

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20230012349

APPLICANT REQUESTS:

- removal of the general officer memorandum of reprimand (GOMOR), 5 November 2014, from his Army Military Human Resource Record (AMHRR)
- removal of the DA Form 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)) covering the period 14 June 2014 through 25 November 2014 from his AMHRR or redaction of the specified comments
- adjustment of his separation date from 31 March 2016 to 31 October 2016
- 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)
- extracts from his AMHRR (43 pages) –
 - DD Form 2339 (Application for Voluntary Retirement), 29 May 2015
 - DA Form 4187 (Personnel Action), 14 October 2015
 - DD Form 2656 (Data for Payment of Retired Personnel), 1 April 2016
- Headquarters, 82d Airborne Division, Memorandum (GOMOR under Provisions of Army Regulation 600-37 (Unfavorable Information)), 5 November 2014, with allied documents (86 pages)
- NCOERs covering the periods June 1997 through March 2016 (48 pages)
- Numerous Award Orders, Award Certificates, and Training Certificates (38 pages)
- Three Character Statements, 8 October 2015, 3 November 2015, and 4 November 2015
- Enlisted Record Brief, 1 April 2016
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 31 March 2016
- Department of Veterans Affairs (VA) Letter, 5 January 2020 (Summary of Benefits)

- VA Letter, 12 February 2021 (Post-9/11 GI Bill Transfer of Education Benefits)
- Email ((Applicant) Packet for Review Board), 13 February 2024

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 the GOMOR should be removed from his AMHRR and the battalion commander's comments should be redacted from his NCOER because the battalion staff did not have direct authority or responsibility for his organic formation.

a. This is an Article 92 (Failure to Obey Order or Regulation), Uniform Code of Military Justice (UCMJ), violation of the XVII Airborne Corps Policy 1-1-1 prescribing that any alcohol, drug, or domestic violence related incidents be reported within 5 days. He took 45 days to report his Soldier's driving under the influence (DUI) of alcohol charge due to fact-finding with local law enforcement prior to his back surgery.

b. He cites the following NCOER errors:

- senior rater did not have direct authority according to the Modified Table of Organization and Equipment
- Part IVa3 (Respect/Equal Opportunity (EO)/Equal Employment Opportunity (EEO)) was checked "NO" – his misunderstandings or disagreements with battalion staff members was handled between them and should not be reflected in his evaluation
- Part IVb (Competence) – redact "received GOMOR for failure to report within brigade, battalion and company standards on Paratrooper misconduct" because the GOMOR is a rating by itself and should not be entered on the NCOER per regulatory guidance
- Part IVf (Responsibilities and Accountability) – redact "lacked the managerial skills to maintain company reporting standards and his ability to manage the company ABCP [Army Body Composition Program]" due to lack of guidance from commander

c. He requests adjustment of his retirement date from 31 March 2016 to 31 October 2016 due to a forgery on his retirement request. He planned to retire in October 2016 and has been trying to correct this for 3 years with no help from his lawyer.

3. He enlisted in the Regular Army on 20 July 1993. He was promoted to the rank/grade of master sergeant/E-8 effective 1 August 2011 and concurrently laterally appointed to the rank/grade of first sergeant/E-8.

4. The Commanding General, Headquarters, 82d Airborne Division, reprimanded him in writing on 5 November 2014 wherein he stated:

You are hereby reprimanded for intentionally violating your duty to render a report when you learned that one of your Paratroopers had been arrested for Driving Under the Influence (DUI) [of alcohol]. An investigation revealed that on 18 August 2014, one of your Paratroopers notified you that he was arrested for DUI. Instead of notifying the Commander, you decided to wait because you thought no one would learn about it. You finally submitted a report on 2 October 2014, but only after you learned that there was no way for you to prevent the Commander from learning about the incident. This behavior reflects poorly on you, and it gives me reason to question your fitness to lead.

As a First Sergeant, you are entrusted with important responsibilities, and you are expected to carry them out with sound judgment, strong values, and unwavering professionalism. You failed to live up to that expectation. A First Sergeant in this organization must be reliable and have an unflappable commitment to integrity. Your actions show that you do not possess these traits and further exhibits that you do not have the character necessary to be a First Sergeant. I have serious reservations regarding your ability to continue to lead and supervise Soldiers.

This is an administrative action and not punishment under the Uniform Code of Military Justice. I am considering filing this reprimand in your Official Military Personnel File. However, I will consider any matters submitted in rebuttal, together with the recommendations of your chain of command, before I make my decision. This reprimand is referred to you, in accordance with AR [Army Regulation] 600-37, paragraph 3-6, for your information and opportunity for rebuttal. You will acknowledge receipt of this memorandum by signing the acknowledgment form. Return your rebuttal, if any, to your respective Brigade Legal Office within seven calendar days from the date you receive this reprimand.

5. His memorandum for Commanding General, Headquarters, 82d Airborne Division (Request for Local Filing of GOMOR, (Applicant)), 20 November 2014, states:

I respectfully request that the General Officer Memorandum of Reprimand (GOMOR) that I received this month be filed locally.

On 19 August 2014, I did not promptly report that one of my Paratroopers was arrested. SPC [Specialist] [REDACTED] approached me in my office and asked if he could speak with me. He explained he was arrested the day before for a DUI [of alcohol], while he left [REDACTED] because he failed a sobriety test where his BAC [blood alcohol content] was .08. He was released after making bail. I asked to see all the documentation he received. After reviewing all the documents, I was puzzled why he was released without the chain of command being notified. I did plan on calling the station at lunchtime that day, but unfortunately did not have time to call because twenty-five percent of the company as well as the Commander had just been ordered to support 2BCT [2d Brigade Combat Team] on their JRTC [Joint Readiness Training Center] rotation. I had to help notify, coordinate, and task Paratroopers at the very last minute. 45 days later, SPC [REDACTED] approached me and said he would have to appear in court now. That is when I notified SPC [REDACTED] Section Chief and then notified the Executive Officer. I then tried to contact the CO [commanding officer] but could not get in touch with him because of poor cellular phone reception in JRTC. The CO contacted me around 1800 that day, I could barely hear him, but I heard him say we needed to start the paperwork for Policy 111, which I promptly accomplished.

I acknowledge that I failed by not timely reporting. I understand that I failed myself and my unit. Sir, I ask you for a second chance; you can be confident that I will never again put myself in this situation. I deeply regret having failed to uphold these standards. I have learned a great deal from this experience, and it has served as a wakeup call. I am improving myself professionally in a way that reflects these lessons.

I am proud of what I have achieved thus far during my service in the Army. I have been a Soldier for 21 years; 15 years as a Paratrooper here at the 82d Airborne Division. Over 5 deployments, I have spent 31 months downrange. This is my second First Sergeant assignment, and this is my first lapse, which I corrected.

I have enclosed recommendations from: COL [Colonel] [REDACTED] Executive Assistant to the Supreme Allied Commander Europe; MAJ [Major] [REDACTED] 2BCT [2d Brigade Combat Team] Operations Officer; MAJ [REDACTED] 1BCT [1st Brigade Combat Team] Operations Officer; MSG [Master Sergeant] [REDACTED] 1ID [1st Infantry Division] HHC [Headquarters and Headquarters Company] S-3 NCOIC [noncommissioned officer in charge]. Please take note that COL [REDACTED] stated "I would fight to serve with him again" and that MAJ [REDACTED] observed that I demonstrated "intellect, concern for Soldiers, personal courage, and self-accountability in the strongest terms." I have also enclosed a copy of my ERB [Enlisted Record Brief] and my last three NCOER's.

I sincerely regret having failed to live up to the standards expected of a Noncommissioned Officer. I have learned a very important lesson from this experience, and it is my desire to have a successful career in the U.S. Army. I will continue to improve myself and strive to uphold the standards expected of a Noncommissioned Officer.

For these reasons, I humbly request that this GOMOR be filed in my local file. My actions accurately reflect my commitment to the Army or potential for future contributions. Sir, thank you for your time and consideration. If you need any further information, please contact me...

6. On 9 December 2014 after carefully considering the circumstances of the misconduct; the recommendations made by the applicant's chain of command; and all matters submitted by the applicant in defense, extenuation, or mitigation; the commanding general directed permanently filing the GOMOR in his AMHRR.

7. His change-of-rater NCOER covering the period 14 June 2014 through 25 November 2014 evaluated his performance and potential as the First Sergeant, Headquarters and Headquarters Company, 1st Brigade Combat Team, 82d Airborne Division. His rater is shown as Captain [REDACTED] Company Commander, who digitally signed the form on 8 January 2015; his senior rater is shown as Lieutenant Colonel [REDACTED] Battalion Commander, who digitally signed the form on 5 February 2015; and the supplementary reviewer is shown as COL [REDACTED] Brigade Commander, who digitally signed the form on 10 February 2015. He signed the NCOER on 11 February 2015. The NCOER shows in:

a. Part IVa (Respect/EO/EEO), his rater marked "No" for "Treats people as they should be treated" and entered the following bullet comment: "disrespectful nature on two separate occasions to the brigade S1 [Personnel] OIC [officer in charge] and 127 EN [127th Engineer] Battalion Commander during transactions and encounters";

b. Part IVb (Competence), his rater marked "Needs Improvement (Some)" and entered the bullet comment: "received GOMOR for failure to report within brigade, battalion and company standards on Paratrooper misconduct";

c. Part IVf (Responsibility and Accountability), his rater marked "Needs Improvement (Some)" and entered the bullet comment: "lacked the managerial skills to maintain company reporting standards and his ability to manage the company ABCP [Army Body Composition Program]";

d. Part Va (Overall Potential for Promotion and/or Service in Positions of Greater Responsibility), his rater rated his overall potential as "Fully Capable";

e. Part Vc (Overall Performance), his senior rater rated his overall performance as "4/Fair";

f. Part Vd (Overall Potential for Promotion and/or Service in Positions of Greater Responsibility), his senior rater rated his overall potential as "3/Superior";

g. Part Ve (Senior Rater Bullet Comments), his senior rater entered the following bullet comments:

- select for Sergeant Major below peers
- send to Sergeant Major Academy when available
- average performance, strived to build effective relationships in company
- demonstrates potential; place in positions of equal responsibility to better develop him

8. There is no evidence indicating he appealed the NCOER.

9. A review of his AMHRR revealed the GOMOR and contested NCOER are filed in the performance folder.

10. The DA Form 2339, 29 May 2015, shows his commander recommended approval of his request for retirement effective 30 June 2016 with 30 days of transitional leave from 1 June 2016 through 30 June 2016.

11. His DA Form 4187, 14 October 2015, shows in:

a. Section IV (Remarks), he stated:

I request to be released from active duty and assignment on 31 October 2016 and be placed on the retirement list on the 1 November 2016. I will have completed over 22 years of active federal service as of the requested retirement date. My current ETS [expiration term of service] is 20220731 [31 July 2022]. I am responsible for ensuring that the physical examination is completed no more than 4 months earlier [and] no later than 1 month prior to my transition leave start date. I understand that enrollment in the Survivor Benefit Plan (SBP) is the only way that I can continue a portion of my retirement pay to my family upon my death. My spouse and I must receive SBP counseling no later than 30 days prior to the beginning of my transition leave. Address upon retirement: [REDACTED] NC. I have not been notified of levy. I currently have 60 days accrued leave. I do plan to take transition leave and permissive TDY [temporary duty]. I believe that I am entitled to retire at the grade of E8. I understand that HRC [U.S. Army Human Resources Command] will make the final determination of

my retirement grade. I am not currently on a DA [Department of the Army] Promotion or school selection list. I have participated in the eArmyU program but have fulfilled my obligation for this program. I have not received a bonus which incurs a service obligation. I understand that I may be required to reimburse any service obligations not fulfilled.

b. Section V (Certification/Approval/Disapproval), block 11 (I certify that the duty status change or that the request for personnel action contained herein), marked the box "Recommended Approval," but block 12 (Commander/Authorized Representative) does not contain the approval authority's name and blocks 13 (Signature) and 14 (Date) are unsigned and undated.

12. Item 3 (Retirement/Transfer Date) of his DD Form 2656, 27 January 2016, shows his retirement date as 1 April 2016.

13. U.S. Army Installation Management Command and Headquarters, U.S. Army Garrison, Fort Bragg, Orders 008-0262, 8 January 2016, retired him effective 31 March 2016 and placed him on the Retired List in the grade of master sergeant effective 1 April 2016.

14. His DD Form 214 shows he retired effective 31 March 2016. He completed 22 years, 8 months, and 11 days of total active service.

15. He provided the following evidence in addition to those documents discussed above:

- Interactive Personnel Electronic Records Management System Documents (43 pages)
- Allied Documents with the GOMOR (86 pages)
- NCOERs (48 pages)
- Award and Training Certificates (38 pages)
- Three Character Statements, 8 October 2015, 3 November 2015, and 4 November 2015 – attesting to his character and desire to remain on active duty
- Enlisted Record Brief
- VA Letter, 5 January 2020 (Summary of Benefits)
- VA Letter, 12 February 2021 (Post-9/11 GI Bill Transfer of Education Benefits)
- Email ((Applicant) Packet for Review Board), 13 February 2024

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted. The Board

found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. Regarding the GOMOR, the Board noted the applicant did not contest the basis for the GOMOR in his rebuttal to the document, and the Board did not find evidence indicating the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. Based on a preponderance of the evidence, the Board determined the GOMOR should remain in the performance section of the applicant's AMHRR.

3. Regarding the contested NCOER, the Board did not find evidence showing there was any deviation from the applicant's established rating scheme, nor did the Board find evidence indicating the comments and box checks on the NCOER represent anything but the considered opinions and objective judgment of the rating officials at the time of preparation. Based on a preponderance of the evidence, the Board determined the contested NCOER should remain in the performance section of the applicant's AMHRR.

4. Regarding the applicant's retirement date, the Board found his originally requested retirement date was not approved, but the Board did not find evidence supporting his claim that the date changed due to forgery. Based on a preponderance of the evidence, the Board determined his retirement date is not in error or unjust.

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.

4/1/2025

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 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 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 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 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 Official Military Personnel File (OMPF) only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

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

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

4. Army Regulation 623-3 (Evaluation Reporting System), effective 1 April 2014 and in effect at the time, prescribed the policies and tasks for the Army's Evaluation Reporting System.

a. Paragraph 3-37 (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) Commanders are required to look into alleged errors, injustices, and illegalities in evaluation reports.

(2) Upon receipt of a request for a Commander's or Commandant's Inquiry, the commander or commandant receiving the request will verify the status of the NCOER 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 commander or 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 4-5 (Policy) stated:

(1) A Commander's or Commandant's Inquiry will not be used to document differences of opinion among members of the rating chain about a rated Soldier's performance and potential. The evaluation system establishes rating chains and normally relies on the opinions of the rating officials. Rating officials will evaluate a rated Soldier and their opinions constitute the organization's view of that Soldier. However, the commander may determine through inquiry that the report has serious irregularities or errors. Examples include:

(a) improperly designated, unqualified, or disqualified rating officials; that is, a rating official not in the published rating chain, a rating official without the minimum required time to render an evaluation report, or a rating official who, through an official investigation, has had a substantiated adverse finding against them that results in their relief or calls into question the rating official's objectivity;

(b) inaccurate or untrue statements; and

(c) lack of objectivity or fairness by rating officials.

(2) The inquiry will be made by a commander in the chain of command or military school commandant above the designated rating officials involved in the allegations. In headquarters and other military organizations lacking a commander or commandant, the inquiry will be conducted by the next higher official in the rating chain above the designated rating officials involved in the allegations.

(3) To ensure the availability of pertinent data and timely completion of an inquiry conducted after the evaluation in question has been accepted at HQDA for inclusion in the rated Soldier's AMHRR, the inquiry will be conducted by either the

commander or commandant at the time the evaluation was rendered who is still in the command position, or by a subsequent commander or commandant in the position. Requests for inquiry will occur no later than 60 days after the signature date of the rated Soldier (or senior rater, if rated Soldier's signature is omitted). The results of the inquiry will be forwarded to HQDA not later than 120 days after the signature date of the senior rater.

(4) The official conducting the inquiry will not pressure or force rating officials to change their evaluations.

(5) The official conducting the inquiry may not evaluate the rated Soldier, either as a substitute for, or in addition to, the designated rating officials' evaluations.

(6) The rating chain or official conducting the inquiry will not use the Commander's or Commandant's Inquiry provisions to forward information derogatory to the rated Soldier. If the inquiry reveals matters that might have resulted in a lower evaluation of a rated Soldier, the information will be addressed in the memorandum outlining the results of the inquiry by the commander or commandant responsible for the inquiry in accordance with paragraph 3-39. No changes will be made to an evaluation report to reflect a lower evaluation of a rated Soldier following the results of a Commander's or Commandant's Inquiry.

(7) If, upon completion of the inquiry, the official conducting the inquiry determines the report has serious irregularities or errors or any violation of policy, the official will ensure that all members of the original rating chain are allowed to correct or edit the evaluation as necessary. The commander's or commandant's memorandum to U.S. Army Human Resources Command will state that all members of the rating chain have been allowed to add or change comments in accordance with the findings and recommendations, and it will list those who did not choose to edit the evaluation.

(8) If the evaluation was previously referred, and after editing the evaluation, it is still referred, the rating chain will refer the final evaluation to the rated Soldier for acknowledgment and the opportunity to submit comments before sending it (and any signed comments) to HQDA.

(9) The results of the inquiry forwarded to HQDA will include the specific findings, conclusions, and recommendations in a memorandum that will be filed with the evaluation report in the rated Soldier's AMHRR for clarification purposes. The results will include the commander's or commandant's signature, will stand alone without reference to other documentation, and will be limited to one page. Sufficient evidence and documentation, such as completed Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigations, reports, and statements, will be attached to justify the conclusions.

(10) If the commander finds no fault with the evaluation, then the Commander's or Commandant's Inquiry is filed locally and a copy given to the rated Soldier. There is no requirement to send the Commander's or Commandant's Inquiry forward to HQDA.

d. 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).

e. 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.

f. Paragraph 4-11 (Burden of Proof and Type of Evidence) stated 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.

g. 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.

h. For a claim of administrative error, appropriate evidence may include:

(1) the published rating scheme used by the organization during the period of the evaluation report being appealed;

(2) assignment, travel, or temporary duty orders;

(3) DA Form 705 (Army Physical Fitness Test Scorecard), DA Form 5500 (Body Fat Content Worksheet (Male)), and DA Form 5501 (Body Fat Content Worksheet (Female));

(4) leave records;

(5) organization manning documents;

(6) hospital admission, diagnosis, and discharge sheets;

(7) statements of military personnel officers or other persons with knowledge of the situation pertaining to the evaluation report in question;

(8) the results of a Commander's or Commandant's Inquiry, Inspector General, and/or Equal Opportunity investigation; and

(9) other relevant documents.

(10) Editable documents must be marked certified true copies. This applies to documents submitted as evidence in support of either an administrative or substantive claim.

i. 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. 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 evaluation report was rendered. The results of a Commander's or Commandant's Inquiry or Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation may provide support for an appeal request.

j. Paragraph 4-12 (Appeals Based on Substantive Inaccuracy) states a decision to appeal an evaluation report will not be made lightly. Before deciding whether or not to appeal, the prospective appellant will analyze the case dispassionately. The prospective appellant will note that:

(1) pleas for relief citing past or subsequent performance or assumed future value to the Army are rarely successful and

(2) limited support is provided by statements from people who observed the appellant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances), letters of commendation or appreciation for specific but unrelated instances of outstanding performance, or citations for awards, inclusive of the same period.

k. Once the decision has been made to appeal an evaluation report, the appellant will state succinctly what is being appealed and the basis for the appeal. For example, the appellant will state:

(1) whether the entire evaluation report is contested or only a specific part or comment and

(2) the basis for the belief that the rating officials were not objective or had an erroneous perception of the performance. A personality conflict between the appellant and a rating official does not constitute grounds for a favorable appeal; it must be shown conclusively that the conflict resulted in an inaccurate or unjust evaluation.

l. Most appellants will never be completely satisfied with the evidence obtained. A point is reached, however, when the appellant will decide whether to submit with the available evidence or to forgo the appeal entirely. The following factors are to be considered:

(1) The evidence must support the allegation. The appellant needs to remember that the case will be reviewed by impartial board members who will be influenced only by the available evidence. Their decision will be based on their best judgment of the evidence provided.

(2) Correcting minor administrative errors or deleting one official's rating does not invalidate the evaluation report.

5. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), 31 March 2014, 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.

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, finance-related documents, and non-service-related documents deemed necessary to store by the Army.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or another authorized agency.

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

7. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), effective 6 September 2011 and in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 12 (Retirement for Length of Service) set policies and procedures for voluntary retirement of Soldiers because of length of service and governed the retirement of Soldiers.

a. Paragraph 12-4 (Twenty-Year Retirement Law) provided that a Soldier who has completed 20 but less than 30 years of active federal service in the U.S. Armed Forces may be retired at his/her request. The Soldier must have completed all required service obligations at the time of retirement.

b. Paragraph 12-12 (Applying for Retirement) stated Soldiers must submit requests for retirement on a DA Form 2339 through the chain of command to the appropriate retirement authority. The retirement authority will notify the Soldier in writing of the effective date of the retirement, if approved.

c. Paragraph 12-14f (Responsibility of Retirement Authority) stated all requests for retirement of eligible Soldiers with less than 30 years of service are considered on their individual merits. Such requests normally should be approved. Requests, however, may be disapproved, or the required date of retirement delayed, based on the best interest of the Army.

d. Paragraph 12-15b (Request for Withdrawal of Application or Change in Retirement Date) stated the retirement date will not be changed unless, after the application is submitted, events that justify a change in the retirement occur that would cause an extreme hardship to the Soldier or immediate family.

//NOTHING FOLLOWS//