

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014759

APPLICANT REQUESTS:

- reconsideration of his request for an upgrade of his under honorable conditions (General) discharge
- a personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190001581 on 6 December 2019.
2. The applicant states he felt he was treated unfairly during the entire investigation and was never given proper time to complete his own investigation or complete his counter defense. He felt there was a lot of bias treatment because of the current chain of command at the time of discharge.
3. While attending the University of Toledo, in Ohio, the applicant enlisted in the Ohio Army National Guard on 29 November 2005 and participated in the Simultaneous Membership Program as a cadet in the Reserve Officers Training Corps. On 8 August 2009, he was honorably discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 6-35b(4), by reason of his appointment as a commissioned or warrant officer.
4. The applicant was appointed as a Reserve Commissioned Officer of the Army in the rank/grade of second lieutenant (2LT)/O-1 in 92A (Quartermaster) area of concentration and ordered to enter active duty on 2 October 2009. He was promoted to first lieutenant (1LT)/O-2 on 2 April 2011. He served in Iraq from 20 May 2011 to 12 December 2011. He was promoted to captain (CPT)/O-3 on 1 October 2013 and that was the highest rank he held. He was assigned to a unit at Fort Campbell, KY.

5. On 30 September 2014, an Investigating Officer (IO) was appointed and directed to conduct a commander's inquiry in the facts circumstances surrounding the allegation that the applicant had fraternized with and sent sexually harassing text messages to a junior enlisted Soldier.

a. The applicant's battalion commander issued him a memorandum temporarily suspending his duties as a Company Commander. This suspension was due to the applicant being under investigation for allegations of fraternization and sexual harassment.

b. A DD Form 2873 (Military Protective Order) was imposed against the applicant for sending inappropriate text messages to a junior Soldier in his command. This order restrained the applicant from initiating any contact or communication with Specialist (SPC)/E-4 D\_\_ for an indefinite period of time.

6. On 3 October 2014, the IO rendered a memorandum containing a synopsis of his investigation as well as his findings and recommendations. The IO stated, in part, the following:

a. He had examined all available evidence provided within this investigation and exhibits 'A through K' indicated below. He had personally investigated the same and it was his belief that the applicant did, in fact, engage in fraternization with enlisted Soldiers as defined by Army Regulation 600-200 (Army Command Policy), paragraph 4-14b and 4-14c, and in violation of paragraph 4-16, which may be punished under Uniform Code of Military Justice (UCMJ), Article 92 as a violation of a lawful general regulation. Relationships between Soldiers of different rank are prohibited, and the exhibits provided clearly display that the applicant was in violation of Army Regulation 600-20.

b. Army Regulation 600-20, paragraphs 7-4, 7-5, and 7-6 define Sexual Harassment as a form of gender discrimination that involves unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature between the same or opposite genders. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment. Army Regulation 600-20, paragraph 7-5 defines categories of sexual harassment as verbal, nonverbal, and physical. Examples of verbal sexual harassment may include telling sexual jokes; using sexually explicit profanity, threats, sexually oriented cadences, or sexual comments; whistling in a sexually suggestive manner; and describing certain attributes of one's physical appearance in a sexual manner. Verbal sexual harassment may also include using terms of endearment such as "honey," "babe," "sweetheart," "dear," "stud," or "hunk" in referring to Soldiers, civilian co-workers, or family members. Based on the exhibits provided, the applicant was in violation of Article 93 of the UCMJ.

c. According to supporting documents, on or about 29 September 2014, the applicant texted SPC D at 1743 and said some things that bothered her, as well as left her with a shocking feeling. According to SPC D's phone record, the applicant texted this enlisted service member (SM), forty-nine times on 29 September 2014. Evidence contains the actual text message conversation between the applicant and SPC D that took place between 29 and 30 September 2014. While questioning SPC D on 1 October 2014, on a DA Form 2823 (Sworn Statement), the SM answered twenty-one questions in which additional information was provided regarding this incident and led to another SM's name being brought forward for questioning.

d. According to SPC C's statement, during the timeframe of December 2012 and February through April 2013, the SM received inappropriate text messages from the applicant, who was then a 1LT serving as the Battalion S4 (Logistics) officer in charge. SPC R stated, "she felt uncomfortable when he stated we should hang out and go out to lunch/dinner." The SM responded back by saying no and assumed that the text messages would have stopped; however, the messages didn't stop until she responded back by saying "she didn't feel right and it's not appropriate, the applicant then stopped texting her."

e. While continuing the investigation, two additional names came up which are reflected in sworn statements made by Staff Sergeant (SSG)/E-6 C\_\_ and SPC R\_\_. Both SSG C and SPC R, who were Soldiers under the applicant's command, stated they encountered fraternization from their commander. On or about 19 April 2014 SSG C was out with her friends, when she received a random text message from the applicant asking her what she was up to, in which she replied back that she was drinking alcohol. The applicant then proceeded by telling her that "they could hang out later if she wanted because he was sitting at home bored." The evidence contains the text message conversations between the applicant and SSG C which started on 19 April 2014, during the initial messaging and picked up again on 7 May 2014 with a message from the applicant asking the SM "Hey there how are you?" to which SSG C did not respond. Information from SPC R's statement involved the applicant, who was then deployed to Iraq with 305th QM Company, in which he sent the enlisted SM a friend request on Facebook. SPC R stated that she didn't start receiving messages from the applicant until they returned back from deployment back to Fort Campbell, KY. The messages she started receiving were as follows: "Hey, how are you, what are you up to?" A few months later the SM started receiving more aggressive messages such as "Would you like to hang out sometimes or can you meet me somewhere?" The SM provided additional statements that can be referenced in the exhibits, which is a snapshot of the Facebook conversations between the applicant and SPC R. SPC D's husband Sergeant (SGT)/E-5 D\_\_, who was a part of the same battalion and was deployed at the time to Afghanistan also provided a statement.

f. The IO recommended appropriate administrative and UCMJ action be taken against the applicant and that he be found guilty of engaging in fraternization and sexual harassment with enlisted Soldiers as defined by Army Regulation 600-20, paragraph 4-14b; 4-14c and 4-16. Appropriate action would include a relief for cause Officer Evaluation Report, General Officer Memorandum of Reprimand (GOMOR), and/or General Officer nonjudicial punishment under the provisions of Article 15, UCMJ.

7. The Brigade Judge Advocate conducted a legal review of the Commander's Inquiry on 17 October 2014, and found it to be legally sufficient. The preponderance of evidence indicated the applicant sent fraternizing messages to several junior enlisted Soldiers and one noncommissioned officer (NCO) in his command, and he may have also sexually harassed at least one of these Soldiers with his inappropriate text messages. The IO's recommendations were consistent with the findings. He recommended the commander approve the findings and recommendations of the IO and request a General Officer Article 15, to be followed by a relief for cause Officer Evaluation Report (OER).

8. The applicant's battalion commander approved the inquiry into the facts and circumstances of the alleged fraternization and sexual harassment.

9. On 17 October 2014, the applicant's brigade commander concurred with the IO's findings and recommendations. She recommended the applicant be given General Officer Article 15 and a Relief for Cause OER.

10. The applicant's intermediate commander concurred with the IO's findings. However, he recommended the Commanding General (CG), 101st Airborne Division (Air Assault), Fort Campbell, KY, issue the applicant a GOMOR and consider initiation of elimination. Upon completion of the GOMOR process, the applicant's unit should follow-up with a relief for cause OER.

11. On 11 December 2014, the CG, Fort Campbell imposed an administrative flag upon the applicant to prevent him from receiving any favorable personnel actions while he was pending adverse action.

12. On 11 December 2014, the CG, Fort Campbell imposed nonjudicial punishment (NJP) upon the applicant under the provisions of Article 15 of the UCMJ.

a. The catalysts for the NJP were the applicant's following offenses:

(1) Wrongfully and dishonestly attempting, as a married man, to engage in a prohibited relationship with a junior enlisted Soldier assigned to his command, by addressing her by her first name and sending her inappropriate and unprofessional

electronic messages, conduct unbecoming of an officer and a gentleman, on or about 29 September 2014, in violation of Article 133 of the UCMJ.

(2) Wrongfully and dishonestly attempting, as a married man, to engage in a prohibited relationship with a junior enlisted Soldier assigned to his command, by addressing her by her first name and sending her inappropriate and unprofessional electronic messages, conduct unbecoming of an officer and a gentleman, between on or about 27 January 2014 and 29 August 2014, in violation of Article 133 of the UCMJ.

(3) Wrongfully and dishonestly attempting, as a married man, to engage in a prohibited relationship with an NCO assigned to his command, by sending her inappropriate and unprofessional electronic messages, conduct unbecoming of an officer and a gentleman, on or about 19 April 2014, in violation of Article 133 of the UCMJ.

b. The applicant had a closed hearing and was sentenced to forfeiture of \$2,583 pay per month for two months, and a written reprimand.

c. On 18 December 2014, the applicant appealed his punishment through counsel. A copy of the appeal and all allied documents are available in their entirety for the Board's consideration.

d. On 8 January 2015, the CG, Fort Campbell determined the proceedings were conducted in accordance with law and regulation and the punishment imposed was not unjust nor disproportionate to the offenses committed and denied the applicant's appeal.

13. The CG, Fort Campbell reviewed the inquiry concerning certain allegation of misconduct committed by the applicant, the temporary suspension of the applicant from command, and the request to permanently remove him from command and relieve him for cause. As a result, he authorized the applicant's brigade commander to permanently remove the applicant from command and relieve him for cause.

14. On 14 January 2015, the CG, Fort Campbell rendered a memorandum informing the applicant he was required to Show Cause for retention on Active Duty under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraphs 4-2b(5), 4-2b (8), and 4-2c(1), for misconduct, moral or professional dereliction, conduct unbecoming an officer, and for receiving NJP under Article 15, UCMJ.

a. The CG, Fort Campbell cited the following specific reasons for elimination: between 27 January 2014 and 29 September 2014, the applicant wrongfully attempted to engage in prohibited and unprofessional relationships with enlisted Soldiers by addressing several Soldiers by their first name and repeatedly transmitting numerous inappropriate, harassing, and unprofessional electronic messages to three female

enlisted Soldiers within his brigade, to wit: "I think you're cute; do you want to meet me after work; I really like you; I can't wait to see you; would you like to hang out; I have always wanted to kiss you; do you live by yourself; if you are up for it then I would be; let me know babe; I'm still married but can I come see you tonight; can I come hang out with you and your friends; and we can hang out later tonight", or words to that effect. Additionally, the applicant received NJP under Article 15, of the UCMJ for these offenses.

b. On 14 January 2015, the CG, Fort Campbell imposed as administrative flag upon the applicant to prevent him from receiving any favorable personnel actions while he was pending field initiated involuntary separation.

c. On 21 January 2015, the applicant underwent a mental status evaluation and pre-separation medical examination and was found to be fit for duty and/or separation and cleared for separation by command.

d. On 12 February 2015, the applicant acknowledged receipt of notification of the notification of elimination, which he received on 15 January 2015. He evaluated his options and elected to submit a resignation in lieu of elimination.

15. On 12 February 2015, having been informed he was being considered for elimination, the applicant voluntarily tendered his resignation for the Army under the provisions of Army Regulation 600-8-24, Chapter 4, in lieu of elimination. If this resignation was accepted, his waiver of rights under paragraph 3 was conditioned on him receiving an honorable discharge as determined by Headquarters, Department of the Army. If this resignation was not accepted as conditioned, he requested appearance before a Board of Inquiry (BOI). The applicant's condition resignation and nine character references letters are available in their entirety for the Board's consideration.

16. On 4 March 2015, a BOI was appointed by the CG, Fort Campbell under the provisions of Army Regulation 600-8-24, paragraph 4-6 to determine whether the applicant should be eliminated from the U.S. Army for misconduct, moral or professional dereliction, conduct unbecoming an officer, and for receiving punishment under Article 15, of the UCMJ.

a. On 4 March 2015, the CG, Fort Campbell sent a memorandum to the CG, U.S. Army Human Resources Command (HRC), Fort Knox, KY, wherein he informed the CG, HRC that on 14 January 2015, he initiated an elimination against the applicant pursuant to paragraph 4-2, Army Regulation 600-8-24, due to misconduct, moral or professional dereliction, conduct unbecoming an officer, and for receiving punishment under Article 15, of the UCMJ. On 12 February 2015, the applicant submitted a Resignation in Lieu of Elimination conditioned on receiving an honorable characterization of service, which was received by his staff judge advocate on 3 March

2015. On 4 March 2015, he directed a BOI to convene and determine whether the applicant should be eliminated from the U.S. Army. He recommended that CG, USAHRC reject the applicant's Resignation in Lieu of Elimination conditioned on receiving an honorable characterization of service. He advised CG, HRC the BOI would proceed as scheduled unless terminated by the Assistant Secretary of the Army's acceptance of the officer's conditional resignation. The elimination proceedings would be forwarded following completion of the BOI.

b. On 27 April 2015, following the granting of an extension, the applicant was advised of his rights, and a BOI was convened.

c. The BOI determined a preponderance of the evidence established that: the applicant wrongfully and dishonorably attempted to engage in a prohibited relationship with a junior enlisted Soldier assigned to his command; wrongfully and dishonorably attempted to engage in a prohibited relationship with a junior enlisted Soldier; wrongfully and dishonorably attempted to engage in a prohibited relationship with a noncommissioned officer; and engaged in substantiated derogatory activity which resulted in derogatory information in the form of an Article 15, dated 18 December 2014, which was filed in his Official Military Personnel File. The BOI found that each supported finding constituted misconduct, moral or professional dereliction; that the conduct was unbecoming of an officer and a gentleman; that the applicant's conduct did not comport with the Army Values and was detrimental to good order and discipline in the Armed Forces. The BOI recommended that the applicant be eliminated from the Army with a General, Under Honorable Conditions characterization of service.

d. On 15 May 2015, the applicant was provided a complete copy of the BOI proceedings. He acknowledged receipt of the BOI report pertaining to his elimination and indicated he would submit an appellate brief and statement within 7 calendar days.

e. On 17 May 2015, the applicant submitted an appellate brief for the BOI, wherein he and counsel contended the Notification and BOI were in error for the following reasons:

(1) The BOI should have given greater consideration to Defense Exhibit A, the applicant's "I love me" book, which was submitted by the defense. The applicant had an exceptional career, to include exceptional OERs. These accomplishments should have been given greater weight and if the BOI members would have done so, they would have given the applicant an Honorable Discharge.

(2) The applicant had additional letters of support that should have been in the packet. These were part of the underlying Article 15 and separation packet. These letters demonstrated that the applicant had support from many of his peers and superiors in this case. He was an excellent Soldier and had demonstrated that during

his time in the military. He also had family and community support in this case. These letters should have been attached to the BOI packet and attached for review by the BOI board members. These letters of support demonstrated that he continued to be able to make significant contributions to the Army mission.

(3) Finally, the applicant's military record speaks for itself. He served in a forward combat area and had exemplary service. He wished to continue to serve in the military and his personal statement showed that he had the willingness and desire to do so.

f. On 30 June 2015, the Staff Judge Advocate (SJA), 101st Airborne Division (Air Assault) and Fort Campbell, KY, reviewed the recommendation for elimination pertaining to the applicant, the BOI proceedings, and the applicant's appeal. The SJA noted that in the appellate brief, the applicant claimed that the BOI did not see eight of his ten letters of recommendation and that they did not consider his "I love me" book. On the contrary, the BOI received all evidence submitted by the accused and properly considered it. The SJA provided a Memorandum for Record wherein a paralegal NCO attested to providing the aforementioned documents to the BOI on 27 April 2015. The SJA recommended the CG, Fort Campbell recommend the applicant's resignation in lieu of elimination be rejected; that the findings and recommendations of the BOI be approved; and that the applicant be eliminated from the Army with a general, under honorable conditions characterization of service.

g. On 30 June 2015, the CG, Fort Campbell forwarded the elimination proceedings to CG, HRC and recommended the applicant's resignation in lieu of elimination be disapproved; the findings and recommendations made by the BOI be approved; the applicant be eliminated from the Army with a general, under honorable conditions characterization of service.

17. The CG, HRC forwarded the applicant's request for resignation in lieu of elimination case to the Deputy Assistant Secretary of the Army (Review Boards) (DASA-RB) for action. On 8 July 2015, the DASA-RB informed the CG, USAHRC the Department of the Army Ad Hoc Review Board had reviewed the applicant's resignation in lieu of elimination. The DASA-RB rejected the applicant's conditioned resignation and directed his case be referred to the General Officer Show Cause Authority, and that in accordance with Army Regulation 600-8-24, paragraph 4-24g, a BOI be conducted, unless the applicant tendered an unconditional resignation in lieu of elimination.

18. The applicant's case was forwarded to the DASA-RB on 21 September 2015 as an Officer Elimination Case. The DASA-RB determined the applicant should be eliminated from the Army based on misconduct and moral or professional dereliction, with an under honorable conditions (General) characterization of service. The elimination was based on both misconduct and moral or professional dereliction (Army Regulation 600-8-24, paragraph 4-2b), and derogatory information (Army Regulation 600-8-24,

paragraph 4-2c). CG, HRC rendered an electronic message informing the applicant's chain of command of this decision on 22 September 2015.

19. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 13 October 2015, under the provisions of Army Regulation 600-8-24, paragraphs 4-2b and 4-24a(1), by reason of unacceptable conduct. His service was characterized as under honorable conditions (general). He was credited with completion of 6 years and 12 days of net active service this period. He was awarded or authorized the:

- Meritorious Service Medal
- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star
- Army Service Ribbon
- Parachutist Badge
- Air Assault Badge

20. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his general discharge. On 30 November 2016, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined he was properly and equitably discharged and denied his request.

21. The applicant petitioned the ABCMR for upgrade of his general discharge. On 5 February 2020, he was informed that the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his request.

22. In reaching its determination, the Board shall consider the applicant's petition, available record, and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

#### 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for unacceptable conduct, including

wrongfully attempting to engage in a prohibited relationship with a junior enlisted Soldier. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant's contention he was not given adequate time to complete his own investigation; however, the Board determined by a preponderance of the evidence the characterization of service designated during the applicant's separation proceedings was appropriate and does not warrant relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for amendment of the ABCMR decision rendered in Docket Number AR20190001581 on 6 December 2019.

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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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 600-8-24, in effect at the time of the applicant's service, prescribed policies and procedures governing transfer and discharge of all commissioned and warrant officers of the Active Army, The Army National Guard of the U.S., and the USAR when serving on active duty for a period of 30 or more consecutive days unless otherwise stated. This regulation included policy statements, operating tasks, rules in support of operating tasks, and sequential steps or each operating task. Chapter 4 (Eliminations), Paragraph 4-2b provided elimination action could be or would be initiated against an officer as a result of misconduct, moral or professional dereliction, or in the interests of national security:

- discreditable or intentional failure to meet personal financial obligations
- mismanagement of personal affairs that are unfavorably affecting performance of duty
- mismanagement of personal affairs to the discredit of the Army
- intentional omission or misstatement of fact in official statements or records for the purpose of misrepresentation
- acts of personal misconduct
- homosexual conduct
- intentional neglect of or failure to perform duties
- conduct unbecoming an officer
- conduct or actions that result in the loss of a professional status
- acts or behavior not clearly consistent with the interests of national security
- drug dependent or identified as having committed an act of personal misconduct involving drugs
- failure to respond in a reasonable length of time to rehabilitation efforts regarding repeated acts of child/spouse maltreatment or abuse and/or other acts of family violence
- failure of a course at a service school because of misconduct, moral or professional dereliction

3. Army Regulation 635-5-1 (Personnel Separations – SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active

duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "BNC" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 600-8-24, Paragraph 4-2b and Paragraph 4-24a(1), by reason of unacceptable conduct.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) 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, Boards 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.

//NOTHING FOLLOWS//