

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20230014516

APPLICANT REQUESTS removal of a referred Officer Evaluation Report (OER) and all other references to this alleged adverse information from his Army Military Human Resource Record (AMHRR)

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in Support of Application
- Orders 311-02 Hazardous Duty Pay Orders
- DA Forms 5960 (Authorization to Start Stop, or Change Basic Allowance for Quarters
- Emails regarding Duty
- DA Form 705 (Army Physical Fitness Test Scorecard)
- Orders HR-9211-00012 Active Duty for Operational Support Orders (ADOS) with amendment
- Network Account Request
- Statement of Non Availability
- Statements to Substantiate Temporary Lodging Allowance
- Leave and Earnings Statements
- Army Lodging Receipts
- Travel Itineraries
- DA Form 31 (Request and Authority for Leave)
- Email Online Ticket Information
- Joint Out-Processing Questionnaire
- Statement of Understanding
- DA Form 137-2 (Installation Clearance Record)
- Criminal Investigation Division (CID) Investigation
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Email regarding Basic Allowance for Housing (BAH) Case
- Letter from Attorney
- General Officer Memorandum of Reprimand (GOMOR)
- Officer Record Brief
- Rebuttal to GOMOR

- Character Reference Letters
- GOMOR Filing
- NGB Form 23B (Army National Guard (ARNG) Retirement Points Statement)
- Certificates and Diplomas
- Status of Forces Identification Cards
- OERs
- Excerpt from Department of Defense (DoD) Financial Management Regulation
- Passport Photos
- Osteopathic Test Scores
- Initial Counseling
- Certificate of Birth, Spouse
- Overseas Housing Allowance Document
- Excerpt from Manual for Courts-Martial, Article 121 Larceny

FACTS:

1. The applicant defers to his counsel, who states in his behalf, in pertinent part:

a. The applicant received a referred OER on 23 September 2020, as a result of a founded CID investigation into allegations he improperly received BAH and family separation allowance entitlements. He inadvertently failed to update his entitlement, when his wife became stuck in Europe, during the outbreak of the COVID-19 global pandemic.

b. He did not act with the required intent to knowingly violate DoD 7000.14-R (Financial Management Regulation). He received consistent advice regarding his entitlement that he closely followed throughout his assignment to Special Operations Command Europe (SOCEUR). However, the COVID-19 pandemic caused his spouse to be unable to leave Europe.

c. Given the circumstances and the larger issues of a once in a century global pandemic, he failed to update his entitlements in a timely manner. This is not a criminal act, it is a fair act of negligence based on circumstances beyond his control. Further, his senior rater is not allowed, under DoD policy, to take adverse actions based on a probable cause determination from a CID investigation. Thus this is an error and injustice.

d. The attorney provides a more detailed explanation regarding the applicant's request in his brief in support of the application.

2. The applicant provides the following documents:

a. A DA Form 5960, 5 August 2019, shows his duty location at Stuttgart, Germany and his wife and children living in Bethesda, Maryland.

b. Orders HR-9211-00012, published by U.S. Army Human Resources Command, 30 July 2019 ordered him to ADOS in Stuttgart, Germany with a report date of 5 August 2019 and an end date of 5 July 2020. On 7 August 2019, the orders were amended changing the end date to 4 August 2020.

c. DA Form 4856 (Developmental Counseling Statement), 4 June 2020, informed him he was being flagged because he was identified as the subject of a CID investigation. The second page of the counseling is not available for the Board's review. He included a copy of the CID investigation.

d. A self-authored e-mail to M- A. V-, 29 August 2020, regarding his BAH case, states in pertinent part, he was briefed by personnel in SOCEUR on the rules of family separation allowanced. He abided by the rules to the letter, but when COVID-19 hit, it did not allow his wife to leave Germany. He has attempted to get his overpay returned to the finance office. Upon finding out about his situation, his leadership unleashed CID on him as if he were a common criminal.

e. On 29 October 2020, the Alabama Adjutant General issued him a GOMOR for violating DoD 7000-14-R. On 4 December 2020, the applicant submitted a rebuttal to the GOMOR, which included his statement and character letters. On 16 December 2020, the Alabama Adjutant General ordered the GOMOR to be filed locally for three years.

3. The applicant's service record contains the following documents:

a. He took the oath of office in the ARNG, in the rank of second lieutenant, on 30 June 1989.

b. His OERs show he was consistently rated as excels/proficient and highly qualified. His OER for the period ending 3 August 2020, shows he was rated as proficient and qualified. His senior rater stated the applicant refused to sign. Do not promote based on findings from a CID investigation.

c. On 1 June 2018, he was notified he had completed the required years of service and will be eligible for retired pay, upon his application, at age 60.

d. He was honorably discharged from the ARNG on 3 May 2021, upon transfer to the U.S. Army Reserve (USAR). On 13 July 2021 he was transferred from USAR Control Group (Reinforcement) to the retired reserve.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's counsel's statement, record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review through counsel of the applicants petition and available military records, the Board carefully considered the applicant's total service and his character letters of support attesting to the applicant's character, integrity and his leadership abilities. The Board noted the applicant's numerous OERs which show he was consistently rated as excels/proficient and highly qualified. His OER for the period ending 3 August 2020, shows he was rated as proficient and qualified. However, his senior rater stated the applicant refused to sign.
2. The Board determined that the applicant and his counsel have not demonstrated by a preponderance of evidence that any procedural error occurred that was prejudicial to the applicant, or that the applicant and his counsel demonstrated by a preponderance of evidence that the contents of the OER are substantially incorrect to support removal. The Board noted, the applicant as a senior officer with his length of service should understand the requirements to properly update his Basic Allowance for Housing (BAH) and family separation allowances when his wife became stuck in Europe. The Board found based on regulatory guidance no merit regarding the applicant's counsel request for removal of the applicant's OER. Therefore, the Board denied relief.
3. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority. There does not appear to be any evidence the contested OER was unjust or untrue or inappropriately filed in the applicant's AMHRR.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

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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//