

FACTS:

1. The U.S. District Court for the District of Columbia ordered the ABCMR to consider the applicant's nonfrivolous argument that retention of the nonjudicial punishment (NJP) and GOMOR in the applicant's records is unjust in light of the BOI findings. Specifically, the Court highlighted the ABCMR's need to consider and address:

- the various ABCMR cases cited by the applicant
- the BOI's findings that he did not "commit intentional neglect or failure to perform assigned duties" or "commit conduct unbecoming an officer"

2. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20200007621 on 16 March 2021.

3. The applicant defers to counsel.

4. Counsel states:

a. The applicant provided four ABCMR decisions that directed transfer of a GOMOR to the Soldier's restricted folder of the AMHRR in similar circumstances. The Board in those cases relied upon recommendations from the applicant's chain of command, the fact that applicant had been promoted after receiving the GOMOR, and a positive history in the applicant's officer evaluation reports (OERs). The applicant provided the same evidence and more. Consistent with legal precedent from the U.S. District Court for the District of Columbia, the Board must consider these prior relevant decisions. The applicant submits that these examples provide support for the Board to grant relief in his case as well.

b. Pursuant to Army Regulation 600-37 (Unfavorable Information), chapter 7, the applicant bears the burden to provide evidence of a clear and convincing nature that a document is untrue or unjust, thereby warranting its removal or alteration. Relevant, substantive evidence may include, but is not limited to an official investigation showing the initial investigation was untrue or unjust, a decision made by an authority above the imposing authority overturning the basis for the adverse documents, notarized witness statements, historical records, official documents, and/or legal opinions.

(1) As evidenced in this case, the applicant presented an official BOI report, charged with determining whether he had exercised extreme insensitivity toward the religious practices of an Afghan officer, which served as the basis of his GOMOR, and whether he neglected or failed to perform assigned duties as the basis of the NJP. The BOI found by a preponderance of the evidence that he did not "commit conduct unbecoming an officer under the provisions of Army Regulation 135-175 [Separation of

Officers], paragraph 2-13p," and did not "commit intentional neglect or failure to perform assigned duties under the provisions of Army Regulation 135-175, paragraph 2-13e(1)." As the Court noted, this could mean that either the BOI found he did not engage in the conduct at all or that his conduct did not violate regulatory guidance. Either way, the BOI findings are an extremely relevant piece of substantive evidence to show the GOMOR and NJP records are untrue or unjust in support of removing the adverse materials from his records.

(2) In the applicant's application to ABCMR, he explained in detail why the BOI findings are more accurate and reliable than the investigation leading to the GOMOR in this specific case. Below he provides additional relevant information from the newly discovered BOI transcript. He also provided evidence that his command highly valued him as well as wanted to retain and promote him, but was precluded by the adverse material as evidence of its injustice (see enclosures to ABCMR Docket Number AR20200007621). These items are relevant, substantive evidence that the GOMOR and NJP records are untrue or unjust, warranting removal.

(3) The DASEB incorrectly indicated that only a letter from the imposing authority admitting the reprimand was unjust or untrue would serve to prove the GOMOR was untrue or unjust. Army Regulation 600-37, chapter 7, illustrates the error of the DASEB's conclusion. While he acknowledges that the ABCMR is not bound by the findings of a BOI, the BOI's findings should be considered as relevant, substantive evidence to establish the untruth and injustice of the adverse material, since the BOI fully considered the exact conduct at issue in the GOMOR, analyzed the GOMOR itself, and concluded the applicant had not violated regulations as alleged.

c. The Court also noted the applicant may consider reasserting his argument regarding the lack of the BOI transcript on remand in light of the transcript's disclosure during the Government's presentation of its case to the Court.

(1) As an initial matter, the Court referenced "contradictory representations regarding the summarized transcript" that left the Court unable to determine whether his argument was frivolous (see Memorandum Opinion Granting Plaintiff's Motion for Summary Judgment in the Matter of Blanco v. Wormuth, 22-1883 (RC) pages 13-14). To clarify: the applicant asserted to the ABCMR that the Government failed to maintain the transcript or summarized transcript from his BOI, and only provided the script. In replying to the Government's motion for summary judgment, he indicated that he "was provided with a summarized transcript and informed that was all that existed." In so stating, he was referring to the "script" referenced before the ABCMR. Counsel mistakenly termed it a "summarized transcript," but intended to refer to the same 6-page script he was given following the BOI. Nothing contradictory was asserted.

(2) ABCMR Docket Number AR2020007621 contains evidence that he was told the entire transcript did not exist. The Government provided an Administrative Record to the Court, containing all relevant documents that were part of the proceedings below, which also did not include the BOI transcript. At some point, however, the Government found the transcript and referenced it before the Court. Accordingly, as he now has a copy, he would like to direct the ABCMR's attention to the following:

(a) The applicant argued he was prejudiced before the DASEB and ABCMR because the Government failed to maintain the transcript from his BOI. The DASEB rejected the BOI as appropriate evidence on the basis that the BOI "is limited to making a determination on whether to retain...an officer on active duty." The BOI transcript clearly indicates that BOI members were asked by the Government to "understand the details of both incidents," and were given copies of the GOMOR packet, the Army Regulation 15-6 investigation report, and the Article 15 packet for consideration prior to rendering any decision. Likewise, his counsel asked members to "think real hard" about what "extreme religious sensitivity" meant, then talked about the evidence and how the Board should characterize it.

(b) The BOI members then heard testimony from witnesses, including the U.S. Special Operations Command (SOCOM) Army Reserve Element (ARE) Deputy Commanding Officer, who explained what a "huge loss" it would be to lose the applicant, that he had "gone above and beyond [what was required] to rectify" any issue from the GOMOR, and described his work ethic as "exemplary." She also explained that the applicant had "been quite open about his remorse," that he learned what was done and said can be taken out of context, and he was aware of this and had moved forward.

(c) The 2d Battalion, U.S. SOCOM ARE, Executive Officer, Major (MAJ) ██████, recognized that the applicant did "a very silly thing that was unprofessional" for which he received a GOMOR, but it was not malicious and he learned his lesson; it was an extremely good learning experience with lessons he can pass along to future leaders of the U.S. Army. MAJ ██████ confirmed that both his personal knowledge and everything he ever heard second-hand concerning the applicant were positive.

(d) The SOCOM ARE Senior Enlisted Advisor also testified and explained that the applicant went above and beyond the call of duty to accomplish the mission and he never had a reason to question the applicant's leadership.

(e) The applicant also testified, answering Board members' questions and specifically addressing religious, racial, and cultural sensitivity and how he works to teach and educate people, including himself. He explained the cultural differences that led to misunderstandings between himself and the Afghan lieutenant. He explained that there was never a video taken and nothing disseminated.

(f) The applicant also specifically addressed the allegations of the NJP and provided a letter of reference vehemently disagreeing with the charge. He explained why the sergeant first class was "out to get him," maintaining his position that he was not sleeping in his vehicle as the sergeant first class claimed. He further addressed BOI members' questions to explain that it was not unusual for seemingly minor interactions to escalate to an Article 15 offense in his unit at that time.

(g) The BOI members considered all the evidence and testimony about the events leading to the NJP and GOMOR. They then unanimously found that he "did not commit intentional neglect or failure to perform his duties under the provisions of AR [Army Regulation] 135-175, Paragraph 2-13e(1)," and "did not commit conduct unbecoming of an officer under the provisions of AR [Army Regulation] 135-175," and based on these findings established by a preponderance of the evidence, recommended his retention.

(h) All of this specific testimony from the BOI transcript is relevant to this Board's consideration of substantial evidence showing the error and injustice of leaving the GOMOR and NJP in the applicant's records, thereby forcing him out of the Army.

d. The applicant asks the Board to bear in mind the stated purpose of Army Regulation 600-37, chapter 7, is as follows:

(1) To ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in an individual's official personnel file; and to ensure the best interests of the Army and the Soldiers are served by authorizing the unfavorable information be placed in, and when appropriate, removed from official personnel files.

(2) Records may be transferred when an applicant provides proof that the intended purpose has been served and transfer would be in the best interest of the Army.

(3) The applicant's conduct occurred more than 19 1/2 years ago. Since that time and until his mandatory discharge, he served honorably and faithfully. He was exonerated by a BOI. He is not seeking relief to upgrade a discharge for retired pay purposes or to simply restore a damaged reputation. He wants to continue serving and multiple commanders want his continued service. The 1st Special Warfare Training Group (Airborne) Psychological Operations Commandant, Colonel (COL) [REDACTED], indicates he would be honored to have the applicant assigned to his command. The applicant previously provided numerous letters endorsing his retention and promotion; statements were provided by Major General [REDACTED], Brigadier General [REDACTED], COL [REDACTED], and MAJ [REDACTED]. The only thing precluding

his continued service is the inability to be promoted due to adverse material in his records. He is simply asking for the opportunity to continue to serve.

(4) Accordingly, the applicant requests that the Board fully consider and grant his request to remove derogatory documents from his AMHRR and direct his consideration by an SSB so he may be considered for continued service at the next grade and beyond.

5. The applicant received NJP under the provisions of Article 15, UCMJ, on 28 February 2004 while serving in the rank of staff sergeant. The DA Form 2627 (Record of Proceedings under Article 15, UCMJ) shows he was punished for sleeping at his lookout post at Observation Point 1 in Ghazni, Afghanistan, and willfully disobeying a lawful order from his superior noncommissioned officer (NCO) on or about 12 February 2003.

- a. He did not demand trial by court-martial.
- b. He requested an open hearing.
- c. His punishment consisted of reduction to sergeant/E-5 and 45 days of extra duty.
- d. The imposing commander directed placement of the DA Form 2627 in the restricted folder of his AMHRR.
- e. He did not appeal the punishment.

6. The U.S. Army Human Resources Command memorandum (Appointment as a Reserve Commissioned Officer of the Army under Title 10, U.S. Code, Sections 12201 and 12203), 7 September 2010, appointed the applicant as a Reserve commissioned officer in the rank/grade of second lieutenant/O-1 and he executed an oath of office on 30 September 2010.

7. The applicant was promoted to first lieutenant/O-2 on 30 March 2012.

8. The Headquarters, U.S. Army Maneuver Center of Excellence, memorandum from the Commanding General (Administrative Memorandum of Reprimand), 29 August 2011, reprimanded the applicant for conduct unbecoming of an officer for exercising extreme insensitivity toward the religious practices of an Afghan officer and stated:

- a. On 5 August 2011, the applicant went to a local restaurant with a group of Infantry Basic Officer Leader Course students, including a visiting student officer from Afghanistan. At some point during the meal, the Afghan student was offered a rib under the impression that it was a beef product. The applicant then decided to videotape the

Afghan officer with his cell phone while he ate the rib. Fully aware of the religious prohibition against consuming pork products, the applicant made inappropriate comments to the effect of "Is it sweet?" and "It's Ramadan and you're eating pork." The applicant made these insensitive remarks in order to evoke a "funny" reaction from the Muslim officer and to capture that reaction on camera. In truth, his actions degraded the Afghan's religious beliefs and publicly embarrassed him.

b. The applicant's immature and insensitive act was aggravated when it was revealed that the rib was actually a pork product. A sworn statement that he rendered as part of an Army Regulation 15-6 investigation indicates a continued lack of acceptance of responsibility for his actions and the degree of gross insensitivity that they embodied. As an officer and a former NCO, he should have known that his actions were grossly inappropriate and that such distasteful behavior could have significant negative consequences for relations with our allies.

c. His behavior was completely unacceptable. He embarrassed himself, his command, and the U.S. Army. Officers must demonstrate maturity and sound judgment at all times. His lack of professionalism and poor judgment caused the commanding general to question his ability to lead and provide a positive influence on Soldiers.

d. The reprimand was imposed as an administrative measure and not as punishment under Article 15, UCMJ.

9. The applicant acknowledged receipt of the GOMOR and requested filing the GOMOR in his local unit file on 3 September 2011. He sincerely and wholeheartedly took full responsibility and regretted his actions.

10. On 16 September 2013, the applicant requested and completed remedial Equal Opportunity (EO) training following his EO incident and Army Regulation 15-6 investigation in August 2011.

11. On 4 October 2011 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 placing the GOMOR in the applicant's AMHRR. He further directed that all enclosures would be forwarded with the reprimand for filing as appropriate.

12. The memorandum from Brigadier General [REDACTED], Assistant Commander, U.S. Special Operations Command Central ((Applicant)), 6 July 2016, states the applicant enrolled in and completed a cultural sensitivity class of his own volition and thereafter volunteered as his unit's EO officer as an additional duty in contrast to earlier assertions of "immaturity and insensitivity" stemming from an incident at the end of his

Infantry Basic Officer Leader Course that resulted in the GOMOR. Since that episode, the applicant volunteered for and was selected to serve as the platoon leader for a multinational Marine Special Operations company exercise, leading and training Soldiers and officers from 13 foreign countries, as well as leading the U.S. Opposition Forces for the entire exercise. This duty, normally assigned to an officer well above his grade, demonstrated an exceptional ability to deal with foreign allies as well as senior leadership. He received an Army Commendation Medal as an impact award for his performance during this exercise.

13. Counsel provided three memoranda of recommendation in support of the applicant's retention in the Army and promotion to captain (CPT).

a. The Special Operations Command Central memorandum from the Assistant Commander, Brigadier General ██████████ ((Applicant)), 6 July 2016, states he has known the applicant for the last year. He has reviewed the applicant's performance since his affiliation to Special Operations Command Central and finds him to be an experienced and competent combat leader whose nearly 27 years of experience has demonstrated a long record of honorable accomplishments. In contrast to earlier assertions of "immaturity and insensitivity" stemming from an incident at the end of his Infantry Basic Officer Leadership Course that resulted in receipt of a GOMOR, the applicant enrolled in and completed a Cultural Sensitivity class of his own volition, and thereafter volunteered as his unit's EO officer as an additional duty. Since that episode, he volunteered for and was selected to serve as the platoon leader for a multinational U.S. Marine Forces Special Operations Command exercise, leading and training Soldiers and officers from 13 foreign countries, as well as leading the U.S. Opposition Forces for the entire exercise. He received an impact Army Commendation Medal for his performance during the exercise. His experience and ability as a company-grade officer has been exemplary to date as evidenced by his OERs, as has his ability to responsibly deal with foreign allies. The added value he brings to this joint command has not yet reached its full potential. He has already shown himself to be a credit to himself, Special Operations Command Central, and the U.S. Army. The applicant would make, not only an excellent company commander, but an excellent field grade officer if given the opportunity.

b. The U.S. Special Operations Command memorandum from the SOCOM ARE Commander, COL ██████████ (Letter of Recommendation for (Applicant)), 23 February 2017, states he strongly recommends the applicant's retention in the U.S. Army as well as his promotion to CPT as soon as possible. Since his arrival at this command in August 2015, he has performed admirably and has often been recognized by the command for providing a level of professionalism and competence not commonly seen in officers of his grade. He has personally worked with the applicant since his assignment as he has reported directly to him on numerous special projects. The applicant is not only an outstanding officer and a credit to the U.S. Army, but a

decorated and accomplished Soldier and a combat leader. While assigned to this command, he has accomplished every task entrusted to him flawlessly, meeting all suspense dates, while exceeding expectations for an officer of his grade. His attention to detail and the competence and work ethic displayed while completing every task is emblematic of officers not only more senior in grade but also experience. The applicant is in the top 10 percent of officers he has personally worked with in the past 25 years. From tactical knowledge to mentoring other service members, the applicant has added value to the organization with a driven, positive approach that has permeated all of the Soldiers and officers alike. The applicant should be allowed to continue his military career in the Army and be afforded the opportunity to serve in positions of greater responsibility. He is without question an asset to this command and the U.S. Army. He has already demonstrated and proven himself worthy of being promoted to the rank of CPT during his time in this command and has unlimited potential. The applicant has personally proven his character and leadership capability to him and other superior officers, as well as his peers and subordinates. He has learned from his mistakes and has flourished as an operations officer. His respect for and interaction with our multinational coalition partners has been beyond reproach.

c. The Headquarters, 78th Operational Response Command (USAR), memorandum from the Commanding General, Major General [REDACTED] (Letter of Recommendation for (Applicant)), 16 March 2017, states he strongly recommends the applicant's retention and promotion in the U.S. Army. The applicant is an exceptional junior officer and fosters an attitude of strength and the mental acuity to make sound decisions of the highest moral character since his arrival at the command in August of 2015. He has performed admirably and has often been recognized by the command for providing a level of professionalism and competence not commonly attributed to officers of his grade. The applicant possesses a complex scope of professional knowledge as evidenced by his OERs and other letters of recommendations submitted. He is a deliberate planner and effective communicator, always providing fact-based recommendations and solutions to commanders, subordinates, and peers alike. As a demonstration of his ability to excel professionally he owns a highly successful international business that benefits the U.S. Government, the U.S. economy, and corporations around the world.

14. The U.S. Army Human Resources Command memorandum (Delay of Promotion and Referral to a Promotion Review Board), 29 December 2016, states a post-selection screening for promotion consideration to CPT discovered the applicant received NJP and a GOMOR. As a result of these findings, he was referred to a promotion review board.

15. The BOI findings, 29 March 2019, and summarized transcript (Board Officers Script, (Applicant) – 29 March 2019) state the BOI was called to determine whether or

not the applicant should be separated from the U.S. Army and, if so, how his discharge should be characterized. The BOI determined the applicant:

- did not commit intentional neglect or failure to perform assigned duties under the provisions of Army Regulation 135-175 (Army National Guard and Reserve Separation of Officers), paragraph 2-13e(1)
- did not commit conduct unbecoming an officer under the provisions of Army Regulation 135-175, paragraph 2-13p

16. The Headquarters, U.S. Army Reserve (USAR) Command, memorandum (Decision Memorandum – Administrative Separation Board (Applicant)), 16 July 2019, states the 76th Operational Response Command convened a BOI in accordance with Army Regulation 135-175, paragraph 2-13e(1) (Intentional Neglect or Failure to Perform Assigned Duties), and paragraph 2-13p (Conduct Unbecoming an Officer), to determine whether the applicant slept on duty while serving as an NCO and disobeyed a lawful order from a senior NCO, resulting in failure to perform his duties, and whether he exercised extreme insensitivity toward the religious practices of an Afghan officer. The board found by a preponderance of the evidence that the applicant did not commit an act of intentional neglect or failure to perform assigned duties and that he did not commit conduct unbecoming an officer. The board recommended the applicant's retention in the USAR. The Commander, USAR Command, approved the BOI results and recommendation to retain the applicant.

17. The Headquarters, 81st Readiness Division, memorandum (Options upon Nonselection for Promotion after Second Consideration), 1 October 2019, informed the applicant that he had been considered twice for promotion to the next higher grade by the Army Reserve Components Selection Board and was not selected.

a. His transition from an active status would be mandatory and he would be separated not later than the first day of the 7th month following the President's approval of the board results unless he:

- was a first lieutenant with a remaining statutory military service obligation
- was a CPT or MAJ and had a service obligation
- was eligible for and requested transfer to the Retired Reserve (if he completed 20 years of qualifying service for Reserve retired pay at age 60 and had a 20-year letter)
- was credited with 18 or more but less than 20 years of satisfactory federal service for retired pay purposes

b. The applicant was directed to complete the enclosed election of options and return it to the command. If his election of options was not received by the suspense

date shown (1 December 2019), he would be administratively transferred to the Retired Reserve, if eligible, or discharged in accordance with law.

c. The applicant did not complete the Reserve Status Statement and Election of Options form.

18. The memorandum from COL [REDACTED], SOCOM ARE (Letter of Recommendation to Remove Derogatory Information from (Applicant's) Official Military Personnel File (OMPF)), 18 November 2019, states the applicant keenly sees his service to the country as an honor, not to be taken lightly or for granted. He has 30 years of total service and his honorable service far outweighs the mistakes from which he has learned throughout. The applicant continues to bear potential for greater responsibility. He currently leverages his mistakes as learning tools when he mentors future leaders. He respectfully recommended removal of derogatory documentation from the applicant's OMPF so he may continue to succeed.

19. The applicant's memorandum for the DASEB (Request for Removal of GOMOR and Article 15/NJP of (Applicant)), 18 November 2019, requests transfer of the DA Form 2627, 28 February 2004, and GOMOR, 29 August 2011, to the restricted folder of his AMHRR.

20. On 28 January 2020 in DASEB Docket Number AR20190014899, the DASEB determined the evidence presented did not provide substantial evidence that the documents in question served their intended purpose or were untrue or unjust, and that their transfer would be in the best interest of the Army.

a. The DASEB noted a BOI is limited to making a determination on whether to retain (with or without reassignment) an officer on active duty or to eliminate an officer. Furthermore, neither the imposing authority nor the DASEB is bound by the BOI's recommendations/findings or to retain the applicant.

b. The applicant did not submit a letter from the imposing authority stating the reprimand is unjust or untrue or new evidence was being considered or discovered.

c. The DASEB determined by unanimous vote that the overall merits of the applicant's case did not warrant removal or transfer of the contested documents.

21. Headquarters, 81st Readiness Division (USAR), Orders 20-113-00022, 22 April 2020, released the applicant from his current assignment and transferred him to the Retired Reserve effective 21 May 2020.

22. On 16 March 2021, the ABCMR denied the applicant's request for removal of the GOMOR and/or setting aside of punishment, and determined the NJP had not served its

purpose. After reviewing the application, and all evidence provided, the Board determined relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. Regulatory guidance provides that once a reprimand is filed in the OMPF, the reprimand and associated documents are permanent unless removed by the appropriate authority. Furthermore, 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 the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. The Board agreed the criteria allowing for removal of the GOMOR from his OMPF was not met. The Board also agreed the evidence did not constitute a basis to support setting aside punishment, and the NJP had not served its purpose. Based upon a preponderance of the evidence, the Board determined there was insufficient evidence to grant any of the requested relief.

23. Counsel again provided the following cases that were previously addressed by the Board in Docket Number AR20200007621 on 16 March 2021 for consideration as examples of similar cases wherein the ABCMR granted relief:

a. In ABCMR Docket Number AR20120002418, 4 September 2012, another applicant requested transfer of a GOMOR from the performance folder to the restricted folder of his OMPF. That applicant stated the GOMOR caused his removal from a key developmental position as an S-3, prevented him from being competitive for a nominative assignment, prevented him from filling a key assignment as an advisor, prevented him from returning to an assignment outside the continental United States, and essentially relegated him to "filler" status for whatever positions were left over. Because of the GOMOR filed in his OMPF, his assignment preferences no longer factored into his assignments. He stated the GOMOR served its intended purpose.

(1) On 7 November 2008, that applicant was issued a GOMOR for extraordinarily poor judgment and conduct unbecoming an officer. Specifically, he was disorderly after a night of drinking at an off-post club on 11 October 2008 and directed abusive, profane language toward junior enlisted Soldiers and used racially-degrading language in the presence of junior enlisted Soldiers.

(2) The Board concluded the applicant's OERs, coupled with the recommendations from his instructors and supervisors, demonstrated clear evidence that the GOMOR had served its intended purpose. As such, it was in the best interest of the Army to transfer the GOMOR from the performance folder to the restricted folder of that applicant's OMPF.

(3) As a result, the Board recommended correction of all Department of the Army records of the individual concerned by transferring the GOMOR and the corresponding DASEB decision memorandum, 27 October 2012, to the restricted folder of that applicant's OMPF.

b. In ABCMR Docket Number AR20120020936, 15 January 2013, another applicant requested removal or transfer of the GOMOR, 11 December 2008, from the performance folder to the restricted folder of his AMHRR. That applicant believed the record was unjust as the punishment served its intended purpose.

(1) On 11 December 2008, that applicant was issued a GOMOR for making a false official statement; disobeying a lawful order; violating the survival, evasion, resistance, and escape rules; and conduct unbecoming an officer and gentleman.

(2) The Board concluded there was no doubt that after his mistake in 2008, that applicant had rebounded in an excellent manner. He had taken big leaps toward improving himself personally and professionally. He rebounded since the incident and successfully received "Among the Best" OER ratings (note: his 2012 OER is rated "Above Center of Mass"), he was promoted to chief warrant officer two, and he was currently deployed. It appeared the GOMOR had served its intended purpose.

(3) While there was insufficient evidence to show the GOMOR was inaccurate, unjust, flawed, or improperly imposed, and thus its removal was not warranted, that applicant proved through his performance that he was dedicated to bettering himself and soldiering on, despite the setback. The existence of the GOMOR in his performance folder was a detractor that stuck out as soon as his records are reviewed.

(4) The Board determined the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommended correction of all Department of the Army records of the individual concerned by transferring the GOMOR, 11 December 2008, and allied documents to the restricted folder of his AMHRR. The Board further determined the evidence presented was insufficient to warrant a portion of the requested relief. As a result, the Board recommended denial of so much of the application that pertained to removal of the GOMOR from his AMHRR.

c. In ABCMR Docket Number AR20130006621, 18 June 2013, another applicant requested transfer of a GOMOR from the performance folder to the restricted folder of his AMHRR.

(1) On 25 February 2010, that applicant was issued a GOMOR for violating a general order on 10 December 2008 by consuming alcohol while deployed to Afghanistan.

(2) The Board concluded he was promoted to chief warrant officer two and received an award for his service as a company commander since he received the GOMOR. His most recent OERs showed he received the highest ratings for promotion potential. Further, current and previous members of his chain of command, including two general officers, supported transfer of the GOMOR to the restricted folder of his AMHRR. In view of the foregoing information, the Board determined it was in the best interest of the Army to transfer the GOMOR and all allied documents, including the DASEB memorandum denying his request, to the restricted folder of his AMHRR.

(3) The Board determined the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommended correction of all Department of the Army records of the individual concerned by transferring the GOMOR and all allied documents, including the DASEB memorandum denying his request, to the restricted folder of his AMHRR.

d. In ABCMR Docket Number AR20140007255, 15 July 2014, another applicant requested transfer of a GOMOR from the performance folder to the restricted folder of his OMPF.

(1) On 29 April 2011, that applicant was issued a GOMOR for engaging in an adulterous relationship with a junior enlisted Soldier.

(2) The Board concluded there was no doubt that after his misconduct in 2011, that applicant rebounded in an outstanding manner. He accepted responsibility for his actions and had taken big leaps toward improving himself personally and professionally. He rebounded since the incident and successfully completed several assignments, received three "Best Qualified" OER ratings, and was awarded the Bronze Star Medal for meritorious service while deployed to Afghanistan. His attitude, which is normally recognized as a major ingredient in the success or achievement of an individual, is that of an officer who, despite the setback, had soldiered on with a strong desire to serve and grow. It had been over 3 years since he received the GOMOR and the GOMOR appears to have served its intended purpose.

(3) The Board determined the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommended correction of all Department of the Army records of the individual concerned by transferring the GOMOR to the restricted folder of his OMPF.

24. Counsel also provided a memorandum from COL [REDACTED] (Letter of Recommendation for (Applicant)), 27 October 2023, in support of the applicant's retention in the Army, promotion to CPT, and assignment to Tier I assets, wherein he states he knew the applicant for over 10 years and closely monitored his performance. The applicant was among the most competent and professional officers he ever worked

with or commanded. He had over 30 years of experience in service and his professionalism and expertise spoke volumes to his accomplishments. His performance was replete with examples of loyalty and dedication to the U.S. Army, his fellow officers, and Soldiers. It would be an honor to have him assigned to any role in his command.

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. Counsel's contentions, the applicant's military records, and regulatory guidance were carefully considered. The Board determined that a preponderance of the evidence supported a finding that the misconduct underlying both the General Officer Memorandum of Reprimand (GOMOR) and Article 15 were unfounded, and that those documents should be removed from the applicant's personnel file. The Board's determination was supported by testimony at the field Board of Inquiry (BOI), the conclusions of the BOI, and evidence contained in the investigations in the file.

2. Furthermore, in light of the above determination and the fact that the BOI results were not considered by previous promotion boards, the Board concluded that a Special Selection Board is warranted to consider the applicant for promotion to the grade of CPT/O3.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board directs that the applicant's record be amended to remove the letter of reprimand, dated 29 August 2011, and the record of proceedings under Article 15, UCMJ, conducted 20 February 2004.
2. The Board further directs that a special selection board be convened to consider the applicant for promotion to the grade of CPT/O3.

3/18/2024

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. 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 27-10 (Military Justice), effective 14 October 2002, prescribed the policies and procedures pertaining to the administration of military justice. Chapter 3 provided that NJP is imposed to correct misconduct in violation of the UCMJ. Such conduct may result from intentional disregard of or failure to comply with prescribed standards of military conduct.
 - a. Paragraph 3-37 stated the decision to file the original DA Form 2627 in the performance folder or the restricted folder of the OMPF would be made by the imposing commander at the time punishment is imposed.
 - b. Paragraph 3-43 states enlisted Soldiers (sergeant and above), commissioned and warrant officers may request the transfer of a record of NJP from the performance folder of their OMPF to the restricted folder under the provisions of this regulation. To

support the request, the person must submit substantive evidence that the intended purpose of Article 15 has been served and that transfer of the record is in the best interest of the Army. Requests normally will not be considered until a minimum of 1 year has elapsed and at least one nonacademic evaluation report has been received since imposition of the punishment.

3. Army Regulation 135-155 (Army National Guard and Army Reserve – Promotion of Commissioned Officers and Warrant Officers Other than General Officers) prescribes the policies and procedures for promotion of Reserve officers.

a. Promotion reconsideration by an SSB may only be based on erroneous non-consideration or material error which existed in the records at the time of consideration. Material error in this context is one or more errors of such a nature that, in the judgment of the reviewing official (or body), caused an individual's non-selection by a promotion board and, that had such error(s) been corrected at the time the individual was considered, a reasonable chance would have resulted that the individual would have been recommended for promotion.

b. Paragraph 3-21b states an officer who twice fails of selection for promotion to the grade of CPT, MAJ, or LTC will be separated in accordance with paragraph 3-22 unless subsequently placed on a promotion list, selected for continuation, or retained under any other provision of law (for example, sanctuary).

c. Paragraph 3-22 states a MAJ on the Reserve Active Status List who has failed to be selected for promotion to LTC for the second time, and whose name is not on a list of officers recommended for promotion to LTC, will be removed from the Reserve Active Status List unless retained as provided in Title 10, U.S. Code, section 14701; Title 10, U.S. Code, section 14702; Title 10, U.S. Code, section 14703; or Title 10, U.S. Code, section 12646 or 12686. Removal will be on the later of the first day of the month after the month in which the officer completes 20 years of commissioned service, or the first day of the seventh month after the approval date of the promotion board report that non-selected the officer for the second time.

4. 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 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 DASEB to justify the request.

5. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, 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.

//NOTHING FOLLOWS//