

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 May 2025

DOCKET NUMBER: AR20230014198

APPLICANT REQUESTS: in effect, removal of a general officer memorandum of reprimand (GOMOR) and all associated documents from his official military personnel file (OMPF).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- Enclosure 1 – DD Form 149 (Application for Correction of Military Record)
- Enclosure 2 – Department of the Army Suitability Evaluation Board (DASEB)
- Enclosure 3 – GOMOR
- Enclosure 4 – Affidavits
- Enclosure 5 – Divorce Decree
- Enclosure 6 – Enlisted Record Brief (ERB).
- Enclosure 7 – Marriage Certificate
- Enclosure 8 – Legal Analysis of Investigation Findings and Recommendations under Army Regulation (AR) 15-6 (Procedures for Administrative Investigations and Boards of Officers)
- Enclosure 9 – AR 15-6 Investigation Documents, 69 pages

FACTS:

1. Through counsel, the applicant states that his command issued him a GOMOR for allegedly having a "wrongful" intimate relationship with a fellow Soldier while he was still married; according to both AR 600-20 (Army Command Policy) and the Uniform Code of Military Justice (UCMJ), the relationship was never "wrongful." Counsel states:

- The applicant began his relationship with his current spouse (C__ R__) when she was a civilian, and the applicant was legally separated from his then spouse (M__ A. H__)
- As of 16 October 2020, the applicant and his former spouse had legally separated; in January 2021, the applicant and his current spouse began their relationship
- On 15 March 2021, C__ R__ enlisted into the Regular Army; on 28 October 2021, the applicant and M__ A. H__ divorced; on 27 December 2021, the applicant and C__ R__ married

2. Counsel argues:

- A 2019 change to Article 134 (General Article – Extramarital Sexual Conduct), UCMJ, states, in Appendix 17 (Analysis of Punitive Articles), that legal separation is an affirmative defense; however, both parties must either be legally separated or unmarried
- Appendix 17 continues, "it is an affirmative defense if the accused is legally separated and the co-actor is unmarried"
- Further, paragraph 4-14c (2) (Relationships Between Soldiers of Different Ranks), AR 600-20, permits relationships like that of the applicant and C__ R__ as long as a marriage occurs within one year of the change in status; C__ R__ enlisted in March 2021, and they married in December 2021
- Counsel notes that, in October 2022, the applicant submitted his rebuttal to the GOMOR; on 2 November 2022, the AR 15-6 appointing authority (Colonel (COL) F__ L. J__) wrote a critical memorandum for record (MFR)
- In her MFR, COL J__ opined that, for the period March to December 2021, the applicant's relationship had violated AR 600-20; in addition, the exception for marriage within one year did not apply to a change from civilian status
- Counsel acknowledges AR 600-20 is "silent as to whether a change in status from that of a civilian to an enlisted service member would constitute a 'change in status..."; however, to interpret that silence against the applicant would "constitute violations of fundamental fairness and the Rule of Lenity..."
- When the DASEB denied the applicant's request for relief, it relied on COL J__'s interpretations; significantly, the applicant never learned of the MFR's existence until the DASEB mentioned it in their record of proceedings
- Because the applicant was not permitted to respond to COL F__ L. J__'s interpretations, his due process rights were violated

3. The applicant provides copies of his divorce decree; the AR 15-6 investigation; GOMOR; marriage certificate; and his spouse's ERB. Additionally, he and his current wife have submitted affidavits:

a. The applicant states:

- On 16 October 2022, he filed a rebuttal to the AR 15-6 investigation, and he explained how his relationship with C__ R__ was never "wrongful"; it began after his legal separation from his then wife and while C__ R__ was still a civilian; she later enlisted, and they married within one year of her enlistment
- Only after the DASEB addressed his GOMOR appeal did he learn of COL F__ L. J__'s 2 November 2022 MFR; this document contained erroneous conclusions, facts, and analyses of law and policy
- The applicant declares that at no time did he ever engage in a "wrongful" relationship

b. The applicant's current spouse states:

- The applicant's GOMOR is factually inaccurate and, as such, is unjust; specifically, the GOMOR fails to account for the commencement of her relationship with the applicant, i.e., after his legal separation from his former wife and prior to her enlistment
- Additionally, she and the applicant married within one year of her enlistment; she contends, contrary to what is alleged in the GOMOR, they complied with Army command policy

4. A review of the applicant's service record shows the following:

- On 23 May 2009, following his graduation from the U.S. Military Academy, the applicant executed his oath of office as a commissioned officer, branched Ordnance Corps
- He served in a variety of assignments, both within the continental United States and overseas, and he deployed twice to Afghanistan; effective 1 December 2012, the Army promoted him to captain (CPT)/O-3
- On or about 14 July 2017, he was assigned to a State University for duty as an Army Reserve Officers' Training Corps (ROTC) Assistant Professor of Military Science
- On 2 May 2020, after a second non-selection for promotion to major in the Regular Army, the applicant executed his oath of office as a commissioned officer in the U.S. Army Reserve (USAR); he continued his active duty service as an ROTC Assistant Professor of Military Science
- Permanent change of station orders reassigned him to Fort Drum, NY, and he arrived at his new duty station, on or about 19 April 2022
- On 24 August 2022, COL F__ L. J__, Sustainment Brigade commander, appointed an investigating officer (IO), under the provisions of AR 15-6
- COL L__ directed the IO to ascertain if the applicant had failed to provide spousal support, as required by AR 608-99 (Family Support, Child Custody, and Parentage), and whether he had engaged in an inappropriate relationship with SPC C__ R__ prior to their marriage
- On 7 September 2022, the IO published her findings and recommendations; she concluded the applicant had engaged in a prohibited relationship with SPC C__ R__ prior to their marriage, and that the applicant had failed to comply with his court-ordered division of marital property
- The IO recommended the applicant be given an order to comply with the court order, and, as to the applicant's prohibited relationship, the command should consult with the servicing Staff Judge Advocate (SJA) to ascertain an appropriate disposition

- On 14 September 2022, the AR 15-6 appointing authority (COL F__ L. J__) referred the AR 15-6 investigation to the applicant for comment
- On 17 October 2022, the applicant filed a rebuttal; he contended the following:
 - He did not feel he had done anything wrong, and the Army had needlessly been dragged into his bitter divorce proceedings
 - The applicant declared the allegation was false that he had engaged in a prohibited relationship with his current spouse, and he noted the timeline was crucial
 - The applicant was an ROTC instructor when his current spouse (C__ R__) was still a civilian and a student at the same university; she took one of the applicant's ROTC classes; in October 2020, C__ R__ left the ROTC program and subsequently transferred to another school
 - On 16 October 2020, the applicant and his former spouse separated and maintained separate residences
 - The applicant states, "I was advised by my divorce lawyer that the law in West Virginia allows spouses to pursue other relationships during the divorce process, if the parties maintain separate dwellings and no longer conduct themselves as a married couple"
 - In January 2021, the applicant started dating C__ R__; after this, C__ R__ enlisted into the Regular Army; "We were keenly aware that officers are not permitted to date enlisted Soldiers, so C__ and I were forced to expedite our courtship and get married or break up within 12 months of her enlistment"
 - Once married, they took steps to declare their marriage to the Army by enrolling in the Married Army Couples Program (MACP); (MACP allows Soldiers to establish a joint domicile)
 - In April, the applicant reported to Fort Drum and announced to his superiors and coworkers that he was married to an enlisted Soldier
 - The applicant continued his rebuttal by addressing the allegations of noncompliance with his divorce decree for the division of marital property
 - The applicant concluded by requesting the IO to reconsider her findings and recommendations; in the event the IO did not reconsider, he appealed to the approval authority for relief
- On 16 October 2022, the applicant's counsel submitted a legal analysis of the AR 15-6 investigation; counsel argued the following:
 - Army command policy (AR 600-20) expressly permitted the applicant's marriage, and there was insufficient evidence to show the applicant's relationship violated the UCMJ
 - With regard to the division of marital property, the applicant had complied with Army regulations and the court order

- On 2 November 2022, the AR 15-6 appointing official (COL F__ L. J__) prepared a Commander's Action Memo, in which she stated the following:
 - She modified the IO's findings to show the applicant "partially complied with the court-ordered division of marital property"
 - Concerning the alleged prohibited relationship, she modified the findings to show that the period from March 2021 (when C__ R__ enlisted into the Regular Army) to December 2021 (when they married) violated AR 600-20
 - COL J__ opined that the regulation's exception for marriages between enlisted Soldiers and officers only contemplated changes in military status, not civilian to military
 - Further, COL J__ wrote, "I find that [applicant] was not legally separated at this relationship, as West Virginia does not have legal separation...Rather, [applicant] was physically separated from [former spouse], including for the purposes divorce"
 - She added, "I also find that [applicant] did not have an honest and reasonable belief that he was legally separated...However, I find there is insufficient evidence of a sexual act as defined under the extramarital sexual conduct article of the UCMJ"
 - COL J__ disapproved the IO's recommendations for the applicant to comply with the court-ordered division of marital property
 - COL J__ indicated she would forward the investigation to the CG, 10th Mountain Division for appropriate action
- On 2 November 2022, the applicant's brigade commander (COL F__ L. J__), requested CG, 10th Mountain Division issue the applicant a GOMOR
- On 2 December 2022, the CG, 10th Mountain Division reprimanded the applicant for "wrongfully having an intimate relationship with a fellow Soldier while married"
- On 22 December 2022, and through counsel, the applicant filed his rebuttal, contending his behavior had not violated either Army regulation or the UCMJ
- On 6 February 2023, the GOMOR issuing authority directed the GOMOR's placement in the applicant's OMPF
- On 7 May 2023, the applicant petitioned the DASEB, requesting the GOMOR's removal from his OMPF
- On 15 August 2023, the DASEB found the evidence did not clearly and convincing establish that the GOMOR had "served its intended purpose or is untrue or unjust, and that its transfer or removal would be in the best interest of the Army"; the DASEB noted the following:
 - In order to remove a GOMOR, the applicant had to clearly and convincingly show the GOMOR was untrue or unjust

- Based on the DASEB's review, "The filing of the GOMOR was not untrue or unjust"; the AR 15-6 investigation found the applicant engaged in a prohibited relationship with his current wife prior to their marriage, and COL F__ L. J__ determined that period March to December violated AR 600-20
- The applicant is currently serving on active duty

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the GOMOR being issued following a legally executed AR 15-6 investigation, where all due process rights were offered to the applicant, and the GOMOR's facts outline the investigating officer's following modified findings (in part) as outlined in HQ, 10th Mountain Division Sustainment Brigade Memorandum for Record, dated 2 November 2022:

"I find that CPT [REDACTED] and SPC [REDACTED] began their relationship in January 2021, prior to SPC [REDACTED] enlistment on 15 March 2021, and that they became married on 27 December 2021. I find that this relationship from the period of March 2021 through December 2021 violated AR 600-20, para. 4-14. I find that this does not fall within the exception contained in AR 600-20, para. 4-14c(2)(b), as this exception contemplates changes in military status as opposed to a change from civilian to military status."

With regards to whether CPT [REDACTED] engaged in extramarital sexual conduct, I find that by a preponderance of the evidence that CPT [REDACTED] and SPC [REDACTED] were in a dating relationship prior to his divorce from [REDACTED]. I find that CPT [REDACTED] was not legally separated at this relationship, as West Virginia does not have legal separation. Rather, CPT [REDACTED] was physically separated from [REDACTED] including for the purposes divorce. I also find that CPT [REDACTED] did not have an honest and reasonable belief that he was legally separated. However, I find there is insufficient evidence of a sexual act as defined under the extramarital sexual conduct article of the Uniform Code of Military Justice.

the Board concluded there was insufficient evidence of an error or injustice warranting relief. Therefore, the Board recommended denying relief.

BOARD VOTE:Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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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 (AR) 600-37 (Unfavorable Information), currently in effect, sets forth policies and procedures to ensure the best interests of both the Army and Soldiers were served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's official military personnel file (OMPF).

a. Paragraph 1-1 (Purpose). The regulation's intent is 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 OMPF.

b. Paragraph 3-2 (Policies). Unfavorable information will not be filed in official personnel files unless the recipient was given the opportunity to review the documents and was given a reasonable amount of time to make a written response.

c. Paragraph 3-5 (Filing of Non-Punitive Administrative Memoranda of Reprimand, Admonition, or Censure).

(1) Authority to issue and direct the filing of such memoranda in an officer's local file is restricted to the recipient's immediate commander or higher level commander; the designated rater, intermediate rater, or senior rater, per AR 623-3 (Evaluation Reporting System); or a general officer who is senior to the recipient.

(2) A memorandum, regardless of issuing authority, can be placed in a recipient's OMPF upon the order of a general officer who exercised general court-martial convening authority over the recipient.

d. Paragraph 7-2 (Policies and Standards).

(1) Once an official document has been properly filed in an OMPF, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority.

(2) For removal of derogatory information, there was no time restriction for submitting an appeal for removal of unfavorable information

(a) The recipient had the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

(b) Evidence submitted in support of the appeal may include but was not limited to the following: an official investigation showing the initial investigation was untrue or unjust; decisions 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.

(c) Appeals that merely allege an injustice or error without supporting evidence or a compelling argument were not considered.

2. Manual for Courts-Martial (MCM), Part IV (Punitive Articles), currently in effect, states, in regard to Article 134 (General Article – Extramarital Sexual Conduct), that it is a violation to engage in extramarital sexual conduct. The MCM further provides that "it is an affirmative defense...that the accused, co-actor, or both were legally separated by order of a court of competent jurisdiction." (Appendix 17 (Analysis of Punitive Articles) does not mention "by order of a court of competent jurisdiction" but notes the requirement for being "legally separated").

3. AR 600-20 (Army Command Policy) (July 2020 version), provides that the prohibition on dating/intimate relationships between officers and enlisted Soldiers does not apply to "situations in which a relationship that complies with this policy would move into noncompliance due to a change in status of one of the members." The same paragraph further provides that if "one of the enlisted members has entered into a program" that would result in promotion to an NCO or officer grade, "the couple must terminate the relationship...or marry within 1 year...."

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

5. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence

is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//