

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 June 2025

DOCKET NUMBER: AR20240001378

APPLICANT REQUESTS:

- Removal of DA Forms 2166-9-2 (Noncommissioned Officer Evaluation Report (NCOER)) for the periods ending 24 September 2021 and 19 May 2022 from his Army Military Human Resource Record
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- AR 15-6 Investigation
- Memorandum Findings and Recommendations
- Missing Documents from Investigation
- Memorandum Notification of Denial of Continued Active Duty Service
- DA Forms 2823 (Sworn Statement)
- Memorandum Regarding Evaluation Report Appeal

FACTS:

1. The applicant states, in pertinent part, the NCOERs were based off an investigation, which he knows was done unfairly. Documents that were submitted to the investigation officer (IO) were not included in the investigation. A document that was submitted to the IO was altered and not the original that was submitted.

2. The applicant provides and his service record shows:

- On 26 February 2007, he enlisted in the Regular Army
- On 6 January 2021, he received an NCOER, which shows he was rated as presence - exceeded standard; intellect - exceeded standard; leads - exceeded standard; develops - far exceeded standard; achieves - exceeded standard; overall performance - exceeded standard; senior rater overall potential - highly qualified
- On 24 September 2021, he received an NCOER, which shows he was rated as presence - did not meet standard; intellect - met standard; leads - met standard;

develops - did not meet standard; achieves - met standard; overall performance - did not meet standard; senior rater overall potential - qualified

- On 27 September 2021, an AR 15-6 investigation into allegations of misconduct was completed; the investigation packet is available for the Board's review
- On 24 October 2021, the IO made his findings and recommendations, which are available for the Board's review
- The applicant provides documents he believes were missing from the AR 15-6 Investigation
- On 19 May 2022, he received an NCOER, which shows he was rated as presence - did not meet standard; intellect - met standard; leads - did not meet standard; develops - met standard; achieves - met standard; overall performance - did not meet standard; senior rater overall potential - not qualified
- In May 2022, he received notice of his referred NCOER and that he was relieved from his duties; on 19 May 2022, he acknowledged receipt of the relief for cause notice
- On 25 July 2022, he rebutted the decision after the investigation
- On 28 February 2023, the applicant received notification of denial of continued active duty service under the Qualitative Management Program; he would be involuntarily discharged not later than 1 September 2023
- On 1 September 2023, he was honorably discharged from the Army due to non-retention on active duty
- On 2 October 2023, the President of Army Special Review Board stated they denied the appeal of his NCOERs
- On 12 October 2023, he received a memorandum from U.S. Army Human Resources Command stating the Enlisted Special Review Board determined the evidence he submitted does not justify altering or withdrawing the NCOERs

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 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 of the applicant's petition and available military records, the Board determined the AR 15-6 investigation, which found the applicant did not provide adequate support to the majority of his Soldiers, failing to acknowledge receipt and provide updates on actions, providing inaccurate information, not facilitating an environment to provide effective communication and support, to be thorough and the evidence within credible.
2. The applicant was provided the opportunity to present his case to the Army Special Review Board who determined the evidence presented did not establish clearly and convincingly that the evaluations were untrue, unjust, or that action was warranted to correct a material error, inaccuracy, or injustice. The Board concluded the evaluation rendered at the time accurately depicted the applicant's performance and the applicant did not provide documentation to the contrary. Therefore, the Board denied relief.
3. 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
XXX	XXX	XXX	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.

//SIGNED//

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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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.
2. Army Regulation 623-3 (Evaluation Reporting System), effective 1 April 2014 and in effect at the time, prescribed the policies and tasks for the Army's Evaluation Reporting System.
 - a. The rater will document any substantiated finding an an Army or Department of Defense investigation or inquiry, that the rated Soldier committed an act of sexual harassment or sexual assault. Paragraph 2-14 (The Senior Rater) will do the same.
 - b. Army Regulation 60-20 (Army Command Policy) provides policy for when items will be mentioned in a Soldier's evaluation report when substantiated by a completed command or other official investigation to include investigations by civil authorities.
 - c. No reference will be made to an incomplete investigation concerning a Soldier. References will be made only to actions or investigations that have been processed to completion, adjudicated, and had final action taken before submitting and evaluation.

d. Any verified derogatory information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged or awaiting trial. While the fact that a rated Soldier is under investigation or on trial may not be mentioned in and evaluation until the investigation or trial is completed, this does not preclude the rating chain's reference to verified derogatory information. For example, when an interim evaluation report with verified information is made available to a commander, the verified information may be included in the evaluation report. For all evaluation reports, if previously reported information later proves to be incorrect or erroneous, the Soldier will be notified and advised of the right to appeal the evaluation report.

e. An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. The determination regarding adequacy of evidence may be made by the HQDA Evaluation Appeals Branch, National Guard Bureau Appeals Section, or the appropriate State Adjutant General (Army National Guard).

f. Substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Failure to submit an appeal within this time would require the appellant to submit his or her appeal to the ABCMR. The Army Special Review Board will not accept appeals over 3 years old or appeals from Soldiers who are no longer serving on active duty or as part of the U.S. Army Reserve or Army National Guard.

g. The burden of proof in the appeal process rests with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(1) the presumption of regularity will not be applied to the evaluation report under consideration and

(2) action is warranted to correct a material error, inaccuracy, or injustice.

h. Clear and convincing evidence will be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. If the adjudication authority is convinced that an appellant is correct in some or all of the assertions, the clear and convincing standard has been met with regard to those assertions.

i. For a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources. Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions allowing them a good opportunity to observe firsthand the appellant's performance as well as

interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the evaluation report was rendered. The results of a Commander's or Commandant's Inquiry or Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation may provide support for an appeal request.

3. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), 31 March 2014, provided procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army's Evaluation Reporting System. Paragraph 6-1 (Deciding to Appeal) states an appellant who perceives that an evaluation report is inaccurate in some way has the right to appeal for redress to the appropriate agency. However, before actually preparing an appeal, an objective analysis of the evaluation report in question should be made.

4. Army Regulation 600-8-104 (AMHR Management) prescribes Army policy and procedure for the creation, utilization, administration, maintenance, and disposition of the AMHRR.

a. This regulation states the OMPF is reflective of a Soldier's permanent record stored in iPERMS. There are various folders within the OMPF, which document a Soldier's military career. Not every Soldier's OMPF will have the same number and types of folders. The types and number of folders will differ based on career path and status. Table 3-1 notes the OMPF folders in the AMHRR.

b. The performance folder of the OMPF contains performance related information. The primary purpose of this folder is to provide necessary information to officials and selection boards tasked with assessing Soldiers for promotion, special programs, or tours of duty. This folder populates various board related applications (for example, Army Selection Board System and National Guard Army Board System).

c. The restricted folder of the OMPF contains documents that may normally be considered improper for viewing by selection boards or career managers. Includes masked documents defined in paragraph 3-10.

//NOTHING FOLLOWS//