

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240002230

APPLICANT REQUESTS: removal of the DA Form 67-10-2 (Field grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 22 February 2020 through 21 February 2021 and associated documents from his Army Military Human Resource Record (AMHRR).

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)
- U.S. Army Japan Memorandum (Request for Removal of OER (Applicant), 22 February 2020-21 February 2021), 24 February 2024, with 42 Enclosures –
  - Enclosure 1 – Contested OER
  - Enclosure 2 – Army Special Review Board (ASRB) Docket Number AR20230004028, 5 December 2023
  - Enclosure 3 – U.S. Army Military District of Washington (MDW) Memorandum (General Officer Memorandum of Reprimand (GOMOR)), 6 August 2020
  - Enclosure 4 – Department of the Army Suitability Evaluation Board (DASEB) Docket Number AR20220001150, 15 March 2022
  - Enclosure 5 – Army Regulation 623-3 (Evaluation Reporting System), 14 June 2019 (pages 91 through 93)
  - Enclosure 6 – U.S. Army Human Resources Command (HRC) Memorandum (Evaluation Report Appeal (22 February 2020-21 February 21 February 2021), 25 January 2024
  - Enclosure 7 – Excerpt of Former Commander's Cross Examination Interview (source not identified)
  - Enclosure 8 – Headquarters, 8th Theater Sustainment Command (TSC), Memorandum (GOMOR), 6 February 2020
  - Enclosure 9 – two Memoranda of Support (Sworn Statements on Behalf of (Applicant)), 10 and 12 February 2020
  - Enclosure 10 – Headquarters, 8th TSC, Memorandum (Filing Determination on Reprimand), 28 February 2020

- Enclosure 11 – two Headquarters, U.S. Army Pacific Command (USARPAC), Memoranda (Verbal Orders of Commanding Officer (VOCO) for (Applicant)), 7 and 8 May 2020
- Enclosure 12 – U.S. Army Criminal Investigation Command (CID) Memorandum (Law Enforcement Report – Final), 14 April 2020
- Enclosure 13 – Statement of USARPAC Assistant Chief of Staff, Financial Management (G-8)), undated
- Enclosure 14 – List of Documents Provided to the Joint Staff Investigating Officer (IO) on 14 May 2020
- Enclosure 15 – Fort Myer Legal Assistance Office Email (Reply: (Applicant)), 7 July 2020
- Enclosure 16 – MDW Memorandum (Filing Determination on Reprimand – (Applicant)), 23 September 2020
- Enclosure 17 – MDW Memorandum (Initiation of Elimination), 23 September 2020
- Enclosure 18 – MDW Memorandum (Request for Removal of GOMOR of (Applicant)), 3 February 2022, with 44 Enclosures
- Enclosure 19 – HRC Email (Reply: Promotion Orders Attached), 5 May 2022
- Enclosure 20 – HRC Promotion Order, undated
- Enclosure 21 – Fort Myer Legal Assistance Office Email (Reply: (Applicant)), 1 June 2020
- Enclosure 22 – Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers), 1 April 2016 (page 33 only)
- Enclosure 23 – Fort Myer Legal Assistance Office Email (Reply: (Applicant)), 2 June 2020
- Enclosure 24 – Joint Staff Instruction 5820.01 (Administrative Inquiries), 24 February 2020 (page 1 only)
- Enclosure 25 – Former Battalion Commander's Email (Reply: Joint Staff Inquiry – (Applicant)), 4 December 2021
- Enclosure 26 –
- Headquarters, Joint Base Myer-Henderson Hall, Memorandum (Notification of Initiation of Adverse Action Personnel Action (Flag)), 27 May 2020
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 27 May 2020
- Enclosure 27 – Former Battalion Commander's Memorandum (Evaluation Report Appeal Endorsement for (Applicant), 22 February 2020-21 February 2021), 2 February 2024
- Enclosure 28 – U.S. Army Corps of Engineers Memorandum (Evaluation Report Appeal Endorsement for (Applicant), 22 February 2020-21 February 2021), 9 November 2023

- Enclosure 29 – Joint Staff Memorandum (Acceptance of U.S. Army Officer (Applicant) to the Joint Staff), 23 July 2019
- Enclosure 30 – Department of Defense (DOD) Instruction 1315.20 (Management of DOD Foreign Area Officer (FAO)), 28 September 2007 (pages 3 and 8 only)
- Enclosure 31 – OER Covering the Period 7 January 2019 through 21 February 2021
- Enclosure 32 – OERs Covering the Periods 2 June 2018 through 6 January 2019 and 11 December 2017 through 1 June 2018 (page 2 only)
- Enclosure 33 – OERs Covering the Periods 22 June 2022 through 30 May 2023 and 31 May 2023 through 18 September 2023 (page 2 only)
- Enclosure 34 – Fiscal Year 2023 (FY23) Colonel (COL) Promotion Board Analysis, 15 February 2023
- Enclosure 35 – FAO, FY22, Senior Service College (SSC) Selection Trends, 4 October 2022
- Enclosure 36 –
- Show Cause Board Recommendation, undated
- MDW Memorandum (Action on Report of Proceedings by Board of Officers – (Applicant)), 30 March 2021
- Enclosure 37 – Applicant's Email (Reply: Ask), 16 through 22 February 2024
- Enclosure 38 – Defense Counterintelligence and Security Agency Memorandum (Intent to Revoke Eligibility for Access to Classified Information, Assignment to Duties that have been Designated National Security Sensitive, and Access to Sensitive Compartmented Information (SCI)), 14 November 2022
- Enclosure 39 – Defense Counterintelligence and Security Agency Memorandum (Favorable Security Determination after Due Process), 30 January 2023
- Enclosure 40 – Department of the Army Pamphlet 600-3 (Officer Talent Management), 14 April 2023 (pages 27 and 28 only)
- Enclosure 41 – Applicant's Memorandum (Request to Defer Consideration for FY24 COL Promotion Selection Board), 26 June 2023
- Enclosure 42 – HRC Memorandum (Request for (Applicant) to Opt Out of Consideration by the FY24 COL Promotion Selection Board), 1 September 2023

FACTS:

1. The applicant states the contested OER was the result of a flawed adverse administrative action and issuance of a GOMOR, which the DASEB later determined was unjust and untrue, and directed its removal from his AMHRR (see enclosure 4).

However, the DASEB could not direct removal of the OER from his AMHRR. He requests removal of the OER and associated documents from his AMHRR to correct the error and injustice that will significantly impact his military career.

a. While the contested OER itself is not adverse, it was generated because of the adverse administrative action and GOMOR, which caused his placement in a nonexistent "Special Projects Officer" principal duty position (see Part III – Duty Description). He feels this placement outside of his career field hindered his career progression. The contested OER will continue to raise questions by future promotion boards or competitive boards that recognize his placement in a "made-up" duty position as a major (MAJ) at a garrison headquarters with a substandard narrative and a "HIGHLY QUALIFIED" rating when he should have been rated as a member of the Joint Staff.

b. He filed an appeal to remove the contested OER on 21 November 2023, but the ASRB denied his appeal on 25 January 2024 (see enclosure 6). He believes the ASRB erred by not removing the OER and feels an injustice remains considering the following:

(1) The ASRB only looked at the OER to determine errors or unfairness and did not consider the injustice of the circumstances of its creation. The ASRB also did not correctly conclude there was an error or that removal was warranted to correct a material error, inaccuracy, or injustice. The error and unfairness preceded the OER's creation. The ASRB noted the DASEB's determination and vote to remove the GOMOR and all related documents from his AMHRR, but stated this action had no bearing on the ratings and comments of the contested OER.

(2) If the flawed adverse action and GOMOR had never occurred, he would not have received the contested OER with a "made-up" duty title under the same rating chain that recommended the second flawed GOMOR based on the underlying facts of the first flawed GOMOR filed in his AMHRR. When he was issued the OER, his rating chain believed he deserved a GOMOR for alleged misconduct (see enclosure 7). These circumstances placed the rater and senior rater (SR) in an impossible position while he was performing duties outside his area of concentration (AOC). This caused the rating to be arbitrary regarding his performance. There is no way to separate the OER from the flawed adverse action, GOMOR, and related DASEB proceedings.

c. Factual Background:

(1) This started with an allegation that he was committing travel voucher fraud. The complaint went directly to CID, purposely bypassing and never involving his chain of command (CoC), until it reached the then-8th TSC Commanding General (CG) as a GOMOR (see enclosure 8). If the complaining individual had used proper channels and spoken with his CoC, they would have known he was given VOCO authority to conduct

alternative language training (see enclosure 11). After his CoC responded, the CG (see enclosure 9) ordered withdrawal and destruction of the GOMOR (see enclosure 10). This should have been the end of it, but a loose end was never closed despite the best efforts of his CoC at USARPAC.

(2) The DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) was never submitted (see enclosure 12) and the VOCO authorization was never processed by the Defense Finance and Accounting Service (DFAS). This resulted in initiation of a debt collection action (see enclosure 13). He transferred from USARPAC to the Joint Staff at the Pentagon in late February 2020. When he arrived, a Joint Staff Inquiry was initiated to investigate the erroneous debt. He was once again investigated for allegations of travel voucher fraud and making a false official statement because CID never properly closed the initial case. He would never have been allowed to execute a permanent change of station to the Pentagon if he were not fully exonerated. These allegations were related to the prior allegations, but the Joint Staff IO declared that he committed fraud.

(3) The Joint Staff IO's "inquiry" was based solely on the CID file from the prior allegation. This should have been a case of double jeopardy, but double jeopardy does not exist for administrative actions. If so, this would have been because the new allegations were based on the withdrawn and destroyed reprimand (see enclosure 10). He submitted all pertinent documents to the IO (see enclosure 14), but these were purposely omitted from the IO's findings, which made him look guilty for something for which he had already been cleared. His testimony and evidence exonerating him of any wrongdoing were not included in the IO's findings. Despite the prior allegations being found wholly unsubstantiated, he was investigated a second time, even after evidence was presented to the IO and the staff judge advocate (SJA) for the general court-martial convening authority (GCMCA). The allegation ultimately led to a second reprimand, which brought up the first reprimand and they both appeared in his AMHRR by September 2020.

(4) He and his legal adviser notified the MDW SJA that he had been cleared of these allegations, but the MDW SJA completely ignored these facts (see enclosure 15). As a result, he was wrongfully released from assignment to the Joint Staff, the GCMCA ordered a GOMOR placed in his permanent file for the same allegations that were previously unfounded (see enclosure 16), his pending promotion to lieutenant colonel (LTC) was halted, and the GCMCA initiated action to eliminate him from the Army (see enclosure 17).

(5) As previously mentioned, the DASEB directed removal of the GOMOR and all related documents from his AMHRR on 13 April 2022 (see enclosure 4). The DASEB's decision was retroactive and resulted in his retroactive promotion to LTC effective 1 June 2020 (see enclosure 19). Unfortunately, the DASEB's directive only

partially remedied the injustice he has faced for 5 years. This created significant second and third orders of effect that were not resolved by simply removing the GOMOR.

d. Administrative Errors Created by Retention of the OER:

(1) This OER contains several administrative errors; his date of rank and rated rank are incorrect because his retroactive promotion to LTC was effective 1 June 2020 and precede the evaluation date (see enclosure 20). He was rated as a MAJ during this rating period.

(2) To correct this error through administrative adjustment, the SR's profiles would have to be recalculated to LTC. Furthermore, administrative corrections can only change administrative data, but cannot adjust box checks. Therefore, the OER cannot be amended through administrative adjustment.

e. Retention of the OER in his AMHRR is an injustice because the OER was written when the rater and SR recommended permanently filing the unjust and untrue GOMOR (see enclosure 7). The rater and the SR denied his rights (see enclosure 21) to respond to adverse information in a report of proceedings (see enclosure 22) under Army Regulation 15-6, paragraph 5-4. The refusal of his response rights claimed the Joint Service Instruction was a Rules for Court Martial 303 inquiry (see enclosure 23). This required appointment by a commander with Uniform Code of Military Justice (UCMJ) authority, which does not exist at the Joint Staff, and it would have countered the limited scope authorized by the Joint Service Instruction (see enclosure 24). It was also erroneously asserted that he would get his GOMOR referral process. His CoC (also his rater and SR) wrongfully denied his due process rights and allowed an immediate imposition of an adverse action flag, not a Commander's Inquiry flag (see enclosure 26). If he had been given the opportunity to explain and respond to the questions of this inquiry, the GOMOR would not have been issued. Furthermore, he should never have been in a situation to receive an OER in a "made-up" special projects position.

f. The rater and SR were clearly biased as indicated when they were questioned and admitted that he was given a lower rating because of the unjust and untrue GOMOR even though he excelled at every task. He would have received higher ratings from both the rater and SR without the knowledge of the GOMOR, which creates another injustice if the OER is not removed from his AMHRR. The rater and SR also noted he would not have been in their rating chain had it not been for the unfounded allegations that resulted in the GOMOR.

g. He was forced to serve in a position outside of his AOC 48P (FAO). His training was extensive, yet he was restricted to serving in a role completely irrelevant to his AOC and evaluated in a "made-up" position. He was supposed to be assigned as a political-military planner within the Indo-Pacific Division of the Joint Staff (see

enclosure 30) with the associated duties. Not taking advantage of his training and skills were unjust and a misuse of a high-density skillset. Again, he should never have been placed under the assigned rating chain or forced to serve in a "made-up" position because of the unjust and untrue GOMOR.

h. It is important to note that the OER he received immediately prior to the contested OER shows he was rated as a promotable MAJ (see enclosure 31). Thus, promotion boards and/or Army competitive boards will be curious as to why he was evaluated as a promotable MAJ and then as a non-promotable MAJ in a "made-up" duty position. This is an injustice as it will negatively affect future promotion boards and decrease his chances of being selected for promotion. All the OERs he received in his duty AOC have superb comments, strong enumeration, and box checks for "MOST QUALIFIED" (see enclosure 32). He has also had strong evaluations after returning to his duty AOC with "MOST QUALIFIED" box checks and solid enumeration.

i. His COL promotion selection and SSC analysis notes the impact of a single OER with subpar comments, no enumeration, and a "HIGHLY QUALIFIED" box check is detrimental to COL promotion selection (see enclosure 34). Since aggregate file strength is assessed during promotion selections, board members can view all OERs. This means the board members will realize that he received a non-FAO duty OER with no enumeration, along with substandard comments and a "HIGHLY QUALIFIED" box check. Both analyses note that even one "HIGHLY QUALIFIED" box check can be the reason for non-selection as "all selectees had a sustained record of 'MOST QUALIFIED' OERs with superior enumeration by the senior rater" (see enclosure 35).

j. He provided a timeline of events and reiterated why the contested OER should be removed from his AMHRR.

k. The underlying false allegations still shock him to his core of how he was portrayed and how completely different his is. He is a proud American of Korean descent, a West Point graduate, and has served honorably. He wanted nothing more than to contribute his fullest to the U.S. Army and believes his actions have aligned with his desire. Before the false allegations, he led a solid career as a Soldier, being selected below the zone for promotion to MAJ, subsequently for promotion to LTC, and to serve with the Joint Staff. Being removed from the Joint Staff and having his promotion to LTC delayed for more than 2 years had a major impact on him. The shame he felt being escorted from his position on the Joint Staff is something he never wants to feel again. He learned tremendously from this experience and he believes the encounter made him a better Soldier and officer. However, this still does not justify the extreme case of unfairness and injustice he has endured for the past 5 years. He believes the injustice will not be fully remedied if the contested OER and initial denied appeal documents are not removed from his AMHRR.

I. He has been fighting for justice since 2019 when CID initiated the investigation because of an individual's unjustified accusation. The GCMCA's decision to file the unjust and untrue GOMOR in his AMHRR caused major effects.

(1) First, it severely tainted his reputation and created a negative image outside of his control. His promotion to LTC was withheld for more than 2 years and he can never return to the Joint Staff, even though he was cleared of the false allegations (see enclosure 37).

(2) Second, he was recommended for elimination from the U.S. Army because of this injustice (see enclosure 17).

(3) Third, the adverse actions resulted in a subpar OER where he was assessed under prejudicial circumstances while performing outside of his duty AOC.

(4) Fourth, the OER contributes negatively to future promotion boards because of its lower rating.

(5) Fifth, this substandard OER has the potential to significantly degrade his chances of being selected by other Army competitive boards, such as SSC.

(6) Sixth, the defective adverse information initiated the Defense Counterintelligence and Security Agency to revoke his eligibility to access classified information and SCI (see enclosure 38). Due to this, he was unable to participate in classified discussions and joint military exercises that were pertinent to his duty position in U.S. Army Japan. He was limited to handling unclassified and controlled-unclassified information, which was also detrimental to his career. After providing facts regarding the disqualifying information, he was determined eligible for access to classified information and SCI (see enclosure 39).

(7) Seventh, the flawed GOMOR delayed his career progression as defined in Department of the Army Pamphlet 600-3 (see enclosure 40). He is a year behind his original year group because he was forced to defer from the FY24 COL Promotion Selection Board. Although the DASEB retroactively reinstated his rank to LTC, he lost 2 years of authentic experience as an LTC while awaiting resolution of the false claims, which were finally vacated on 13 April 2022 (see enclosure 4). However, if he were not granted the opt out from the FY24 COL Promotion Selection Board, he would have been competing against his peers with incomplete career progression (see enclosure 41). After reviewing his case, HRC granted the opt-out request (see enclosure 42).

(8) Finally, he will be considered for promotion by the FY25 COL Promotion Selection Board in October 2024. Therefore, if the contested OER and denied appeal



documents are not removed, it will negatively impact this Promotion Selection Board and any future consideration for promotion, creating another injustice. He is requesting removal of the contested OER and initial denied appeal documents (enclosure 2) from his AMHRR so he can compete in the upcoming COL Promotion Selection Board with fair consideration of his potential and future promotion without any remnants of the false allegations.

2. He was commissioned as a Regular Army officer in the Military Intelligence Branch in the rank/grade of second lieutenant/O-1 effective 18 March 2004. He was promoted to the rank/grade of MAJ/O-4 effective 1 July 2013.

3. He provided page 2 of two OERs he received while serving in the rank/grade of MAJ, showing:

- from 11 December 2017 through 1 June 2018, his rater rated his overall performance as "EXCELS" and his SR rated his overall potential as "MOST QUALIFIED"
- from 2 June 2018 through 6 January 2019, his rater rated his overall performance as "EXCELS" and his SR rated his overall potential as "MOST QUALIFIED"

4. On 23 July 2019, he was notified of his acceptance for a nominative Joint Staff position in the Pentagon with a reporting date of no later than 20 January 2020.

5. His annual OER covering the period 7 January 2019 through 21 February 2020 addressed his duty performance as the Chief, Strategy Branch, USARPAC. His rank is shown as "MAJP [major promotable]" (indicating he was serving in a position authorized for the next higher rank). His rater is shown as COL C\_\_\_\_ P\_\_\_\_, Chief, Installation Management Agency, and his SR is shown as COL M\_\_\_\_ W\_\_\_\_, Chief, Security Cooperation. His rater and SR digitally signed the OER on 24 February 2020 and 25 February 2020, respectively. The applicant signed the OER on 31 March 2020. His rater rated his overall performance as "PROFICIENT" and his SR rated his overall potential as "MOST QUALIFIED."

6. The Headquarters, 8th TSC, GOMOR issued on 6 February 2020 was ordered withdrawn and destroyed on 28 February 2020 after the CG received two sworn explanatory memoranda from the applicant's former rater and the former Chief of International Military Affairs.

7. The CID memorandum (Law Enforcement Report – Final), 14 April 2020, noted the DA Form 4833 was pending.

8. An undated interview of a USARPAC G-8 staff member states she created the DFAS debt to recoup money paid for the applicant's travel voucher funds after being directed to do so by CID.
9. The two Headquarters, USARPAC, memoranda (Sworn Statement on Behalf of (Applicant)), 7 May 2020, and (VOCO for (Applicant)), 8 May 2020, show the applicant received VOCO authorization from his then-commander and he followed up with the former USARPAC Language Sustainment Program Manager after each training session.
10. He provided a list of documents he submitted to the IO during an interview on 14 May 2020.
11. The Headquarters, Joint Base Myer-Henderson Hall, memorandum (Notification of Initiation of Adverse Action Personnel Action (Flag)), 27 May 2020, and DA Form 268, 27 May 2020, notified the applicant that an adverse action flag was initiated against him, suspending all favorable personnel actions. The applicant noted he had not seen the IO report and requested a full report so he could respond.
12. The GOMOR from the CG, MDW, GOMOR, 6 August 2020 reprimanded him in writing wherein he stated:

You are reprimanded for failing to comply with Joint Staff policy regarding the publication of information for public release and for making false official statements. Despite receiving counseling from your supervisors on the Joint Staff requirement to submit papers and articles for review prior to publication, you published an article on the relevance of U.S. Forces in the Republic of Korea in RealClearDefense.com in April 2020 without authorization. You are further reprimanded for making false official statements while attempting to reconcile a \$20,653 debt to the US Government. In May 2020, you submitted three SF-182s [Standard Forms 182 (Authorization, Agreement, and Certification of Training)] and training plans in an effort to seek a waiver from Defense Financing Accounting Service (DFAS) of \$20,653 you were overpaid for travel to Korea for language training in 2018 and 2019, and justify said language training. The documents provided to DFAS since May 2020 directly contradict your original claims for these trips.

You exhibited extremely poor judgment in publishing articles without obtaining prepublication review. As a United States Army Officer working on Korean policy, you should be cognizant of the sensitive information you are exposed to by virtue of your official status within the Department of Defense. Your failure to adhere to policy signals a dangerous disregard for information and personnel security. This, along with the inconsistencies you have provided during the

course of the DFAS recoupment, indicates a serious lack of integrity and truthfulness.

This is an administrative reprimand imposed under the provisions of Army Regulation (AR) 600-37 (Unfavorable Information), and not as punishment under Article 15, UCMJ. You are advised that in accordance with AR 600-37, para[graph] 3-5b, I am considering whether to direct this reprimand be filed permanently in your Army Military Human Resource Record (AMHRR). Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal. You will be provided, by separate cover, a copy of the evidence which forms the basis for this reprimand. You will immediately acknowledge receipt of this reprimand in writing. You will forward any matters you wish me to consider through your chain of command within seven calendar days, using the format prescribed in AR 600-37, para[graph] 3-7.

13. The applicant's acknowledgement of receipt of the GOMOR is not available for review.

14. On 23 September 2020 after carefully considering the circumstances of the misconduct; the recommendations made by the applicant's chain of command; and all matters submitted by the applicant in defense, extenuation, or mitigation; the CG directed permanently filing the GOMOR in the applicant's AMHRR.

15. The memorandum from the CG, MDW (Initiation of Elimination), 23 September 2020, states the applicant was required to show cause for retention on active duty under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraphs 4-2b (Acts of Personal Misconduct) and 4-2c (Derogatory Information), due to misconduct, moral or professional dereliction, and derogatory information filed in his AMHRR.

16. His annual OER covering the period 22 February 2020 through 21 February 2021 addressed his duty performance as the Joint Base Myer-Henderson Hall Headquarters Battalion Special Projects Officer (see enclosure 1). His rater is shown as LTC V\_\_\_\_ M. B\_\_\_\_, Battalion Commander; his SR is shown as COL K\_\_\_\_ A. P\_\_\_\_, Garrison Commander; and there is no supplementary reviewer shown. His rater digitally signed the report on 12 March 2021, the SR signed the report on 15 March 2021, and the applicant digitally signed the report on 15 March 2021.

a. The OER shows in:

(1) Part I (Administrative, block c (Rank), his rank as "MAJ";

(2) Part III (Duty Description), block c (Significant Duties and Responsibilities): Serves as a Special Projects Officer for the CDR, JBMHH and HQ BN [Commander, Joint Base Myer-Henderson Hall, and Headquarters Battalion] US Army. Responsible for the initiatives and projects of the post and battalion commanders as well as the staff operations and synchronization of the section. Facilitates the day-to-day operations within the section and ensures all initiatives and projects are nested within the commanders intent and strategic vision";

(3) Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes) (Rater), block e (This Officer's Overall Performance is Rated as), his rater rated his overall performance as "PROFICIENT" and commented: "[Applicant] has performed extremely well as the special projects officer on my staff. I tested his ability with various projects, and he exceeded my expectations"; and

(4) Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), the SR marked "HIGLY QUALIFIED" and commented: "[Applicant] displays great potential within his areas of expertise as a Foreign Area Officer (FAO). Already selected for LTC, promote now and send to key FAO positions where he can best serve the Army."

17. A review of the applicant's AMHRR revealed the contested OER is filed in the performance folder. His records contain no evidence indicating a Commander's Inquiry was requested, initiated, or completed.

18. He provided the show-cause board recommendation and results, 30 March 2021, which retained him in the U.S. Army.

19. On 8 February 2022, he submitted a request for removal of the GOMOR, 6 August 2020, to the DASEB with 44 enclosures.

20. On 15 March 2022, the DASEB determined the evidence clearly and convincingly reflected that the GOMOR under consideration was untrue or unjust. The DASEB voted to approve removal of the GOMOR, 6 August 2020, and all related documents from his AMHRR. This action constituted grounds for promotion reconsideration, if eligible and previously non-selected.

21. The HRC email from a Human Resources Assistant (Reply: Promotion Orders Attached), 5 May 2022, informed him that his promotion orders showing his date of rank as 1 June 2020 were attached. HRC Orders 140-013, 19 May 2020, promoted him to LTC effective 1 June 2020.

22. The ASRB reviewed the applicant's request to remove his OER covering the period 22 February 2020 through 21 February 2021 while serving in the rank and grade of MAJ/O-4. The board noted:

a. There was insufficient evidence indicating that the ratings and comments on the contested OER were anything other than the considered opinions of the rating officials. There was insufficient evidence supporting the rating chain comments as being inaccurate, untrue, or unjust.

b. On 15 March 2022, the DASEB determined the evidence clearly and convincingly reflects that the GOMOR under consideration is untrue or unjust. The DASEB voted to approve removal of the GOMOR, dated 6 August 2020, and all related documents from the appellant's AMHRR. However, this action has no bearing on the ratings and comments on the contested OER.

c. The contested OER, as presented, is not negative in nature, is not a referred report, and the rating officials recommended the applicant's promotion now and selection for key positions in the future in the Army.

d. The SR of the contested OER rated the applicant's potential as "HIGHLY QUALIFIED" during this rating period.

e. The applicant did not provide a copy of a Commander's Inquiry as it pertains to his contentions with the contested report that would render the OER invalid or that it contained administrative errors.

f. The applicant has not provided clear and convincing evidence showing the ratings and comments on the contested report were in error or that they were not the considered opinions and objective judgments of the rating officials at the time the report was rendered.

g. The ASRB memorandum from a Human Resources Specialist (Evaluation Report Appeal (22 February 2020-21 February 2021)), 25 January 2024, determined the evidence he submitted did not justify altering or withdrawing the evaluation report for the period stated above. A copy of the ASRB's decision memorandum will be filed in the performance folder of his AMHRR beside the evaluation report, and the board's record of proceedings will be filed in the restricted folder.

23. The U.S. Army Corps of Engineers memorandum from his garrison commander/SR during the period of the contested OER (Evaluation Report Appeal Endorsement for (Applicant), 22 February 2020-21 February 2021), 9 November 2023, states:

My name is Brigadier General K\_\_\_\_ P\_\_\_\_, and I was [Applicant's] garrison commander and senior rater for the 20200222-20210221 [22 February 2020-21 February 2021] rating period. I am writing on behalf of [Applicant] to endorse his appeal for the subject evaluation to be deleted from his Army Military Human Resource Record.

I concur and share the same view as COL V\_\_\_\_ M. B\_\_\_\_ regarding [Applicant's] evaluation. During the rating period, [Applicant] excelled at every task given to him by either me or then-LTC B\_\_\_\_. Notwithstanding, the administrative process that he was subject to, which later proved untrue, had a significant effect on my rating. Therefore, I believe that the rating at the time the evaluation report was rendered is not a true representation of his performance or potential. Given the significant challenge to making an accurate rating under these circumstances, I believe it would be unjust for this misrepresented rating evaluation to remain without amendment in [Applicant's] file, which can considerably affect his future promotion and career.

I strongly advocate for this evaluation to be deleted as is the fairest remedy to the erroneous prior administrative process otherwise biasing [Applicant's] personnel record.

24. The memorandum from the applicant's former battalion commander/rater during the period of the contested OER (Evaluation Report Appeal Endorsement for (Applicant), 22 February 2020-21 February 2021), 2 February 2024, states:

My name is Colonel V\_\_\_\_ M. B\_\_\_\_, and I was [Applicant's] battalion commander and rater for the 20200222-20210221 [22 February 2020-21 February 2021] rating period. I am writing on behalf of [Applicant] to strongly support his appeal for the subject evaluation to be removed in its entirety from his Army Military Human Resource Record (AMHRR).

During the rating period, even though [Applicant] excelled at every task given to him, the administrative process that he was subject to, later proved untrue, had a major effect on my rating. Except for the now removed GOMOR, [Applicant's] evaluation would have been significantly different. Simply, I knew about the GOMOR, and it prevented me from giving [Applicant] a higher rating block. I would like to emphasize that while there are no negative comments on the report and I did not mention the GOMOR, it was still in my mind and factored into the evaluation to give him a lower rating. Thus, looking back, I am not sure that the rating is a true representation of his performance under my observation. It is also key to note that, absent the adverse action against [Applicant] that was then pending and later overturned by the Army Review Boards Agency, Brigadier General K\_\_\_\_ A. P\_\_\_\_'s and I would never have been in

[Applicant's] rating chain. He was placed in my battalion and given the made-up position of "special projects officer" and was consequently not able to perform in his originally assigned position.

Given the challenge to making an accurate rating under these circumstances, I believe that it would be unjust for this rating to significantly affect his chance of promotion amid a background of consistently exceptional performance throughout his military career. Therefore, leaving this evaluation in his AMHRR would be a clear injustice.

The Applicant is an officer of exemplary character, dedicated to duty, and committed to the profession of arms. I was particularly impressed with the professionalism and character which drove him to continue to do his best for our Army and Nation even during the difficult process he endured in the 20200222-20210221 [22 February 2020-21 February 2021] rating period.

In closing, I unequivocally advocate for this evaluation to be removed from his AMHRR. Under these circumstances, where false allegations impacted the officer in a multitude of ways, but concrete and indirect, it would be an injustice not to remove this evaluation from his permanent file.

25. Email from the HRC FAO Branch Manager, 22 February 2024, states the Joint Policy Branch indicated he was unable to encumber a Joint Duty Assignment List position in the future. This does not mean he cannot serve in a Joint organization, but he cannot be assigned to a Joint Duty Assignment List-coded billet. He could serve at a Unified Combatant Command, Defense Security Cooperation Agency, Office of the Secretary of Defense, etc., as long as they are not Joint Duty Assignment List-coded billets.

26. He provided the following additional documents for consideration:

a. an excerpt of a cross-examination interview wherein his former rater noted he recommended filing the GOMOR in his AMHRR;

b. several email between his counsel and the MDW SJA, 1 June 2020, 2 June 2020, and 7 July 2020;

c. an excerpt of Joint Staff Instruction 5820.01, 24 February 2020, showing that provisions of this instruction are mandatory for Joint Staff administrative inquiries, unless otherwise directed or authorized by the appointing authority or other more specific regulation, directive, or instruction requiring an inquiry into an incident;

d. email from his former battalion commander/rater noting he did not order a Rules for Court Martial 303 inquiry into the Joint Staff Inquiry involving the applicant;

e. an excerpt of DOD Instruction 1315.20 (Management of DOD FAO), 28 September 2007 (pages 3 and 8), showing FAOs are a key and critical component of the DOD corps of language professionals;

g. page 2 of two OERs he received while serving as an LTC, showing his rater rated his overall performance as "EXCELS" and his SR rated his overall potential as "MOST QUALIFIED";

f. his FY23 COL promotion and FY22 SSC board analysis;

g. the Defense Counterintelligence and Security Agency memorandum (Intent to Revoke Eligibility for Access to Classified Information, Assignment to Duties that Have Been Designated National Security Sensitive, and Access to SCI), 14 November 2022;

h. the Defense Counterintelligence and Security Agency memorandum (Favorable Security Determination after Due Process), 30 January 2023;

i. his memorandum (Request to Defer Consideration for FY24 COL Promotion Selection Board), 26 June 2023; and

j. the HRC memorandum (Request for (Applicant), to Opt Out of Consideration by the FY24 COL Promotion Selection Board), 1 September 2023.

27. He is currently serving in the rank/grade of LTC/O-5 and was recently reassigned to the Office of Deputy Chief of Staff, Pentagon, with a reporting date of 30 June 2024.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. Based upon the available documentation reflecting the successful career of the applicant prior to the issuance of a GOMOR issued to the applicant, the facts outlined in the previously issued GOMOR to the applicant, and the finding of the DASEB finding the issued-GOMOR was untrue and unjust, the Board found by a preponderance of the evidence that the applicant was transferred to a position he otherwise would not have been placed in. Therefore, the Board concluded there was an injustice warranting removal of the requested OER and all supporting documents and replacing them with a memorandum of nonrated time. Upon completing its removal, the Board recommends the applicant's record be forwarded to a Special Selection Board (SSB) for promotion consideration to COL/O6.



BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by:

- removing the DA Form 67-10-2, Officer Evaluation Report (OER)) covering the period 22 February 2020 through 21 February 2021 and associated documents from his Army Military Human Resource Record (AMHRR)
- sending the applicant's amended record to a Special Selection Board (SSB) for reconsideration for promotion to the rank of COL/O6.

█

█ █

█ █

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 15-6 (Procedures for Administrative Investigations and Boards of Officers) establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives.

a. Paragraph 5-2 states IOs may use whatever method they deem most efficient and effective for acquiring information. Although witnesses may be called to present

formal testimony, information may also be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

b. Paragraph 5-4 provides the right to respond to adverse information.

(1) Although the investigation procedures are not intended to provide a hearing for interested persons, field grade officers have a right to respond to adverse information in a report of proceedings. This right exists regardless of whether adverse administrative action is recommended or contemplated against the field grade officer.

(2) When a field grade officer has the right to respond pursuant to this paragraph, the portion of the report of investigation and supporting evidence pertaining to the adverse information will be referred to the officer after being properly redacted. The officer will have at least 10 business days to respond. The referral and processing of any response will be conducted in accordance with paragraph 2-8c.

(3) The right of a field grade officer to respond to adverse information should not influence the conduct of an investigation. The officer's right to respond to adverse information will not serve as a substitute for attempting to interview the individual during the investigation.

(4) The field grade officer's response to the adverse information may include anything the officer deems to be relevant to the finding, including, but not limited to, a rebuttal memorandum prepared by the officer or his representative, additional evidence in any format, and letters of support. All materials provided in response to adverse information will be included as an exhibit to the report of proceedings.

(5) The right to respond to adverse information is extended by this regulation only to field grade officers, because such findings or recommendations may be considered in future promotion boards that will consider those officers for promotion. This does not require nor preclude approval authorities from extending this opportunity to any other individual who is the subject of adverse information in the report of proceedings.

2. Army Regulation 600-37 (Unfavorable Information) 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. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of

investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's AMHRR only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the AMHRR, the recipient's submissions are to be attached. Once filed in the AMHRR, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) provides that 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. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR. Soldiers must have received at least one evaluation (other than academic) since imposition. If an appeal is denied, a copy of the appeal will be placed in the restricted portion of the AMHRR.

d. Only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the AMHRR. Such documents may be appealed on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met.

3. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policies for completing evaluation reports that support the Evaluation Reporting System. It also provides guidance regarding redress programs, including commander's inquiries and appeals. The regulation provides that:

a. Evaluation reports are assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army Officer or Noncommissioned Officer Corps. Performance will be evaluated by observing action, demonstrated behavior, and results from the point of view of the values, leadership framework and responsibilities identified on the evaluation forms, counseling forms, and as explained in Department of the Army Pamphlet 623-3. Consideration will be given to the relative experience of the rated officer, the efforts made by the rated officer, and the results that could be reasonably expected given the time and resources available. Potential evaluations will be performance-based assessments of the rated officers of the same grade to perform in positions of greater responsibility and/or higher grades. Assessment of potential will apply to all officers, regardless of their opportunity to be selected for higher positions or grades.

b. The SR is the senior rating official in the military rating chain or as officially designated by the academic institution. SRs use their positions and experience to evaluate the rated Soldier from a broad organizational perspective, military program of instruction, or civilian academic course standards. SRs will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods; use all reasonable means to become familiar with a rated Soldier's performance; assess the ability of the rated Soldier; ensure that rating officials counsel the rated Soldier individually and throughout the rating period on meeting their objectives and complying with the professional standards of the Army; consider the information on the applicable support forms when evaluating the rated individual; evaluate the rated Soldier's potential relative to their contemporaries; and ensure that all reports, which the SR and subordinates write, are complete and provide a realistic evaluation in compliance with procedures established in Department of the Army Pamphlet 623-3.

c. Each report will be an independent evaluation of the rated Soldier for a specific rating period. It will not refer to prior or subsequent reports. It will not remark on performance or incidents occurring before or after the period covered.

d. The burden of proof rests with the appellant.

(1) Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(a) the presumption of regularity will not be applied to the report under consideration; and

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

(2) 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 may provide support for an appeal request.

e. Paragraph 4-7 states an evaluation report accepted for inclusion in the rated Soldier's AMHRR is presumed to be administratively correct, have been prepared by the proper rating officials, and represent the considered opinion and objective judgment of the rating officials at the time of preparation. 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.

f. Paragraph 3-7 states officers who are both promotable and serving in any documented position authorized for the next higher rank will have a "P" identifier with their rank on their OERs, Part I. The "P" identifier indicates the officer's OER will be profiled (Part VI, block a) with those of the next higher rank.

g. Paragraph 4-7g(10) states removal of an evaluation report for administrative reasons will be allowed only when circumstances preclude the correction of errors, and then only when retention of the evaluation report would clearly result in an injustice to the Soldier.

4. Department of the Army Pamphlet 600-3 (Officer Talent Management) serves as a professional development guide for all officers to understand the process of talent management (TM). TM is the systematic planning for the right number and type of people to meet the organization's needs at all levels and at all times so that most people are employed optimally. It requires officers to understand their talents, defined as an officer's unique knowledge, skills, and behaviors that result in effective performance when properly aligned against a particular job. Within a TM system, officers must take an active role in managing their careers. This pamphlet describes the policies and procedures that guide an officer to understand, develop, and employ their talents over the course of a successful career. It also serves as a mentoring tool for leaders at all levels. It is an important TM guide for assignment officers, proponents, and Headquarters, Department of the Army (HQDA), selection board members. The overarching focus of this pamphlet is the development and TM of all officers of the U.S. Army. Paragraph 4-7 provides specific professional development goals for an LTC.

5. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army Evaluation Reporting System.

a. Paragraph 2-10 provides that:

(1) A documented supplementary review will be performed by a Uniformed Army advisor above the rating chain, when there are no uniformed Army designated rating officials for the rated officer, for relief-for-cause reports when the SR is the individual directing the relief, or if the relief has been directed by an individual other than the rating officials.

(2) The first U.S. Army officer above the SR in the organization or supervision will be designated as the Uniformed Army advisor and conduct a supplementary review. This officer will be designated by the commander establishing the rating chain and identified in the published rating scheme at the beginning of the evaluation period. The SR will mark "YES" or "NO" in block f1 to identify if the DA Form 67-10-2 requires a supplementary review.

b. Paragraph 2-28 provides that:

(1) If a referred OER is required, the SR will place an "X" in the appropriate box in Part II, block d, 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 II, block d.

(2) 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 on the OER; rating officials may not rebut rated officer's referral comments.

(3) 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 a request must be submitted separately.

c. Paragraph 2-29 provides that if a rated officer or warrant officer is officially relieved, the following specific instructions apply to completing a relief-for-cause OER.

(1) The performance evaluation box check in Part IV of the OER must reflect "UNSATISFACTORY" or "CAPABLE." An "UNSATISFACTORY" recommendation is consistent with relief action and does not need further explanation. However, raters who select "CAPABLE" must explain their recommendation and reasons in view of the action to relieve.

(2) The SR's potential evaluation in Part VIa of the DA Form 67-10 series must reflect "NOT QUALIFIED" or "QUALIFIED." A "NOT QUALIFIED" recommendation by the SR in Part VIa is consistent with a relief action and does not need further explanation. However, SRs who select "QUALIFIED" must explain their recommendation and reasons in view of the action to relieve.

d. Paragraph 2-30 provides that a mandatory review of relief-for-cause OERs is required following referral to the rated officer.

(1) When an officer (commissioned or warrant) is officially relieved of duties and a relief-for-cause OER is subsequently prepared, the OER will be referred to the rated

officer or warrant officer as described in the referral process in Army Regulation 623-3. Note: This referral must be completed before taking any of the actions in the following subparagraphs.

(2) If the rater or intermediate rater directed the relief, the SR will perform the review, provided he or she is an Army officer or Department of the Army civilian when other rating officials are uniformed Army rating officials. Otherwise, the first U.S. Army officer, designated as the uniformed Army advisor in the organization or chain of supervision above the individual directing the relief will perform a supplementary review of the OER.

(3) Changed relief-for-cause OERs will be referred, again, by the SR (or other reviewer) in accordance with the referral process in Army Regulation 623-3, to the rated officer so that the corrected OER may be acknowledged, and comments can be provided, if desired. Only the final referral and acknowledgment are forwarded with the report to HQDA.

(4) If the SR is qualified to serve as the reviewer and is satisfied that the OER is clear, accurate, complete, and fully in accordance with the provisions of the regulation, they will continue to process the OER.

6. Army Regulation 600-8-104 (Army Military Human Resource Records Management) governs the composition of the Official Military Personnel File (OMPF) and states the performance folder is used for filing performance, commendatory, and disciplinary data. Once placed in the OMPF, a document becomes a permanent part of that file. The document will not be removed from or moved to another part of the OMPF unless directed by certain agencies, to include the Army Board for Correction of Military Records. Appendix B states the DA Form 67-9 and DA Form 67-10-1 are filed in the performance folder of the Soldier's OMPF.

//NOTHING FOLLOWS//