

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20240000207

APPLICANT REQUESTS:

- removal of the general officer memorandum of reprimand (GOMOR), 18 March 2022, from his 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), 4 April 2023
- Department of the Army Suitability Evaluation Board (DASEB) Memorandum (Resolution of Unfavorable Information for – (Applicant), Case Number AR20230006636), 6 July 2023
- DD Form 149 (Online Version), 26 September 2023 (two copies)
- Counsel's Memorandum (Supplemental Statement in Concern of (Applicant)), 22 March 2023
- Memorandum for Army Review Boards Agency (ARBA), (ARBA Case Tracking System Case Number AR20240000207), 26 April 2024, with Evidentiary Documents –
 - Enclosure 1 – Memorandum for President, DASEB (Letter of Support for (Applicant)), 17 January 2024
 - Enclosure 2 – District Court Judgment of Denial of Protection from Abuse Order, 29 April 2021
 - Enclosure 3 – District Court Civil Court Department Journal Entry, 31 August 2021
 - Enclosure 4 – Trial Defense Services, Fort Leavenworth Field Office, Memorandum (Attorney Response to Referral of Report of Investigation – (Applicant)), 21 January 2022, with Auxiliary Documents
 - Enclosure 5 – [REDACTED] Offense Report, 4 July 2019, with Auxiliary Documents
 - Enclosure 6 – [REDACTED] Court Public Access Portal Search Results Screenshot with Auxiliary Documents

- Enclosure 7 – Installation Management Command and U.S. Army Garrison-Rock Island Arsenal Memorandum for Record (Telephone Conversation – [REDACTED] 10 January 2022

FACTS:

1. The applicant states there was no evidence of his counterproductive leadership. Civilian law enforcement found that he was the victim of the assault, not the accused. The alleged comment in the GOMOR was taken out of context.

a. These allegations were addressed in his judge advocate general attorney's response to the referral of report of investigation, 31 January 2022. The details of his response were completely disregarded by the investigating authority (IA) and inappropriately considered as adverse information to justify their position in actioning an unfounded and unjust reprimand in his Official Military Personnel File (OMPF). Several critical points that he made in the Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation and GOMOR responses were ignored by the IA, most likely due to a known prejudice across the organization by the active duty command group toward National Guardsmen.

b. The allegation of assaulting his ex-fiancée [REDACTED] while holding his child is purely false. It was action taken by his ex-fiancée in an attempt to remove his parental custody during an ongoing contentious child custody case. A civilian law enforcement agency, [REDACTED] Police Department, [REDACTED] conducted an investigation and rendered no citation, no arrest, and no charges, and then deemed it a civil matter. His chain of command was informed of the police interaction and chose not to conduct an Army Regulation 15-6 investigation as no assault occurred. His ex-fiancée waited 2 weeks and then requested a protection order through the county court, which was temporarily granted until it could be reviewed by the assigned judge. After review, the assigned judge denied her request as there was zero evidence that an assault occurred. There is no preponderance of the evidence as it was solely her word against his; therefore, the allegation was unjust and should be removed from the GOMOR.

c. The allegation of counterproductive leadership traits and destructive leadership style are also misleading and inappropriate. Sergeant First Class (SFC) [REDACTED] lied in his sworn statement as Major (MAJ) [REDACTED] was present for the interaction. MAJ [REDACTED] sworn statement contradicts SFC [REDACTED] claim of name calling, bullying, and swearing; yet the IA disregarded this objective evidence along with additional field-grade officer sworn statements supporting his position. MAJ [REDACTED] sworn statement is misleading as the conversation had with MAJ [REDACTED] was a closed-door discussion about SFC [REDACTED] performance capacity. SFC [REDACTED] was not present nor was the conversation directed at SFC [REDACTED] at any time thereafter. Even if

MAJ [REDACTED] initial statement was accepted out of ignorance by the IA, MAJ [REDACTED] sworn statement confirmed his position that he never directly cursed at SFC [REDACTED] and is therefore an even split. There is no preponderance of evidence. The allegation is therefore unjust and should be removed from the GOMOR.

d. The allegation of assaulting a civilian follows the pattern of behavior of his ex-fiancée. She fabricated her statements which completely contradict law enforcement who investigated the complaint on 4 July 2019, 2 years prior. Three police officers provided their statements along with a sworn statement from him outlining the chain of events. Civilian law enforcement determined that Mr. [REDACTED] (a civilian male) had been drinking to excess and attempted to drive. He was inebriated and could not walk, let alone drive. During the incident, Mr. [REDACTED] assaulted him. He restrained Mr. [REDACTED] from driving a vehicle until the police arrived. He stands by his decision and believes he saved lives by preventing Mr. [REDACTED] from driving under the influence of alcohol. A statement from a Mr. [REDACTED] (with whom he had no connection), 10 January 2022, noted he did not instigate the fight – a statement that was ignored by the IA. This statement, along with his and [REDACTED] police officers' statements, equally supports his position and does not support a preponderance of the evidence. This allegation is therefore unjust and should be removed from the GOMOR.

e. The allegation of communicating a threat by making a comment about burning down the First Army Headquarters was said in jest and was taken completely out of context. It was a joke referencing the movie titled "Office Space." A follow-up statement from MAJ [REDACTED] was provided to his attorney when drafting his GOMOR response. MAJ [REDACTED] described that he was frustrated with his ongoing child custody case and frequent staff duty scheduling was making it difficult to manage out-of-state court-ordered parenting time and also make arrangements for child custody court hearings in [REDACTED] MAJ [REDACTED] opined that the comment was clearly a joke and taken out of context. The comment about burning the building down to avoid staff duty was a joke in poor taste taken out of context.

f. This situation entirely stems from an ongoing bitter child custody battle. As these separate personal and professional allegations were inappropriately combined by the IA to inflate the scope of the initial Army Regulation 15-6 investigation, deceptive investigative bias created a false and misleading preponderance of the evidence, each allegation is unjust and not supportive of a GOMOR filed in his OMPF.

2. Counsel requests removal of the 18 March 2022 GOMOR from the applicant's AMHRR. He noted the following material errors were substantially prejudicial to the applicant's rights (see memorandum for details):

a. The allegation of counterproductive leadership comes essentially from one person: SFC [REDACTED] There are no command climate surveys. All other sources of

information flow from statements made by SFC [REDACTED] There are no other statements corroborating SFC [REDACTED] statements. The applicant's career speaks for itself. He has had a long history of effective leadership and proven results.

b. The military police investigations (MPI) do not support any findings warranting a GOMOR. The civilian law enforcement agency that conducted the investigation concluded that the applicant was the victim of an assault. This GOMOR – for unknown reasons – arrives at the exact opposite conclusion of the investigating agency. The allegation involving his ex-fiancée is another unsubstantiated remnant of a long-fought child custody hearing. It has no place in a reprimand.

c. The suggestion that the applicant commented on burning down First Army Headquarters is taken completely out of context. It was a light-hearted comment reported by – not surprisingly – SFC [REDACTED] The commissioned officer present – MAJ [REDACTED] – has provided a statement indicating the comment was said in jest, not taken seriously, and was a joke about the amount of staff duty field-grade officers were standing. The comment should not be included in a reprimand.

d. Counsel's remaining statements reiterate the comments the applicant made and include a timeline of events.

3. The applicant's memorandum for ARBA (ARBA Case Tracking System Case Number AR20240000207), 26 April 2024, requests removal of the GOMOR from his AMHRR.

a. He notes the factual context in which the First Army investigating officer (IO) and Office of the Staff Judge Advocate (OSJA) blatantly abused their use of discretion by disregarding evidence provided by the accused. The First Army OSJA conflated outrageous allegations for their goal of reaching a preponderance of the evidence ruling solely created by their subjective confirmation bias (the tendency to interpret new evidence as confirmation of one's existing beliefs or theories). This bias did not provide the IA with an accurate assessment of all available evidence necessary for an objective decision.

b. The details of his Army Regulation 15-6 investigation and GOMOR responses were completely disregarded by the First Army OSJA and inappropriately considered subjective and false allegations as adverse information without objectively weighing the evidence he and his legal representation presented to tilt a preponderance in their favor in order to rationalize the actioning of an unfounded and unjust reprimand in his AMHRR. This is deliberate confirmation bias and abuse of discretion.

c. MAJ [REDACTED] the IO, did not conduct a thorough and complete investigation. MAJ [REDACTED] never interviewed him or asked him about the specific events alleged by

SFC [REDACTED] or requested any follow-up to directly address any specific allegations. Nor did he ask any questions of other personnel who were present during the events, primarily MAJ [REDACTED] and MAJ [REDACTED]

d. The allegation of assaulting his ex-fiancée while holding their child is purely false. Nowhere in the MPI report does it show by a preponderance of the evidence that his ex-fiancée and his child were victims of assault. The allegation was made by her in an attempt to remove his parental custody during an ongoing contentious child custody case. A civilian law enforcement agency, [REDACTED] Police Department, [REDACTED] conducted their investigation and rendered no citation, no arrest, and no charges, and then deemed it a civil matter – supported by the physical copies of the [REDACTED] police reports he provided to the military police investigator, Detective [REDACTED]

e. His ex-fiancée's reactive behavior is further supported by the fact that joint legal custody was reinstated on 19 August 2021 by [REDACTED] Court and she filed her complaint with [REDACTED] Victim Advocacy Program Office 5 days later on 24 August 2021, using the same exact allegations that were dismissed in civilian court, in a malicious attempt to alienate him from his child. When his ex-fiancée realized she could potentially lose custody over an attempt to ruin his professional career, she attempted to retract her complaint through [REDACTED] Victim Advocacy Program Office.

f. It is also worth noting that nowhere in Army Regulation 15-6 investigation or MPI does it label his ex-fiancée and his child as victims of assault. The IO for the Army Regulation 15-6 investigation believed that his ex-fiancée was worried for her safety and added that his ex-wife refused to cooperate. However, that is hearsay provided by his ex-fiancée to the IO as the IO never directly contacted his ex-wife [REDACTED]. The MPI scope pertained solely to the 4 July 2019 incident and comments made about the First Army Headquarters. It did not add his ex-fiancée and child as victims of assault because there was no substantiation. Regarding this untrue allegation, there is no preponderance of the evidence. The allegation is therefore unjust and should be removed from the GOMOR.

g. The allegation of counterproductive leadership traits and destructive leadership style are also misleading and inappropriate. SFC [REDACTED] lied in his sworn statement as MAJ [REDACTED] and MAJ [REDACTED] were both present for the interaction with SFC [REDACTED]. MAJ [REDACTED] sworn statements with counsel on 31 January 2022 contradict SFC [REDACTED] claim of name calling, bullying, and swearing. Yet the OSJA and IA disregarded this objective evidence along with additional field-grade officer sworn statements supporting his position. MAJ [REDACTED] was deployed outside the continental United States during the investigation and was never contacted by the IO.

h. MAJ [REDACTED] initial sworn statement was misleading. The conversation with him occurred in his office while assisting with email migration and was a closed-door discussion about SFC [REDACTED] performance capacity. SFC [REDACTED] was not present nor was the conversation directed at SFC [REDACTED] at any time thereafter. Even if MAJ [REDACTED] initial statement was accepted out of ignorance by the IA, MAJ [REDACTED] sworn statement confirms his position that he never directly cursed at SFC [REDACTED] or name-called during the two alleged scenarios and the statements are therefore an even split. Regarding this untrue allegation, there is no preponderance of the evidence. It is therefore unjust and should be removed from the GOMOR.

i. The allegation of communicating a threat by making a comment about burning down the First Army Headquarters said in jest was taken completely out of context. It was a joke referencing the movie titled "Office Space." His comment about burning the building down to avoid staff duty was a joke in poor taste and taken completely out of context by SFC [REDACTED] a known fabricator of untruths regarding his additional allegations of his failure to attend mandatory events which were unfounded.

4. Following prior enlisted service in the Army National Guard, the applicant was appointed as a Reserve commissioned officer of the Army in the rank/grade of second lieutenant/O-1 effective 18 December 2004. He executed his oath of office in [REDACTED] Army National Guard on 19 December 2004.

5. U.S. Army Human Resources Command Orders C-01-501468, 27 January 2005, released the applicant from the U.S. Army Reserve Control Group (Annual Training) by reason of appointment to [REDACTED] Army National Guard in the rank of second lieutenant effective 18 December 2004.

6. The applicant was promoted to the rank/grade of MAJ/O-4 effective 21 March 2017.

7. National Guard Bureau Orders 078-36, 19 March 2021, assigned the applicant in an Active Guard Reserve status to Headquarters, First Army, Rock Island, IL, as a strategic plans officer for the period 6 July 2021 to 31 August 2024.

8. The Director, Army Personnel [REDACTED] Army National Guard, memorandum (Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years)), 19 April 2021, notified the applicant that having completed the required years of service, he was eligible for retired pay upon application at age 60.

9. The applicant became the subject of an Army Regulation 15-6 investigation on 6 October 2021 while serving as a strategic plans officer assigned to Headquarters, First Army, Rock Island, IL. An investigating officer (IO) was appointed on 6 October 2021 to investigate the facts and circumstances regarding allegations of his misconduct. The IO was directed to address the following questions at a minimum:

a. whether the applicant demonstrated counterproductive traits such as bullying, poor self-control, refusing to listen to subordinates, showing little or no respect, and talking down to other members of the First Army G-3 Plans Section in violation of Army Regulation 600-100 (Army Profession and Leadership Policy), paragraph 1-11d; or in violation of the Article 133 (Conduct Unbecoming an Officer), Uniform Code of Military Justice (UCMJ); or Article 134 (Conduct of a Nature to Bring Discredit on the Armed Forces), UCMJ;

b. whether the applicant demonstrated a destructive leadership style through abusive, intemperate, and irascible behaviors to other members of the First Army G-3 Plans Section in violation of Army Regulation 600-100, paragraph 1-11e; or in violation of Article 133, UCMJ; or Article 134, UCMJ;

c. whether the applicant complied with family support requirements to Ms. [REDACTED] in accordance with Army Regulation 608-99 (Family Support, Child Custody, and Parentage);

d. if the applicant failed to go to his appointed place of duty by missing mandatory events in violation of Article 86, UCMJ; and

e. if the applicant failed to complete reports in a timely manner as his duties required and was derelict in those duties in violation of the Article 92, UCMJ.

10. The Headquarters, First Army, memorandum from the IO (Army Regulation 15-6 Investigation (Applicant)), 28 October 2021, states, in part:

a. Summary of Key Events.

(1) Since early August 2021, the applicant has had a significant rift with the G-3 Plans Noncommissioned Officer (NCO), SFC [REDACTED]. This rift was brought to the attention of Mr. [REDACTED] Deputy Chief of Plans, who emphasized to the applicant that he needed to tone down what others perceive as demeanor of being angry, unnecessarily aggressive, and not wanting to be assigned to First Army. This temperament issue has also been observed by at least one other member of the team (MAJ [REDACTED]) and was brought to the attention of Mr. [REDACTED] before an inspector general complaint was filed.

(2) On 24 August 2021, [REDACTED] Victim Advocate reached out to Captain [REDACTED] Headquarters and Headquarters Detachment (HHD) Commander, on behalf of Ms. [REDACTED] the applicant's ex-fiancée. Ms. [REDACTED] provided court documentation, as well as text messages, regarding her relationship experience with the applicant. Ms. [REDACTED] was asking for assistance and it was believed that her assistance was regarding child support; however, it was determined that the

applicant has been providing child support as required by the District Court [REDACTED] since August 2021.

(3) During late September 2021, there were three events that the applicant was allegedly accused of missing: Personnel Asset Inventory (PAI), Height and Weight (HT/WT), and an Army Combat Fitness Test (ACFT). During the time of these events, the applicant was out of the office for quarantine. This information was reported to his G-3 Plans leadership, but it was not provided to SFC [REDACTED]. Upon returning from quarantine, the applicant conducted the HT/WT requirements, but did not participate in the PAI or ACFT. During the investigation, it was discovered that the applicant was on pass on 7 September 2021 during the PAI. He was also on quarantine status during the ACFT and was not on the roster to take the ACFT on 27 September 2021. It was also discovered that during the PAI is currently rehabilitating his left leg after breaking his fibula in April of this year.

b. Summary of Key Findings and Recommendations.

(1) Finding 1. He found by a preponderance of the evidence that the applicant did demonstrate counterproductive traits such as bullying and poor self-control, refusing to listen to subordinates, showing little or no respect, and talking down to other members of the First Army G-3 Plans Section in violation of Army Regulation 600-100, paragraph 1-11d; Article 133, UCMJ; and Article 134, UCMJ.

(2) Recommendation 1. He recommended counseling the applicant on his behavior and instructing him to no longer communicate with SFC [REDACTED] in order to alleviate any tension between the two individuals until the relationship can be repaired. Any requests for information or administrative inquiries regarding the applicant should go through Mr. [REDACTED] Deputy Chief of Plans, to prevent confusion and to improve the work environment. If this does not alleviate the tension, SFC [REDACTED] request to move sections may need to be granted in order to prevent further interpersonal conflict.

(3) Finding 2. He found by a preponderance of the evidence that the applicant did demonstrate a destructive leadership style through abusive, intemperate, and irascible behaviors to other members of the First Army G-3 Plans Section in violation of Army Regulation 600-100, paragraph 1-11e; Article 133, UCMJ; and Article 134, UCMJ.

(4) Recommendation 2. He recommended counseling the applicant on his behavior and instructing him to attend anger management class.

(5) Finding 3. He found by a preponderance of the evidence that the applicant did not violate his family support requirements in accordance with Army Regulation 608-99. An additional finding, but outside the scope of the investigation, he found by a

preponderance of the evidence that the mother of the applicant's son has concerns over the safety of herself and their child.

(6) Recommendation 3. He recommended no further action because the applicant has complied with family support requirements in accordance with Army Regulation 608-99. For the additional finding, he recommended verbally reminding the applicant of the no-contact order from [REDACTED] court.

(7) Finding 4. He found no evidence supporting the allegation that the applicant failed to go to his appointed place of duty by missing mandatory events in violation of Article 86, UCMJ.

(8) Recommendation 4. There is no evidence to support the allegation that the applicant failed to go to his appointed place of duty by missing mandatory events in violation of the Article 86, UCMJ, at this time. However, the HHD is not aware of the injury to the applicant's fibula, so the applicant needs to provide the documentation to support his current medical condition.

(9) Finding 5. There is no evidence supporting the allegation that the applicant failed to complete reports in a timely manner as his duties required and was derelict in those duties in violation of the Article 92, UCMJ.

(10) Recommendation 5. He recommended re-engaging the applicant to understand the role that SFC [REDACTED] plays within the G-3 Plans Section. As the lone NCO within the directorate, SFC [REDACTED] is overall responsible for the accountability for all of the people in his section, regardless of rank. In addition, the applicant must understand that as the senior NCO, it is SFC [REDACTED] fundamental duty to make sure the personnel within his section are in the right place at the right time and in the proper uniform. In addition, he recommended counseling the applicant on providing updated information regarding any injuries to HHD.

11. The Trial Defense Services, Fort Leavenworth Field Office, memorandum (Attorney Response to Referral of Report of Investigation – (Applicant)), 21 January 2022, responded on behalf of the applicant and requested disapproval of the IO's findings and recommendations as they are not adverse within the meaning of Army Regulation 15-6, nor does the evidence support the findings and recommendations by a preponderance of the evidence. Counsel discussed each finding, noting the finding was either not supported by a preponderance of the evidence or was not adverse in nature (see memorandum and auxiliary documents for details).

12. The applicant's memorandum (Response to Referral of Report of Investigation – (Applicant)), 31 January 2022, states he reviewed the report and all the supporting exhibits and requests disapproval of the IO's adverse findings and recommendations.

He refutes each finding. He states he will hold himself accountable and be more mindful of how he presents himself to others (see memorandum for details).

13. [REDACTED] Police Department memorandum (Law Enforcement Report – Final), 24 February 2022, shows [REDACTED] Police Department investigated the applicant for the offenses of assault and communicating a threat and named the victims as the U.S. Government; Headquarters, First Army; and a male civilian.

a. Report Summary: Initial Report: On 4 October 2021, Detective [REDACTED] received an allegation(s) that the applicant made threatening comments about burning down Building 68 while on duty and that the applicant was possibly involved in a physical assault that occurred on 4 July 2019 while he was stationed at Fort Leavenworth, KS. Detective [REDACTED] received a video showing the alleged assault. A criminal investigation was opened to look into both allegations. The investigation continues.

b. Final Investigation: The investigation revealed that on 17 September 2021 at approximately 1 p.m., the applicant made a threatening comment when he threatened to burn down Building 68 while on duty because he was irritated with having to pull staff duty. The investigation also revealed that at 5:43 p.m. on 4 July 2019, the applicant assaulted a male civilian with no affiliation to the U.S. Army. The incident occurred while the applicant was stationed at Fort Leavenworth, KS. On 2 February 2022, Captain [REDACTED] First Army Judge Advocate General Office, opined the applicant committed "assault and communicating a threat." The case was referred to Headquarters, First Army, for action.

c. Status. This is a Final Report. Commander's Report of Disciplinary or Administrative Action (DA Form 4844) is pending.

14. The applicant was reprimanded in writing by the Commanding General, First Army, on 18 March 2022, wherein he stated:

An Army Regulation (AR) 15-6 investigation found that you demonstrated counterproductive traits such as bullying, poor self-control, refusing to listen to subordinates, showing little or no respect, and talking down to members of First Army and demonstrated destructive leadership through abusive, intemperate, and irascible behavior. Furthermore, a Military Police Investigation (MPI) found evidence that you assaulted a civilian and assaulted your ex-fiancée and child when you forcefully took your ex-fiancée's phone while she was holding your child. Also, you made a comment about burning down the First Army headquarters.

You are hereby reprimanded. As a field grade officer I expect more leadership and professionalism than your conduct has exhibited. Your comments and treatment of First Army staff, junior, senior, and peer, causes me to question your character and ability to build a team that can accomplish the mission. Your comments regarding burning down the First Army Headquarters and your treatment of and attitude toward civilians cause even deeper concern that you are unfit to lead Soldiers. Your conduct is below the standard of what is expected of a field grade officer in the United States Army, violates the Army Values, the Army's morals, the Army ethic, and Army policy. I expect immediate improvement and cessation of further professional and personal conduct in violation of Army policy and the Army Values.

This is an administrative reprimand imposed as an administrative measure under the provisions of AR 600-37 [Unfavorable Information], and not as a punishment under UCMJ, Art[icle] 15. In accordance with AR 600-37, Paragraph 3-5.b., I am considering whether to direct this reprimand be filed permanently in your Army Military Human Resource Record. Prior to making my filing decision, I will consider all matters you submit. You will be provided a copy of the evidence which forms the basis for this reprimand. Acknowledge receipt of this reprimand in writing immediately, and forward any matters you wish me to consider within seven calendar days of receipt of this memo through the First Army Staff Judge Advocate. If you reasonably request, the First Army Staff Judge Advocate may approve additional time to prepare your matters.

15. The applicant acknowledged receipt of the GOMOR on 18 March 2022.

16. Counsel's memorandum for the Commanding General, First Army (Response to GOMOR in Concern of (Applicant), 17 April 2022, requested removal of the GOMOR from the applicant's AMHRR. Counsel stated the allegations against the applicant fall into three categories: (1) counterproductive leadership, (2) MPIs; and (3) First Army Headquarters. Counsel notes the following and provides a timeline of events (see memorandum for details):

a. The allegation of counterproductive leadership comes essentially from one person – SFC [REDACTED]. There are no command climate surveys. All other sources of information flow from statements made by SFC [REDACTED]. There are no other statements corroborating SFC [REDACTED] statements. The applicant's career speaks for itself. The applicant had a long history of effective leadership and proven results noted below.

b. The MPIs do not support any findings warranting a GOMOR. The civilian law enforcement agency that conducted the investigation concluded the applicant was the victim of an assault. This GOMOR – for unknown reasons – arrives at the exact opposite conclusion of the investigating agency. The allegation involving the applicant's

ex-fiancée is another unsubstantiated remnant of a long-fought child custody hearing. It has no place in a reprimand.

c. The suggestion that the applicant commented on burning down First Army Headquarters is taken completely out of context. It was a light-hearted comment reported by – not surprisingly – SFC [REDACTED]. The commissioned officer present – MAJ [REDACTED] has provided a statement indicating the comment was said in jest, not taken seriously, and was a joke about the amount of staff duty field-grade officers were standing. The comment should not be included in a reprimand.

17. After carefully considering the matters submitted in rebuttal, the First Army Commanding General directed filing the GOMOR in the applicant's AMHRR on 2 May 2022.

18. A review of the applicant's AMHRR revealed the GOMOR and allied documents are filed in the performance folder.

19. The applicant petitioned the DASEB for removal of the GOMOR, 18 March 2022, from his AMHRR. On 20 June 2023 in Docket Number AR20230006636, the DASEB determined the overall merits of the case did not warrant removal of the GOMOR.

20. Counsel provided the following evidence for consideration in addition to those documents discussed above:

a. Enclosure 1 contains the memorandum for President, DASEB, from Colonel [REDACTED] (Letter of Support for (Applicant)), 17 January 2024, who was the First Army Deputy Chief of Staff G-3/5/7 and the applicant's senior rater during the period under review, recommending and supporting removal of the GOMOR from the applicant's AMHRR. He believes the action taken was unjust and exaggerated, and that a biased decision was made.

b. Enclosure 2 contains the State District Court Judgment of Denial of Protection from Abuse Order, 29 April 2021, showing the applicant as the defendant, wherein the court determined there was a lack of support of the allegations by a preponderance of the evidence because the actions complained of are not abuse as defined by the statute. The court denied the request for a Final Protection from Abuse Order and vacated any ex parte or others issued in the case.

c. Enclosure 3 contains the District Court Civil Court Department Journal Entry, 31 August 2021, showing the applicant as the petitioner and Ms. [REDACTED] as the respondent. On 19 August 2021, the court reviewed the Family Assessment and Layne Project Reports, and modified the Journal Entry of 29 April 2021 as follows:

(1) that the applicant and Ms. [REDACTED] shall share joint legal custody of the minor child;

(2) that the applicant shall have unsupervised parenting time with the minor child every weekend for the next four weekends on Saturday and Sunday from 8:35 a.m. until 5:15 p.m. each day;

(3) that the parties shall participate in supervised exchanges through the Layne Project;

(4) that the cost of the supervised exchanges through the Layne Project shall be split equally (50/50) between the applicant and Ms. [REDACTED]

(5) that the applicant and Ms. [REDACTED] shall continue to participate in individual counseling with their current or re-engage service with their prior provider to address their current situation and how to improve as co-parents;

(6) that the applicant and Ms. [REDACTED] shall each provide a written report/letter from the individual counselor outlining the number or individual sessions on or before 15 September 2021;

(7) that the applicant and Ms. [REDACTED] shall each participate in an Anger Management Assessment through a provider recommended by [REDACTED] County District Attorney or a comparable provider in [REDACTED] and

(8) that the applicant and Ms. [REDACTED] shall participate in mediation prior to the next review date of 15 September 2021.

d. Enclosure 5 contains [REDACTED] Standard Offense Report, 4 July 2019, noting the applicant as the victim and Mr. [REDACTED] as the suspect. Alcohol was involved. The offense of battery occurred on 4 July 2019 when Mr. [REDACTED] struck the applicant after the applicant was concerned that Mr. [REDACTED] was intoxicated and trying to drive off. The applicant defended himself and held Mr. [REDACTED] until law enforcement officers arrived (see auxiliary documents for details).

e. Enclosure 6 contains [REDACTED] District Court Public Access Portal Search Results showing the applicant searched court records pertaining to Mr. [REDACTED]

f. Enclosure 7 contains the Installation Management Command and U.S. Army [REDACTED] Memorandum for Record (Telephone Conversation – [REDACTED] 10 January 2022, showing Detective [REDACTED] interviewed Mr. [REDACTED] a civilian, and Mr. [REDACTED] made the following significant statements:

a. There was a party down the street with lots of intoxicated people. There was an intoxicated guy who came through our yard falling down multiple times.

b. The applicant went to help the guy and the guy threw a punch at him, knocking his cup out of his hand. The applicant put the guy in a choke hold for about a minute.

c. Question: Did the intoxicated guy go unconscious? Answer: I don't believe so. [Applicant] wasn't looking for any trouble.

d. Police showed up and arrested the intoxicated guy.

e. Question: Would you and your wife provide written statements if needed? Answer: Yes. [Applicant] didn't instigate the fight.

21. The applicant is currently assigned to the National Guard Bureau in the rank/grade of MAJ/O-4 in an Active Guard Reserve status.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the applicant's and counsel's observations regarding the deficiencies in the investigation that led to the imposition of the GOMOR and the fact that the GOMOR unfairly mentions incidents unrelated to the AR 15-6 investigation. The Board agreed that the applicant would have benefited from counseling or perhaps a locally filed GOMOR, but the Board did not agree with the decision to file the GOMOR in the performance folder of the applicant's AMHRR. Based on a preponderance of the evidence, the Board determined the GOMOR and all allied documents should be removed from the applicant's AMHRR.

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 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, 18 March 2022, and all allied documents from his AMHRR.

2/5/2025

X

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 15-185 (Army Board for Correction of Military Records) prescribes the 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). 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 15-6 (Procedures for Administrative Investigations and Boards of Officers) establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Paragraph 5-2 states IOs may use whatever method they deem most efficient and effective for acquiring information. Although witnesses may be called to present formal testimony, information may also be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

3. Army Regulation 600-100 (Army Profession and Leadership Policy) establishes Army Profession and leadership policy by defining key terms and responsibilities associated with the Army Profession and appropriate leadership practices and methods for Soldiers and Army civilians.

a. Paragraph 1-11d states Army professionals are required to uphold the Army Ethic and model the core leader competencies. They must remain vigilant to guard against counterproductive leadership behaviors from themselves as well as in the units with which they serve. Counterproductive leadership can take different forms, from incompetence to abusiveness, all of which have detrimental impacts on individuals, the unit, and the accomplishment of the mission. Counterproductive leadership behaviors can span a range of behaviors to include bullying, distorting information, refusing to listen to subordinates, abusing authority, retaliating, blaming others, poor self-control (loses temper), withholding encouragement, dishonesty, unfairness, unjustness, showing little or no respect, talking down to others, behaving erratically, and taking credit for others' work. One such type of counterproductive leadership is toxic leadership, which is defined as a combination of self-centered attitudes, motivations, and behaviors that have adverse effects on subordinates, the organization, and mission performance. To be classified as toxic, the counterproductive behaviors must be recurrent and have a deleterious impact on the organization's performance or the welfare of subordinates. An exacerbating factor may be if the behaviors demonstrate selfish reasons such as elevating one's own status, grabbing power, or otherwise obtaining personal gain. Counter-productive leadership behaviors prevent the establishment of a positive organizational climate, preclude other leaders from fulfilling their requirements, and may prevent the unit from achieving its mission. They will lead to investigations and, potentially, removal from position or other punitive actions. Army leaders are required to utilize self-awareness programs (Multi-Source Assessment and Feedback, Commander 360 (a program that is a new assessment for battalion and brigade commanders in which they receive feedback from leaders, peers, and subordinates throughout their organization. It is a leader development program within the Army's Multi-Source Assessment and Feedback, and others) to ensure they receive feedback indicating whether they exhibit appropriate behaviors for an Army leader. Army leaders are required to provide performance and professional growth counseling to subordinate leaders to prevent or remedy counterproductive leadership.

b. Paragraph 1-11e states destructive leadership styles can compromise organizational effectiveness and discourage subordinates from continuing their Army service. In a variety of ways, they undermine mutual trust and impede mission accomplishment. In senior leaders, destructive styles are particularly damaging. These types of leaders must be developed to change their destructive leadership style if possible or, if not able to change, be removed from the Army profession. Five destructive leadership styles are:

- incompetent managers
- affable non-participant
- insensitive driven achiever
- toxic self-centered abuser
- criminal

4. Army Regulation 608-99 (Family Support, Child Custody, and Parentage) sets forth Department of the Army policy, responsibilities, and guidance on financial support of Family members, child custody and visitation, parentage, and compliance with court orders regarding these and related matters. This regulation preempts all other regulations on these matters within the Department of the Army. This regulation should not be construed to create any right, benefit, or entitlement, substantive or procedural, enforceable by law or in equity, by a party against the United States, its agencies, its officers, or any other person. This regulation will not be construed to create any right to judicial review involving compliance or noncompliance with this regulation by the United States, its agencies, its officers, or any other person.

5. 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 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) states:

(1) Authority to issue and direct the filing of such memoranda in an officer's local file is restricted to:

(a) the recipient's immediate commander or a higher-level commander in the chain of command (if such commander is senior in grade or date of rank to the recipient);

(b) the designated rater, intermediate rater, or senior rater, under the officer evaluation reporting system; or

(c) the general officer (to include one frocked to the rank of brigadier general) who is senior to the recipient, or an officer who exercises general court-martial jurisdiction over the recipient.

(2) A memorandum, regardless of the issuing authority, may be filed in the AMHRR, and managed by the U.S. Army Human Resources Command or the proper State Adjutant General (for Army National Guard personnel) upon the order of a general officer (to include one frocked to the rank of brigadier general). The general officer directing filing must exercise general court-martial convening authority over the recipient, be the designee or delegate of the individual exercising general court-martial convening authority over the recipient, be a filing authority from the recipient's losing command pursuant to paragraph (f)(1) below, or be the chief of any designated special branch pursuant to Title 10, U.S. Code, section 3064, acting pursuant to their statutory authority over members of their respective special branches. Memoranda filed in the AMHRR will be filed in the performance folder.

d. 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.

e. 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 the DASEB with a copy of the new evidence or information to justify the request.

6. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 April 2014, 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 ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) states memoranda of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

//NOTHING FOLLOWS//