

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2025

DOCKET NUMBER: AR20230014352

APPLICANT REQUESTS: Removal of DA Form 67-10-1 (Officer Evaluation Report (OER)) for the period ending 2 June 2021 from his Army Human Resource Record (AMHRR)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Memorandum of Agreement, 7 December 2020
- Orders UO-054-0005 Order to Active Duty, 23 February 2021
- Memorandum for Record (MFR) Observations on Applicant, 27 March 2021
- MFR Witness Account, 29 March 2021
- MFR Text Messages, 29 March 2021
- MFR Leader Philosophy, 31 March 2021
- DA Forms 4856 (Developmental Counseling Form)
- MFR Witness Account, 14 April 2021
- DA Forms 2823 (Sworn Statement)
- MFR Witness Account, 16 April 2021
- DA Form 5500 (Body Fat Worksheet), 11 May 2021
- DA Form 67-10-2 (OER), 2 June 2021
- MFR Acknowledgement of Receipt of Counseling on OER, 2 June 2021
- DA Form 67-10-1A (OER Support Form) 15 December 2021
- Response to Freedom of Information Act, 8 November 2023
- Emails

FACTS:

1. The applicant states, in pertinent part:

- He reported Colonel (COL) R- J- to the Army North Surgeon for toxic leadership and encouraging a hostile work environment
- COL J- targeted him with verbal abuse and mobbing
- COL J- did not acknowledge the applicant performed all duties admirably

- COL J- stated he was retaining the applicant for 90 days so the COL could have a shot at the applicant's OER to prevent the applicant from being promoted to COL
- COL B-, at the direction of COL J-, issued fabricated counseling statements to justify the referred OER
- The OER he received is unjust and given in retaliation
- The applicant is now retired and would like to leave his military service with a clear conscience

2. The applicant provides and his service record shows:

- On 30 August 2000 and 2 June 2008, he took the oath of office as a Reserve Commissioned Officer
- On 14 March 2013, he took the oath of office in the Army of the United States, without component
- He was on active duty as a member of the U.S. Army Reserve (USAR) from 16 January 2017 through 15 January 2018; he was honorably released
- OERs from 2 September 2016, 15 December 2017, 15 December 2018 and 7 November 2019 show he was consistently rated as proficient and highly qualified/qualified
- On 5 December 2019, he received notification he had completed the required years of qualifying Reserve service and was eligible for retired pay at age 60
- He was on active duty, as a member of the USAR, from 3 April 2020 through 21 June 2020; he was honorably released
- Orders UO-054-0005, 23 February 2021, ordered the applicant to Active Duty in support of Coronavirus with a report date of 1 March 2021 for a period of 290 days
- He was on active duty, as a member of the USAR, from 1 March 2021 through 16 June 2021; he was honorably released
- MFR, 27 March 2021, are observations of the applicant on a Pre-Deployment Site Survey (PDSS) Team from 25-27 March 2021
- MFR, 29 March 2021, is a witness account of a PDSS trip and the applicant's actions, during the trip
- MFR, 29 March 2021, is text message communication between the PDSS team
- On 30 March 2021, he received a Development Counseling Form to explain how he served as a member of the team; the applicant agreed with the counseling and signed the form
- MFR, Leader Philosophy, briefed to the applicant on 31 March 2021, to communicate the leader philosophy/approach to serving the team
- MFR, 14 April 2021, witness account of PDSS trip and the applicant's actions, during the trip

- Sworn Statement, 15 April 2021, describes an incident when the applicant stated, "send me home. I am tired of this s***t"
- Sworn Statement, 15 April 2021, describes the incident and the applicant stated, "I want to go home. Send me the f**k home. Reprimand me, I don't care, but send me home"
- On 15 April 2021, he received a Developmental Counseling Form to formalize the initial verbal no contact order; the applicant did not sign the counseling form
- MFR, 16 April 2021, witness account of applicant's actions unbecoming of a commissioned officer
- On 29 April 2021, he received a Developmental Counsel Form stating he had shown little organization and coordination of activity with the team; he disagreed with the counseling and signed the form
- On 5 May 2021, he received misconduct counseling; he agreed with the counseling and signed the form
- Body Fat Content Worksheet, 11 May 2021, shows the applicant's allowable body fat percentage was 26 percent and his actual body fat percentage was 33 percent
- On 21 May 2021, he received a Developmental Counseling Form stating his skill to develop is how to talk to people and put them on timelines for goal completion; he agreed with the counseling and signed the form
- OER for the period ending 2 June 2021 (contested OER) shows he was rated unsatisfactory and not qualified; he does not possess the potential for continued military service; do not promote
- Letter of Referral of OER and Applicant's response, 9 June 2021, he volunteered as a citizen Soldier in response to Covid-19; he fell victim and was targeted by his command; the OER is retribution intended to derail his promotion
- MFR, 2 June 2021 wherein the applicant acknowledged receipt and counseling on his OER
- OER Support Form, shows the goals the applicant had for his upcoming OER and his counseling dates
- Emails regarding transfer to the Retired Reserves and his referred OER
- On 20 August 2021, Orders were published assigning him to the Retired Reserve effective 1 September 2021
- On 7 April 2022, Orders were published placing him on the retired list effective 29 March 2022

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and military

records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the DA Form 67-10-1 (Officer Evaluation Report (OER)) for the period ending 2 June 2021 was substantially incorrect and support removal. Therefore, the Board found no error or injustice and denied 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.

X //SIGNED//

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 623-3 (Evaluation Reporting System), prescribed the policies for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 2-12 (The Rater) stated the rater will provide a copy of his or her support form, along with the senior rater's support form, to the rated Soldier at the beginning of the rating period. For officers in grades warrant officer 1 through COL, the DA Form 67-10A is mandatory for use throughout the rating period.

b. Paragraph 2-14 (The Senior Rater) stated senior raters and reviewing officials will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods.

c. Paragraph 3-4 (The Support Form Communication Process) stated the initial and follow-up counseling between the rater and the rated Soldier that is documented in the support forms assures a verified communication process throughout the rating period.

(1) The support form communication process is characterized by initial and follow-up face-to-face counseling between the rater and the rated Soldier throughout the rating period. The initial face-to-face counseling assists in developing the elements of the rated Soldier's duty description, responsibilities, and performance objectives. The follow-up counseling enhances mission-related planning, assessment, and performance development.

(2) Through the communication process, rated Soldiers are made aware of the specifics of their duties and may influence the decision on what is to be accomplished. Thus, the rated Soldier is better able to: direct and develop their subordinates plan for accomplishing the mission gain valuable information about the organization find better ways to accomplish the mission

(3) Although the support or form is an official document covered by regulation, it will not become part of the official file used by selection boards or career managers. Failure to comply with any or all support form or counseling requirements will not constitute the sole grounds for appeal of an evaluation report. The senior rater will ensure that a completed support form is returned to the rated Soldier when the OER is forwarded to Headquarters, Department of the Army (HQDA).

d. Paragraph 3-36 (Modifications to Previously Submitted Evaluation Reports) addressed requests for modifications to both completed evaluation reports that are filed in a Soldier's AMHRR and evaluation reports that are being processed at HQDA prior to completion.

(1) An evaluation report accepted by HQDA and included in the official record of a rated Soldier is presumed to be administratively correct, to have been prepared by the properly designated rating officials who meet the minimum time and grade qualifications, and to represent the considered opinions and objective judgment of the rating officials at the time of preparation.

(2) Requests for modifications to evaluation reports already posted to a Soldier's AMHRR require use of the Evaluation Report Redress Program.

(3) Requests that a completed evaluation report filed in a Soldier's AMHRR file be altered, withdrawn, or replaced with another report will not be honored if the request is based on the following:

- statements from rating officials that they underestimated the rated Soldier
- statements from rating officials that they did not intend to assess the rated Soldier as they did
- requests that ratings be revised
- statements from rating officials claiming administrative oversight or typographical error in checking blocks on forms for professional competence, performance, or potential
- statements from rating officials claiming OERs were improperly sequenced to HQDA by the unit or organization
- a subsequent statement from a rating official that he or she rendered an inaccurate evaluation of a rated Soldier's performance or potential in order to preserve higher ratings for other officers (for example, those in a zone for consideration for promotion, command, or school selection)

(4) For evaluation reports that have been completed and filed in a Soldier's AMHRR, substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Administrative appeals will be considered regardless of the period of the evaluation report; decisions will be made based on the regulation in effect at the time reports were rendered.

(5) An exception is granted for evaluation reports when information that was unknown or unverified when the evaluation report was prepared is brought to light or verified and this information is so significant that it would have resulted in a different evaluation of the rated Soldier. The following actions will be accomplished in an effort to modify the evaluation report:

(a) if the information would have resulted in a higher evaluation, the rated Soldier may appeal the evaluation report and rating officials may provide input to support this point; or

(b) if the information would have resulted in a lower evaluation, rating officials may submit an addendum to be filed with the OER.

e. Chapter 4 (Evaluation Report Redress Program) stated the program is both preventive and corrective, in that it is based upon principles structured to prevent and provide a remedy for alleged injustices or regulatory violations, as well as to correct them once they have occurred.

(1) Paragraph 4-3 (Applicability) stated that 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 OER 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 a temporarily administrative holding status until completion of the inquiry.

(2) Paragraph 4-8a (Timeliness) stated because evaluation reports are used for personnel management decisions, it is important to the Army and the rated Soldier that an erroneous report be corrected as soon as possible. As time passes, people forget and documents and key personnel are less available; consequently, preparation of a successful appeal becomes more difficult.

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

(a) the presumption of regularity referred to in paragraphs 3-36a and 4-7a will not be applied to the report under consideration; or

(b) action is warranted to correct a material error, inaccuracy, or injustice.

(4) Paragraph 4-11d stated 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 applicant'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 applicant'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 may provide support for an appeal request.

2. Army Regulation 600-8-104 (Army Military Human Resource Records Management), prescribed policies governing the Army Military Human Resource Records Management Program. 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 provided that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the Army Military Human Resource Record and/or Interactive Personnel Electronic Records Management System) contains the list of all documents approved by Department of the Army and required for filing in the AMHRR and/or interactive Personnel Electronic Records Management System and shows the DA Form 67-10-2 is filed in the performance folder.

//NOTHING FOLLOWS//