

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240001604

APPLICANT REQUESTS:

- In effect, reinstatement of the rank of staff sergeant (SSG)
- Promotion to sergeant first class (SFC)
- Back pay at the rank of SSG with 12 years of service until April 2012
- Back pay at the rank of SFC with 13 years of service until June 2019
- In effect, retirement with 20 years of service and back pay for retirement to 2019
- In effect, pay for service time lost
- Award of the Korea Defense Service Medal
- Award of the Meritorious Service Medal
- Award of the Distinguished Service Medal
- In effect award of the Army Good Conduct Medal up to 20 years of service
- Correction of her Specific, Measurable, Action-Oriented, Realistic, and Time-bound (SMART) goals to show Warrior Transition Battalion, Korea, and Fort Bragg Dental
- Removal of DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) from her Army Military Human Resource Record (AMHRR)
- Removal of documentation regarding her Special Court-Martial from her AMHRR
- In effect, correction of her Special Court-Martial Order and distribution to show favorable results

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's Request
- Orders 113-07 Promotion to sergeant (SGT), 23 April 2007
- Monthly SGT Promotion Selection Name List, 1 May 2007
- Monthly SSG Promotion Selection Name List, 1 November 2003
- DA Form 4872 (Certificate of Promotion) to SSG, 1 November 2008
- Honorable Discharge Certificate, 30 October 2008
- Oath of Reenlistment Certificate, 31 October 2008

- Eight DA Forms 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)), 31 Augst 2008, 31 Augst 2009, 26 April 2010, 15 January 2011, 1 February 2011, 14 January 2012, 15 January 2012, and 14 February 2013
- Permanent Orders 074-02, Award of the Army Good Conduct Medal (4th Award), 14 March 2012
- Letter from the Army Board for Correction of Military Records (ABCMR), 13 June 2013
- Letter from the Army Discharge Review Board (ADRB), 19 January 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the 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. The applicant states:

a. She was exposed to chemicals and severed bodies, while she was in the military. She was diagnosed with pituitary issues after her first deployment in the Army in 2007. It became more prevalent in later years and an adenoma formed in her brain on her pituitary gland.

b. Unknown to her, this affected her level of irritability. She still motivated others. She had certain senior ranking members of the service within the dental command in Korea and Fort Bragg who harassed her sexually, mentally, and lied about her when they could not find any bad information about her.

c. She still continued to push through adversity, although she was confronted with negativity. She stayed positive the entire time and pushed herself to stay motivated, which was very hard to do. All while trying to maintain a family (husband and a child with special needs).

d. Then she was stricken with cancer. It was very tough. She was in Operation Enduring Freedom and Operation Iraqi Freedom. She was sent a letter from the ABCMR in 2013 that her application would not be considered because she had not exhausted all means of recourse. Now that she has completed the ADRB process, she is sending this application for consideration.

3. The applicant provides:

a. DA Forms 2166-8 (NCOER), show her desired NCOERs and a representation of her work.

(1) An unsigned, unprocessed NCOER from 20 July 2011 through 1 December 2011, in the rank of SSG, her principal duty title was Vocalist U.S. Army Band. The NCOER was completed for her departure on temporary duty and was for a period of 5 months. She was rated excellence in competence, physical fitness and military bearing, leadership, training, and responsibility and accountability. Her rater rated her as among the best. Her senior rater rated her 1 out of 5 in overall performance and overall potential and stated promote to SFC immediately.

(2) An unsigned, unprocessed NCOER from 15 January 2011 through 14 January 2012, in the rank of SSG, her principal duty title was Senior Dental NCO, NCO in charge Camp Carroll Dental Clinic. The NCOER was an annual NCOER and was for a period of 12 months. She was rated excellence in competence, physical fitness and military bearing, leadership, training, and responsibility and accountability. Her rater rated her as among the best. Her senior rater rated her 1 out of 5 in overall performance and overall potential and stated promote to SFC immediately.

(3) An unsigned, unprocessed NCOER from 15 February 2012 through 14 February 2013, in the rank of SSG, her principal duty title was Senior Dental Noncommissioned Officer (NCO), NCO in charge Camp Carroll Dental Clinic. The NCOER was an annual NCOER and was for a period of 12 months. She was rated excellence in competence, physical fitness and military bearing, leadership, training, and responsibility and accountability. Her rater rated her as among the best. Her senior rater rated her 1 out of 5 in overall performance and overall potential and stated promote to SFC immediately.

b. Letter from the ABCMR, 13 June 2013, informed the applicant that she had an open Inspector General (IG) investigation pertaining to the issues she brought before the Board. Since there was an open IG investigation that may affect the issues she addresses in her application, it would be premature for the Board to consider her request until the investigation is completed.

4. The applicant's record contains a DD Form 215, which shows award of the Korea Defense Service Medal (2nd Award). Therefore, this portion of her request will not be considered by this Board.

5. The applicant's service record contains the following documents:

a. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she served in the U.S. Navy from 27 May 1997 to 26 May 2001. She completed 4 years of active service. She was honorably relieved and was transferred to the U.S. Naval Reserve for completion of her required service.

b. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the Regular Army on 9 July 2003. She remained in the Regular Army through immediate reenlistments.

c. Permanent Orders 345-3044, published by Headquarters, U.S. Army Infantry Center, 11 December 2003, awarded her the Parachutist Badge effective 19 December 2003 or upon completion of Airborne training.

d. Certificate of Achievements:

- 9 November 2004, for meritorious achievement in support of the Heidelberg Dental Health Activity (DENTAC) semi-annual weapons qualification range
- 1 June 2005, for meritorious achievement in support of the Heidelberg DENTAC semi-annual weapons qualification range
- 28 November 2005, for meritorious achievement in support of the Heidelberg DENTAC semi-annual weapons qualification range
- 28 November 2005, for attaining a score of 268 with a minimum of 90 in each event on the semi-annual Army Physical Fitness Test (APFT)
- 2 December 2005, for attaining a score of 268 with a minimum of 90 in each event on the semi-annual Army Physical Fitness Test
- 14 October 2010, for her attendance and participation in the Alpha company, WTB The Research and Analysis Center workshop

e. Award of the Army Good Conduct Medal for exemplary behavior, efficiency, and fidelity in the active federal military service for the period of:

- 9 July 2002 through 8 July 2005, no permanent order number
- 9 July 2005 through 8 July 2008, 3rd Award, Permanent Order Number 274-32
- 9 July 2008 through 8 July 2011, 4th Award, Permanent Order Number 074-02

f. Award of the Army Achievement medal:

(1) For meritorious achievement as the Heidelberg DENTAC Soldier of the Quarter. Permanent Order Number 01-08, 16 January 2007.

(2) For outstanding performance while serving as a Dental Assistant for the Heidelberg DENTAC. Permanent Order Number 12-08, 22 January 2007.

(3) For outstanding achievement during the APFT. Permanent Order Number 361-001, 27 December 2007.

(4) For meritorious service while assigned to the 1st Brigade Combat Team, 82nd Airborne Division during operation Iraqi Freedom. Permanent Order Number 143-29, 25 July 2008.

(5) For meritorious achievement as the NCO of the 1st Quarter. Permanent Order Number 005-01, 5 January 2009.

g. Orders 113-07, published by Headquarters, 1st Brigade Combat Team, 504th Parachute Infantry Regiment, 82nd Airborne Division, 23 April 2007, promoted her to SGT effective 1 May 2007.

h. DA Forms 2166-8 (NCOER) show:

(1) From 1 May 2007 through 30 April 2008, in the rank of SGT, her principal duty title was Dental NCO. The NCOER was an annual NCOER and was for a period of 12 months. She was rated success in competence, excellence in physical fitness and military bearing, success in leadership, success in training, and success in responsibility and accountability. Her rater rated her as fully capable. Her senior rater rated her 3 out of 5 in overall performance and overall potential and stated promote with peers.

(2) From 1 May 2008 through 31 August 2008, in the rank of SGT, her principal duty title was Dental NCO. The NCOER was an change of rater NCOER and was for a period of 4 months. She was rated success in competence, excellence in physical fitness and military bearing, success in leadership, success in training, and success in responsibility and accountability. Her rater rated her as fully capable. Her senior rater rated her 2 out of 5 in overall performance and overall potential and stated promote with peers.

(3) From 1 September 2008 through 31 August 2009, in the rank of SSG, her principal duty title was Squad Leader. The NCOER was an annual NCOER and was for a period of 12 months. She was rated excellence in competence, success in physical fitness and military bearing, excellence in leadership, excellence in training, and success in responsibility and accountability. Her rater rated her as among the best. Her senior rater rated her 1 out of 5 in overall performance and 2 out of 5 in overall potential and stated promote with peers.

(4) From 1 September 2009 through 20 April 2010, in the rank of SSG, her principal duty title was Squad Leader. The NCOER was an change of rater NCOER and was for a period of 6 months. She was rated excellence in competence, excellence in physical fitness and military bearing, success in leadership, success in training, and success in responsibility and accountability. Her rater rated her as fully capable. Her senior rater rated her 2 out of 5 in overall performance and 2 out of 5 in overall potential and stated promote to SFC with peers.

(5) From 27 April 2010 through 15 January 2011, in the rank of SSG, her principal duty title was Squad Leader. The NCOER was a change of rater NCOER and was for a period of 9 months. She was rated excellence in competence, excellence in physical fitness and military bearing, success in leadership, success in training, and success in responsibility and accountability. Her rater rated her as among the best. Her senior rater rated her 1 out of 5 in overall performance and in overall potential and stated promote to SFC immediately.

(6) From 16 January 2011 through 15 January 2012, in the rank of SSG, her principal duty title was Dental NCO. The NCOER was an annual NCOER and was for a period of 12 months. She was rated success in competence, success in physical fitness and military bearing, success in leadership, success in training, and success in responsibility and accountability. Her rater rated her as fully capable. Her senior rater rated her 3 out of 5 in overall performance and 2 out of 5 in overall potential and stated servicemember refused to sign the NCOER.

(7) From 16 January 2012 through 4 December 2012, in the rank of SSG, her principal duty title was Dental SGT. The NCOER was a change of rater NCOER and was for a period of 11 months. She was rated needs some improvement in competence - did not accomplish daily tasks to full capability, success in physical fitness and military bearing, needs some improvement in leadership - did not always put mission first; constantly acted confused and unsure what to do, success in training, and needs some improvement in responsibility and accountability - missed accountability formation on more than one occasion. Her rater rated her as marginal. Her senior rater rated her 4 out of 5 in overall performance and in overall potential and stated promotion not recommended, at this time; NCO refused to sign, feels evaluation is not justified.

(8) From 1 April 2013 through 10 October 2013, in the rank of SSG, her principal duty title was Dental Assistant. The NCOER was for discharge and was for a period of 6 months. She was rated excellence in competence, excellence in physical fitness and military bearing, needs much improvement in leadership - demonstrated a serious lack of integrity and poor judgement without consideration of results, success in training, and success in responsibility and accountability. Her rater rated her as marginal. Her senior rater rated her 5 out of 5 in overall performance and in overall potential and stated Soldier reduced to private (PVT) due to court-martial conviction, Soldier is unavailable to sign.

i. Orders 304-02, published by Warrior Transition Battalion, 30 October 2008, promoted her to the rank of SSG effective 1 November 2008.

j. Army Commendation Medal Certificate shows she was awarded the Army Commendation Medal, by Permanent Order 075-02, 16 March 2011 for meritorious service while serving as a squad leader.

k. DA Form 4856 (Developmental Counseling Statement), 7 April 2011 to inform her that she did not utilize the proper chain of command when informing AREA IV command about a Soldier issue. She disagreed with the counseling and signed the form.

l. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 11 April 2011 shows she was flagged for adverse action.

m. DA Form 2627 (Record for Proceedings Under Article 15, Uniform Code of Military Justice) shows she received nonjudicial punishment, in the rank of SSG, for wrongfully soliciting to Specialist G- D- to make to Sergeant First Class S- a false statement; dereliction in the performance of her duties, and communicating a threat. Her punishment was reduction to the rank of SGT. She appealed the punishment stating additional matters were submitted. The additional matters were not available for the Board's review. The appellate authority denied her appeal stating the punishment is appropriate.

n. Special Court-Martial Order Number 2, published by Headquarters, XVIII Airborne Corps and Fort Bragg, 3 January 2014, shows she was found guilty, in the rank of SGT, at a Special Court-Martial on 25 September 2013 of:

- Failing to go to her appointed place of duty on or about 26 March 2012
- Failing to go to her appointed place of duty on or about 3 December 2012
- Willfully disobeying a lawful order from her superior commissioned officer on or about 3 June 2013
- Failing to obey a lawful order from an NCO on or about 25 March 2013
- Disrespecting an NCO on or about 1 June 2012.

Her sentence was to be discharged from the service with a bad-conduct discharge and reduction to the grade of E-1. On 3 January 2014, the Convening Authority approved the sentence, and except for the part of the sentence extending to a bad-conduct discharge, ordered it executed.

o. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged from active duty, in the grade of private/E-1, on 24 June 2015. She completed 4 years, 5 months, and 17 days of service this period with 7 years, 5 months, and 29 days of prior active duty service. She had continuous honorable service from 9 July 2003 through 7 January 2011. She had service in Iraq from 27 May 2007 to 28 May 2008. Her service characterization was upgraded per ADRB Proceedings AR20170007605 on 31 May 2017. Her characterization of service was honorable, her separation code was JFF and reentry code was 4, and the narrative reason for discharge was secretarial authority. She was awarded or authorized the:

- Army Commendation Medal

- Army Achievement Medal (5th Award)
- Meritorious Unit Commendation (2nd Award)
- USCG Unit Commendation
- Army Good Conduct Medal (3rd Award)
- U.S. Navy Good Conduct Medal
- National Defense Service Medal
- Armed Forces Expeditionary Medal (2nd Award)
- Global War on Terrorism Service Medal
- Korea Defense Service Medal (2nd Award)
- Iraq Campaign Medal with Campaign Star
- Noncommissioned Officer Professional Development Ribbon (2nd Award)
- Army Service Ribbon
- Overseas Service Ribbon (4th Award)
- U.S. Navy Sea Service Deployment Ribbon (2nd Award)
- Parachutist Badge
- Expert Marksmanship Badge with Rifle Bar

p. On 5 May 2017, the applicant petitioned the ADRB requesting an upgrade of her under other than honorable conditions discharge to honorable. The ADRB stated in their Case Report and Directive:

(1) On 6 June 2016, during a prior personal appearance, the ADRB reviewed the applicant's case (AR20150019271) and after carefully examining her record of service, during the period of enlistment under review, hearing her testimony, the board determined that clemency was warranted. Accordingly, the board voted to grant relief by changing her characterization of service to UOTHC.

(2) The board action directed was:

- Issue a new DD Form 214 - Yes
- Change characterization to - Honorable
- No change to reason, authority, separation and reentry codes, or restoration of grade

q. On 29 May 2017, the applicant petitioned the ADRB requesting a change to her narrative reason for retirement in ADRB Docket Number AR20230005358. The board action directed was:

- Issue a new DD Form 214 - Yes
- Change characterization to - No Change
- Change reason/separation code to - Secretarial Authority/JFF
- Change reentry code to - RE 3

- Change authority to Army Regulation 635-200 (Active-Duty Administrative Separations), Chapter 15

r. The applicant's service record is void of documentation showing she was recommended for promotion or considered for promotion to SFC.

s. The applicant's service record is void of documentation showing she was recommended for award of the Meritorious Service Medal or the Distinguished Service Medal.

t. The applicant's service record shows she was awarded the Army Good Conduct Medal for her period of service from 9 July 2008 to 8 July 2011. There is no indication she was awarded the award after 8 July 2011.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Reinstatement of the rank of staff sergeant (SSG): DENY, based upon the reduction in rank resulting from a separation based upon misconduct, and the applicant holding the rank of PVT/E1 at the time of separation.
- Promotion to sergeant first class (SFC): DENY, based upon the lack of evidence the applicant was promoted to the rank of SFC and held the rank of SFC at the time of separation.
- Back pay at the rank of SSG with 12 years of service until April 2012: DENY, based upon the applicant failing to retain the rank of SSG through the requested period of service.
- Back pay at the rank of SFC with 13 years of service until June 2019: DENY, based upon the lack of evidence showing the applicant obtained the rank of SFC during her period of service.
- Change the narrative reason for separation to retirement: DENY, based upon the current narrative reason for separation accurately depicting the reasons and events leading to the applicant's separation.
- Pay for service time lost: DENY, based upon the lack of proper justification; based upon regulatory guidance, pay is not distributed for lost time.

- Award the Korea Defense Service Medal: DENY, based upon the previously issued DD Form 215 adding the KDSM to the applicant's record.
- Award of the Meritorious Service Medal: DENY, based upon the pattern of misconduct in the applicant's record, and the lack of evidence showing the applicant was submitted for and approved for the MSM.
- Award of the Distinguished Service Medal: DENY, based upon the pattern of misconduct in the applicant's record, and the lack of evidence showing the applicant was submitted for and approved for the DSM.
- Award of the Army Good Conduct Medal up to 20 years of service: DENY, based upon the pattern of misconduct within the applicant's record; as a result of that misconduct, the Board concluded there was insufficient evidence to warrant awarding additional AGCMs to the applicant.
- Correction of her Specific, Measurable, Action-Oriented, Realistic, and Time-bound (SMART) goals to show Warrior Transition Battalion, Korea, and Fort Bragg Dental: DENY, based upon these documents and goals being utilized for SMs who currently serve on military duty status and the applicant no longer serving in a military duty status, the Board concluded there was insufficient justification for making any change.
- Removal of Article 15 from the AMHRR: DENY, based upon the misconduct in the record leading to the Article 15 and the lack of evidence all due process rights were afforded to the applicant during the processing of the Art 15.
- Removal of Special Court-Martial from the AMHRR: DENY, based upon the misconduct leading to the SCM and the lack of evidence all due process rights were afforded to the applicant during the processing of the SCM.
- Correction of the Special Court-Martial Order and distribution to show favorable results: DENY, based upon the court order accurately depicting the results of the SCM.

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 27-10 (Military Justice), prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial (MCM), United States, 2005, hereafter referred to as the MCM and the Rules for Courts-Martial (R.C.M.) contained in the MCM. Paragraph 3-19(6) (d) (Void reduction), any portion of a reduction under Article 15 beyond the imposing commander's authority to reduce is void and must be set aside. Where a commander reduces a Soldier below a grade to which the commander is authorized to reduce and if the circumstances of the case indicate that the commander was authorized and intended to reduce the Soldier at

least one grade, a one-grade reduction may be approved. Also, if a reduction is to a lower specialist grade when reduction should have been to a lower NCO grade (or vice versa), administrative action will be taken to place the offender in the proper rank for the MOS held in the reduced pay grade. All rights, privileges, and property, including pay and allowances, of which a Soldier was deprived by a reduction that has been set aside must be restored.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system.

a. Soldiers promoted to PV2 through SGM entitled to a promotion effective date that exceeds 6-months prior to the date of the promotion instrument, the following will be entered in the special instructions: Because the effective date of the promotion exceeds this instrument by more than 6-months, the Defense Joint Military Pay System will automatically pay up to 12-months of back pay entitlements. Your next leave and earnings statement will reflect such payment. If you are due back pay in excess of 12-months, upon receipt of your leave and earnings statement that reflects back pay, provide your servicing finance and accounting office (FAO) with a copy of the instrument. Your servicing FAO will initiate procedures under the provisions of the DOD Financial Management Regulation 7000.14-R, Volume 7A, table 1-4, rule number 12, which will result in you receiving any additional back pay to which you are entitled.

b. Paragraph 1-28 (Noncommissioned Officer Education System requirement for promotion and conditional promotion), a. Soldiers (all components) must complete the following PME courses as follows: completion of Structured Self Development (SSD) 3 is an eligibility requirement for promotion consideration to SFC and graduation of the Senior Leaders Course (SLC) is a promotion requirement to SFC. d. There are no military education waivers to attain eligibility for promotion consideration or pin-on.

c. Paragraph 4-3 c, the selection board will recommend a specified number of best qualified Soldiers by Military Occupational Specialty (MOS) from the zones of consideration to meet the needs of the Army. The total number selected for each MOS is the projected number the Army needs to maintain its authorized-grade strength.

d. Paragraph 4-9, a. Soldier must meet the announced eligibility requirements for board consideration. b. Soldier will review and authenticate his ERB information in

accordance with procedures outlined in board announcement messages. c. Soldiers will review their AMHRR online at <https://iperms.hrc.army.mil> prior to a board. Serving S1, MPD, and/or military HR offices will assist Soldiers by submitting authorized AMHRR documents in accordance with AR 600-8-104.

5. Title 31, U.S. Code, section 3702, is the 6-year barring statute for payment of claims by the Government. In essence, if an individual brings a claim against the Government for monetary relief, the barring statute states the Government is only obligated to pay the individual 6 years in arrears from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records is not bound by the barring act. The Board for Correction of Military Records decision creates a new entitlement to payment and the 6-year statute begins again. Payment is automatic and not discretionary when a Board for Correction of Military Records decision creates an entitlement.

6. Army Regulation 600-37 (Unfavorable Information), 2 October 2020, 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. Paragraph 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) states:

(1) Authority for Filing in the Local File. There are only two filing options: filing in the performance portion of the AMHRR, or local filing. Commanders do not have the option to file memoranda in the restricted folder of the AMHRR. If local filing is intended, the memorandum does not need to be referred to a higher authority for review.

(2) 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) a 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 convening authority jurisdiction over the recipient, or the designee of the general court-martial convening authority.

b. Filing in AMHRR. Memoranda filed in the AMHRR will be filed in the performance folder. Directions for filing in the AMHRR will be contained in an endorsement or addendum to the memorandum.

c. Paragraph 7-2d (Burden of Proof and Level of Evidence Required) states once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority.

(1) The recipient bears the burden of providing substantial evidence that the intended purpose of the document has been served in support of a request for the transfer of any official memoranda of reprimand, admonition, censure, or record of proceedings pursuant to Article 15, Uniform Code of Military Justice, from the performance folder to the restricted folder of the recipient's AMHRR.

(2) The recipient must indicate how the transfer of the unfavorable information would be in the best interest of the Army, thereby warranting transfer of the document to the restricted folder of the AMHRR. Such evidence may include, but is not limited to: statements of support from the imposing authority, the Soldier's current chain of command, the Soldier's chain of command at the time of imposition, and/or other memoranda of support; subsequent evaluation reports (other than academic); notarized witness statements; official documents; court documents; statements of remorse; documents demonstrating rehabilitation; other documents proving the intended purpose of the document has been served; and legal documents.

7. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 April 2014, prescribes policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the Official Military Personnel File, finance-related documents, and non-service related documents deemed necessary to store by the Army. 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 another authorized agency.

8. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. The regulation in effect at the time, dated 11 December 2006, stated:

a. The Meritorious Service Medal is awarded to members of the Armed Forces of the United States or of a friendly foreign nation who distinguish themselves by outstanding meritorious achievement or service. After 16 January 1969 but prior to 11 September 2001, the Meritorious Service Medal was authorized to be awarded only

for meritorious service or achievement while serving in a non-combat area. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

b. The Distinguished Service Medal (DSM) is awarded to any person who, while serving in any capacity with the U.S. Army, has distinguished himself or herself by exceptionally meritorious service to the Government in a duty of great responsibility. The performance must be such as to merit recognition for service which is clearly exceptional. Exceptional performance of normal duty will not alone justify an award of this decoration. For service not related to actual war, the term "duty of great responsibility" applies to a narrower range of positions than in time of war and requires evidence of conspicuously significant achievement. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of high positions of great importance.

c. The Army Good Conduct Medal is awarded to individuals who distinguish themselves by their conduct, efficiency, and fidelity. This period is 3 years except in those cases when the period for the first award ends with the termination of a period of active Federal military service. There is no right or entitlement to the medal until the immediate commander has approved the award and the award has been announced in permanent orders. Although there is no automatic entitlement to the Army Good Conduct Medal, disqualification must be justified.

d. Personal Decorations: Paragraph 1-14 states, except for award recommendations submitted in accordance with the provisions of Section 1130, Title 10, United States Code (10 USC 1130), which is outlined below, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored, with the exception of the Medal of Honor, Distinguished Service Cross, and Distinguished Service Medal. An award recommendation will be considered to have been submitted into military channels when it has been signed by the initiating officer and endorsed by a higher official in the chain of command. However, pursuant to 10 USC 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army will make a determination as to the merit of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting requirements under 10 USC 1130.

(1) 10 USC 1130 allows the Service Secretary concerned to review a proposal for the award of, or upgrading of, a decoration that is otherwise precluded from consideration by limitations established by law or policy. In order to request an award under Title 10 USC 1130, you must submit a DA Form 638 (Recommendation for

Award). The DA Form 638 should clearly identify the members unit, the period of assignment, and the award being recommended. A narrative of the actions or period for which the member is requesting recognition must accompany the DA Form 638. In addition, the award request should be supported by sworn affidavits, eyewitness statements, certificates, and related documents. Corroborating evidence is best provided by commanders, leaders, and fellow Soldiers who had personal (i.e., eyewitness) knowledge of the circumstances and events relative to the request.

(2) 10 USC 1130 also requires that a request of this nature be referred to the Service Secretary from a Member of Congress. Therefore, the member must submit their request through a Member of Congress who will send it to the United States Army Human Resources Command, ATTN: AHRC-PDP-A, 1600 Spearhead Division Avenue, Fort Knox, KY 40122. The burden and costs for researching and assembling documentation to support approval of requested awards and decorations rest with the requestor.

9. Army Regulation 635-200 (Active-Duty Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 3 provided that an enlisted person would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

d. Soldier of the Regular Army must be on active duty, when they retire. Years of service for retirement are computed by adding all active Federal service in the Armed Forces. A Soldier who has completed 20 but less than 30 years of Active Federal Service in the U.S. Armed Forces may be retired at his or her request. The Soldier must have completed all required service obligations, at the time of retirement.

//NOTHING FOLLOWS//