

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240000350

APPLICANT REQUESTS: through counsel:

- removal of Army Regulation (AR) 15-6 investigation, complete removal of derogatory noncommissioned officer evaluation report (NCOER) and all allied documents
- She be transferred to another unit where she may truly move forward with her career
- an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record) (online application)
- Counsel Brief, 14 August 2023
- Unsworn Applicant Statement
- Character Reference Letters (4)
- Call Data Papers (Allied Papers)
- Noncommissioned Officer (NCOER) Report
- Memorandum for Record (MFR) for Relief for Cause

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. Counsel states,

a. The negative NCOER was supported by an erroneous and insufficient AR 15-6 findings and recommendation. The factual findings in the investigating officer's (IO) investigation do not prove any causal relationship between the applicant's actions and the unit's overall command climate; [applicant's] infrequent or one-time "negative" behaviors are not "counterproductive leadership"; no allegation, either alone or taken together, was severe enough to have "decreased the psychological well-being of unit

members due to an overall decrease of morale and Soldiers' inability or unwillingness to communicate with Platoon Leadership." She should not have been relieved from her duties as Platoon Sergeant, all findings related to counterproductive leadership should have been deemed "unsubstantiated" due to the lack of supporting evidence, and this action should be dismissed entirely.

b. The applicant was the subject of an AR 15-6 investigation of suspected "hazing and bullying" in late 2020. The hazing claim was unsupported, but the bullying claim was founded. She was engaged in or oversaw bullying and was recommended for a general officer memorandum of record (GOMOR). She was promoted to sergeant first class. Her new command found her to be hard working. She identified Soldiers she considered to be in the bottom 20 percent and "put her extra capital toward those individuals." Her Soldiers were dissatisfied with her leadership.

c. The investigation showed various statements regarding the applicant making fun of Soldier's mental health issues, alleged she was toxic, and told a noncommissioned officer (NCO) to call a Lyft at 0400 from the hospital, fraternization, and statements. The new definition of counterproductive leadership, like the old definition of toxic leadership, appears to create a two-part test. To be deemed a counterproductive leader, an Army leader seemingly must: 1) exhibit behaviors that violate at least one of the Army's core leader competencies or Army Values, and 2) those behaviors must prevent a climate conducive to mission accomplishment. Her actions did not meet the threshold two-part requirement to be considered counterproductive leadership. Fourteen (14) Soldiers were interviewed, including her command. The IO indicated that only a "small minority" of Soldiers interviewed gave positive comments, or that unit had "problem Soldiers." Her prior actions as dining facility (DFAC) manager are unquestionably what caused some Soldiers to avoid interacting with her.

d. The IO was biased. She encouraged the IO to speak to the Soldiers she suggested. None of those Soldiers were interviewed. The IO also omitted a key part of a text message from his report, which sheds light on why she conducted the welfare check on a Soldier.

e. The factual findings in the IO's investigation do not prove any causal relationship between her actions and the unit's overall command climate; she infrequent or one-time "negative" behaviors are not "counterproductive leadership"; no allegation, either alone or taken together, was severe enough to have "decreased the psychological well-being of unit members due to an overall decrease of morale and Soldiers' inability or unwillingness to communicate with Platoon Leadership"; and the Investigating Officer was biased. The Command should be concerned that senior, black, transgender, non-commissioned officers are being investigated and relieved due to race, gender, sexual orientation, and systemic toxic leadership, especially in light of the comments made by

her. This investigation should be vacated and destroyed. She should not be relieved from her duties as Platoon Sergeant, all findings related to counterproductive leadership should be deemed “unsubstantiated” due to the lack of supporting evidence, and this action should be dismissed entirely. She would also request that she be transferred to another unit where she may truly move forward with her career.

3. Counsel provides the following documents:

a. An unsworn statement from the applicant which states she received an unfair AR 15-6 investigation. The 15-6 investigation and subsequent evaluation are both procedurally and substantially defective. The documents were unfair at the time and remain so now. None of the service members she requested the IO to interview were interviewed. She personally feels it was done intentionally to strengthen the case against me. Why else would others who were present during the time of many if not all the allegations be interviewed? Her own immediate supervisor, a second lieutenant was not interviewed and in his position as the Platoon Leader, he could've provided adequate information to add to the case.

b. Four-character reference letters that attests to her dedication, intelligence, fortitude, and professionalism. She is dependable, discrete, hard charging, loyal, hones, enthusiastic and realistic in her expectations. She is motivated and desires to lead and improve her section. She has good moral character and is honest, reliable, hardworking, conscientious, and courteous. Her main goal was to help Soldiers improve their skills, knowledge, and professionalism at the workplace, at the same time she was trying to help them to improve on daily goals and leadership skills for their future.

4. Counsel's request, on behalf of the applicant, to have her transferred to another unit where she may truly move forward with her career, is not within the purview of this Board. The Board only considers the removal of documents from Soldiers service records. Therefore, this issue will not be discussed further in these proceedings.

5. The applicant's service record shows the following information:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) reflects she enlisted in the Regular Army on 4 October 2010, with multiple reenlistments.

b. Her Enlisted Record Brief shows:

- she was promoted to sergeant first class (SFC) on 29 October 2021
- completed the Senior Leadership Course in 2021
- she was assigned to the 619th Quartermaster (QM) Platoon, in Fort Campbell, KY from 28 June 2022 to present

c. Her NCOER for the period of 1 January 2022 through 31 December 2022 shows she received an evaluation due to a "Relief for Cause" submission. The Relief for Cause was directed by the brigade commander as the result of a substantiated investigation for counterproductive leadership during a rated period. It shows, in part, in Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies):

- Failed to established a workplace and overall command climate that should have fostered dignity and respect for all members of the group.
- Failed to adhere to rules, regulations, or standard operating procedures pertaining to Equal Opportunity.
- She demonstrated exceptional knowledge in her field
- She is a top notch SFC who expects and enjoys a challenge while instilling confidence within substantiated; sets an example for all to emulate.
- Rate Overall Performance: Met Standards
- She refused to sign

d. A MFR for Relief for Cause, 30 March 2023 shows:

- On 21 January 2023, the applicant's commander notified her in writing that she was considering taking action to relieve her from her position as the first platoon sergeant
- On 24 January 2023 she signed the acknowledgement and elected to submit matters for consideration
- On 21 February 2023, her civilian defense counsel submitted wrote matters on her behalf
- After carefully reviewing the AR 15-6 investigation, and additional matters she submitted, the commanding officer determined that the appropriate course of action is to permanently relieve the applicant of her position as the 1st platoon sergeant due to a lost confidence in her ability to lead Soldiers in her position. Moreover, her professional characteristics, conduct, and behavior warrant removal in the best interests of the Army.

e. The applicant's record was void of documentation to show she received any nonjudicial punishment, GOMOR, or FLAG.

f. The applicant is currently serving in the Regular Army on active duty with the 619th QM Company in Fort Campbell, KY.

6. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a 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.

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 through counsel carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review through counsel of the applicant's petition and available military records, the Board determined that the applicant's counsel did not demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the DA Form 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report) are substantially incorrect and support removal.

2. The Board noted, the applicant's record was void of documentation to show she received any nonjudicial punishment, GOMOR, or FLAG. The Board found the evidence provided by the applicant's counsel insufficient to overcome the burden of administrative regularity in that there is no evidence the applicant or her counsel used administrative procedures through U.S. Army Human Resources Command Evaluation Appeals Branch to rebut the comments in her NCOER. Therefore, the Board denied relief.

3. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.

4. 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:

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. Army Regulation (AR) 600-8-104 (Army Military Human Resource Records (AMHRR) Management) states The AMHRR is a permanent record remaining under Army control for 62 years from a Soldier's final separation date to include retirement, separation, and death. Only documents pertaining to a Soldier's military career and listed in this regulation will be filed in the AMHRR. No more than one copy of a document will be uploaded into the AMHRR. The document will not be removed from or moved to another part of the AMHRR unless directed by certain agencies, to include this Board.

4. Army Regulation 15-6 (Procedures for Administrative Investigations and Board of Officers). This regulation establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another regulation or directive, but in that case, its provisions are not mandatory.

a. Chapter 2-9 (Request for Reconsideration) states a subject, suspect, or respondent (such as an officer against whom an adverse finding was made) may request reconsideration of the findings of an inquiry or investigation upon the discovery of new evidence, mistake of law, mistake of fact, or administrative error. New evidence is that information that was not considered during the course of the initial investigation and that was not reasonably available for consideration. New evidence neither includes character letters nor information that, while not considered at the time of the original investigation, the subject of the investigation could have provided during the course of the investigation. Limitations:

(1) A request for reconsideration is not permitted when the investigation resulted in administrative, nonjudicial, or judicial action, or any action having its own due process procedural safeguards.

(2) Requests for reconsideration must be submitted to the approval authority within 1 year of the approval authority's approval of the investigation. The approval

authority may entertain a request outside of 1 year for good cause. While not exhaustive, good cause is the discovery of new relevant evidence beyond the 1-year time limitation, which the requester could not have discovered through reasonable diligence, or the requester was unable to submit, because duty unreasonably interfered with his or her opportunity to submit a request. The approval authority's determination of good cause is final.

b. Chapter 3-19 (Filing and Record Keeping of the Report. The approval authority filing requirements. Except in the case of an investigation or board that contains adverse information regarding a field-grade officer or a high-profile case, the approval authority will keep the original and a digital copy of the final report of proceedings on file for a period of not less than 5 years.

//NOTHING FOLLOWS//