

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20230012181

APPLICANT REQUESTS:

- removal of the general officer memorandum of reprimand (GOMOR), 5 July 2022, from his Army Military Human Resource Record (AMHRR)
- a 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 under the Provisions of Title 10, U.S. Code, Section 1552)
- Headquarters, U.S. Army Reserve Medical Command, Memorandum (Request for Army Board for Correction of Military Records (ABCMR) from (Applicant)), 3 June 2023
- three County Sheriff General Offense Hardcopies, 3 November 2016 to 1 June 2018
- Criminal Report Affidavit, 14 February 2021
- Circuit/County Court Arrest Warrant, 15 February 2021
- Circuit/County Court Judgment and Sentence, 8 November 2021
- Headquarters, 143d Sustainment Command (Expeditionary), Memorandum (GOMOR), 5 July 2022
- 154th Legal Operations Detachment Memorandum (Statement of (Applicant), GOMOR Rebuttal Matters for (Applicant), 19 September 2022
- Headquarters, 143d Sustainment Command (Expeditionary), Memorandum (Filing Determination of Reprimand – (Applicant)), 8 December 2022

FACTS:

1. The applicant states the GOMOR he received was an injustice under the provisions of Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-9. Specifically, the GOMOR states he is being reprimanded for assaulting his spouse on 15 February 2021. The GOMOR also references three earlier incidents where he was arrested between 2016 and 2019. The GOMOR relies heavily on police reports, which have no requirement to contain evidence that is proven by the preponderance of the evidence. An individual can report almost anything and it will end

up in a police report, no proof or support required. Police are the first step in criminal investigations that continue to develop and gain more information, at which time a prosecutor is able to completely evaluate the case. To rely solely on police reports is a disservice to him and to the administration of justice because those police reports don't have the benefit of continued investigation or being weighed against counterbalancing evidence.

2. Following prior enlisted service in the Army National Guard of the United States, he enlisted in the U.S. Army Reserve on 4 October 2018.

3. The County Sheriff General Offense Hardcopy, 3 November 2016, lists the applicant as the suspect for the misdemeanor offense of battery/assault on 1 November 2016. The report states, in part:

On 11/01/2016 [2 November 2016] at approximately 1030 hours [10:30 a.m.], the victim [applicant's spouse] and the suspect [applicant] engaged in a verbal argument that turned physical when the suspect [applicant] allegedly struck the victim [applicant's spouse] in the face with a closed fist. The suspect [applicant] fled in his vehicle to an unknown location. Both parties are married to each other (for two years). There are no witnesses to the incident. The victim [applicant's spouse] received no visible injuries. The incident occurred at their residence located at XXXX B\_\_\_\_ S\_\_\_\_ C\_\_\_\_ Riverview, FL 33578 "S\_\_\_\_ at B\_\_\_\_" in the parking lot area.

4. The County Sheriff General Offense Hardcopy, 6 July 2017, lists the applicant as the suspect for the felony offenses of aggravated assault, theft from vehicle, simple battery, and criminal mischief on 3 July 2017. The report states, in part:

Upon arrival, the arrestee, identified as [Applicant], was already in custody in the rear of Deputy N. H\_\_\_\_ [badge number] marked HCSO [H\_\_\_\_ County Sheriff's Office] patrol car (see supplement). Dep. [Deputy] J. O\_\_\_\_ [badge number] also responded to assist (see supplement)....

I observed a black 2002 GMC [General Motors Corporation] (Chevrolet) [Sierra] 3500HD [heavy duty] to[w] truck bearing Florida tag D\_\_\_\_; with an assigned VIN [vehicle identification number] of XXXXXXXXXXXX with a white UHaul pickup truck hooked up in the back. I observed multiple points of impact, as if the windows were struck with a blunt object such as a metal pipe, to the rear window (three points of impact), the windshield (two points of impact), and the front passenger window (one point of impact). The damage to the vehicle is estimated to cost \$1,200 to repair.

[Applicant] was charged with Burglary, Simple Battery, Aggravated Assault with a Deadly Weapon, and Felony Criminal Mischief and was transported to O\_\_\_\_ R\_\_\_\_ Jail.

5. The County Sheriff General Offense Hardcopy, 1 June 2018, lists the applicant as the suspect for the felony offense of a domestic violence – battery/assault) on 29 May 2018. The criminal report affidavit states:

On 05-9-2018 [9 May 2018], at approximately 2017 hours, [8:17 p.m.] the defendant [applicant] and the victim [applicant's spouse] were engaged in a verbal altercation that turned physical when the defendant [applicant] knowingly and intentionally pushed the victim [applicant's spouse], hit her chest with his knee, and pushed her to the floor. The defendant [applicant] then armed himself with a gun and intentionally pointed the gun at the victim [applicant's spouse]. These actions were against the victim's [applicant's spouse's] will and created a well-founded fear in the victim [applicant's spouse]. The defendant [applicant] and the victim [applicant's spouse] are married and have been living together as a family for 5 years. The victim [applicant's spouse] positively identified the defendant [applicant] as the one who committed the offense. The defendant [applicant] was positively identified via his valid Florida Drivers [sic] License.

6. The Criminal Affidavit Report, 14 February 2021, lists the applicant as the defendant for the misdemeanor offense of battery on 14 February 2021. The report states:

On 02/14/2021 [14 February 2021], at approximately 2045 hours [8:45 p.m.], the defendant [applicant] and victim [applicant's spouse] were engaged in a verbal altercation which turned physical when the defendant [applicant] willingly and unlawfully used his hand to grab the victim [applicant's spouse] by her head and push her head into a wall. The push caused the victim [applicant's spouse] to suffer some soreness, however the victim [applicant's spouse] refused treatment by Emergency Medical Services. The defendant [applicant] then fled the residence in a vehicle in an unknown direction. The defendant [applicant] and the victim [applicant's spouse] have been married for seven years. The victim [applicant's spouse] positively identified the defendant [applicant] as the person who committed the offense.

7. The Circuit/County Court Arrest Warrant, 15 February 2021, shows the applicant was arrested for the first degree misdemeanor offense of battery – domestic violence and non-felony offense of driving under the influence of alcohol on 15 February 2021.

8. The Circuit/County Court Judgment and Sentence, 8 November 2021, shows the applicant entered a plea of nolo contendere [no contest] to disorderly conduct. He was

ordered to pay mandatory and discretionary costs, fines, fees, penalties, and surcharges totaling \$348.00.

9. On 5 July 2022, the Commanding General, Headquarters, 143d Sustainment Command (Expeditionary), issued him a GOMOR, wherein he stated:

I hereby reprimand you for assaulting your spouse. On 15 February 2021, you were arrested by the H\_\_\_\_\_ County FI Sheriff's Office (HCSO) on charges of domestic violence battery. Subsequently, you were formally charged by the state attorney with battery to which you entered a nolo contendere [no contest] plea to disorderly conduct on 8 November 2021. In her allegations leading to your arrest, your spouse (victim) stated you grabbed her by the side of her head and pushed her head into the wall. This occurred after you escalated a verbal argument into a physical altercation by taking the victim's phone away from her as she was trying to leave.

Additionally, other arrest reports received from HCSO show a history of violence and poor judgment. On 29 May 2018, you were arrested by HCSO on charges of battery and aggravated assault. For this arrest, the same victim alleged that, after a verbal altercation, you struck her in the chest with your knee, pushed her to the floor, and threatened to shoot the victim while pointing a firearm at her. In 2016, HCSO reports document the same victim alleging you struck her following yet another verbal dispute. On 3 July 2017, in a non-domestic incident, you were arrested by HCSO on charges of burglary, simple battery, aggravated assault with a deadly weapon, and felony criminal mischief. This arrest stemmed from a physical altercation between you and a tow truck driver (driver). HCSO reports indicate you entered the driver's tow truck without permission or lawful authority, which led to the physical altercation. After the altercation, the driver alleged you threw vehicle keys at him striking the back of his leg. The driver then alleged you retrieved a metal pipe and threatened him with further violence. As a result, the driver fled the scene and, upon returning a short time later, found his tow truck's windows smashed. A witness to the altercation reported seeing you strike the victim [tow truck driver] multiple times with a closed fist and confirmed the driver's accusation that you threw keys at him (driver). The witness also reported hearing you state you were "going to get a gun" during this exchange with the driver.

You have breached the Soldier's Creed and Army values and have brought discredit upon the Army. Your actions are disgraceful and completely unacceptable. There is no excuse for this pattern of aggressive behavior that only served to escalate what would otherwise have been non-physical verbal disputes. Your repeated arrests cause me grave concern about how quickly you resort to violence to resolve your disputes. Your poor judgment and ill-thought actions affect good order and discipline and give rise to questions regarding your

potential for future service. I expect your future behavior will reflect the high degree of professionalism expected of every Soldier assigned to this command. Additionally, you are admonished and directed to conform your future behavior to the high standards expected of all Soldiers, especially that of a noncommissioned officer.

This is an administrative memorandum of reprimand imposed under the provisions of AR [Army Regulation] 600-37 [Unfavorable Information] and not as punishment under Uniform Code of Military Justice, Article 15. You are advised that in accordance with AR [Army Regulation] 600-37, paragraph 3-5c, I am considering whether to permanently file this reprimand in your Army Military Human Resource Record. You have thirty (30) calendar days from the date of receipt of this reprimand to submit matters in rebuttal on your behalf. Your response to this reprimand should be by memorandum to me submitted through your chain of command. I will withhold my final filing determination until I timely receive and consider any response you may choose to submit. Requests for extension of your response period, or copies of any supporting documentation for this reprimand will be made in writing to the Office of the Staff Judge Advocate, 143d Sustainment Command (Expeditionary), 9500 Armed Forces Reserve Drive, Orlando, Florida 32827-5226, or call 910.771.0341.

10. The 154th Legal Operations Detachment memorandum from the applicant (Statement of (Applicant), GOMOR Rebuttal Matters for (Applicant)), 19 September 2022, states:

I'd like to first acknowledge my past short comings and thank you for allowing me the opportunity to provide insight to these accusations. I understand that the reports made are your only guide to make judgment. However, the perceived facts do not present an accurate picture of the events that took place. My wife and I have had a very unstable and at times a very toxic marriage and most certainly should have separated a long time ago. Unfortunately, quitting is something that's not in either of us, and the idea of us having a happy [sic] family with our two sons kept fueling our strive [sic] to make it work.

I understand that I'm being reprimanded for assaulting my wife. However, I was never convicted of assaulting my wife and, more important, I did not assault her.

I did plea [sic] no contest to disorderly conduct. I was offered an initial plea that permitted me to take a course and then not have any charges. However, this option did not work with the timeline my work had for me to resolve this matter, so my attorney reached out to the AG [Attorney General], who agreed to a charge of disorderly conduct. My lawyer advised me that this was the path of

least resistance to maintain my military career and employment at Progressive insurance, so I took this plea.

The police reports do not accurately reflect the events on the 14th of February, 2021. My wife attacked me, and while I did push her, I only pushed her off after she had attacked me. This is not the first time my wife has been violent with me. About a week prior, my wife threw my football helmet at me, causing a dent in the wall – the dent my wife claimed happened from the incident.

Of course, I know I am not perfect. I have made some mistakes in my life, I am human. However, I own all my wrong doings and I try my best to change what's in my control.

Since this incident, it has truly made me reflect on my life and marriage causing me to make drastic changes. During this time, I was in a very low place due residual effects of these allegations and by the grace of God I found the Tampa Bay Warriors Hockey Club. I became a member and focused my time and energy constructively learning a new sport that has helped me physically and mentally.

The Tampa Bay Warriors is a 501C non profit [sic] organization that is made up of veterans and first responders and we create healthy, positive, and supportive environment for each other. Especially when we go through our lows and episodes due to past traumas. In particular, I have sought mentorship from retired SGM [Sergeant Major] D\_\_\_\_ L\_\_\_\_ and meet with him time to time after our club meetings to talk and to seek advice. We also play together on the same team at the Advant [Advent] Heath Ice Plex in Wesley Chapel every Thursday where I'm also able to seek counseling and guidance as needed. I also seek counsel from my father who is my Pastor and has the professional credentials to do so as he provides me scriptures and exercise that have helped me deal with adverse situations.

In the GOMOR, other prior incidences are referenced. These prior incidents occurred when I was either serving in the Florida Army National Guard, Guard Inactive Reserve, or Guard contract in reporting to a Reserve Unit. I'll be more than happy to explain these further if helpful. I'm not ashamed of anything I've had to go through, and I've been candid with my leadership in my unit about these events when they occurred. While it is a challenge – physically and mentally – to continue to explain past events that have been resolved, if lack of clarity on these prior incidences affects your decision, I would be more than glad to explain what happened.

Since the event in February 2021, I've been separated from my wife. We do communicate and co-parent and to be honest, I believe our friendship is stronger than it has ever been. We have been through a lot [of] bad times with each other and have reach[ed] a point in our lives we truly want what's best for each other.

As I mentioned earlier in my letter, deciding to exit a toxic relationship where I have been previously attacked on numerous occasions was the right choice here. I continue to work on maintaining a healthy co-parenting relationship for the benefit of our children. I also know that my past experiences, including my prior deployments, have caused trauma that impacts my ability to effectively manage or de-escalate high emotion situations. As an NCO [noncommissioned officer], I understand that it is my responsibility to be a leader and a role model. This is why I've already sought out support and counseling to process my prior experiences and build tools that can help me better navigate high-tension situations. Better understanding how my prior experiences can impact how I react in tense situations is important to me so that I can continue to be a strong and effective leader. I am, of course, open to any other suggestions from the Command to continue to better myself.

I do ask that you rescind this General Officer Letter of Reprimand or, in the alternative, keep it local. I have 17 years of good service and have proven myself to be a capable Soldier and Non Commission[ed] Officer with consistent recommendations on NCOER's [noncommissioned officer evaluation reports]. Since I've been separated, my life has been ascending in all spectrums. Allow me the opportunity to further reflect that as I serve under your command.

11. On 8 December 2022, the Commanding General, Headquarters, 143d Sustainment Command (Expeditionary), directed permanently filing the GOMOR in the applicant's AMHRR.

12. A review of his AMHRR revealed the GOMOR and auxiliary documents are filed in the performance folder.

#### BOARD DISCUSSION:

1. 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 by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the General Officer Memorandum of Reprimand, issued on 5 July 2022 is substantially incorrect and

supports removal. The Board noted the applicant's assertion of injustice based on summary conclusions that are not based on fact; however, the Board concluded the issued GOMOR, despite the lesser charge based on an approved plea deal with the county, reflects the circumstances as they existed and therefore, the Board denied relief.

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:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



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 policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). Board members will review all applications that are properly before them to determine the existence of an error or injustice and 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. 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.

2. Army Regulation 600-37 (Unfavorable Information), 10 April 2018, sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; ensures that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and ensures that the best interests of both the Army and the Soldier are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. Chapter 3 (Unfavorable Information in Official Personnel Files) states 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. Paragraph 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) states nonpunitive administrative letters of reprimand, admonition, or censure in official personnel files, such as 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) states 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.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 May 2014, prescribes 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 states that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency.

b. Appendix B shows letters/memorandums of reprimand, censure, and admonition are filed in the performance folder unless directed otherwise by the Department of the Army Suitability Evaluation Board.

//NOTHING FOLLOWS//