10 months and 28 days active service during this period with 12 years, 2 months, and 11 days of total prior active service and 11 years, 6 months, and 10 days of prior inactive service.
7. The Headquarters, U.S. Army Sergeants Major Academy, Fort Bliss, memorandum (Letter of Transmittal), 13 March 2014 with a suspense date of 13 April 2014, states:

The enclosed DA Form 1059, Service School Academic Evaluation Report, may have an adverse impact on your career and is referred to you for your acknowledgement and information. You have the option to submit a statement on your behalf in accordance with AR [Army Regulation] 623-3 [Evaluation Reporting System], paragraph 3-28 [Referred DA Form 1059 Series]. Comments or statements do not constitute an appeal. Appeals are processed separately as outlined in AR [Army Regulation] 623-3, chapter 4 [Evaluation Report Redress Program].

You must place an "X" in the appropriate box in block 9 to indicate whether you wish to make comments. You must date and sign the DA Form 1059 in block 15c. Additionally, you will find a memorandum enclosed to acknowledge receipt of this packet. You must return the DA Form 1059, the memorandum, and any statement you wish to include, in the enclosed envelope to the Registrar by the suspense date listed above.

If the DA Form 1059 is not returned by the suspense date above, the Registrar will place the following statement "Rated Soldier refused to sign" in block 14 and distribute the DA Form 1059 in accordance with AR [Army Regulation] 623-3 and DA PAM [Department of the Army Pamphlet] 623-3 [Evaluation Reporting System].

8. The enclosed DA Form 1059, 13 March 2014, shows this is a referred report. The course duration was 13 August 2013 through 13 March 2014. She failed to achieve course standards. The comments section states:

- the applicant is dismissed from the course for lack of progress
- this dismissal is based on the applicant's failure to maintain satisfactory progress while enrolled in Phase I. No determination is made regarding whether this course failure reflects on the applicant's character, behavior, or lack of aptitude in certain areas
- the applicant was not evaluated on the H100 History Research Paper, H111 Haines Research Paper, L503 Ethics Essay, and the W573 Staff Study
- the rated noncommissioned officer refused to sign

9. The enclosed Headquarters, U.S. Army Sergeants Major Academy, Fort Bliss, memorandum (Acknowledgement of Receipt for DA Form 1059, Service School Academic Evaluation Report, (Applicant)), 13 March 2014, shows the applicant did not make an election or sign the memorandum.

10. The enclosed Postal Service Form 3811 shows the applicant signed for receipt of certified mail. The sender is not identified and the form is undated.

11. Headquarters, 81st Regional Support Command, Orders 14-093-00055, 3 April 2014, reassigned her from Headquarters and Headquarters Company, U.S. Army Civil Affairs and Psychological Operations Command, to the Retired Reserve effective 3 May 2014.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicants petition and military records, the Board determined that the applicant did not demonstrate evidence that establishes the presumption of regularity will not be applied to the DA Form 1059 (Service School Academic Evaluation Report), dated 13 March 2014 filed in her Army Military Human Resource Record (AMHRR) or that action is warranted to correct a material error, inaccuracy, or injustice. The Board noted the applicant's assertion that at the time she was a single parent and simultaneously employed with her civilian employer and requested a withdrawal from the Sergeants Major Course; however, the Board concluded her evaluation report shows she failed to achieve course standards and was dismissed due to lack of progress. Therefore, the Board denied relief.

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

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.

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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 623-3 (Evaluation Reporting System), effective 5 July 2012 and in effect at the time, prescribed the policies and tasks for the Army's Evaluation Reporting System.

a. Paragraph 3-36 (Modifications to Previously Submitted Evaluation Reports) stated an evaluation report accepted by Headquarters, Department of the Army (HQDA), and included in the official record of a rated Soldier is presumed to:

(1) be administratively correct,

(2) have been prepared by the properly designated rating officials who meet the minimum time and grade qualifications, and

(3) represent the considered opinions and objective judgment of the rating officials at the time of preparation.

b. Section II (Commander's or Commandant's Inquiry), paragraph 4-3 (Applicability) stated:

(1) Commandants (for DA Form 1059 or DA Form 1059-2) are required to look into alleged errors, injustices, and illegalities in evaluation reports.

(2) Upon receipt of a request for a Commandant's Inquiry, the commandant receiving the request will verify the status of the DA Form 1059 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 commandant will notify the Evaluations Appeals Office via email with a request to have the evaluation placed in an administrative temporary hold status until completion of the inquiry.

c. Paragraph 4-7f (Policies) stated 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, National Guard Bureau Appeals Section, or the appropriate State Adjutant General (Army National Guard).

d. Paragraph 4-8 (Timeliness) stated substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Failure to submit an appeal within this time would require the appellant to submit his or her appeal to the ABCMR. The Army Special Review Board will not accept appeals over 3 years old or appeals from Soldiers who are no longer serving on active duty or as part of the U.S. Army Reserve or Army National Guard.

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

(1) the presumption of regularity will not be applied to the evaluation report under consideration and

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

f. Clear and convincing evidence will be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. If the adjudication authority is convinced that an appellant is correct in some or all of the assertions, the clear and convincing standard has been met with regard to those assertions.

4. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), 5 June 2012 and in effect at the time, provided procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army's Evaluation Reporting System. Paragraph 6-1 (Deciding to Appeal) states an appellant who perceives that an evaluation report is inaccurate in some way has the right to appeal for redress to the appropriate agency. However, before actually preparing an appeal, an objective analysis of the evaluation report in question should be made.

5. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 2 September 2012 and in effect at the time, prescribed the policies and operating tasks for the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the Official Military Personnel File (OMPF), finance-related documents, and non-service-related documents deemed necessary to store by the Army. It provides that once properly filed in the OMPF, a document becomes a permanent part of that file. The document will not be removed from the OMPF or moved to another part of the OMPF unless directed by competent authority.

//NOTHING FOLLOWS//