

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20230012675

APPLICANT REQUESTS:

- removal of two DA Forms 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) (Sergeant)) covering the periods 1 October 2015 through 29 September 2016 and 30 September 2016 through 9 September 2017 from his Army Military Human Resource Record (AMHRR)
- alternatively, deletion of the Sexual Harassment/Assault Response and Prevention (SHARP) comments and removal of the "Did Not Meet Standard" box checks

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)
- 90th Sustainment Brigade Memorandum (Request for the Transfer of General Officer Memorandum of Reprimand (GOMOR) of (Applicant)), 21 February 2023
- Department of the Army Suitability Evaluation Board (DASEB) Docket Number AR20230002564, 14 March 2023
- Army Review Boards Agency Memorandum (Resolution of Unfavorable Information for – (Applicant), AR20230002564), 29 March 2023
- 90th Sustainment Brigade Memorandum (Evaluation Report Appeal (Applicant), 1 October 2015 through 29 September 2016 and 30 September 2016 through 9 September 2017), 10 October 2023
- Army Review Boards Agency Letter, 23 July 2024
- two DA Forms 2166-9-1 covering the periods 1 October 2015 through 29 September 2016 and 30 September 2016 through 9 September 2017

FACTS:

1. The applicant states the two NCOERs covering the periods 1 October 2015 through 29 September 2016 and 30 September 2016 through 9 September 2017 are causing a negative perception of him. The ratings were solely based upon allegations of inappropriate communications with a female Soldier for which he received a GOMOR. He was rated by the same rater and senior rater for both rating periods. Rating

comments regarding SHARP were mentioned during both rating periods; however, the alleged incident occurred during the first rating period only. He attended a suitability board on 8 November 2017 and the board found that he did not commit a pattern of misconduct pursuant to Army Regulation 635-200 (Active Duty Enlisted Separations) as originally stated in his NCOERs and GOMOR.

2. He enlisted in the U.S. Army Reserve on 7 September 2007.

3. U.S. Army Human Resources Command Orders R-03-283806, 30 March 2012, ordered him to active duty in an Active Guard Reserve status for a period of 3 years with a reporting date of 23 May 2012.

4. U.S. Army Human Resources Command Orders R-06-586499, 3 June 2015, assigned him to 337th Military Intelligence Battalion (Counterintelligence), Milwaukee, WI, with a reporting date of 7 September 2015.

5. The NCOER covering the period 1 October 2015 through 29 September 2016 shows his rater as First Sergeant (1SG) [REDACTED] Company 1SG, and his senior rater as Captain (CPT) [REDACTED] Commander. His principal duty title is shown as Supply Sergeant. The NCOER shows in:

a. Part II (Authentication):

- blocks a3 (Rater's Signature) and b3 (Senior Rater's Signature) – the rater and senior rater authenticated the form with their digital signatures on 15 January 2017
- block d1 (Counseling Dates) – an initial counseling date of 3 March 2016 and a later counseling date of 9 September 2016
- block d2 (Rated NCO's Signature) – the applicant authenticated the form with his signature on 17 January 2017

b. Part IVc (Character), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comment: "inappropriate communications with a female Soldier led to a founded and approved SHARP violation during this rating period";

c. Part IVd (Presence), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following comment: "required remedial counseling for losing his bearing when communicating with a female Soldier";

d. Part IVe (Intellect), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comments:

- uses poor judgment as seen in his recording conversations and threatening to use the conversations for personal gain
- counseled by the BN [battalion] Commander concerning Soldiers [sic] threat to politically smear an Officer in the USAR [U.S. Army Reserve] who is a state representative

e. Part IVf (Leads), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comments:

- his ability to lead is hampered by the loss of trust between him and the company leadership due to his treatment of a female Soldier
- due to the [Army Regulation] 15-6 [Procedures for Administrative Investigations and Boards of Officers] SHARP investigation has been unable to be present during the BA [battle assemblies] and unable to participate as an NCO

f. Part IVg (Develops), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comments:

- broke down unit cohesion by sexually harassing a fellow Soldier
- Soldier did not foster a positive or professional work environment and is not trusted to develop all Soldiers

g. Part IVh (Achieves), the rater placed an "X" in the "Met Standard" block and entered the following bullet comments:

- all SIK [subsistence in kind], LIK [lodging in kind], and [REDACTED] [REDACTED] is completed with zero deficiencies
- ensures all Soldiers are paid on time even though it is not his MOS [military occupational specialty] or his duty description

h. Part IVi (Rater Overall Performance) (I currently rate 24 Army NCOs in This Grade), his rater entered the following bullet comments:

- this Soldier has established a trend of harassment towards female Soldiers
- disobeyed a 3 MAR 16 [3 March 2016] direct order by not communicating with Soldiers in a professional manner
- does not live up to the values of the Army or the NCO Corps

i. Part V (Senior Rater Overall Potential) (Select One Box Representing Rated NCO's Overall Performance Compared to Others in the Same Grade Whom You Have Rated in Your Career. I currently rate 2 NCOs in This Grade), the rater placed an "X" in the "Not Qualified" block and entered the following bullet comments:

[Applicant] has not demonstrated the NCO or Army Values. His inappropriate behavior resulted in a founded SHARP violation. In addition, he disobeyed a direct order given during the March counseling. The Soldier has a history of making false statements. [Applicant] is proficient at assisting in the administrative functions required to lodge, feed and equip Soldiers.

6. On 29 September 2016, the Commanding General, Military Intelligence Readiness Command, issued him a GOMOR for violating Army Regulation 600-20 (Army Command Policy) and U.S. Army SHARP policy, wherein he stated:

An investigation under AR [Army Regulation] 15-6 has determined that you violated AR 600-20 and U.S. Army SHARP policy and directives by making inappropriate verbal and written sexual comments to Sergeant [REDACTED] between November 2015 and March 2016, and that you further disobeyed a direct order to cease contact with SGT [REDACTED] in violation of Article 92 [Failure to Obey Order or Regulation] of the Uniform Code of Military Justice.

You are hereby reprimanded for your actions, which demonstrate a grave lack of judgment, personal responsibility, and integrity that brings discredit upon yourself, the Army Reserve, and the Military Intelligence Readiness Command. Your actions severely violated the trust you have been given as a Soldier and as a Non-Commissioned Officer. These actions will not be tolerated and cause me to seriously question your fitness to continue serving in the Army Reserve.

This reprimand is imposed as an administrative action under AR [Army Regulation] 600-37 [Unfavorable Information], and not as punishment under Article 15 [Commanding Officer's Nonjudicial Punishment] of the Uniform Code of Military Justice. I intend to file this reprimand in your Official Military Personnel File; however, I will not make a final determination until after I receive and consider any materials you timely submit on your behalf.

7. The NCOER covering the period 30 September 2016 through 9 September 2017 shows his rater as 1SG [REDACTED] 1SG, and his senior rater as CPT [REDACTED] Company Commander. His principal duty title is shown as Company Supply Sergeant. The NCOER shows in:

a. Part II (Authentication):

- blocks a3 (Rater's Signature) and b3 (Senior Rater's Signature) – the rater and senior rater authenticated the form with their digital signatures on 5 September 2018
- block d1 (Counseling Dates) – an initial counseling date of 8 January 2017 and a later counseling date of 10 August 2017

- block d2 (Rated NCO's Signature), the applicant authenticated the form with his signature on 6 September 2018

b. Part IVc (Character), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comments:

- frequently argued with the company commander
- does not support the Army SHARP program as seen in his 8 January counseling on how to properly communicate with female Soldiers

c. Part IVd (Presence), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comments:

- often lost his military bearing in the presence of the commander
- often asked multiple people the same questions looking for the response he wanted verses the response he received
- a very passive aggressive Soldier who cannot let go of discussions or arguments where he perceives he is right

d. Part IVe (Intellect), the rater placed an "X" in the "Met Standard" block and entered the following bullet comments:

- didn't use sound judgment or act in a professional manner on June 20, 2017 when he widely disseminated inaccurate and derogatory information to civilians
- received kudos from BN staff for his end of year KYLOC orders; is so organized that he is able to walk leadership directly to any sensitive item

e. Part IVf (Leads), the rater placed an "X" in the "Met Standard" block and entered the following bullet comments:

- took the lead and conducted all LIK and SIK purchase requests for two other companies and the BN HHD [Headquarters and Headquarters Detachment] do [due] to their inability to perform the task
- was only allowed to be at battle assemblies around TPU [troop program unit] female Soldiers starting in August 2017

f. Part IVg (Develops), the rater placed an "X" in the "Met Standard" block and entered the following bullet comments:

- shows his two supply Soldiers how to track all inventoried items
- always willing to work late hours to assist his Soldier in completing common tasks

g. Part IVh (Achieves), the rater placed an "X" in the "Met Standard" block and entered the following bullet comments:

- maintains 100% accountability of all company items
- has an outstanding system for tracking the smallest detail of the company inventory
- his knowledge and management of the company supply areas led to one of the most efficient change of command inventories

h. Part IVi (Rater Overall Performance) (I currently rate 3 Army NCOs in This Grade), his rater entered the following bullet comments:

- managed supply and acquisitions as well as anyone, often tasked above his paygrade [sic] and succeeds at completion
- acted immature when dealing with confrontation or when he perceived he was right

i. Part V (Senior Rater Overall Potential) (Select One Box Representing Rated NCO's Overall Performance Compared to Others in the Same Grade Whom You Have Rated in Your Career. I currently rate 2 NCOs in This Grade), the rater placed an "X" in the "Not Qualified" block and entered the following bullet comments:

One of the most proficient Supply Sergeants I have worked with in my Army career. He ensures Soldiers have meals and lodging. Significant bad judgment relating to communication issues not consistent with NCO values. Inappropriate texting in violation of SHARP guidance directed towards lower enlisted Soldiers is a significant leadership concern that overshadows his otherwise professional performance.

8. The applicant's memorandum for the President, DASEB (Request for the Transfer of General Officer Memorandum of Reprimand (GOMOR) of (Applicant)), 21 February 2023, requests transfer of the GOMOR, 29 September 2016, from the performance folder to the restricted folder of his AMHRR.

9. On 14 March 2023 in Docket Number AR20230002564, the DASEB determined the evidence submitted was sufficient to warrant the requested relief. As a result, the board directed transfer of the GOMOR, 29 September 2016, to the restricted folder of the applicant's AMHRR. The board noted this action is not to be considered retroactive and, therefore, does not constitute grounds for promotion reconsideration, if previously non-selected. The board further directed filing the decision memorandum and allied documents in the restricted folder of the applicant's AMHRR.

10. On 29 March 2023, the President, DASEB, notified the applicant that the DASEB voted to approve the transfer of the GOMOR, 20 March 2016, and all related documents from the performance folder to the restricted folder of his AMHRR.

11. On 10 October 2023, the applicant submitted a request to the DASEB wherein he requested removal of the two NCOERS covering the periods from 1 October 2015 through 29 September 2016 and from 30 September 2016 through 9 September 2017 from his AMHRR.

12. On 23 July 2024, the Director, Case Management Division, notified the applicant that his request must be directed to the Army Board of Correction of Military Records (ABCMR) for consideration since he had exhausted his administrative remedies with the DASEB.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. Based upon the available documentation showing supporting evidence of the comments reflected on the applicant's two contested NCOERs, the Board concluded there was insufficient evidence of an error or injustice which warrants removal or redaction of any portion of the two documents. As a result, the Board recommended denying all requested relief.

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.

3/6/2025

XCHAIRPERSON


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. 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.
2. Army Regulation 623-3 (Evaluation Reporting System), 14 June 2019, prescribes the policies and tasks for the Army's Evaluation Reporting System.
 - a. Paragraph 2-5 (Rules for Designating a Rater) states the rater will be the immediate supervisor of the rated Soldier responsible for directing and assessing the rated Soldiers' performance. The rater will normally be senior to the rated Soldier in grade or date of rank. The rater will be the supervisor of the rated NCO for a minimum period of 90 calendar days.
 - b. Paragraph 2-7 (Rules for Designating a Senior Rater) states a senior rater will be an officer or NCO of the U.S. Armed Forces, U.S. Coast Guard, or a Department of Defense civilian. The senior rater will be the immediate supervisor of the rater. To render a written NCOER, the senior rater must have been designated as the rated NCO's senior rater for a minimum period of 60 calendar days.

c. Paragraph 3-37 (Modifications to Previously Submitted Evaluation Reports) states an evaluation report accepted by Headquarters, Department of the Army, 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.

d. Paragraph 4-7f (Policies) states 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 Headquarters, Department of the Army, Evaluation Appeals Branch; National Guard Bureau Appeals Section; or the appropriate State Adjutant General (Army National Guard).

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

- (1) the presumption of regularity will not be applied to the evaluation report under consideration and
- (2) action is warranted to correct a material error, inaccuracy, or injustice.

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

g. 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.

h. 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 investigation may provide support for an appeal request.

i. 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.

j. 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.

k. 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.

3. Army Regulation 600-37 (Unfavorable Information), 10 April 2018 and in effect at the time, provided 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. Paragraph 7-2a(3) (Appeals Involving Document with Regulatory Appeal Authority) stated this regulation does not apply to documents that have their own regulatory appeal authority, such as evaluation reports or records of courts-martial.

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 April 2014, prescribes the policies and operating tasks for the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to,

the Official Military Personnel File (OMPF), finance-related documents, and non-service related documents deemed necessary to store by the Army. It provides that once properly filed in the OMPF, a document becomes a permanent part of that file. The document will not be removed from the OMPF or moved to another part of the OMPF unless directed by competent authority.

//NOTHING FOLLOWS//