

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230015253

APPLICANT REQUESTS:

- removal of the Headquarters, 1st Infantry Division Artillery, memorandum (Separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, Commission of a Serious Offense, (Applicant)), 2 June 2016, from her Army Military Human Resource Record (AMHRR)
- a personal appearance hearing before the Board

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)
- Headquarters, 1st Infantry Division Artillery, Memorandum (Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, (Applicant)), 2 June 2016

FACTS:

1. The applicant states there is a derogatory document filed in her AMHRR regarding her separation resulting from an investigation that was suspended for a year pending any unfavorable action. She never received nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) or any other type of punishment. She was informed that the document would not remain in her record after a year; however, the document was uploaded to her AMHRR after executing her permanent change of station. She has not been in any trouble since the incident and attained the rank of staff sergeant (SSG).
2. She enlisted in the Regular Army on 27 January 2015.
3. The Headquarters, 1st Infantry Division Artillery, memorandum (Separation under Army Regulation 635-200, Chapter (should read Paragraph) 14-12c, Commission of a Serious Offense, (Applicant)), 2 June 2016, suspended the applicant's separation for 12 months. The commander stated: "This correspondence will be filed as permanent

material in the Soldier's AMHRR IAW [in accordance with] AR [Army Regulation] 600-8-104 [Army Military Human Resource Records Management]."

4. A review of her records in the interactive Personnel Electronic Records Management System revealed no other documents regarding the action under review.
5. She was promoted to the rank/grade of SSG/E-6 effective 22 January 2022.
6. She is currently serving as a human resources specialist in the rank/grade of SSG/E-6 at the Geospatial Intelligence Battalion.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was 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 majority determined the Headquarters, 1st Infantry Division Artillery, memorandum (Separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, Commission of a Serious Offense, (Applicant)), 2 June 2016 filed in the applicant's Army Military Human Resource Record (AMHRR) demonstrates an injustice and supports removal. The Board noted the applicant was retained on active duty and the memorandum was filed as an administrative measure; however, determined that memorandum has served its intended purpose and no longer requires permanent filing in her AMHRR. The Board also noted the applicant was promoted to staff sergeant on 1 January 2022, which shows her continued improvement and dedication to the Armed Forces. Therefore, the Board majority concluded, based on a preponderance of evidence found in the military record, the applicant's claim for removal of the memorandum is warranted. The Board minority concluded no error or injustice exists to support removal of the memorandum from the applicant's AMHRR.

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 Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the Headquarters, 1st Infantry Division Artillery, memorandum (Separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, Commission of a Serious Offense, (Applicant)), dated 2 June 2016 filed in her Army Military Human Resource Record.

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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 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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 600-37 (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. Paragraph 7-2d (Burden of Proof and Level of Evidence Required) states once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct and to have been pursuant to an objective decision by a competent authority. For removals, there is no time restriction for submitting an appeal for removal of unfavorable information from the AMHRR. The recipient has the burden to prove to show, by clear and convincing evidence, that the document is either untrue or unjust, in whole or in part. Evidence submitted in support of the appeal may include, but is not limited to 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.

3. 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. 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.

//NOTHING FOLLOWS//