IN THE CASE OF:

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20230014765

<u>APPLICANT REQUESTS:</u> through counsel, removal of the general officer memorandum of reprimand (GOMOR), 17 January 2019, 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 under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Petition, with enclosures
  - Memorandum (Personal Statement in Support of Removing GOMOR from AMHRR – (Applicant)), 3 November 2023
  - Report of Investigation (ROI), 17 October 2018, with allied documents (40 pages)
  - Headquarters, 94TH Training Division (Force Sustainment), Memorandum (GOMOR)), 17 January 2019
  - GOMOR Rebuttal Packet with 11 attachments (25 pages), including –
  - Memorandum (Request to Rescind or File Locally GOMOR (Applicant)),
    1 March 2019
  - Affidavit of Non-Prosecution, 5 February 2019
  - Headquarters, 94TH Training Division (Force Sustainment), Memorandum (Filing Determination on Reprimand), 6 March 2019
  - Department of the Army Suitability Evaluation Board (DASEB) Docket Number AR20210005404, 6 April 2021
  - DASEB Memorandum (Resolution of Unfavorable Information for (Applicant), Case Number AR20210005404), 8 April 2021

# FACTS:

1. Counsel states the applicant was reprimanded in writing for allegations of striking his girlfriend with a cell phone and slapping a phone out of her son's hands causing

scratches to his neck and chest on 15 September 2018 at Joint Base Andrews, MD. His girlfriend, Specialist (SPC) also alleged that he fled the scene while intoxicated.

- a. The applicant denied any wrongdoing and fully denied his girlfriend's version of events. He was not subjected to administrative separation proceedings, was promoted to the rank of staff sergeant (SSG)/E-6, and has served honorably throughout his Army career. Accordingly, he requests consideration of the facts and circumstances and removal of the GOMOR in the interest of fairness, clear legal error, and justice.
- b. The applicant has been unjustifiably accused and condemned for a crime he did not commit. He aspires to continue serving and become a commissioned officer. He has consistently denied the allegations in the GOMOR and served as a model Soldier since the allegations. He was promoted to SSG despite having the GOMOR in his file. However, he feels the GOMOR will restrict him from further service based on the accusations.
- c. The GOMOR should have been rescinded after his girlfriend provided an affidavit recanting her allegations. However, the issuing authority (IA) abused his discretion to do something in face of the recanted domestic violence accusations.
- 2. The applicant's memorandum (Personal Statement in Support of Removing GOMOR from AMHRR Applicant) provides his service history and his version of the details of the alleged abuse incident, as later detailed in these proceedings.
- 3. He enlisted in the U.S. Army Reserve on 30 November 2012.
- 4. He was serving in the Active Guard Reserve (AGR) in the rank/grade of sergeant (SGT)/E-5 when he became the subject of a 2018 ROI for violating Article 128 (Assault) of the Uniform Code of Military Justice (UCMJ). The investigation noted the applicant was accused of striking SPC in the face with her cellphone and slapping a phone out of hands [SPC 8-year-old child], causing scratches on his neck and chest on or about 15 September 2018.
- a. The case background noted, on 15 September 2018, SFS [Security Forces Specialist]/BDOC [Base Defense Operations Center] was notified of an assault that took place at Joint Base Andrews, MD involving and the applicant. Patrols were dispatched and completed a statement from alleging during a verbal altercation, the applicant struck her in the face with her cell phone. The asked the applicant to leave and told her 8-year-old dependent to get help, at which point the applicant slapped a phone out of his hand, causing scratches on his neck and chest. The applicant left the installation before patrols could arrive. SFS completed Air Force (AF) Form 1361 (Pick Up Restriction Order) for the applicant's apprehension

upon returning to Joint Base Andrews. Alert Photo took photographs to document injuries sustained by and her 8-year-old dependent. On 18 September 2018, the applicant was detained by Aberdeen Proving Grounds (APG) Military Police (MP) entering the installation due to the existing AF Form 1361. SFS traveled to APG to contact the applicant, while he was in custody. SFS initiated an investigation to determine whether the allegations were true and uncover any other criminal activity the Air Force was unaware of.

- b. The synopsis noted the investigation revealed that the applicant assaulted and her 8-vear-old dependent. provided a sworn statement on 15 September 2018 stating the applicant assaulted her and her 8-year-old dependent. On 15 September 2018. Alert Photo took seven photographs to document injuries and her 8-year-old dependent. On 18 September 2018, the sustained by applicant was detained by entering the installation due to the existing AF Form 1361. SFS traveled to to charge, interview, and book the applicant requested legal counsel and declined to make a statement. On 24 September 2018, provided a sworn statement to SFS which contradicted her original statement made at the time of the incident implying she was at fault for the altercation, exaggerated her first statement, and no longer wished to participate in the investigation. speak with SFS after a canvas of the neighborhood for witnesses was conducted. On 18 October 2018, provided a sworn statement that detailed how 8- year-old dependent told him about the assault. agreed to speak with SFS after being reached out to as an implied witness in second statement. Due to the applicant being a U.S. Army Active Reservist, the 11th Wing Staff Judge Advocate declined to prosecute. SFS contacted 5-80 Ordnance Battalion Command for the purpose of handing the case file over to the appropriate legal entity.
- 5. The Commanding General, Headquarters, 94TH Training Division (Force Sustainment), reprimanded him in writing on 17 January 2019 wherein he stated:

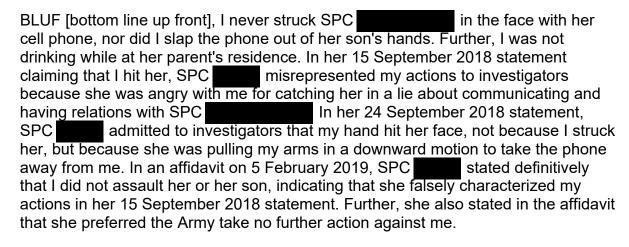
On 15 September 2018, Air Force Security Forces (AFSF) responded to calls of an assault taking place in family housing on Joint Base Andrews, MD. Earlier, you had gone to the home seeking to reconcile your relationship with an ex-girlfriend. However, you began drinking and would not leave the residence after repeated requests for you to leave. When AFSF arrived on scene, they found the situation had escalated, and learned that you had struck the face of the victim with her cell phone. Then, when the victim told her eight-year-old son to get help, you slapped the phone out of his hands causing scratches to his neck and chest. You fled from the scene prior to the police arriving. On September 18, 2018, Military Police arrested you when you attempted to enter the installation. Therefore, you are hereby being reprimanded.

As a noncommissioned officer [NCO], you are the backbone of the Army; you set the standard. Unfortunately, you have failed in this regard. Your wholly inappropriate actions have not only undermined your ability to effectively enforce these high standards, but they have brought discredit upon your unit and the United States Army Reserve. Moreover, your conduct casts serious doubt not only on your leadership, but also on your ability for continued service in any capacity.

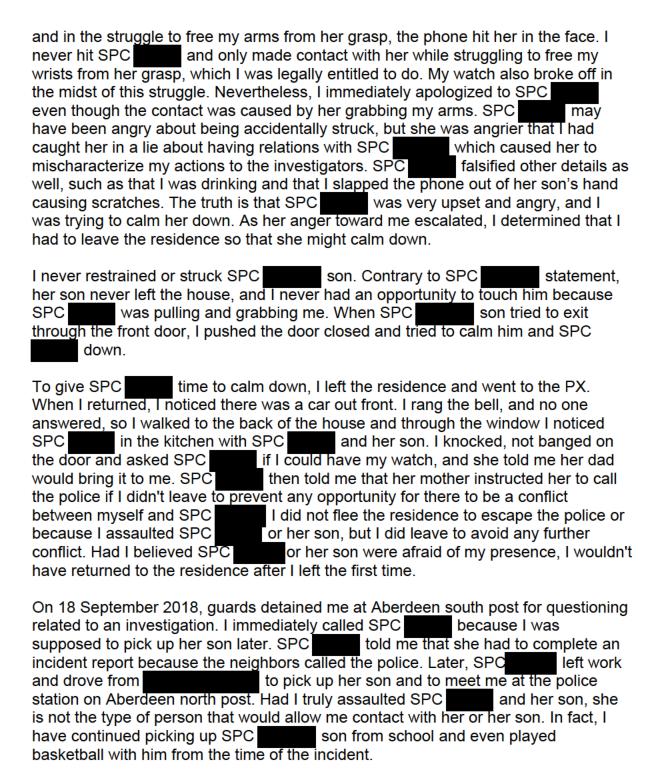
This is an administrative reprimand imposed under the provisions of AR [Army Regulation] 600-37 [Unfavorable Information] and not as punishment under the Uniform Code of Military Justice. You are advised that in accordance with AR 600-37, Paragraph 3-4b, I am considering whether to file this reprimand in your Official Military Personnel File [OMPF]. Prior to making my filing decision, I will consider any maters you submit on your behalf. You will acknowledge receipt of this reprimand in writing. You will also forward any matters you wish me to consider within 30 calendar days to: Office of the Staff Judge Advocate, 94th Training Division, Fort Lee, VA.

- 6. As previously noted, SPC provided an Affidavit of Non-Prosecution on 5 February 2019, recanting her story.
- 7. His memorandum for Commander, Headquarters, 94TH Training Division (Force Sustainment) (Request for Rescind or File Locally GOMOR (Applicant)), 1 March 2019, states:

Sir, I respectfully request you rescind or file locally the GOMOR dated 17 January 2019.

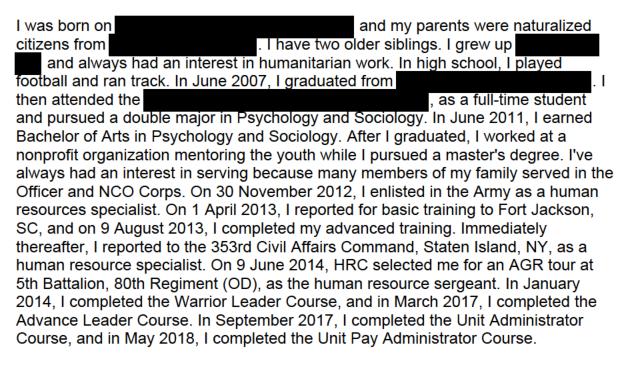


SPC is not my ex-girlfriend. We were and are in a relationship and have been living together for the past year, and she is presently pregnant with our child. While I was on her cell phone speaking with SPC SPC grabbed both of my wrists in an attempt to take the phone away from me. I instinctively resisted her pull,



When deliberating on my request, I respectfully ask that you consider the excellent quality of my duty performance over the past four years and evidence of my good

character. There is not one instance of misconduct throughout my entire career. I have demonstrated my ability to execute the mission and to achieve results beyond my commands' expectations, and I have done so in an honorable and professional manner, without exception.



I have earned the Army Achievement Medal with Oak Leaf Cluster; the Army Good Conduct Medal; the Noncommissioned Officer Professional Development Ribbon with Roman Numeral Two; the Army Service Ribbon; and the National Defense Service Medal.

In my duty assignments over the last four years, my raters and senior raters have consistently rated and referred to me as a top-notch NCO and my duty performance has never failed to meet expectations. In addition to my technical and operational achievements, I have taken all opportunities made available to me to lead and mentor my fellow Soldiers. SFC [sergeant first class] my current rater, states that I am "reliable and committed to helping all Soldiers no matter the task." Further, SFC noted that I perform my job without direct supervision; continue to be an asset to the organization; and fully support SHARP [Sexual Harassment/Assault Response and Prevention], EO [Equal Opportunity], and EEO [Equal Employment Opportunity]. 1LT [first lieutenant] my senior rater, states that I display "strong perseverance and aptitude;" that I have the ability to be "an extremely effective NCO;" and I will be a "strong asset to any unit." In my previous evaluation, 1 LT states, "Sergeant is the hardest working and most responsible sergeant I have worked with thus far in my career. He has

excellent organizational skills; he is a great communicator and leader. Promote ahead of peers. Groom for a key leadership position." CPT [Captain] my previous senior rater, states that I am a "strong NCO who is a total Army asset" who should be selected "ahead of peers" for SSG. Further, "[SGT consistently performed the duties of an E-6 with professionalism and accuracy, [was] a role model for junior Soldiers [whose] merits deserve selection for career development training ahead of peers [and he] stands out as one of the top five junior NCOs I have worked with.

My superiors, fellow Soldiers, and those who know me well confirm that I am a level headed professional with good judgement. CPT states states, "The Applicant is an outstanding Soldier and a true professional. He has always been dependable, trustworthy, and selfless. His efforts in the S-1 were the focal point in the overall success of the BNs personnel readiness. He worked long hours and never hesitated to go the extra mile when anyone in the command needed his help. I could always trust that the applicant was going to do exactly what was expected of him and more. Based on my experience with working alongside of the applicant I highly recommend that he is retained."

SGM [Sergeant Major] (U.S. Army, Retired) has 35 years of Army service and has known me for four years. He states, "I can honestly state that one of the main things that I found impressive and refreshing about the applicant was his mindset and drive. I consider him as a trustworthy individual who cares about the well-being of others. Many Soldiers of the 5-80th Regiment (OD) know that the applicant has been what many would consider a one-person shop for longer than half his tenure with the unit. The applicant's ability to make sound judgments was the catalyst of his success. The applicant demonstrates the Army Values and that can go without questioning."

SFC [Sergeant First Class] was my predecessor at 5-80th Regiment (OD) in human resources. He states, "the applicant is one of the few Soldiers that I have ever seen pick up the human resource profession with ease. With the applicant, I can use a delegate style of leadership with no worries of the products' end result. His ability to make good decisions inside and outside of work is what compliments his great character. I have seen the applicant in tense situations where he remained level-headed and overcame roadblocks. One of the things that I like about the applicant is that he is not afraid to seek guidance as he formulates his approach on things. He is a thinker and moves with intelligence. I can speak of the applicant as having good character; he's very serene and conscious of others."

is a fellow Soldier and peer of mine who's also a human resource NCO. She states, "The applicant is a not only a dependable NCO, but also one who is well respected amongst his peers. He is known to exhibit the qualities of what a

Soldier is supposed to be as well as an NCO. He is very knowledgeable in his military duties as a human resource professional, and he exudes these behaviors at all times with all colleagues, both superiors and subordinates alike."

In closing, I did not intentionally strike SPC or scratch her son, and I was not drinking while at her residence. To act as I have been alleged to is in total opposition of my demonstrated personality and moral character and contrary to the opinions of those who know me well. Therefore, I respectfully request that you rescind or file locally the GOMOR dated 17 January 2019. Thank you for your time and consideration.

- 8. On 6 March 2019 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 filing the GOMOR on the performance portion of his OMPF. All enclosures were forwarded with the reprimand for filing as appropriate.
- 9. He was promoted to the rank/grade of SSG/E-6 effective 1 May 2020.
- 10. On 6 April 2021 in Docket Number AR20210005404, the DASEB determined the evidence presented did not establish clearly and convincingly that the GOMOR was untrue or unjust and the overall merits of the case did not warrant removal of the GOMOR from his AMHRR. The DASEB noted:
- a. The applicant requests removal of a GOMOR from his AMHRR. In order to remove a GOMOR from the official record, the burden of proof rests with the appellant 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 AMHRR. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.
  - b. The appellant contends the GOMOR should be removed because it is untrue.
- c. Careful consideration was given to the evidence submitted, the documents in the AMHRR, the appellant's contentions (complainant did not tell the truth and provided statement requesting no action be taken against him because the allegations were untrue) and the Board determined the evidence submitted is insufficient as a basis to remove the GOMOR.
- (1) Family violence is unacceptable and incompatible with the Army Core Values. All leaders will take proactive measures and immediate steps to prevent domestic violence in their units and its effect on Soldiers and Families. Family violence can result in serious physical, emotional, and psychological injuries, and in the most

severe cases, result in death. All leaders have a moral and professional obligation to immediately act upon known or suspected incidents of domestic and child abuse.

- (2) The complainant's Affidavit of Non-Prosecution was duly noted. However, unaccompanied by a statement from the IA or formal investigation it is insufficient as a basis to remove the GOMOR.
- (3) The IA reviewed the GOMOR packet which included the appellant's rebuttal, a Report of Investigation, Incident Report Summary, and the complainant's statement. The IA determined the GOMOR was warranted and due to the nature of the incident the IA elected to file the GOMOR in the appellant's AMHRR.
- (4) The appellant may disagree with the IA's decision to issue him a GOMOR, however, it was within the IA's authority to do so. One of the main differences between the military and civilian responses to domestic violence is the authority of the commanding officer when a service member commits abuse. The commanding officer can use judicial, administrative, or other punishments to respond to the reported incident.
- (5) The governing regulation states the officer who directed the filing of an administrative GOMOR, admonition, or censure may request its revision, alteration, or removal, if a later investigation determines it was untrue or unjust, in whole or in part. The basis for such determination must be provided to the DASEB in sufficient detail so as to justify the request. Counsel/appellant did not submit a letter from the IA stating the GOMOR was untrue, unjust, filed erroneously, or new evidence was being considered.
- (6) The filing of the GOMOR was not unjust. The governing regulation permits the issuance of a written reprimand when there is reasonable belief that someone has deviated from the Army values, personal conduct, or the expectations of a Soldier. The reprimand may be filed in the appellant's AMHRR permanently to permit the Army to consider all available relevant information when considering the appellant for positions of leadership, trust, and responsibility.
- (7) The DASEB does not have an automatic removal policy based upon implementation of new Army personnel management programs, the noted misconduct being a single incident, or excellent prior or post service since the imposition of the GOMOR. Moreover, the DASEB, in compliance with Army Regulation 600-37, does not have a policy of removing unfavorable information based on an alleged injustice resulting from non-selection for promotion, schooling, previous evaluations or special assignments.
- d. The appellant has not provided clear and convincing evidence to support the removal of the GOMOR. Once a GOMOR is properly filed in the AMHRR, it is presumed

to be administratively correct and filed pursuant to an objective decision by competent authority.

- e. Based on the available evidence, the appellant has not provided clear and convincing evidence which shows the GOMOR is inaccurate, unjust, or otherwise flawed.
- 11. The DASEB Memorandum (Resolution of Unfavorable Information for (Applicant), Case Number AR20210005404), 8 April 2021 notified the applicant of the denial of his request.
- 12. On 1 September 2021, the applicant was released from active duty for reenlistment in the USAR. He was concurrently ordered to AGR status and assigned to his current duty station.

## **BOARD DISCUSSION:**

- 1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
- 2. The Board found the decision to reprimand the applicant was supported by the evidence available to the GOMOR imposing authority; however, the Board found the decision to file the GOMOR in the performance portion of the applicant's AMHRR was too harsh. The Board agreed that the event described in the available records was an isolated incident that was not of such severity that it should have become part of the applicant's AMHRR. Based on a preponderance of the evidence, the Board determined the GOMOR and all allied documents, to include any DASEB proceedings, should be removed from the applicant's AMHRR.

#### BOARD VOTE:

Mbr 1	Mbr 2	<u>Mbr 3</u>	
			GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

# BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the GOMOR, 17 January 2019, and all allied documents, to include any DASEB proceedings, from his AMHRR.



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 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.
- 2. 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 Army Board for Correction of Military Records or other 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//