

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20230012160

APPLICANT REQUESTS:

- Correction of his military records and administrative data to reflect military retirement at the rank of lieutenant colonel (LTC)/O5, effective 1 September 2021;
- Removal of all adverse administrative actions taken against him after 1 September 2021; and
- Award all due pay and allowances associated with his backdated effective retirement date
- a personal appearance hearing before the Board

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

- Enclosure 1: DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552) with enclosures –
- Enclosure 2 – Power of Attorney
- Enclosure 3 – Retirement Order
- Enclosure 4 - Transfer Order
- Enclosure 5 – Transfer Revocation
- Enclosure 6 – Retirement Revocation
- Enclosure 7 – Peterson Memorandum For the Record
- Enclosure 8 – Ward Legal Memorandum
- Enclosure 9 – Conditional Waiver
- Enclosure 10 – Inspector General (IG) Complaint
- Enclosure 11 – General Officer Memorandum of Reprimand

FACTS:

1. The applicant states, through counsel:

a. “This ABCMR petition seeks to rectify the unjust revocation of [the applicant’s] retirement order, which was originally approved and issued on 1 June 2021, with an effective retirement date of 1 September 2021. Despite the retirement order being valid and in accordance with Army Regulation 600-8-24 (Officer Transfers and Discharges),

the order was later improperly rescinded on 4 October 2021, citing his 'being under investigation' as the reason. However, being under investigation does not warrant revoking a retirement order once it has been approved and issued, especially when no court-martial is pending, nor charges contemplated.

b. "Furthermore, [the applicant's] transfer to the retired reserve, effective 1 September 2021, was also revoked on 24 August 2021, without any valid justifications provided by his command. No other orders, administrative actions, or records of hearings have been presented to justify his removal from active duty or the Active Guard Reserve (AGR) program. [Applicant's] exceptional service record, officer evaluation reports, and numerous awards for meritorious service further reinforce the unjustness of the revocation.

c. "This petition also highlights the Illinois National Guard Adjutant General's denial of [the applicant's] retirement despite a memorandum submitted by LTC B___W___, which presented binding legal authorities supporting his retirement. The denial appears to lack sufficient evidence, legal analysis, or valid reasoning, raising concerns about its legitimacy. As a result, this petition seeks to correct [the applicant's] military record, restore the original retirement order, and dismiss any subsequent adverse actions, such as the GOMOR and conditional waiver, which were issued beyond the proper retirement date.

d. "[The applicant], an AGR Soldier in the Illinois Army National Guard (ILARNG), was pending retirement in August 2021. He had been an AGR Soldier since 1998 and received his commission in June 2002. [Applicant] served on AGR until June 2020, when he resigned to deploy to Ukraine. There was an agreement in place that he would retire from active duty at the end of the deployment, or no later than 31 August 2021, if he returned to the ILARNG.

e. "In April 2021, [the applicant] returned from his deployment but was subsequently informed on 7 May that he was under command-directed investigation based on the results of a command climate survey. Nevertheless, on 1 June 2021, a retirement order was issued ordering [the applicant's] retirement effective 31 August 2021, with his retirement date on 1 September 2021. He received his final DD [Form] 214 on 6 August 2021. [Applicant] then received a second order, dated 17 August 2021, indicating his transfer to the retired reserve, also effective 1 September 2021.

f. "However, on August 24 - only seven days before he was set to retire - [the applicant] was notified that the transfer order was being revoked, and he would not be allowed to remain on active duty. The revocation of his retirement order was later produced on 4 October 2021, along with a revocation of his retirement DD [Form] 214. The reasoning for this revocation was --due to Solider [sic] being under investigation. No other orders, administrative action, or records of hearings or otherwise to indicate

justification or action regarding [the applicant's] removal from active-duty or AGR have been produced by his command, nor any evidence whatsoever to support revoking his retirement orders.

g. "On September 25, 2021, [colonel] [COL] G____ P____ submitted a memorandum for record on [the applicant's] behalf, refuting the allegations in the command climate survey and highlighting [the applicant's] exceptional performance during his last deployment. On 1 December 2021, LTC B____ W____, acting as Trial Defense Counsel for [the applicant], submitted a legal memorandum to ILARNG TAG, Maj. Gen. R____ N____ addressing [the applicant's] retirement issues. LTC W____ argued that [the applicant] had not received formal notification of any proceedings to withdraw his federal recognition, that [the applicant] had been informed he would not be allowed to retire despite previously approved retirement orders, and that the revocation of the retirement orders violated Army regulation. The memorandum was denied.

h. "On May 11, 2022, with no available options and facing dire financial straits due to not having received any military pay in almost nine months, [applicant] was pressured by his command to voluntarily tender his resignation for retirement purposes in lieu of withdrawal of federal recognition, thereby waiving certain rights and conditioned on his retirement at his current rank with no adverse actions other than a GOMOR, and consideration given to the original retirement date of 1 September 2021. However, his retirement was not backdated and was listed as 30 September 2022, thereby violating the conditions of his waiver.

i. "On June 10, 2022, [applicant] submitted a formal IG complaint against ILARNG TAG, Maj. Gen. R____ N____, reiterating the arguments presented in LTC W____'s earlier legal memorandum. [The applicant] stated that despite multiple retirement orders and Army regulations supporting his retirement, the TAG arbitrarily denied it. He also mentioned that he was given only seven days' notice that he would not be allowed to retire and would be transitioned to part-time service, preventing him from receiving full-time pay or retirement benefits. [The applicant] alleged that the delay in his retirement was intended to punish him.

j. "Furthermore, [the applicant] received a GOMOR from BG J____ O____ on 6 August 2022, based on the findings of an administrative investigation. [Applicant] submitted a rebuttal on 1 September 2022, denying any wrongdoing and pointing out evidence that supported his innocence, including letters from members of his team and his commendable service record.

k. "Throughout his career, [the applicant's] Officer Military Personnel File (OMPF) contained officer evaluation reports recognizing his exceptional qualifications, recommendations for promotion, and numerous awards for meritorious service,

including the period covering the deployment on which the allegations were made in the command survey.

l. “[The applicant’s] retirement order, which bore an effective date of 1 September 2021, was improperly revoked in violation of Army Regulation 600-8-24. The subsequent adverse actions taken against him are invalid and must be expunged from his record. It is incumbent upon the authorities to uphold the integrity of the military justice system by promptly rescinding the revocation of [the applicant’s] retirement order and correcting his military record to reflect his rightful retirement status, with all due pay and allowances. Failure to do so would only perpetuate injustice and undermine the fundamental principles upon which the U.S. military operates.”

m. The entire legal brief has been provided to the Board for their complete review.

2. Counsel provides the following documents:

a. Order 147-1003, issued by Department of Military Affairs, State of Illinois, 1 June 2021 shows the applicant was retired from active duty on 31 August 2021, released from assignment and duty and placed on the Retired List, effective 1 September 2021. He completed 24 years, 3 months and 7 days of military service.

b. Memorandum, Subject: Voiding DD Form 214 for [Applicant], 4 October 2021 states, “In accordance with the above reference, the DD form 214 (Certificate of Release or Discharge from Active Duty) for [Applicant] be voided. Retirement revoked by the State of Illinois due to Solder being under investigation.”

c. Memorandum For the Record, issued by the ILARNG Joint Force Headquarters, 25 September 2021, states, in effect, that the COL was the applicant’s supervisor during the 33rd IBCT’s deployment to Ukraine from June 2020 thru April 2021. The applicant performed exceptionally in his assignment as the Operations Group Section Lead advisory to the Armed forces Ukraine Combat Training Center Yavoriv. His section had the most complex and challenging assignment but due to his leadership, experienced the greatest success in comparison to all other sections. He was always professional, motivating, respectful and people friendly. He put in long hours and never said anything disparaging to anyone. He was an inspirational leader and certainly no indications of toxic leadership. There were female Soldiers and linguists and none of them ever expressed any concern about how they were being treated. He never made any unprofessional or demeaning comment about women or any fellow female Soldier or linguist during the entire deployment. The applicant was one of the highest performing officers in the Task Force who was also well respected and liked among his fellow Soldiers and civilians. The entire letter has been provided to the Board.

d. Legal Memorandum from the applicant’s legal counsel while he was in service. It

states:

(1) "I have been assigned to serve as legal counsel to [the applicant] involving an AR 15-6 investigation which was commenced to determine whether or not he violated Army Regulations.

(2) Following substantiated findings in the AR 15-6 investigation, [the applicant] was informed that the ILARNG TAG intended to seek withdrawal of his Federal recognition. As of the date of this memorandum, [the applicant] has not received formal notification of such a proceeding.

(3) [The applicant] was informed that due to the pending investigation and the intent of the ILARNG to seek withdrawal of his Federal recognition, he would not be allowed to retire as had been previously approved by three separate Orders.

(4) [The applicant] received his retirement Orders on 1 June 2021 from the ILARNG TAG which stated that [he] was retired from active duty effective 31 August 2021. This Order was revoked on 04 October 2021 by HQ, USAG, Fort Leonard Wood, see attached exhibit 8.

(5) [The applicant] was issued a DD 214 on 6 August 2021 designating his separation as a retirement and characterizing his service as honorable. This DD [Form] 214 was voided on 4 October 2021 by HQ, USAG, Fort Leonard Wood.

(6) [The applicant] received his State of Illinois retirement Orders on 17 August 2021 from the ILARNG TAG which transferred him to the retired reserve effective 31 August 2021. This Order was revoked on 24 August 2021 by the TAG, ILARNG.

(7) [Counsel cites Army Regulation 600-8-24, paragraph 3].

(8) There are specific criteria which must be met to amend or revoke a retirement order as stated in the above Army Regulation 600-8-24, i.e. '...promotion option, extreme compassionate reasons, or for the good of the Service'. None for these exceptions apply to [the applicant] and therefore rescinding his retirement orders is in violation of this Army regulation.

(9) One of [the applicant's] retirement orders was revoked prior to his scheduled retirement date of 1 September 2021. Two of [his] retirement orders were revoked after his scheduled retirement date of 1 September 2021.

(10) [The applicant] hereby requests to have his retirement orders reinstated immediately as previously authorized in his three retirement orders referenced above and be allowed to retire as required by Army Regulation 600-8-24, para. 6-3.

e. Memorandum, Subject: Conditional Waiver in lieu of proceedings for withdrawal of Federal Recognition, 11 May 2022, states, in effect, the applicant voluntarily tendered his resignation for the purpose of retirement as an officer of the ILARNG and as a Reserve Officer of the Army. He was advised of the reasons for initiation of action to withdraw his Federal Recognition his rights to appear before a board of officers, to be represented by counsel, to submit a brief on his behalf and any other statement, to present witnesses, and to have a reasonable time (at least 30 days) to prepare his case. He waived the above rights with the understanding that if his resignation for the purpose of retirement is accepted, he may be separated with a discharge characterization of no less than a general discharge and that he maintain his rank of LTC with no referral to a grade determination board, receiving no punitive action or adverse administrative action other than a GOMOR and that his retirement ate being retroactive to his original retirement date of 1 September 2021 but not later than 31 May 2022.

f. Memorandum for the IG, Department of Defense, Subject: Formal IG Complaint against MG R____N____, the TAG, ILARNG, 14 June 2022, which states, in pertinent part:

(1) "Unfortunately, during my last year of service with the ILARNG, I have faced unwarranted accusations of misconduct and a revocation of my retirement orders preventing me from retiring for nearly one year from the date I was scheduled to retire. My primary complaint involves MG N____ using an administrative process to artificially prevent me from retiring. By unnecessarily and unreasonably preventing me from retiring for nearly 10 months, Maj Gen N____ is using an administrative process for the purpose of taking punitive action against me, which also has a direct effect on my family.

(2) My initial request to retire was approved for August of 2020. Around April of 2020, I requested to delay my retirement to allow me to deploy with the 33rd IBCT to Ukraine starting in June of 2020 and retire after the deployment. The request was approved but required me to resign from the Title 32 AGR Program, with the agreement to deploy and retire upon return before FY 2022. After returning from the deployment, but prior to the T10 Order ending, I was informed that I was flagged for a Commander's Investigation. I completed all retirement actions, received a retirement order dated 1 June 2021 for my retirement to start on 1 September 2021. I also received a completed DD 214 on or around 10 August 2021 which stated that my separation was for the purpose of retirement. I then received another retirement order dated 17 August 2021 for my retirement to start on 1 September 2021. Both Retirement Orders were signed by MG N____. On 24 August 2021, I received an email stating that I would not be allowed to retire. The email also stated that I would not be allowed to continue active service. I was moved to part-time service after 24-years of continuous active-duty service. My 17 August retirement order was revoked on or around 24 August 2021. This action stopped

my active duty pay and blocked me from receiving my active-duty retirement pay. The retirement order dated 1 June 2021 and DD [Form] 214 were both revoked on 4 October 2021 which was after my approved retirement date of 1 September 2021. This created an enormous financial hardship for me and my family.

(3) MG N____, violated Army Regulations by revoking my Retirement Order after it was approved, unexpectedly denying my family and me my planned and previously approved retirement. He submitted his request to TAG through the [Staff Judge Advocate] for the ILARNG on or around 2 December 2021. It was denied.

(4) MG N____ deliberately delayed an administrative action for the purpose of denying my family and me the ability to retire. As of the date of this memorandum, nearly 10 months since my approved retirement date, MG N____ continues to delay my retirement by artificially extending an administrative process. He is using this as a punitive measure. Each month that my retirement is delayed is denying me my earned retirement, survivor benefits for my wife, and the many other benefits to which my family and I are entitled after 30-years of honorable service. It is incomprehensible that MG N____ would use this process to harm my family and me this way.”

3. A review of the applicant’s service record shows:

a. On 7 June 2002, the applicant took his Oaths of Office in the ILARNG as a second lieutenant (2LT).

b. Orders 158-109, 7 June 2002, appointed the applicant in the ILARNG as a 2LT.

c. Special Orders Number 9AR, reflects the applicant was promoted to the rank/grade of Major (MAJ)/O-4 in the ILARNG with an effective date of 10 January 2011.

d. Order 169-0999, 18 June 2021 reflects the applicant was ordered to active duty in Active Guard or Reserve Status in the rank of LTC, to report to the ARNG Staff Regiment, Joint Force, with a reporting date of 19 January 2021.

e. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 11 June 2021 due to the completion of his required service. He completed 2 months and 12 days of active duty service, with 24 years and 25 days of total prior active service. He received the following awards:

- Bronze Star Medal
- Meritorious Service Medal (5th Award)
- Army Commendation Medal (5th Award)
- Army Achievement Medal (3rd Award)

- U.S. Navy Achievement Medal
- Meritorious Unite Commendation
- Army Good Conduct Medal
- Army Reserve Component Achievement Medal
- National Defense Service Medal with Bronze Service Star
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Med with Campaign Star
- Iraq Campaign Medal with Campaign Star
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Army Reserve Component Overseas Training Ribbon (2nd Award)
- Armed Forces Reserve Medal with 20 year Device Silver Hour Glass
- Armed Forces Reserve Medal with Device (3rd Award)
- NATO Medal
- Combat Action Badge
- Master Recruiter Badge

f. Transfer Order 0001333314.00, issued by the ILARNG Augoe, Army Element Joint Force Headquarters, 17 August 2021 reflects the applicant was placed on the Retired Reserve, with a termination date of 31 August 2021.

g. Transfer Order 0001333314.00 which transferred the applicant to the Retired Reserves was revoked on 24 August 2021.

h. Memorandum, Subject: GOMOR, issued by the ILARNG, 6 August 2022, which states in part:

(1)“I am reprimanding you for misconduct. Specifically, I am reprimanding you based upon the findings of the enclosed administrative investigation in which the investigating officer determined that you engaged in misconduct constituting failure to obey a regulation and conduct unbecoming an officer and gentleman. Your conduct, as described in the enclosed administrative investigation, is inexcusable. As a Commissioned Officer, you are charged with the responsibility of demonstrating exemplary conduct and setting the example for subordinates to emulate. You failed in that responsibility and undermined your ability to lead Soldiers. Your misconduct has seriously diminished your standing as a Commissioned Officer, demonstrates a lack of leadership qualities, and calls into question your fitness as a leader. I trust that you will refrain from any further misconduct and that your future actions will reflect the degree of professionalism expected of every Commissioned Officer assigned to the ILARNG.”

i. On 7 August 2022, the applicant acknowledged the GOMOR and elected to submit a written statement within 30 days.

j. On 1 September 2022, the applicant submitted a rebuttal to the GOMOR. He states, "The AR 15-6 Investigation included evidence that I did not engage in misconduct. Attached to this rebuttal are letters of support from 12 members of my 21 Soldier team stating that they have never known me to engage in misconduct and that the allegations against me are inconsistent with my character. I did not engage in the misconduct alleged. My letters of support state that I made some Task Force policies more stringent. They state that although some sections throughout the Task Force had command climate issues, our section was quite the opposite, our command climate was excellent. Further, other officers submitted letters on my behalf stating that not only did I not violate policies or commit misconduct, the allegations against me and others were from disgruntled Soldiers who intentionally sought to damage others' careers throughout the deployment. My first line leader, COL G ___ P _____, was not available during the time that I had to submit my version of the events and respond to the allegations against me as part of the AR 15-6 Investigation. However, he later provided me with a letter that also supports my character and adherence to Army policies and values. He, like the 12 Soldiers who wrote letters of support for me, states the opposite of the findings in the investigation, that my performance was exceptional and that I did not commit misconduct. Although I submitted this letter in the past, no one has ever responded to me that the letter was included in my packet. Therefore, I will provide it as an attachment to this rebuttal." The applicant goes on to say, his career has been remarkable, and he is among the most decorated Officers in the ILARNG. He also provides character references, which is provided for the Board's view.

k. Memorandum, Subject: Filing Decision of GOMOR. The Assistant TAG, states after careful consideration of all the facts, he directed the GOMOR be filed in the applicant's Army Military Human Resources Record.

l. National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) reflects the applicant was honorably retired from the ILARNG on 30 September 2022. He completed 30 years of total service for retirement in the rank of LTC/O5. He received the following awards:

- Army Reserve Components Achievement Medal (9th Award)
- Illinois Long and Honorable Service Medal (5th Award)
- Army Achievement Medal (3rd Award)
- Illinois Military Attendance Ribbon (14th Award)
- Army Commendation Medal (5th Award)
- Master Recruiter Badge
- Meritorious Service Medal (5th Award)
- Army Good Conduct Medal

- Armed Forces Reserve Medal with M Device and 20 Year Silver
- Bronze Star Medal (2nd Award)
- Combat Action Badge
- Illinois Abraham Lincoln Medal of Freedom (3rd Award)
- Meritorious Unit Commendation
- Illinois State Active Duty Ribbon (2nd Award)
- Illinois Military Medal of Merit
- Army Reserve Components Overseas Training Ribbon (2nd Award)
- NATO Medal
- Afghanistan Campaign Medal with Campaign Star
- Navy and Marine Corps Achievement Medal
- National Defense Service Medal with Bronze Service Star
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Army Service Ribbon
- Overseas Service Ribbon (4th Award)
- Army National Guard Master Recruiter Badge

m. Transfer Order 0002146300, 9 November 2022 reflects the applicant was transferred to the Retired Reserve, with an effective date of 1 October 2022.

n. Special Orders Number 109AR, 15 November 2022 reflects the applicant was transferred to the USAR/Retired List in the rank of LTC/O5.

4. On 9 August 2024, an advisory opinion was obtained from the National Guard Bureau (NGB), which recommended approval of the applicant's request. It states:

a. Based on the applicant's claims and the documents he provided in support of his request, the applicant request to retire effective 1 September 2021 should be approved. AR 600-8-24 specifically states guidelines for amending or revoking approved and issued retirement orders. Considering the applicant's situation where he already had his DD Form 214, retirement orders, and was on terminal leave, the retirement orders were erroneously revoked directly contrary to the Army Regulations. An AR 15-6 investigation is not a reason outlined in AR 600-8-24 for revoking retirement orders, and he should not have been held from retirement. This incorrect revocation has caused undue hardship on the applicant and his family. Additionally, if his retirement is effective 1 September 2021, there should not have been an investigation that resulted in the GOMOR.

b. The Army National Guard AGR Branch concurs with this recommendation.

5. On 20 August 2024, a copy of the advisory opinion was provided to the applicant's counsel for the opportunity to respond.

6. On 22 August 2024, counsel for the applicant states in response to the advisory opinion from NGB, "The AO makes it abundantly clear that an error and injustice occurred when [the applicant's] retirement orders were improperly revoked on August 24, 2021, because of an AR 15-6 investigation. [The applicant's] retirement orders were effective 1 September 2021 and AR 600-8-24 does not provide for the revocation of retirement orders for the purposes of an AR 15-6 investigation. As the AO admits '[a]n AR 15-6 investigation is not a reason outlined in AR 600- 8-24 for revoking retirement orders, and he should not have been held from retirement.' The AO is favorable, and this Board should grant [the applicant's] requested relief.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was 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.

a. The applicant was transferred to the Retired Reserve on 17 August 2021, but their Retired Reserve orders were revoked on 24 August 2021, contrary to regulation. Subsequently, on 6 August 2022, a General Officer Memorandum of Reprimand (GOMOR) was issued for misconduct (failure to obey an order/regulation) and filed in the applicant's Army Military Human Resource Record (AMHRR). The applicant was ultimately placed on the Retired List as an LTC on 15 November 2002.

b. A National Guard Bureau (NGB) Advisory Opinion recommends approval of relief, citing that the revocation of the applicant's Retired Reserve orders was contrary to regulation and that if the applicant had properly retired on 1 September 2021, there should not have been an investigation leading to the issuance of a GOMOR.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Voiding ILARNG Order 0001333314, dated 24 August 2021
- Amending ILARNG Order 0002146300.00, dated 9 November 2022 to reflect the effective date of 1 September 2021
- removing the General Officer Memorandum of Reprimand, dated 6 August 2022, with auxiliary documents from his Army Military Human Resource Record
- Awarding any backpay and entitlements as a result of this correction

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. 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.

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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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 (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 conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Paragraph 5-2 states IOs may use whatever method they deem most efficient and effective for acquiring information. Although witnesses may be called to present formal testimony, information may also be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

3. Title 10, U.S. Code, section 628 (Special Selection Boards), paragraph (b)(1), states if the Secretary of the Military Department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene an SSB under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine:

a. the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

b. the board did not have before it material information for its consideration.

4. Army Regulation 600-8-29 (Officer Promotions), prescribes policies and procedures governing promotion of Army commissioned and warrant officers on the Active Duty List. Paragraph 7-2 states an SSB may be convened under Title 10, U.S. Code, section 628, to consider or reconsider commissioned or warrant officers for promotion when Headquarters, Department of the Army, discovers one or more of the following:

- an officer was not considered in or above the promotion zone by a regularly scheduled board because of administrative error (SSB required)
- the board that considered the officer in or above the promotion zone acted contrary to law or made a material error (SSB discretionary)
- the board that considered the officer in or above the promotion zone did not have before it some material information (SSB discretionary)

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 Official Military Personnel File (OMPF), finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 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) states the DA Form 67-10-2 is filed in the performance folder of the Soldier's OMPF and memorandums of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

6. 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 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 (Appeals).

c. Paragraph 7-2 (Policies and Standards) 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. Soldiers must have received at least one evaluation (other than academic) since imposition. If an appeal is denied, a copy of the appeal will be placed in the restricted portion of the AMHRR.

d. 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.

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

a. Paragraph 1-11 provides that when it is brought to the attention of a commander that a report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, that commander will conduct an inquiry into the matter. The Commander's Inquiry will be confined to matters related to the clarity of the evaluation report, the facts contained in the report, the compliance of the evaluation with policy and procedures established by Headquarters, Department of the Army, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official.

b. Paragraph 4-7 provides that evaluation reports accepted for inclusion in the official record of an officer are presumed to be administratively correct, been prepared by the proper rating officials, and represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant 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 is 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 appellant.

c. Paragraphs 4-11a and 4-11b state an evaluation report accepted for inclusion in the official record of a rated Soldier's OMPF is presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of the rating officials at the time of preparation. The burden of proof rests with the applicant. Accordingly, 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 and action is warranted to correct a material error, inaccuracy, or injustice.

d. Paragraph 4-11d states 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 (see Department of the Army Pamphlet 623-3 (Evaluation Reporting System)). Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant'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 appellant'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 report was rendered.

//NOTHING FOLLOWS//