

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20240000701

APPLICANT REQUESTS:

- in effect, removal of all derogatory information from his official military personnel file (OMPF) pertaining to the applicant's alleged improper use of memorandum templates with signature
- removal of a general officer memorandum of reprimand (GOMOR) from his OMPF
- in effect, amendment of items 26 (Separation Code) and 28 (Narrative Reason for Separation) of his DD Form 214 (Certificate of Release or Discharge from Active Duty)

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 67-10-1 (Company Grade (O1 – O3 (Second Lieutenant (2LT) to Captain (CPT)); WO1 – CW2 (Warrant Officer One to Chief Warrant Officer Two)) Officer Evaluation Report (OER))
- Two memoranda
- Two letters of support
- Corps Signal Brigade – Table of Contents
  
- Enclosure 2 – WholeSoldier Counseling Form
- Enclosure 3 – CPT D\_\_ M. S\_\_'s Signature Template
- Enclosure 4 – Variation of CPT S\_\_'s Signature 1
- Enclosure 5 – Variation of CPT S\_\_'s Signature 2
- Enclosure 6 – Barracks Clearing Memorandum
- Enclosure 7 – Email Traffic (CPT T\_ and Sergeant First Class (SFC) M\_\_ (26 August 2022 Flag Inquiry))
- Enclosure 8 – DA Form 1559 (Inspector General Action Request): Request for 26 August 2022 documents
- Enclosure 9 – DA Form 268 (Report to Suspend Favorable Actions (Flag)): Initiate Flag
- Enclosure 10 – DA Form 268: Remove a Flag

- Enclosure 11 – Email TA (tuition assistance) Hold
- Enclosure 12 – Mobile Phone Call Records: 26 and 28 October 2022 from Investigating Officer (IO) (CPT T\_\_ J\_\_)
- Enclosure 13 – Mobile Phone Call Records: 26 August 2022 from CPT D\_\_ M. S\_\_
- Enclosure 14 – Maps Geolocation: 10 June 2022
- Enclosure 15 – Timeline Visual Aid
- Enclosure 16 – Lieutenant (LT) S\_\_ and Staff Sergeant (SSG) B\_\_ (Platoon Sergeant (PSG)) Text Messages
- Enclosure 17 – 11 July 2022 Initial Counseling Documents (False Documents)
- Enclosure 18 – Character Letter: N\_\_ A\_\_
- Enclosure 19 – Character Letter: D\_\_ C\_\_
- Enclosure 20 – Character Letter: C\_\_ G\_\_
- Enclosure 21 – Character Letter: D\_\_ T\_\_
- Enclosure 22 – Character Letter: J\_\_ H\_\_
- Enclosure 23 – Character Letter: K\_\_ F\_\_
- Enclosure 24 – Character Letter: B\_\_ L\_\_
- Enclosure 25 – Character Letter: A\_\_ F\_\_
- Enclosure 26 – Character Letter: P\_\_ C\_\_
- Enclosure 27 – Character Letter: T\_\_ R\_\_
- Enclosure 28 – Character Letter: K\_\_ A\_\_
- Enclosure 29 – Character Letter: N\_\_ T\_\_
- Enclosure 30 – Character Letter: J\_\_ B. J\_\_
- Enclosure 31 – Character Letter: N\_\_ E\_\_
- Enclosure 32 – Character Letter: M\_\_ F\_\_
- Enclosure 33 – Character Letter: S\_\_ N\_\_
- Enclosure 34 – Character Email: L\_\_ S\_\_

FACTS:

1. The applicant states he is asking the Board to correct errors and injustices in his OMPF. The allegations of misconduct deeply concern him, as they have the potential to significantly impact his reputation and military career.

a. Specifically, the applicant points to allegations related to his alleged improper use of memorandum templates containing CPT D\_\_ M. S\_\_'s signature; CPT D\_\_ M. S\_\_ was the applicant's company commander at the time. The applicant argues, "It is of the utmost importance that these allegations be thoroughly addressed and rectified to ensure fairness and accuracy in my military record."

b. "One critical issue that I wish to emphasize is the inadequacy of the (Army Regulation (AR) 15-6 (Procedures for Administrative Investigations and Boards of Officers)) investigation conducted regarding these allegations. The investigation's shortcomings can be attributed to multiple factors, including the failure to conduct a thorough follow-up on the allegations, insufficient consideration of crucial evidence, and potential manipulation during interviews." The investigation's inadequacies led to an incomplete and biased result. Further, the AR 15-6 IO failed to take into account the evidence provided by the applicant, which showed his PSG (SSG T\_\_ E. B\_\_) lied, and that conclusively demonstrated the applicant had had no ill intent and never sought to mislead anyone.

c. The applicant also asks the Board to remove the GOMOR because he firmly believes it has served its purpose and its continued presence in his OMPF "only perpetuates the adverse impact on my military career." "Furthermore, I kindly ask for the removal of the misconduct code from my DD (Form) 214. Given the circumstances surrounding the allegations, I believe that the presence of this code unfairly tarnishes my military service record." "I remain deeply concerned about the sudden revelation of these allegations, especially the fact that they were not reported immediately, which raises questions about their credibility and the fairness of the entire process."

2. The applicant provides additional arguments in a memorandum addressed to the Department of the Army Suitability Evaluation Board (DASEB), dated 20 December 2023; (the applicant's service record is void of any documentation showing the DASEB acted on his appeal).

a. Citing AR 600-37 (Unfavorable Information), the applicant requests the removal of his GOMOR and reiterates that it has served its intended purpose; he adds that it has been in his OMPF for at least one year and he received at least one OER since the GOMOR's issuance.

(1) The applicant contends the GOMOR has served its purpose because it has significantly contributed to his professional growth and development and led to a deep reflection on his responsibilities and duties as an officer. Additionally, it prompted him to take proactive steps in his personal and professional development.

(2) The applicant notes, "Post-GOMOR, my OERs have consistently reflected a significant enhancement in leadership, strategic planning, and execution of duties. My commitment to excellence is evident in my recent achievements, including leading successful missions and initiatives that have positively impacted the unit." Further, "I have proactively sought out and completed advanced leadership and ethics training. These have equipped me with insights and tools that have been integral to my improved decision-making and interpersonal skills."

b. Regarding the misuse of his commander's signature, the applicant states, "I acknowledge my error in judgment. However, it's crucial to note the lack of explicit prohibitions and the prevalent culture within the unit at the time. This context, while not excusing my actions, provides a broader understanding of the situation." Additionally, "Concerns raised about my interpersonal conduct have been diligently addressed. Feedback from my current superiors and peers, which I have enclosed, testifies to my improved conduct and positive influence within the unit." The applicant points out that he has received numerous commendations and acknowledgements after being issued the GOMOR, and they serve as testaments to his personal growth in areas of previous concern.

c. "Another critical aspect of this appeal concerns the potential impact of the GOMOR on my future career ambitions. Postmilitary service, I aspire to either become an FBI Special Agent or pursue a career in IT (information technology) Project Management with the Department of State. Both roles require a high level of integrity and an unblemished record of service. The presence of the GOMOR in my performance record could significantly hinder these specific career aspirations, potentially limiting my ability to continue serving my country in these critical capacities. The transfer of the GOMOR to the restricted file is thus crucial not only for my current professional standing but also for enabling my pursuit of these specialized roles within federal government service, thereby allowing me to continue my dedication to national service in a different yet equally impactful manner."

3. The applicant provides an OER from his last rating period, documents from the AR 15-6 investigation and elimination action, and 19 letters of support. The letters of support show the following:

a. In a December 2023 memorandum, CPT T\_\_ R. H\_\_, Behavioral Health Officer, affirms the applicant voluntarily engaged in individual behavioral health counseling and participated in four sessions.

b. CPT J\_\_ E. S\_\_, S-3 (Plans, Operations, and Training) Plans Officer, states, in a memorandum dated in November 2023, that he has known the applicant since late Spring 2023, when the applicant worked in the Brigade S-3 section; given what he has come to know about the applicant, the recent revelations about involuntary separation proceedings are challenging to reconcile.

(1) Notably, the applicant demonstrated leadership and exceptional organizational skills; he maintained a positive attitude and an eagerness to learn from his noncommissioned officers (NCO). CPT S\_\_ never saw any indication the applicant was abusing his authority or displayed behaviors warranting separation.

(2) Recognizing the applicant's untapped potential, CPT S\_\_ assumed the role of mentor for the applicant and, due to his interactions with the applicant, CPT S\_\_ believes the applicant should be retained on active duty.

c. The remaining 17 letters of support were prepared in March/April 2023 and all endorse the applicant as a dedicated and reliable officer who maintained a positive attitude; included are the following:

(1) SFC N\_\_ A\_\_ expresses his complete support of the applicant; he worked closely with the applicant when the applicant was a platoon leader; the applicant stood out as an exceptionally dedicated and reliable officer with a positive attitude. The applicant displayed outstanding listening skills and an eagerness to learn from NCOs. Regarding the applicant's use of the commander's signature, many Soldiers have used templates showing the commander's signature, and the unit did not establish any policies about such use. The applicant simply followed existing practices and meant no harm.

(2) First Lieutenant (1LT) D\_\_ T\_\_ states, as of the date of her statement, she was serving as a Signal Officer in a signal battalion; she first met the applicant in the battalion S-3 shop, and she often saw the applicant engage with Soldiers to hear their concerns and offer feedback.

(3) SFC J\_\_ H\_\_ states that, although he has since been reassigned, he was previously assigned to the same battalion as the applicant, where he served as a team leader, section leader, PSG, and, on two occasions, the unit's acting first sergeant (1SG). He and the applicant developed a trusted and professional relationship, and the applicant would often turn to him for advice. He found the applicant to be humble and always willing to ask the right people for the proper guidance when he did not know something.

(4) Corporal (CPL) K\_\_ L. F\_\_ states he worked with the applicant during a training exercise at the post's "Mission Training Complex (MTC)." During the exercise, the applicant earned a "2-Star Coin," but, as an example of his humility, the applicant declined the award and recommended the coin be given to the writer instead. Throughout the exercise, the applicant displayed exceptional initiative by troubleshooting hardware and restoring internet access to most of the end-users. In addition, he fostered a "supportive and collaborative environment that allowed the team to concentrate their tasks."

(5) CPL A\_\_ F\_\_ states the applicant had a positive impact on her after she failed an ACFT (Army Combat Fitness Test) and lost her rank; the applicant offered valuable tips on how to improve her test performance and, over a 2-week period, worked with her until she achieved her goals.

(6) SFC P\_\_ R. C\_\_, NCOIC (NCO in charge), Battalion S-3, states, after initially meeting the applicant during a training exercise evaluation, the applicant transferred to the S-3 shop; the applicant immediately immersed himself in his work and consistently impressed everyone with his ability to complete tasks ahead of schedule. The writer states he "witnessed a remarkable transformation in [applicant]. He developed an uplifting and positive attitude, constantly seeking opportunities to assist others and prioritizing the well-being of his fellow Soldiers above all else." The writer learned of the circumstances that led to the applicant's transfer to the S-3, and he felt compelled to offer his support. SFC C\_\_ declared, "It was clear that he (applicant) had not been given a fair chance to succeed, despite his determination to be the officer his leadership needed."

(7) 1LT M\_\_ J. F\_\_ states she and the applicant worked together as LTs in the same battalion, and when she went through a difficult period, the applicant was the only LT who offered his assistance and periodically checked on her. She added, "It is shocking to hear that [applicant] is being accused of conduct unbecoming of an officer. He has always acted with the utmost professionalism and integrity, and his character is beyond reproach." "...what has truly set (the applicant) apart is his willingness to listen to feedback, learn from his mistakes, and improve himself. He has a growth mindset and is always looking for ways to become a better Soldier and leader."

(8) 1LT L\_\_ R. S\_\_ sent the applicant an email stating, after giving the applicant's request some thought and receiving advice from a mentor outside the organization, 1LT S\_\_ decided not to provide a letter of support. The mentor indicated that, by writing a letter of support, 1LT S\_\_'s career could be negatively affected, depending on who saw it. Nonetheless, 1LT S\_\_ lauded the applicant's abilities and potential but added that he thought the "cards (the applicant) were dealt were unfair...."

4. A review of the applicant's service record shows:

a. On 23 May 2021, the applicant executed his oath of office as a Regular Army commissioned officer, branched Signal Corps. On 23 January 2022, he completed the Signal Basic Officer Leadership Course, and orders assigned him to Fort Hood, TX (now renamed Fort Cavazos). On or about 23 February 2022, he arrived at his new unit, an expeditionary signal battalion, and he assumed duties as a platoon leader.

b. On or about 27 September 2023, the applicant's rating chain issued him a referred OER (DA Form 67-10-1) for the rating period of 20210507 through 20220927; the report rated him as a platoon leader. The applicant's company commander (CPT D\_\_ M. S\_\_) was his rater was his company commander and the senior rater was the battalion commander.

(1) Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes (Rater)). The rater gave the applicant an "Unsatisfactory" rating and, in the comments, stated, "[Applicant]'s actions fell far below the standards expected of a Commissioned Officer...Frequent counseling in all substandard performance area(s) has not resulted in any significant, lasting improvement. [Applicant] is unable to work harmoniously with others and does not promote good morale." The rater's comments in in Part IVc included the following:

- (1) Character – Applicant's "inconsistent demonstration of the Army Values were more than an occasional lapse in judgment"
- (2) Presence – Applicant's "poor attitude and lack of respect for Soldiers rubbed off on subordinates and created a poor work environment"
- (3) Intellect – Applicant lacked good judgment on a number of occasions and he was non-receptive to guidance
- (4) Leads – Applicant "struggled to display a behavior for his Soldiers to emulate. [Applicant]'s treatment of others repeatedly changed with the situation and his level of frustration with it."
- (5) Develops – Applicant struggled with resilience and he lacked the ability to learn from constructive criticism; "[Applicant] did not work with congruent (sic) with his PSG or NCOs, which demonstrated a lack of trust within his NCO ranks"
- (6) Achieves – Applicant did well on his ACFT and members of his unit received the Military Outstanding Volunteer Service Medal

(2) Part VI (Senior Rater). Under Part VIa (Potential Compared with Officers Senior Rated in Same Grade), the senior rater entered, "Qualified." In Part VIc (Comments on Potential), the senior rater indicated the applicant had the potential to be a good officer and affirmed the applicant was "Always the consummate professional with me...."

c. On 30 September 2022, the applicant's brigade commander appointed an IO, under the provisions of AR 15-6; the brigade commander instructed the IO to elicit facts about the following: did the applicant improperly use his commander's (CPT D\_\_ M. S\_\_) signature on documents and has the applicant exhibited conduct unbecoming of an officer.

d. On 7 November 2022, an AR 15-6 IO submitted her findings and recommendations.

(1) First, the IO affirmed the applicant had used CPT D\_\_ M. S\_\_'s signature on documents without her permission; the signature appeared to have been cut and pasted onto the documents. She provided the following timeline:

- On 3 July 2022, the applicant modified documents in the 1st Platoon Microsoft (MS) Teams folder
- On 5 July 2022, the applicant produced three memoranda that showed CPT D\_\_ M. S\_\_'s signature; notably, the bottom part of the "y" was cut off
- On 11 July 2022, the applicant produced two additional memoranda with the same signature applied
- On 25 July 2022, CPT D\_\_ M. S\_\_ counseled the applicant for making false statements and for actions unbecoming an officer
- On 11 August 2022, CPT D\_\_ M. S\_\_ counseled the applicant after he lied, demonstrated he was unable to work as part of a team, and spoke negatively about his PSG (SSG T\_\_ E. B\_\_)
- On 13 September 2022, the applicant produced a "barracks clearing" memorandum, which displayed the same improper signature; CPT D\_\_ M. S\_\_ was on leave at the time

(2) Included in the IO's report was a summary of a memorandum for record (MFR), dated 20 September 2022 and completed by 1LT A\_\_ R\_\_, in which 1LT R\_\_ wrote he had asked the applicant how he was doing and the applicant's replied, "I want to go the f\_\_ home!"; the applicant then turned to his Soldiers and said, "Get the f\_\_ in the Humvee (High Mobility Multipurpose Wheeled Vehicle)."

(3) On 21 September 2022, and at the request of his Soldiers, the applicant conducted a sensing session.

(a) The session resulted in 22 statement being completed and given to the applicant's commander; all indicated the applicant was having an overall negative impact on the platoon, and the statements detailed instances where the Soldiers felt the applicant had shown disrespect toward his Soldiers and displayed an unwillingness to learn from his NCOs.

(b) On 21 September 2022, the applicant's commander advised him in a counseling statement that she was removing him from his position as platoon leader because of the sensing session; she additionally addressed instances where the applicant had allegedly made idle threats about repercussions and where his actions had created a toxic environment. On 27 September 2022, the applicant's commander informed him that he was being flagged and an investigation would be initiated.

(4) The IO's listed the following findings:

- The applicant admitted using CPT D\_\_ M. S\_\_'s signature on documents without her permission

- There were several counseling forms, sworn statements, and 22 sensing session comments that supported allegations that the applicant had exhibited conduct unbecoming of an officer and displayed counterproductive leadership

(5) The IO recommended the command take "appropriate administrative and correction action," along with additional training for the applicant and all new platoon leaders.

e. On 20 December 2022, the III Corps and Fort Hood Commanding General (CG) issued the applicant a GOMOR, in which he reprimanded the applicant for producing false documents and exhibiting conduct that was unbecoming of an officer. On 20 December 2022, the applicant acknowledged receipt and indicated he would submit a response.

f. On 24 January 2023, the applicant filed his GOMOR rebuttal; with his response, the applicant included 11 enclosures and 24 exhibits. The applicant made the following arguments:

(1) The applicant began by acknowledging the seriousness of the GOMOR's allegations and affirmed he took "full responsibility for my actions"; however, he maintained the GOMOR was unjust and appeared to be retaliatory in nature.

(a) The applicant stated he took full responsibility for producing false documents, and he deeply regretted the resulting confusion. Nonetheless, the applicant pointed out that, "The practice of producing documents using my commander's signature was common, accepted, and condoned within our company."

(b) "In hindsight, I realize now that using my commander's signature without their explicit permission was a violation of military regulations and an error in judgment on my part. Furthermore, my actions were taken in good faith and with the best intentions to serve the needs of the company and the mission; I firmly believe that this disciplinary action was taken against me in retaliation from my protected communication to my battalion commander." (On 25 July 2022, the applicant emailed the battalion commander and told her he was having difficulties in his unit; despite the presence of "great leadership," he was afraid that he would lose his career if the battalion commander did not transfer him).

(2) "Be that as it may, I understand my actions have damaged the trust of my command, and I apologize for that...From my perspective, my commander selectively enforced regulations and singled me out for disciplinary action while turning a blind eye to similar actions taken by my peers. I am willing to take any steps necessary to regain that trust and make amends for my actions."

(3) The applicant discussed his sexual orientation because, while initially wanting to keep this private due to safety and professional concerns, he began to feel excluded from his unit after 8 July 2022, and he felt bullied by the executive officer and 1SG to disclose his sexual orientation. He felt he was constantly being judged and his contributions were not valued; in August 2022, he had a mental breakdown. He requested a transfer but was forced to remain in the unit.

(4) The applicant concluded by renewing his commitment to regain his command's trust and would strive to uphold the highest standards of professionalism and integrity. After reiterating his full acceptance of responsibility, he asked the GOMOR imposing official to rescind both the GOMOR and the AR 15-6 investigation, and to direct the convening of an "impartial forum...to determine the true motivations behind my company commander's actions with the findings of the new 15-6 investigation currently open concurrently with the senatorial inquiry and DOD OIG (Department of Defense Office of the Inspector General) inquiry."

g. On or about 28 February 2023, the applicant received his second and last OER, covering the rating period 20220928 through 20230228; the rated duty position was "Plans Officer." The applicant's rater showed the applicant as "Proficient," and the rater's comments were favorable. The senior rater rated the applicant as "Highly Qualified," and noted the applicant was "in the top 50 percent" of 2LTs he had rated in the last 14 years.

h. On 6 March 2023, the GOMOR imposing official (CG, III Corps and Fort Hood) directed the GOMOR's placement in the applicant's OMPF. Also, on 6 March 2023, the CG, III Corps and Fort Hood advised the applicant, via memorandum, that the applicant was required to show cause for retention on active duty, in accordance with paragraph 4-2b(Misconduct, Moral or Professional Dereliction, or in the Interests of National Security) and 4-2c (Derogatory Information), AR 600-8-24 (Officer Transfers and Discharges). As his basis, the CG cited the same concerns addressed in the GOMOR.

i. On 19 March 2023, the applicant acknowledged receipt of the CG's elimination memorandum; the applicant elected to submit a rebuttal with statements and documents. On 14 April 2023, the applicant filed a 15-page rebuttal with 34 enclosures (included with the applicant's current ABCMR application).

(1) He declared his "unwavering commitment to the U.S. Army" and how, during the last 8 months, he had embarked on a transformative journey. He stated his aim was to convey his dedication to continued learning and improvement, and to uphold the values and principles expected of a commissioned officer. He referred to the 17 character letters as offering a more comprehensive understanding of his character and potential in the Army.

(2) The applicant categorically denied any wrongdoing or malicious intent when he used his company commander's signature without her permission; he simply relied on his PSG's support and expertise. Additionally, there were no company policies explicitly forbidding this practice and using the commander's signature, as the applicant did, was common. The applicant believed the company commander singled him out and was retaliating against him. To bolster his argument that there was no wrongful intent to deceive, the applicant cited case law.

(3) The applicant detailed "excruciating circumstances."

- The applicant "encountered several challenges" that made it difficult for him to trust his company commander and unit 1SG
- At times, it may have appeared he displayed a negative attitude, but in actuality, he was "grappling with severe depression, stemming from the perception that I was being treated as a pawn rather than a valued member of the team"; nonetheless, the applicant learned valuable lessons
- Citing case law, the applicant argued his company commander's actions created a hostile environment that kept him from seeking redress or requesting a transfer; "The fear and intimidation instilled by my commander's actions made it nearly impossible for me to voice my concerns"
- "The ripple effects of my commander's actions extended to my personal life, exacerbating my mental health struggles and ultimately leading to the breakdown of my relationship with my fiancé"

(4) The applicant pointed to case law as he contended his company commander failed to provide "proper care and support for Soldiers experiencing mental health issues" and showed a lack of transparency.

(a) Despite his behavioral health counselor's urgent recommendation that the command transfer the applicant, the company commander refused, claiming a transfer could not occur while the applicant was under investigation.

(b) The applicant states he was "uninformed about the investigation" and never told his request for tuition assistance had been denied (due to the initiation of a flag).

(c) "Additionally, my commander failed to provide a safe and supportive environment for subordinates. *United States v. Gleason*, 43 M.J. 69 (C.A.A.F. 1995), underscores a commander's responsibility to establish such an environment. The case of my fellow Soldier, who attempted suicide due to my commander's harsh restrictions, further illustrates the unsafe and unsupportive atmosphere within the unit. Notably, both the Soldier's and my circumstances were similar, as we were treated differently after the commander and 1SG were informed of our same-sex marriages."

(d) "My due process rights were not protected during the investigation process." The lack of transparency and poor communication violated the applicant's rights, and his commander's actions were contrary to Army regulations.

(5) The applicant maintained his company commander abused her authority by flagging him and preventing him from transferring to another unit. The applicant detailed how his commander had lost his trust, and the applicant supported his contentions with additional case law.

(6) The applicant addressed the financial consequences of an involuntary separation. "Should I be relieved of my duties before the contract's completion date, I will be required to reimburse the ROTC scholarship I received. Additionally, I have utilized the (private corporation) Career Starter Loan to support my grandmother's essential household repairs. Consequently, being relieved of my duties will significantly impact my life as I navigate the complexities of managing this debt."

(7) "In conclusion, I stand resolute in my commitment to the Army, its values, and its mission. The experiences and lessons gained during my time in Alpha Company have transformed me into a better leader and a more capable Soldier." "I ask that you consider the growth I have demonstrated, the support I have received from my peers, and the commitment I have shown to self-improvement when evaluating my case for retention."

j. On 22 November 2023, after reviewing the results of a Department of the Army Ad Hoc Review Board, the Deputy Assistant Secretary of the Army (DASA) (Review Boards (RB)), directed the applicant's involuntary separation with an honorable character of service; in addition, the DASA (RB) waived recoupment action on the applicant's ROTC debt.

k. On 29 December 2023, he was separated accordingly. His DD Form 214 shows he completed 2 years, 7 months, and 23 days of active duty service; the report additionally reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Global War on Terrorism Service Medal, and Army Service Ribbon
- Item 25 (Separation Authority) – AR 600-8-24
- Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JNC"
- Item 27 (Reentry Code) – Not applicable
- Item 28 (Narrative Reason for Separation) – "Unacceptable Conduct"

**BOARD DISCUSSION:**

1. After reviewing the application and all supporting documents, the Board found that relief was not 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 applicants petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the derogatory information from his official military personnel file (OMPF) pertaining to the improper use of memorandum templates or the General Officer Memorandum of Reprimand, issued on 20 December 2022 are substantially incorrect and support removal. The Board noted the applicant's admittance of guilt and request for forgiveness; however, found insufficient evidence to support removal of the documents from his record.

2. Upon review of the applicant's request for amendment of his DD Form 214, specifically items 26 (Separation Code) and 28 (Narrative Reason for Separation), the Board concluded there was no error in the preparation of the applicant's DD Form 214 that would warrant an amendment and therefore denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for 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 (AR) 600-8-24 (Officer Transfers and Discharges), currently in effect, prescribes principles of support, standards of service, and policies to support officer transfers and discharges.

a. Paragraph 4-1 (Overview).

(1) An officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

(2) Every officer deserves a fair chance to demonstrate their capabilities. When an officer shows ineffective tendencies (especially if the officer is inexperienced), when practicable, he or she will be given another chance under another commander. The officer's ineffectiveness will be systematically recorded in documents that specify each period covered, duties observed, and defects noted. Recommendations for elimination action will not be based on generalities and vague impressions. It is necessary to document, in writing, the precise reasons an officer is considered ineffective.

b. Paragraph 4-2 (Reasons for Elimination).

(1) Paragraph 4-2b (Misconduct, Moral or Professional Dereliction, or in the Interests of National Security). The paragraph lists 15 reasons for elimination within this subparagraph, to include:

- Intentional misrepresentation of facts in obtaining an appointment or in official statements or records
- Acts of personal misconduct
- Conduct unbecoming an officer

(2) Paragraph 4-2c (Derogatory Information). The paragraph lists 7 reasons for elimination within this subparagraph, to include:

- Adverse information filed in the Soldier's official military personnel file (OMPF) in accordance with AR 600-37 (Unfavorable Information)
- Any substantiated adverse finding or conclusion from an officially documented investigation, proceeding, or inquiry

c. Paragraph 4-17 (Board of Review or Ad Hoc Review Board). Elimination cases served after 20 September 2013 will be reviewed by the Ad Hoc Review Board. The Ad Hoc Review Board is appointed by the Secretary of the Army or designee. The Ad Hoc Review Board, after thorough review of the records of the case, will make recommendations to the Secretary of the Army or designee as to whether the officer should be retained in the Army. Appearance by the respondent (or the counsel) is not authorized.

d. Paragraph 4-19 (Elimination of a Probationary Officer). A probationary officer is any commissioned officer on the active duty list with less than 6 years active commissioned service or a commissioned Reserve officer with less than 6 years commissioned service.

(1) Processing an officer's recommendation for elimination under this paragraph does not require referral to a Board of Inquiry unless the officer declines to elect a resignation in lieu of elimination and an other than honorable discharge is recommended.

(2) If the officer declines to elect a resignation in lieu of elimination, and if an honorable or general discharge (under honorable conditions) is recommended, the U.S. Army Human Resources Command will forward the case to the Deputy Assistant Secretary of the Army (DASA) (Review Boards) for final decision.

3. AR 600-37, currently in effect, 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 OMPF.

a. Paragraph 3-1 (Policies). Unfavorable information will not be filed in a Soldier's OMPF unless the following has occurred:

(1) The Soldier was given the opportunity to review the documentation that serves as the basis for the proposed filing, and he/she was provided a reasonable amount of time to make a written statement in response.

(2) The issuing authority has fully affirmed and documented the unfavorable information.

(3) The unfavorable information meets Federal legal requirements for accuracy, relevance, timeliness, and completeness.

b. Paragraph 7-2 (Appeals – Policies and Standards – Burden of Proof and Level of Evidence Required). 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 a competent authority.

(1) The recipient has the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

(2) Evidence submitted in support of the appeal may include but is not limited to the following: 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) The DASA (RB) is the final decision authority for removal of unfavorable information from the OMPF.

4. AR 635-8 (Separation Processing and Documents), currently in effect, includes policies and procedures for DD Form 214 (Certificate of Release or Discharge from Active Duty) preparation. The regulation states the narrative reason for separation are tied to the Soldier's regulatory separation authority and it directs preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation).

5. AR 635-5-1, currently in effect, states officers separated for unacceptable conduct, per AR 600-8-24, will receive "JNC" as their SPD and item 28 (Narrative Reason for Separation) will state, "Unacceptable Conduct."

6. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//