

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230012187

APPLICANT REQUESTS:

- removal of the DA Form 67-10-1 (Company Grade Plate (First Lieutenant-Captain; Warrant Officer 1-Chief Warrant Officer 2) Officer Evaluation Report (OER)) covering the period 10 May 2017 through 6 June 2018 from his Army Military Human Resource Record (AMHRR)
- a personal appearance hearing before the Board

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 2d Medical Recruiting Battalion, Redstone Arsenal, AL, Memorandum (Appointment of Investigation Officer for Alleged Equal Opportunity (EO) Violations by (Applicant), Nashville Medical Recruiting Center, 2d Medical Recruiting Battalion), 10 April 2018
- Contested OER
- Memorandum for Commander, U.S. Army Medical Recruiting Brigade ((Applicant) (Rated Officer) 2nd (Revised) Response to Command OER Rater Comments), 6 July 2018
- Headquarters, U.S. Army 2d Medical Recruiting Battalion, Memorandum (Report of Investigation for Alleged EO Violations against (Applicant)), 24 September 2018, with auxiliary documents
- Headquarters, U.S. Army Medical Recruiting Battalion, Memorandum (Recommendation Regarding Alleged Misconduct by (Applicant), Commander, Nashville Medical Recruiting Company, 2d Medical Recruiting Battalion), 1 October 2018
- Headquarters, U.S. Army Medical Recruiting Brigade, Memorandum (Brigade Commander Recommendation for Alleged EO Violations by (Applicant), 2d Medical Recruiting Battalion), 5 October 2018
- Headquarters, U.S. Army Recruiting Command, Memorandum (Misconduct – (Applicant)), 27 November 2018, with summary enclosure
- Office of the Deputy Chief of Staff, G-1, Letter, 6 March 2019

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 he requests removal of the referred OER from his AMHRR due to his rater's and senior rater's bias during an EO investigation of him while in command that was initiated by his company first sergeant (1SG).

a. His rater rendered a referred OER based on implicit bias, leading to unjust deflation of his performance evaluation during the period of an ongoing investigation. This investigation brought against him by his company 1SG and company secretary took place within the rating period under consideration. The unproven/unsubstantiated allegations brought against him were not released until 22 November 2018. The referred OER contains inaccurate and untrue statements regarding his trustworthiness during his first year in command, as well as a lack of objectivity by rating officials. Further, written derogatory information did not represent factual information limited to matters directly related to the evaluation. The OER excluded key additional accomplishments during the rated period listed on OER support form. The company 1SG was removed from the position shortly after the investigation was completed. This evaluation prompts his mandatory separation.

b. He was not given time to request a proper Commander's Inquiry to determine relief. His 1SG initiated an investigation while both were in command positions. His 1SG was close to both the rater and senior rater. Although he was vindicated of the EO allegations on 22 November 2018, he invariably lost trust in the process, became disengaged from the appeal process, and lost the motivation to continue fighting for a proper rating. He spoke with the nearest legal assistance office only to receive an appointment within 60-90 days to post his second response to his evaluation. He went on to complete his command, attended a 2-year graduate school, and works in the U.S. Army Medical Department Activity.

3. He was appointed as a Reserve commissioned officer in the U.S. Army Reserve in the Medical Service Corps in the rank/grade of first lieutenant/O-2 and executed his oath of office on 30 April 2011. He was subsequently appointed as commissioned officer in the Regular Army and executed his oath of office on 23 May 2011. He was promoted to first lieutenant/O-2 effective 23 November 2012 and to captain/O-3 effective 1 May 2015.

4. He became the subject of an Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation into the facts and circumstances

surrounding allegations of EO violations that allegedly occurred at or near the Nashville Medical Recruiting Station, 2nd Medical Recruiting Battalion, on 10 April 2018. An investigating officer (IO) was appointed to investigate and provide detailed answers (including the who, what, when, where, why, and how) to the following two allegations:

a. Allegation 1: Did the applicant bully (Redacted) by scheduling a health and welfare check that never occurred on or about December 2017 at the Nashville Medical Recruiting Station in violation of Army Regulation 600-20 (Army Command Policy)?

b. Allegation 2: Did the applicant discriminate against (Redacted) and (Redacted) of (Redacted) Medical Recruiting Station on the bases of sex and/or race by calling Station Commanders (Redacted) and (Redacted) to find out the whereabouts of the officers in charge (OICs), rather than calling the OICs directly, on or about January 2018 at the Nashville Medical Recruiting Company in violation of Army Regulation 600-20?

5. He was given an OER covering the period 10 May 2017 through 6 June 2018 (12 rated months), which addressed his duty performance as the Company Commander, Nashville Medical Recruiting Company, Nashville, TN. His rater was Lieutenant Colonel (LTC) W____ A. S____, Battalion Commander, 2d Medical Recruiting Battalion, Redstone, AL, and his senior rater was Colonel (COL) H____ A. K____, Brigade Commander, U.S. Army Medical Recruiting Brigade, Fort Knox, KY. His rater and senior rater digitally signed the OER on 6 June 2018 and 15 July 2018, respectively. The applicant refused to sign the OER. The OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry "Extended Annual";

b. Part II (Authentication), block d (This is a Referred Report, Do You Wish to Make Comments?), a checkmark was placed in the appropriate block, signifying to the applicant that he was receiving a referred report. In that same block, a checkmark was placed in the "Yes" block, indicating the applicant wished to make comments;

c. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block b (This Officer's Overall Performance is Rated as), his rater rated his performance as "Proficient" and entered the following comments: "[Applicant] is my #3 of 3 Company Commanders and within the top 50% of MSC [Medical Service Corps] Captains that I have worked with in the last 10 years. [Applicant] is a hard-working and dedicated officer, who sincerely looks to improve this team every day";

d. Part IV, block c4 (Leads), his rater entered the following comments: "[Applicant] worked hard to build trust within this command, but still has much room for growth. He struggled with building relationships within and outside of his Company which impacted

his ability to optimize his unit's potential. He did successfully conduct four Reserve Partner events that contributed to his USAR [U.S. Army Reserve] mission success";

e. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), his senior rater rated his potential as "Qualified";

f. Part VI, block c (Comments on Potential), his senior rater entered the following comments: "[Applicant] dedicated himself to becoming technically proficient in recruiting operations during his first year in command. He maintained a physical presence in his geo-dispersed AO [area of operations] to better understand his team's and recruiting partners' needs, communicate his vision, and develop community partnerships. [Applicant] demonstrates a sincere desire to positively impact his formation and mission and hone his leadership skills. Promote to MAJ [major]; significant potential to excel in his career field. The rated officer refused to sign."

6. He acknowledged the contested OER by memorandum on 6 July 2018 and submitted comments (see memorandum for details).

a. He believes the negative remarks remain inaccurate and requests reconsideration and correction for this evaluation period, as well as a better explanation of how well he performed.

b. He noted how well he performed through his inspector general inspections, EO command climate survey, and rater interactions, and stated his plans carried out speak to his performance as a leader.

c. He takes exception to Part IVb and requests consideration of his constituted command performance and successful outcomes during this first rating period. During his time in the company, his performance has been a motivating factor for his station commanders and OICs who focused their efforts at being competitive and getting the job done.

d. He takes exception to Part IVc and requests consideration that he instituted a monthly essay submission to assess the writing capabilities of his Soldiers. He established an award system, hails and farewells for new and departing personnel, and conducts battlefield circulation to check in with his subordinates.

7. A review of his AMHRR shows the contested OER is filed in the performance folder.

8. On 24 September 2018, the IO completed the Army Regulation 15-6 investigation and determined the following (see redacted attachment with auxiliary documents):

a. Findings.

(1) Allegation 1: Did [Applicant], in violation of AR [Army Regulation] 600-20, bully [Redacted] by scheduling a health and welfare check? Unsubstantiated. The IO found that [Applicant] did not bully [Redacted], [Redacted], and [Redacted] denied being bullied by [Applicant]. [Redacted] described [Applicant] as socially awkward, and [Redacted] thought [Applicant's] choice of words during [redacted] face-[redacted].

(2) Allegation 2: Did [Applicant], in violation of AR [Army Regulation] 600-20, discriminate on the bases of sex and/or race, against Officers in Charge [OIC's], [Redacted] of [Redacted] and [Redacted], by calling Station Commanders, [Redacted] find out the whereabouts of the OIC's, rather than calling the OIC's directly? Unsubstantiated. The IO found that [Applicant] did not commit the alleged discrimination. The following [Redacted] all said that [Applicant] did not discriminate against anyone on the basis of race or gender: [Redacted's] rejection of the allegations against [Applicant] was less adamant, but even [Redacted] said that [Redacted's] claim of discrimination by [Applicant] was not supported by the evidence.

b. Recommendations.

(1) The IO recommended closure of all allegations of bullying and discrimination against the applicant as unsubstantiated.

(2) The IO recommended that the applicant continue to work on his social interaction skills and work to become more attentive to his actions when addressing others.

(3) The IO recommended that Nashville Medical Recruiting Company conduct another command climate survey within in 60 days to review the progress the company has made since the allegations were made.

(4) Redacted.

9. The Headquarters, U.S. Army Medical Recruiting Battalion, memorandum from the commander (Recommendation Regarding Alleged Misconduct by (Applicant), Commander, Nashville Medical Recruiting Company, 2nd Medical Recruiting Battalion), 1 October 2018, noted he reviewed the report of investigation and legal review regarding the applicant's alleged misconduct and concurred with the IO's findings. He recommended closure of the investigation as unsubstantiated and lifting the applicant's flag.

10. The Headquarters, U.S. Army Medical Recruiting Brigade, memorandum from the commander (Brigade Commander Recommendation for Alleged EO Violations by (Applicant), 2nd Medical Recruiting Battalion), 5 October 2018, noted she reviewed the report of investigation, the battalion commander's recommendation, and the legal review

regarding the alleged EO violations against the applicant and concurred with the battalion commander's recommended closure of the investigation as unsubstantiated and lifting the applicant's flag. She further noted there was insufficient evidence that the applicant committed any prohibited acts or misconduct.

11. The Headquarters, U.S. Army Recruiting Command, memorandum from the commanding general (Misconduct – (Applicant)), 27 November 2018, with summary enclosure, states:

I have reviewed the Report of Investigation dated 24 September 2018, the legal review and chain of command recommendations. The preponderance of the evidence does not substantiate that [Applicant] bullied and discriminated against certain members of his command based on race and gender.

This case is closed with no further action being taken.

12. The Office of the Deputy Chief of Staff G-1, letter, 6 March 2019, responded to the applicant's request for a copy of the informal EO investigation conducted against him under the Freedom of Information Act. The Management Support Office provided the redacted investigation report with auxiliary documents.

13. He is currently assigned to a captain position as the Chief Patient Administrator with the U.S. Army Medical Department Activity-Fort Campbell, KY.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 and standard review based on law, policy and regulation. Removal of a Officer Evaluation Report (OER) is generally not warranted unless it is factually incorrect. However, upon review of the applicants petition and available military records, the Board determined that the applicant demonstrated by a preponderance of evidence that his rater's and senior rater's showed bias during an EO investigation of the applicant while he was in command which was prejudicial to the applicant and by a preponderance of evidence that the contents of the OER are substantially incorrect and support removal.

2. The Board found sufficient evidence to support the applicant's request for removal of the applicant's Officer Evaluation Report (OER)) covering the period 10 May 2017 through 6 June 2018 from his Army Military Human Resource Record (AMHRR). Evidence shows the applicant's senior leadership reviewed the report of investigation, the battalion commander's recommendation, and the legal review regarding the alleged

EO violations against the applicant and concurred with the battalion commander's recommended closure of the investigation as unsubstantiated and lifting the applicant's flag. Furthermore, she noted there was insufficient evidence that the applicant committed any prohibited acts or misconduct.

3. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority. There does appear to be evidence the contested OER was unjust or untrue or inappropriately filed in the applicant's AMHRR. In the best interest of the Army and the applicant's continued service, the Board granted relief.

4. 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

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing from his Army Military Human Resource Record (AMHRR) the DA Form 67-10-1 Officer Evaluation Report (OER) covering the period 10 May 2017 through 6 June 2018, and replacing it with a memorandum noting unrated time for this time period.



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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 15-185 (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. 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. 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.
3. 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. The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority. It is the duty of the IO or board to ascertain and consider the evidence on all sides of each issue thoroughly and impartially and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

4. 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 3-26 (Referred Evaluation Reports) states any report with negative remarks about the rated officer's Values or Leader Attributes/Skills/Action in rating official's narrative evaluations will be referred to the rated officer by the senior rater for acknowledgment and comment before being forwarded to Headquarters, Department of the Army (HQDA).

b. Paragraph 3-28 states the referral process ensures the rated Soldier knows that his/her OER contains negative or derogatory information and affords him/her the opportunity to sign the evaluation report and submit comments, if desired.

(1) The senior rater will refer a copy of the completed OER or academic evaluation report (AER) (an OER or AER that has been signed and dated by the rating officials) to the rated Soldier for acknowledgment and comment.

(2) Upon receipt of the rated officer's acknowledgment (for example, receipt of a signed OER or AER, email, signed certified mail document, signed acknowledgment statement accompanying memorandum, submission of signed comments, and so forth), the senior rater will enclose it, any written comments provided by the rated officer, and the referral memorandum, with the original OER or AER for forwarding to the reviewer (if applicable).

(3) If the senior rater (for OERs) or reviewing official (for AERs) decides the comments provide significant new facts about the rated Soldier's performance that could affect the evaluation of the rated Soldier, he or she may refer the comments to the other rating officials, as appropriate. The rating officials, in turn, may reconsider their evaluations of the rated Soldier. The senior rater or reviewing official will not pressure or influence another rating official. Any rating official who elects to raise their evaluation as a result of this action may do so. However, the evaluation may not be lowered because of the rated Soldier's comments. If the OER or AER is changed but still requires referral, the OER or AER will again be referred to the rated Soldier for acknowledgment and the opportunity to provide new comments, if desired. Only the latest acknowledgment ("YES" or "NO" on OER or AER signed by the rated Soldier) and the rated Soldier's comments, if submitted, will be forwarded to HQDA.

c. Paragraph 4-7 states 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.

d. Paragraph 4-11a-b states 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.

e. 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.

f. Paragraph 4-13a(2) states limited support is provided by statements from people who observed the applicant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances); letter of commendation or appreciation for specific but unrelated instances of outstanding performance; or citations for awards, inclusive of the same period.

5. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to Department of the Army. Paragraph 2-28 provides that:

a. If a referred OER is required, the senior rater will place an "X" in the appropriate box in Part IId of the completed OER. The OER will then be given to the rated officer for signature and placement of an "X" in the appropriate box in Part IId.

b. The rated officer may comment if he or she believes the rating and/or remarks are incorrect. The comments must be factual, concise, and limited to matters directly related to the evaluation rendered in the OER; rating officials may not rebut rated officer's referral comments.

c. The rated officer's comments do not constitute an appeal. Appeals are processed separately. Likewise, the rated officer's comments do not constitute a request for a Commander's Inquiry. Such requests must be submitted separately.

6. 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. 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 other authorized agency.

//NOTHING FOLLOWS//