

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240002192

APPLICANT REQUESTS: in effect, removal of the referred marking and unfavorable Army Physical Fitness Test (APFT) entries from his DA Form 67-10-1 (Company Grade Plate (O1 – O3; WO1 – CW2) Officer Evaluation Report (OER)) covering the period 17 June 2019 through 16 April 2020.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DA Form 67-10-1
- Evaluation Record Letter of Referral, Rated Officer Response Memorandum (Remarks Regarding Referred OER from 17 June 2019 through 16 April 2020 for (Applicant)), 13 May 2020
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 29 October 2020

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 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. The applicant states his OER covering the period 17 June 2019 through 16 April 2020 was referred due to an APFT failure. That APFT was first announced as a diagnostic test and his command sergeant major changed the APFT to a record test after the test had already begun. His commander rendered a change-of-rater OER because he transferred out of the unit for mobilization and no other APFT was conducted during the rating period. This was during the Coronavirus Disease 2019 (COVID-19) pandemic. Due to COVID-19 restrictions at the time, he was not allowed to take another APFT. The COVID-19 regulations also nullified that APFT failure since he had already passed an APFT during the time frame dictated by the Army. However, this referred OER is still filed in his records.

3. He was appointed as a Reserve commissioned officer of the Army on 6 May 2016.

4. He was given the contested OER covering the period 17 June 2019 through 16 April 2020 (10 rated months), which addressed his duty performance as the Terminal Management Team Officer in Charge. His rater was Major [REDACTED] Battalion Executive Officer, and his senior rater was Lieutenant Colonel [REDACTED] Battalion Commander. His rater and senior rater digitally signed the OER on 25 May 2020 and 26 May 2020. He signed the OER on 26 May 2020. The OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry, "Change of Rater";

b. Part II (Authentication), block d (This is a Referred Report, Do You Wish to Make Comments?), a checkmark was placed in the appropriate block, signifying to him that he was receiving a referred report. In that same block, a checkmark was placed in the "Yes" block, indicating he wished to make comments;

c. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes):

(1) block a (APFT Pass/Fail/Profile), the entry "Fail" on 7 March 2020. His rater entered the following comment: "[Applicant] failed the 2-mile Run."

(2) block b (This Officer's Overall Performance is Rated as), his rater rated his performance as "Proficient" and entered the following comments: "[Applicant] is an outstanding officer. He performed exceptionally well as the Terminal Team OIC [Officer in Charge]. [Applicant] worked tirelessly and played a key role in building his terminal team and ensuring that all administrative, operational and training requirements were always met and in compliance. [Applicant's] command of his team along with his proficiency in operations and logistics were key inputs to the battalion's success";

d. Part IV, block c1 (Character), his rater entered the following comments: "[Applicant] is a disciplined leader who always display[s] a positive demeanor. He takes responsibility for the welfare of his Soldiers, both professionally and as individuals. [Applicant] has great interpersonal skills and he is capable of bringing his team together to accomplish all assigned missions. [Applicant] fully supports the Army's SHARP [Sexual Harassment/Assault Response and Prevention], EO [Equal Opportunity] and EEO [Equal Employment Opportunity] programs and policies";

e. Part IV, block c2 (Presence), his rater entered the following comments: "[Applicant] is a confident leader with a strong command presence. He is intelligent, articulate and adaptive. [Applicant] is a steady presence under stressful conditions. His

discipline always imparts confidence to his team, allowing them to achieve and successfully perform their assigned missions and tasks";

f. Part IV, block c3 (Intellect), his rater entered the following comments: "[Applicant's] understanding of unit operations and requirements are an immeasurable asset to the unit. He clearly understands the Commander's intent and mission requirements. [Applicant] is able to think critically, generate solutions to accomplish his mission, and actively sought a better understanding of his operational mission by seeking an enhanced understanding of the IT [Information Technology] systems his team uses";

g. Part IV, block c4 (Leads), his rater entered the following comments: "[Applicant] has an active leadership style that has allowed him to develop, educate, and grow his team. His infectious enthusiasm has helped him build a strong, effective, and close-knit team. [Applicant] is able to articulate a clear vision, build consensus, and motivate his element";

h. Part IV, block c5 (Develops), his rater entered the following comments: "[Applicant] has trained, developed, and maintained his Terminal Management Team into an organization that is capable of achieving all assigned tasks and missions";

i. Part IV, block c6 (Achieves), his rater entered the following comments: "[Applicant] achieved positive results in all assigned tasks, and consistently delivers results";

j. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), his senior rater rated his potential as "Highly Qualified"; and

k. Part VI, block c (Comments on Potential), his senior rater entered the following comments: "[Applicant] is an energetic junior officer consistently displaying the desire to learn. Promote to Captain with peers and send to Captain's Career Course."

6. He acknowledged the contested OER by memorandum on 13 May 2020 and submitted the following comments: "I was unable to take APFT in April due to COVID-19 restrictions."

7. Headquarters, 1179th Transportation Surface Brigade, Orders 20-107-00012, 16 April 2020, released him for mobilization from his current assignment and assigned him to the 1185th Deployment and Distribution Support Battalion, Lancaster, PA, effective 17 April 2020.

8. Headquarters, U.S. Army Reserve Deployment Support Command, Orders VR-162-0007, 10 June 2020, ordered him to active duty as a member of his Reserve

Component unit for a period of 400 days for the purpose of activation in support of Operation Freedom's Sentinel with a reporting date of 1 November 2020.

9. On 9 October 2021, he was honorably released from active duty by reason of completion of required active service. His DD Form 214 shows he completed 11 months and 11 days of net active service during this period.

10. A review of his Army Military Human Resource Record (AMHRR) shows the contested OER is filed in the performance folder.

BOARD DISCUSSION:

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 applicant's 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 comments surrounding the APFT are substantially incorrect and support removal. Therefore, the Board 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.

3/25/2025

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. 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 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policy for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 3-26 (Referred Evaluation Reports) states any report with negative remarks about the rated officer's Values or Leader Attributes/Skills/Action in rating official's narrative evaluations will be referred to the rated officer by the senior rater for acknowledgment and comment before being forwarded to Headquarters, Department of the Army.

b. Paragraph 3-28 states the referral process ensures the rated Soldier knows that his/her OER contains negative or derogatory information and affords him/her the opportunity to sign the evaluation report and submit comments, if desired.

(1) The senior rater will refer a copy of the completed OER or academic evaluation report (AER) (an OER or AER that has been signed and dated by the rating officials) to the rated Soldier for acknowledgment and comment.

(2) Upon receipt of the rated officer's acknowledgment (for example, receipt of a signed OER or AER, email, signed certified mail document, signed acknowledgment statement accompanying memorandum, submission of signed comments, and so forth), the senior rater will enclose it, any written comments provided by the rated officer, and the referral memorandum, with the original OER or AER for forwarding to the reviewer (if applicable).

(3) If the senior rater (for OERs) or reviewing official (for AERs) decides the comments provide significant new facts about the rated Soldier's performance that could

affect the evaluation of the rated Soldier, he or she may refer the comments to the other rating officials, as appropriate. The rating officials, in turn, may reconsider their evaluations of the rated Soldier. The senior rater or reviewing official will not pressure or influence another rating official. Any rating official who elects to raise their evaluation as a result of this action may do so. However, the evaluation may not be lowered because of the rated Soldier's comments. If the OER or AER is changed but still requires referral, the OER or AER will again be referred to the rated Soldier for acknowledgment and the opportunity to provide new comments, if desired. Only the latest acknowledgment ("YES" or "NO" on OER or AER signed by the rated Soldier) and the rated Soldier's comments, if submitted, will be forwarded to Headquarters, Department of the Army.

c. Paragraph 4-7 states evaluation reports accepted for inclusion in the official record of an officer are presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

d. Paragraphs 4-11a and b state an evaluation report accepted for inclusion in the official record of a rated Soldier's Official Military Personnel File is presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of the rating officials at the time of preparation. The burden of proof rests with the applicant. Accordingly, to justify deletion or amendment of a report, the applicant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration and action is warranted to correct a material error, inaccuracy, or injustice.

e. Paragraph 4-11d states 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 (see Department of the Army Pamphlet 623-3 (Evaluation Reporting System)). 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 report was rendered.

f. Paragraph 4-13a(2) states limited support is provided by statements from people who observed the appellant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances); letter of commendation or appreciation for specific but unrelated instances of outstanding performance; or citations for awards, inclusive of the same period.

4. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to Department of the Army. Paragraph 2-28 provides that:

a. If a referred OER is required, the senior rater will place an "X" in the appropriate box in Part IId of the completed OER. The OER will then be given to the rated officer for signature and placement of an "X" in the appropriate box in Part IId.

b. The rated officer may comment if he or she believes the rating and/or remarks are incorrect. The comments must be factual, concise, and limited to matters directly related to the evaluation rendered in the OER; rating officials may not rebut rated officer's referral comments.

c. The rated officer's comments do not constitute an appeal. Appeals are processed separately. Likewise, the rated officer's comments do not constitute a request for a Commander's Inquiry. Such requests must be submitted separately.

5. Army Regulation 600-8-104 (Army Military Human Resource Records Management), prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. 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 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

6. Army Regulation 350-1 (Army Training and Leader Development) prescribes policies, procedures, and responsibilities for developing, managing, and conducting Army training and leader development. Paragraph F-5 states:

a. The APFT provides an assessment of the physical readiness training program. Physical conditioning or training periods solely devoted toward meeting APFT requirements are highly discouraged.

b. Commanders may administer the APFT as often as they wish; however, they must specify beforehand when the results are for record. Soldiers will take the APFT twice each calendar year. A minimum of 4 months will separate record tests. Soldiers that require make-up testing or re-testing for an APFT failure are exempt from the 4-month rule. The intent is for Soldiers to take a record APFT every 6 months.

c. Soldiers who fail a record APFT for the first time or fail to take a record APFT within the required period will be flagged in accordance with Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag)). In the event of a record test failure, commanders may allow Soldiers to retake the test as soon as the Soldier and the commander feel the Soldier is ready.

7. Department of the Army Military Personnel Message Number 20-087 (Policy and Processing Guidance in Response to Novel COVID-19 Impacts to the New DA Form 1059 Series (AERs), DA Form 67-10 Series (OERs), and DA Form 2166-9 Series (Noncommissioned Officer Evaluation Reports)), 27 March 2020, provided guidance and reinforced Army policy and procedures for documenting the absence of APFTs and height/weight compliance in response to COVID-19 restrictions for evaluations with a "THRU DATE" of 11 March 2020 and after. Paragraph 5 states:

a. APFT requirements are administered in accordance with Army Regulation 350-1.

b. Rater's will enter "PASS" or "FAIL" and the date (YYYYMMDD) of the most recent record APFT administered by the unit within the 12-month period prior to the "THRU" date of the evaluation. If the APFT has not been taken within 12 months of the "THRU" date, the APFT data entry will be left blank, by selecting "NO APFT" from the drop down menu in the Evaluation Entry System, and the rater will provide an explanation in the provided comments section.

c. For evaluation reports with a "THRU DATE" of 11 March 2020 or later, Soldiers who are unable to take a record APFT due to the COVID-19 outbreak will select "NO APFT" from the drop down menu in the Evaluation Entry System and the rater will explain the absence of APFT data in the provided comments section. Rater comments must highlight COVID-19 as the contributing factor. Lack of an APFT due to COVID-19 will not result in a derogatory or referred report.

d. Soldiers who are missing a record APFT unrelated to the COVID-19 outbreak will adhere to procedural guidance found in Army Regulation 623-3 and Department of the Army Pamphlet 623-3.

//NOTHING FOLLOWS//