

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240002300

APPLICANT REQUESTS:

- General Officer Memorandum of Reprimand (GOMOR) be retroactively removed from his Army Military Human Resource Record (AMHRR)
- His Referred DA Form 67-10-1 (Officer Evaluation Report (OER)) be corrected, amended or removed
- Retroactive Promotion to Captain (CPT) as of fiscal year (FY) 2021

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in Support of Application for Correction of Records
- Exhibit 1 - GOMOR
- Exhibit 2 - Memorandum of Mandatory Removal Date (MRD) due to Non-Selection for Promotion
- Exhibit 3 - Memorandum AR 15-6 Conduct Unbecoming and Officer and a Gentleman Findings and Recommendations
- Exhibit 5 - Memorandum Legal Review of AR 15-6
- Exhibit 6 -- GOMOR Filing Determination
- Exhibit 7 - Department of the Army Suitability Evaluation Board (DASEB) Request to Remove GOMOR and Referred DA Form 67-10-1 (OER)
- Exhibit 8 - DA Form 2823 (Sworn Statement) [REDACTED]
- Exhibits 9 - 11 - DA Forms 67-10-1 (OER), 2020, 2021, 2022
- Exhibits 12-27 - Letters/Memorandums of Support
- Exhibit 8 [sic]- DASEB Record of Proceedings
- Exhibit 9 - Letter from DASEB
- Exhibit 10 - Memorandum from DASEB
- Exhibit 11 - DASEB Request to Remove GOMOR and Referred DA Form 67-10-1 (OER)
- Exhibit 12 - DA Form 2823 (Sworn Statement) [REDACTED]
- Exhibit 13 - DA Form 2823 (Sworn Statement) [REDACTED]
- Exhibit 14 - Photos
- Exhibits 15-18 - DA Forms 67-10-1 (OER), 2020, 2021, 2022, 2023

- Exhibits 19-34 - Letters/Memorandums of Support

FACTS:

1. The applicant defers to his counsel.

2. The applicant's counsel states, on behalf of the applicant:

a. Pursuant to Title 10 U.S. Code section 1553, Public Law 95-126, and Department of Defense Directive 132.28, the applicant respectfully submits this application for a complete correction of his military records. Specifically, he requests that his GOMOR, 23 March 2020, be retroactively removed from his AMHRR; that his referred OER is either corrected, amended, or removed; and that he be retroactively promoted to the rank of CPT by the Department of the Army, CPT, Army Competitive Category Promotion Selection Board as of FY 2021. While he received a partially favorable decision from the DASEB and his GOMOR was transferred to the restricted section of his AMHRR, the decision did not fully consider the context to the GOMOR's imposition, and he is continually experiencing an injustice.

b. Distinguishing between unfavorable information removal and transfer is paramount in this matter since this determines whether the applicant will be allowed to continue his Army career. If the GOMOR is retroactively removed from his AMHRR, no basis would exist for his MRD due to non-selection for promotion and his promotion would be considered on the merits of his service. However, transfer of the GOMOR to the restricted section of his AMHRR does not allow him to further serve in the Army since he would still not be eligible for promotion. The brief is for the purpose of the Board's consideration in conducting a records review of the applicant's request, and this request is being made on the bases of material error and material injustice.

c. The basis for this application is the applicant was given a GOMOR on 23 March 2020 following an investigation for sexual harassment, and this ultimately led to him being removed from the Army due to non-selection for promotion. The investigation officer's (IO) report alleged that on 10 December 2019, he scheduled a full body oil massage with Mrs. [REDACTED] at [REDACTED]. During that time, he allegedly entered the establishment around 1900 and had his hands on his crotch, while awaiting to enter the massage room. When he entered the massage room, the IO report alleged that he "exposed his genitalia multiple times to Mrs. [REDACTED] making it appear as an accident, touch Mrs. [REDACTED] leg also making it appear as an accident, and made a comment on how his wife does not touch him so he needed more than a massage for his muscles."

d. On 5 March 2020, an IO's legal review of the allegations investigating his alleged conduct unbecoming an officer and gentlemen was completed. The IO opined that the investigation was legally sufficient and determined the following:

1) The applicant is married; 2) Mrs. [REDACTED] is married; 3) While at [REDACTED] [REDACTED] he had his hands on his crotch while waiting to go back to the massage room; 4) While in the massage room, he exposed his genitals to Mrs. [REDACTED] at least three times, touched her upper thigh, and asked Mrs. [REDACTED] to focus the massage on areas near his genitals; and 5) He made vague comments soliciting sexual acts from Mrs. [REDACTED] allegedly because his wife does not touch him, at home.

e. In response to the allegation, he submitted a rebuttal response on 31 March 2020, and requested the GOMOR be withdrawn. He denied the allegations against him and maintained that he would never take any action that would disrespect his marriage to his wife, his personal morals, his religious faith, or the Army in general in the manner that was described. He further argued that he: did not inappropriately expose himself, did not touch the massage therapist, did not seek anything other than a professional full body oil massage from a certified therapist as was advertised, and did not know why his accuser would lodge such accusations against him.

f. Included in the rebuttal packet were evaluations showing his high level of utility to the Army and eleven-character statements from his fellow first lieutenants (1LT), upper level chain of command, family members, and peers that attested that his character was contrary to the allegations against him. The rebuttal concluded in stating the GOMOR should not be filed in his AMHRR and that it be withdrawn instead. Nevertheless, his commanding officer ultimately directed, on 20 April 2020, that the GOMOR be placed in his permanent AMHRR. Due to a combination of the AMHRR filed GOMOR and the referred OER, he was ultimately recommended for removal from the Army no later than 1 June 2023.

g. He applied to the DASEB, on 10 February 2023, to petition for the removal of the GOMOR. He argued that he met the requirements for adverse action removal in that: the GOMOR has been in his AMHRR for at least one year, he is remorseful for the circumstances that led to the GOMOR while still maintaining his innocence, he has received multiple OERs since the imposition of the GOMOR, the GOMOR has served its intended purpose, he has obtained the rank of at least staff sergeant (SSG), and removal of the GOMOR serves the interest of justice for himself and the Army. He further expanded on the adverse action removal on injustice grounds due to several fatal errors made, during the investigation.

h. On 11 April 2023, he received a DASEB decision partially granting his relief. The DASEB determined that the overall merits of the case did not warrant a removal of the

GOMOR. The DASEB based its assumption on the AR 15-6 investigation containing no material errors and opined the applicant did not provide "clear and convincing evidence which shows the GOMOR was rendered in error or is unjust or untrue." It ultimately determined that: the IO believed that the preponderance of the evidence standard supported the issuance of a GOMOR and permanent filing in his AMHRR, the AR 15-6 investigation was legally sufficient, the GOMOR clearly stated he exposed himself, filing of the GOMOR was not unjust and he did not submit evidence to un-substantiate the allegations.

i. However, the DASEB agreed with the applicant that the GOMOR served its intended purpose and that its transfer serves the best interest of the Army. The DASEB ultimately unanimously decided that the GOMOR be transferred to the restricted portion of his AMHRR. On 25 April 2023, Army Human Resources Command was ordered to transfer the GOMOR, but this transfer was not considered retroactive "nor does it constitute a bases for promotion reconsideration." The applicant is now submitting for a correction of this error in discretion by the DASEB as a result of this decision to the Board.

j. The Secretary of the Army may correct any military record when it is "necessary to correct an error or remove an injustice." A motion or request for review must be made within three years after an alleged error or injustice is discovered. However, the Board may waive this statute of limitations if it would serve the interest of justice to decide a case on the merits. Here, the applicant received notice of his involuntary discharge on 28 November 2022, therefore he is well within the three-year period for timely review.

k. The Board will approve an application to correct military records if the applicant demonstrates the existence of material error or injustice and that sufficient evidence exists on the record. However, the burden is on the applicant to overcome the presumption of regularity or administrative actions. "The Army Board for Correction of Military Records (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.

l. In considering whether a correction is warranted, a panel consisting of at least three ABCMR members will review each application to determine "whether a preponderance of the evidence shows that an error or injustice exists" and either "if so, what relief is appropriate" or "if not, deny relief." According to Black's Law Dictionary, a preponderance of the evidence is defined as:

[T]he greater weight of evidence, not necessarily established by the greater number of witnesses testifying to the fact but by evidence that has the most convincing force; superior evidentiary weight that,

though not sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

In determining whether relief should be granted based on error or injustice grounds, the Board considers a list of subjective factors including: an applicant's candor; whether the punishment, including any collateral consequences was too harsh; the aggravating and mitigating facts related to the record or punishment from which the veteran or servicemember wants relief.

m. Army Regulation 600-37 (Unfavorable Information) provides the procedures for appealing negative information in a Soldier's official military personnel file (OMPF) and explains that its purpose is to "ensure the best interest 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." The Board's objective is to not only ensure that fair standards are applied to all Soldiers but also to "prevent adverse personnel action based on unsubstantiated derogatory information." It explains that once an official documents has been filed in a Soldier's OMPF, it is presumed to be administratively correct and the burden of proof rests with the Soldier to provide clear and convincing evidence of the unjust or untrue nature of the negative information. In determining whether any unfavorable information in the AMHRR should be removed, "favorable and unfavorable information regarding the Soldier will be considered."

n. In analyzing whether any unfavorable information should be removed from a Soldier's AMHRR, Army Regulation 600-37 further provides five requirements that an applicant must evidence for the removal. The applicant must show that 1) one year has elapsed since the filing of the unfavorable information; 2) the Soldier has indicated remorse for the actions, which caused the unfavorable information to be filed; 3) at least one positive evaluation report, other than an academic evaluation, has been received since the filing; and 4) the unfavorable information has served its intended purpose. One additional requirement is that the Soldier must at least obtain the rank of SSG for removal consideration.

o. If the applicant satisfies these five factors, the Board then moves to determine whether allowing the unfavorable information is in the best interest of the Army and whether any injustice occurred. The applicant has the burden of proof "to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust in whole or in part." However, the Board will not consider appeals that "merely allege an injustice or error without supporting evidence or a compelling argument." The applicant may further submit evidence that alleged actions in the unfavorable filing is contrary to his character and service history.

p. First, while the applicant is grateful that the DASEB decided to move the GOMOR to the restricted section of his AMHRR, the DASEB nonetheless made a material error

in discretion in not removing the GOMOR since the applicant met the standard for GOMOR transfer based on the five factors, so there exists no need to argue this favorable point. However, the applicant maintains that the DASEB erred in finding that the AR 15-6 investigation was legally sufficient and that the GOMOR clearly stated the applicant exposed himself because the IO improperly relied on speculative witness testimony as well as failed to conduct follow up inquiries to remedy the insufficient witness testimony. As a consequence, the DASEB unjustly relied on a flawed investigation that did not meet AR 15-6's requirements to hold that the GOMOR should not be removed from his AMHRR.

q. When an IO is assigned to investigate any matter, he/she must follow AR 15-6's guidelines to ensure a fair investigation. The primary duties of an IO are to ascertain and consider the evidence and facts regarding relevant issues, be thorough and impartial, and make findings and recommendations warranted by the evidence. The IO's findings should be "readily deduced from the evidence in the record" and may make "reasonable inferences...from the facts and the evidence." When an IO obtains witness testimony, the IO has a responsibility to ensure that if the testimony "involved technical terms that are not generally known outside the witness's field of expertise, the witness should be asked to define the terms the first time they are used."

r. In examining the evidence used to impose the GOMOR, a number of factual inconsistencies were not properly addressed. A statement provided by the applicant details his account of events and greatly differs from Mrs. [REDACTED] account. He explains that on the day in question, he walked into the chiropractor's office and was instructed to lie on an automatic massage table. After two minutes, he felt uncomfortable on the massage table in the lobby of the chiropractor's office because the machine had him gyrating his hips up and down in front of onlookers, which was embarrassing. While seated, his hands were in his lap in a resting position, since he was seated. He later discovered, during the investigation, that the receptionist told the massage therapist that she had a weird vibe from him because of how he was seated in the lobby. He argues that by having the receptionist tell the massage therapist about her "bad vibes," this unnecessarily primed the therapist to view benign actions as sexual advances, when that was far from the truth.

s. Before undressing, the applicant and the massage therapist discussed the areas of tension that he wanted massaged. He stated that he was having tension issues in his hamstrings, hips, iliotibial band, glutes, and groin muscle. The massage therapist then recommended she focus the massage on his lower extremities, since that seemed to be his largest problem area and he agreed.

t. When he eventually was told to move to a massage room and undress, he noted that he was draped, the process by which the massage therapist covers any sensitive genital areas to prevent exposure, when he was scheduled for a full body oil massage.

During that time, he was fully aware of standard practices in giving another a massage as well as draping due to a massage therapy class he took while attending [REDACTED]. Using his own expertise as a basis for an opinion, he describes the process as following:

The therapist is in control of whether the client is exposed and is the one who lays the drape on the client since it is possible to be exposed if the therapist is not careful. In order to expose themselves, the client would have to do it on purpose by physically removing the draping or moving suddenly to one side to the point where the draping would fall off. If a client's genital areas are exposed due to improper draping, the therapist reapplies the drape. In instances where proper draping exists but the client removes the drape on purpose, the therapist is trained to tell the client that they will walk out of the room, allow the client to drape themselves, and return to continue the massage. They are to instruct the client that if the drape falls off again, due to the client's intentional removal, the therapist verbally indicates that the massage is over and no refund will be given, due to the client's malfeasance.

u. Draping is the responsibility of the therapist. However, the client and the therapist typically discuss comfort level and preference, prior to initiating the massage. Regardless of preference, at a minimum, the genitals and gluteal cleft of the client are always covered by the therapist. Here, this discussion of preference did not occur, prior to initiation of the massage but instead happened during the massage, after the receptionist primed the therapist about her "bad vibe." The applicant further submits that a combination of this improper priming and lack of pre-massage communication led to the therapist misinterpreting innocent conversation, adjustment, and movement as inappropriately sexual.

v. The applicant then maintains that during the massage, he was fully draped and that the massage therapist was massaging his thighs over the drape. He requested that she remove the drape on that area for the purpose of getting a deeper massage using oil as advertised and did not mention having the drape removed for any sensitive areas to be massaged. The two then conversed about his history with massage therapy and his background. When the massage concluded, he left the therapist's office and was unaware of any actions that he committed that would have made anyone uncomfortable.

w. Unreliability of Mrs. [REDACTED] statement. However, during her interview with the IO, Mrs. [REDACTED] statement of events is fraught with errors, speculation, and she was unable to discuss why she deviated from standard practice, during the massage. She told the IO that she had to drape him again "two to three times, after I recovered him initially." But

she failed to discuss standard practice for when a client intentionally takes off their drape multiple times and what actions she took in response. Standard practice would dictate that she leaves the room and ends the massage if the draping was intentionally removed multiple times, but she did not indicate that this took place.

x. Further, logic dictates that the therapist remove herself from the room, if a client were to make repeated sexual advances that made her uncomfortable, during the massage as well. During her response to the IO's questions, she noted that she ended the massage seven minutes early, contrary to the applicant's assertion of her ending three minutes early, into the 50-minute massage, but she never indicated to the applicant that this was being done because he was making her uncomfortable, during the 43 minutes he was massaged. Also, during the entirety of the massage, not once did she state he was acting inappropriately, warn him that she would end the massage early due to her discomfort, or make mention of any discomfort. The IO additionally did not ask the necessary follow-up questions to determine why the therapist continued to massage him for at least 43 minutes, without making any mention of her alleged discomfort. He maintains that Mrs. ■ took no steps to leave the room because there was no such inappropriate behavior.

y. Next, Mrs. ■ claimed he repeatedly asked her to "work on him, without the drape" and implied he was "seeking more than a massage." While he agrees that he asked for the drape to be removed in the target areas, he only did so to receive a proper full body oil massage as advertised and that the drape needed to be moved for his thighs to be oiled. He never indicated that the drape should be removed from his genitals, since full removal for the oil massage would have made him uncomfortable. He argues that he had no sexual intentions or inferences in his request, and that no action he took implied that he was seeking more than a massage.

z. The remaining portions of Mrs. ■ statement to the IO are speculative at best and the reliability of her statement is in question. She described his demeanor as "unsettling" and that his intentions were "sexual in nature." This is pure speculation, and she could not possibly have known what his intentions were in getting the massage. In her statement, she provided no additional follow-up information to specifically address what his "sexual in nature" intention meant and no conversation was had that could be construed as him having sexual intentions, since she later told the IO that "he did not ask for anything specifically." It stands to reason that if one person does not explicitly ask for actions from another, specifically tells another their intentions, or acts in a way that implies further action, it is impossible for another person to accurately guess what occurs in someone else's mind.

aa. Mrs. ■ also made other claims that simply do not make logical sense. She stated that she believed the applicant was touching himself inappropriately/masturbating

while lying face down, which would mechanically be very difficult to accomplish if lying face down on a table. In his initial application to the DASEB, he stated that:

The accuser claims that I asked her to massage areas near my genitals. "Under the circumstances" this is not unusual. The groin and glutes were among a list of other muscles discussed to focus on prior to undressing, including the iliotibial band, hip, and hamstring. She was the one who suggested that we focus on the lower body, and I agreed, if she thought that is what would make sense for what I believed to a one-hour massage (they actually only did 50 minutes).

ab. Lastly in response to the IO's question of whether the applicant adjusted himself longer than necessary, she stated that "anything done with sexual intent is not necessary but also not inappropriate. Adjusting any part of your body because of discomfort on the table is sometimes necessary." From her reasoning, it is acceptable to adjust oneself if uncomfortable as long as sexual intent is not in play. Again, she wrongfully speculated that because he adjusted himself, he had "sexual intent" when she cannot possibly know his intent. She failed to describe how long this adjustment lasted, how this correlated to sexual intent, and why this adjustment was not simply for comfortability purposes.

ac. The overwhelming evidence that either does not make logical sense or calls for improper speculation should have prompted the IO to ask additional questions for clarification, seek additional witnesses to resolve any ambiguity in Mrs. [REDACTED] statements, or dismissed the investigation due to lack of clear evidence of violation. However, the IO seemingly ignored the inconsistencies and speculative responses, and he thus erred in relying on Mrs. [REDACTED] statement, concluding the applicant committed the offense, and recommending that a GOMOR be filed.

ad. As a result, the DASEB further made a wrongful determination in reliance of the improper IO investigation by assuming that the AR 15-6 investigation was flawless and that the evidence clearly stated he exposed himself. This conclusion by the DASEB greatly overlooks the lack of substantiating evidence against the applicant. The evidence in the investigation packet used for the GOMOR consists of two interviews with Mrs. [REDACTED] and another employee. The other employee, [REDACTED] indicated she was not present at the scene nor did she have any firsthand knowledge of the allegation outside of what Mrs. [REDACTED] told her. Outside of these two statements, the IO took pictures of the layout of the massage room and lobby.

ae. This is insufficient information to substantiate that the applicant sexually harassed given the multitude of the aforementioned issues with Mrs. [REDACTED] testimony. If the IO conducted a reliable and proper investigation under AR 15-6, the applicant maintains he would have been found not guilty of the offense by a preponderance of the

evidence, no GOMOR would be issued, and there would be no need for the DASEB to make any decision. But the IO ignored pertinent information throughout the investigation to the applicant's detriment and could not readily deduce his guilt under AR 15-6 guidelines. Based on this error, he should be given fair consideration by the Board and the GOMOR matter should be removed to correct the errors of the IO and the DASEB alike.

af. Next, while he received a partially favorable decision from the DASEB, filing the GOMOR in the restricted section of his AMHRR still undoubtedly jeopardizes his career in the Army and constitutes a material injustice. He was a young officer that not only consistently operated at a high level but also had ample room to grow. Maintenance of the GOMOR additionally mischaracterizes him as a sexual deviant and potential adulterer who committed the harassing actions, and this will stain not only his remaining military career but also his life as a civilian, after his separation. Additionally, his reputation before and after the issuance of the GOMOR displays that the allegations are against his character and calls into question the reliability of the IO report's conclusions.

ag. The applicant maintains that, while he never committed the sexual harassment acts described in the GOMOR and investigation, he nonetheless apologizes to his command and the Army at large for allowing the perception that he ever acted with impropriety to develop. He fully recognizes that Soldiers are held to a high standard of personal responsibility and performance, and he maintained that standard throughout his time in the Army. He valued his military duties too much to recklessly and wantonly jeopardize his career by carelessly and disrespectfully sexually harassing another in such a manner. He apologizes that this misunderstanding has caused the Army to question his judgment, military bearing, and commitment to the mission. He is committed to earning back the Army's trust, wishes to continue his service to the country, and believes removal of the GOMOR is the most effective way to allow him the redemption he is seeking. Still, his character itself evidences that the complete removal of the GOMOR is the only just cause of action due to his further utility to the Army, his post GOMOR OERs, and numerous memoranda that further attest to his character.

ah. Since the imposition of the GOMOR, he continued to display a high level of utility to his unit. A few of his recent achievements are that he "attended the United States Army Special Operations Command (USASOC) Jumpmaster Course and graduated in the top 10 percent of [his]class 3 out of an estimated 42," "represented the Battalion as the Chemical, Biological, Radiological, and Nuclear (CBRN) officer in charge (OIC) in two joint CBRN exercises with the Japanese Ground Self-Defense Force (JGSDF), 15th Nuclear, Biological, and Chemical Unit," and "was recognized as the top performer" during the Maritime Assessment Course in preparation for the Special Forces Combat Diver School Qualification Course.

ai. His largest achievement, since the issuance of the GOMOR is that he participated in, and earned, the Expert Soldier Badge (ESB) assessment. The applicant explains as follows:

The Brigade Commander, Colonel (COL) [REDACTED] ordered that all able and qualified personnel participate in the Expert Infantryman Badge (EIB)/ESB assessment. The Brigade's Modified Table of Organization and Equipment (MTOE) allows 3,657 personnel; 1,998 are assigned to non-infantry battalions. At the conclusion of the event, 36 of those 1,998 individuals were awarded the ESB. Seven individuals from my battalion of 510 (MTOE personnel), received the badge, including myself. This was the first time non-infantrymen were permitted to participate in an attempt to earn this badge in this unit. At my following unit, I was the only person in my battalion who had the badge, and I was sent to Camp Zama, Japan to be an instructor/grader for the first ESB conducted outside the continental United States, and the first ESB not conducted in tandem with an EIB. I continue to motivate and encourage Soldiers to prepare for these tasks and to participate to learn these basic Soldiering skills and to develop themselves under a stressful environment.

aj. Even after his separation from the Army, due to non-selection, he still displayed usefulness to the Department of Defense with a position of trust as a Security Clearance Representative with the Marine Expeditionary Force-III Command Element. With his position, he is given a high level of responsibility, is required to maintain a security clearance, and additionally works with other Soldiers that he served with, during his time in the Army; and although his separation from the Army was not under ideal circumstances, he still has not allowed his discharge to stop him from being a continued asset to the military as a whole.

ak. His OERs, from after the alleged incident to the present day, further evidence the hard work and effort that he put into upholding the Army's high standards for its Soldiers. While his 2020 rating period OER made note of the sexual harassment complaint investigation, he nonetheless was recognized for his duties as the battalion chemical officer, safety, hazardous material (HAZMAT), and unit status report (USR) officer. His senior rater Major (MAJ) [REDACTED] acknowledged that he "is a highly intelligent and analytical officer that communicates with a high degree of professionalism and tact."

al. Even though his 2020 OER was handicapped by the investigation report, his two subsequent OERs both indicated the high level of utility he brought to his unit. His 2021 OER rater MAJ [REDACTED] applauded his efforts, calling him a "dedicated officer who routinely takes on additional duties and responsibilities to support the battalion." When discussing

his character, MAJ [REDACTED] noted that he is a quiet professional who has been a dependable source of continuity within the Battalion S-3 Section, "willing to step-up and fill any required role." He was then recognized for supporting the Army's Sexual Harassment/Assault Response and Prevention (SHARP) and Equal Opportunity (EO) programs as well. MAJ [REDACTED] ultimately concluded that, "[the applicant's] performance, during this rating period was outstanding...continue to assign difficult jobs to groom this young officer for increased responsibility."

am. His next OER in 2022 from MAJ [REDACTED] similarly echoed these same sentiments. MAJ [REDACTED] acknowledged that he "took initiative as the senior CBRN Soldier in the battalion to train company CBRN noncommissioned officers (NCO)" and that he "exemplifies the Army Values through his daily commitment to the unit and the mission." Similarly, he was deemed to be "highly qualified," being among the top three 1LTs in the Special Forces Battalion and was touted as having "potential to excel as a Chemical Company Commander."

an. Last, his most recent OER, after the allegations and before his Army separation, is a standout display of his future usefulness to the Army if allowed to reenlist. MAJ [REDACTED] his rater, lauded him as being "the #1 company grade chemical officer I have worked with in 14 years of service. [The applicant]] took on and thrived with responsibilities beyond his normal responsibilities as a chemical officer, to include unit readiness, command inspection program, airborne program management, and antiterrorism." He was praised for fostering a "healthy climate of trust" in his unit, consistently extended his influence beyond his chain of command in his work as a chemical officer, assisted with Inspector General inspections, completed the Maritime Assessment Course "at the top of his cohort," and revived a nonexistent antiterrorism program as well as established a battalion standard operating procedure (SOP). In the end, he was rated as "highly qualified" when compared to other officers of the same grade with his best suited future successive assignments being Chemical Reconnaissance Detachment Commander, Company Commander, and Brigade CBRN Officer.

ao. By all accounts, he has been an outstanding and high performing Soldier who has shown his continued utility to the United States Army through his deeds and actions. He has further demonstrated, during his military career, that he is the type of individual who still has much to contribute to the Army. His continued utility is evidenced by numerous character statements authored by his fellow Soldiers, upper-level chain of command, friends, and others that attest to his high moral character both before and after the alleged incident.

ap. COL [REDACTED] who worked as his battalion commander from 2018 through 2020, similarly petitions for his retention due to his character. While COL [REDACTED] is aware of the circumstances that led to the GOMOR's filing and originally recommended the GOMOR be filed, he questions whether the applicant was "a victim of circumstances of

misunderstanding" since the "accusation was out of character for him." The COL believes that the GOMOR's intended effect to rehabilitate the applicant has been achieved and that since the incident, he has "not witnessed or received any report of conduct outside the Army values." COL [REDACTED] concludes by recognizing the applicant "cares deeply for the profession and demonstrates the expectations of a commissioned officer" and concludes that he "deserves a place within our profession."

aq. Command Sergeant Major (CSM) [REDACTED] served as his battalion commander [sic] for over two years and attests that his performance "was nothing short of remarkable." He refers to the applicant as "an officer and leader that Soldiers flock to and look for guidance and direction" and lauds him for being an example for others to emulate. While he is fully aware of the circumstances that led to the GOMOR's imposition and disagrees with the decision itself, CSM [REDACTED] recognizes him as an officer "with unlimited potential" and ultimately recommends that he be allowed to continue his Army career.

ar. Sergeant Major (SGM) [REDACTED] has worked with the applicant for the last six months as the S-3 Operations SGM and has noted the applicant's unquestionable "character, care for the county, and concern for the personnel under his stead." SGM [REDACTED] describes him as being "one of the most genuine, empathetic, and natural leaders I have come across in 28 years of service" and celebrates his completion of the Pre-Special Forces Combat Diver Qualifications Course, which he recognizes as being "one of the hardest courses in the Special Forces." In the end, the SGM advocates for the applicant's retention and notes that it would be a "great loss to the force if he were not permitted to continue service."

as. Lastly, LTC [REDACTED] the applicant's battalion commander from when he served at 1st Battalion, 1st Special Forces Group further recognizes the utility he would bring to the Army in the future. During his observation of his work as the battalion's CBRN officer, LTC [REDACTED] recognized him as "extremely dedicated to professional excellence, having strong moral fortitude and respect for others, courageously honest and candid, unrelenting in the pursuit of adversity, and exceptionally resilient in the face of stress and adversity." The LTC watched him take charge as a staff officer to enforce standards across the unit, he prepared special operators for the Special Forces Comba Drive school, and his overall moral fortitude "compliments his dedication to duty and professional excellence." LTC [REDACTED] concludes his memorandum in noting that the applicant embodies the Army Values and that if allowed to continue in the future, "he has the potential to rise through the ranks to become a significant positive force for any formation under his charge."

at. Additional character memoranda from MAJ [REDACTED] and the eleven character memoranda included from before the GOMOR was formally filed are also included for reference. These statements range from individuals who attest to the applicant "possess[ing] one of the best moral characters of any person I have met" to others who

indicate that "the Army is stronger as a result of his dedication to doing the right thing and standing against those who promote otherwise" to others who believe that "I am confident that he will continue to demonstrate both strong moral character and performance if given the opportunity for continued service." An overwhelming number of other Soldiers of similar bearing recommend that he should be given the opportunity to continue his Army duties. These thirteen additional character statements are also included as additional exhibits for brevity's sake.

au. In light of the facts and arguments presented, the applicant requests the Board correct the errors of the DASEB and retroactively remove his GOMOR from his AMHRR due to both fatal flaws in the conducted investigation and his outstanding character he displayed as a loyal Soldier. He has met the burden of proof with a clear and convincing argument of the IO's errors, during the investigation, and the DASEB erred when it relied on the IO's flawed investigation to grant only partial relief. Prior to this event, the applicant established himself as a consummate professional whose technical expertise has greatly benefited his unit and the Army as a whole, and he continues to benefit the Department of Defense in his current capacity.

av. To maintain this unfavorable information would be perpetuating a grave injustice against an invaluable Soldier and would unnecessarily place his future career opportunities in dire straits and removal of this improper GOMOR would additionally allow him the opportunity to continue serving as a Soldier in the future and be of greater service than he is currently. The evidence submitted also shows that his outstanding character and continued utility to the Army is beyond reproach and his brilliant future should not be placed in jeopardy over this incident.

3. The applicant provides the following documents:

a. Memorandum Notification of MRD due to Non-Selection for Promotion, 28 November 2022 states, in pertinent part, the Department of the Army FY 2022, CPT Army Competitive Category, Promotion Selection Board, convened to consider officers for promotion. Unfortunately he was not among those selected for promotion. He must be removed from the Army no later than 1 June 2023.

b. Memorandum DASEB Request to Remove GOMOR and Referred OER from his AMHRR, 10 February 2023, states:

(1) He submits this memorandum to request removal of the GOMOR and referred OER from his AMHRR as well as provide full context to the allegations against him. The purpose of his memorandum is to outline the issues with the investigation, evidence that the GOMOR has served its intended purpose, and to display that his retention is in the best interest of the Army.

(2) He would like first to make it clear that he does not support any act of sexual harassment. He is confident that any of his peers, coworkers, leadership, or subordinates would expect him to be the first person to stand up against this type of behavior. He respects those around him. He is careful not to touch, pat on the back, hug people, or do anything of that nature because he knows that not everyone is okay with that. To those who he has confided in with his situation, they have all reacted with surprise because this is not who he is. It is not in his character and it is not what he represents.

(3) With the allegations against him, he would like to make it clear that the accusations made against him were a combination of suppositions, assumptions, misinterpretations, exacerbations, and lies. He has always been disappointed and surprised that this investigation led where it did, and he believes the IO did not fairly consider the totality of the available evidence.

(4) The behavior described by the accuser does not pass the commonsense test. He knew she was an Army spouse, and his wife purchased the massage for him. The massage was done at a professional chiropractic office by a therapist that he would not consider his type. Even if someone were trying to solicit sexual actions, he does not believe it would be done at a professional location such as this.

(5) The issues first arose with the massage when the therapist had a conversation with the receptionist, prior to his massage. The receptionist told the therapist that she had a weird vibe from him and to be careful because he "had his hands on his crotch" the whole time he was on the automatic massage table. This was surprising because he did not sit still on that machine because he felt uncomfortable on it. It was weird and awkwardly forced his hips to move up and down, in the waiting room. He stopped after like two minutes because it was too awkward and did not feel good. Afterwards, he waited in a chair. He believes it is possible that his hands were resting in his lap but under these circumstances, that is not unusual. He believes that having been warned by the receptionist prior to initiating his massage, the therapist was looking for anything and everything she could use to potentially complain about him.

(6) He would like to make it clear that the accusations made against him were a combination of suppositions, assumptions, misinterpretations, exacerbations, and lies. During the investigation, the accuser would not directly answer the IO's questions. The things she claimed he did, she stated that he made it look like an accident. He will bring this up throughout the memorandum.

(7) A major point of contention in the investigation was that he allegedly exposed himself to the therapist by intentionally removing the drape covering his body. She claims he exposed himself two to three times (she could not confirm) and speculated that he intentionally did it when she says he made it look like an accident. He takes

issue with her statement, which incorrectly presupposed his intentions and knows that she did not follow proper protocol when a drape is removed, whether intentionally or accidentally. He is aware of these steps due to a massage therapy course he took, while attending Monterey Peninsula Community College.

(8) The therapist is in control of whether the client is exposed and is the one who lays the drape on the client since it is possible to be exposed if the therapist is not careful. In order to expose themselves, the client would have to do it on purpose by physically removing the draping or moving suddenly to one side to the point where the draping would fall off. If a client's genital areas are exposed due to improper draping the therapist reapplies the drape. In instances where proper draping exists but the client removes the drape on purpose, the therapist is trained to tell the client that they will walk out of the room, allow the client to drape themselves, and return to continue the massage. They are to instruct the client that if the drape falls off again, due to the client's intentional removal, the therapist verbally indicates that the massage is over, and no refund will be given due to the client's malfeasance.

(9) The therapist may know her own perceptions, but she cannot truly know his intentions without asking. Her statement means that she perceived it as an accident but assumed that he did it on purpose. It cannot be made fact that he did it on purpose because she is not him. Despite her claim, he did not expose himself. She also never made any indication that he conducted any inappropriate behavior. The IO asked what the procedure is for this type of behavior in the event that it does occur, and she did not answer the question. There was no follow-up to get an answer from her. She did no such procedure because there was no such behavior.

(10) The therapist claimed that he touched her upper thigh, but again says that he made it look like an accident. Again, she is stating her own perspective that she perceived it as an accident and assumed that he did it on purpose. She cannot know his intentions without him stating them. Under these circumstances, during a massage, it is possible for the therapist to brush up against the client's hand or arm if they position themselves there. Again, she was in control. She stated that she would have to position herself in a way that it would be difficult to do on accident, yet she says she perceived it as an accident. This is a contradiction. Would it not have to be on purpose or look like it was on purpose if she was positioned as she claimed? An intentional grab, he believes, would have been described much differently than an appeared accident.

(11) Again, under the circumstances, it is not uncommon to brush up against someone's arm or hand if the therapist does not move the arm out of the way. Under the circumstances, it is also possible for a client to accidentally brush against the therapist if they move their arm in a different positions. If this happens on purpose, he believes it would not seem like an accident, as she stated. Regardless, he does not remember his hand or anything else touching her. If it had happened to him, and it seemed intentional,

he would have either said something or moved the arm out of the way or let the client know to relax and that he would move their hand or arm if necessary, and that if they were cold or hot to let him know, so he would stay in control. There were no indications that this occurred.

(12) The accuser claims that he asked her to massage areas near his genitals. Under the circumstances, this is not unusual. The groin and glutes were among a list of other muscles discussed to focus on prior to undressing, including the iliotibial band, hip, and hamstring. She was the one who suggested that they focus on the lower body, and he agreed, if she thought that is what would make sense for what he believed to be a one hour massage, which actually only lasted 50 minutes.

(13) The accuser claimed he was naked on top of the blanket and sheet, when she walked in. The common sense question about this was to ask her reaction, if this was the case, but it was not asked. If it were him, he would have instructed the client to cover themselves how he wanted, he would have left again, and returned. Regardless, this was a lie. He was covered from his waist down and when she walked in, she covered his back and neck.

(14) The accuser claimed he made a vague comment soliciting sexual acts. First of all, she did not actually claim that he solicited sexual acts. Second, she claimed he was difficult to read, but she assumed his intentions were sexual. During their conversation, he told her that his wife had gifted him the massage because she does not like to give massages. The therapist twisted that phrase in a way that is disturbing to read, so he will not repeat it. He did not say what she said he did. However, even if he had said what she said he did, it was not a solicitation, it would be a creepy way to suggest and as she put it, vaguely implied that he would be willing to get more if she wanted but he did not want that. Everything about the environment and common sense indicates he was not there for sexual activity. He did not say what she said he did and it would not have made sense to ask for something like that, under these circumstances.

(15) This is ridiculous, just read her answers. This does not sound like someone who has been sexually harassed. She just seems snippy. She gives no detail to the IO's [questions]. She does not remember saying things she said in a Criminal Investigation Division (CID) interview, she cannot give any details of anything except a quote she made up about his wife that she insists is exactly how he said it. She agrees that it is necessary to adjust yourself, denies the claim she formerly made about him masturbating, and says he was adjusting himself. The results of this investigation never should have progressed as far as it did.

(16) While he still believes that his behavior should never have been called into question and that the allegations against him are false, he understands that GOMORs are used to deter and correct a Soldier's behavior. Ever since the GOMOR's imposition,

he has not had any further allegations of a similar nature nor has any other allegations of misconduct arisen. But while the GOMOR has served its intended purpose and he has maintained his high level of utility to the Army to the present day, this process has caused a strain on his life that he has dealt with for the past few years.

(17) During the investigation and in the months to follow, he could sense the difference in how he was treated by his leadership. He could feel that they no longer trusted him. He needed people to talk to, but he understood that anyone he informed about his situation would have to decide whether they believed him. It made him vulnerable and he felt they would have to reassess everything they knew about him in deciding whether to support him or not. He asked several individuals for letters of support, which were included in his original rebuttal. Most of them were supportive and understanding of his situation. Nevertheless, under these circumstances, it was difficult to have to ask this of his leadership, chaplain, and friends.

(18) Reading the accusations makes him uncomfortable. The way the therapist describes him and what she believes his thoughts and intentions were is far from how he treats those around him and far from his intentions. He strives to uphold the highest levels of respect that he is capable of. While trying to deal with the emotional and mental impacts of this situation, he sought support from the Military Family Life Counselors to deal with this cloud that now constantly hovers over his head. For about a year after the investigation, he was dealing with feelings of loneliness, isolation, self-doubt, and anxiety. These feelings still arise on occasion, when he has to face the possibility that his career, livelihood, and passion may be taken from him.

(19) Almost a year after the accusations, a peer who had worked with him for a couple of months had begun to trust him and they started eating lunch together. After a while, he opened up and told him about a number of rumors that were going around among his peers about what they believed he had done and why they thought he got a GOMOR. Some of the rumors involved his wife and went as far as to say he was trying to get hand jobs at massages because his wife does not touch him at home. The applicant was glad he was able to ask and hear the applicant's side of the story, but it was difficult knowing that others pass this type of judgement without having the courage to verify the truth, at the source. He was not easily able to gain friends or acquaintances among his peers. He was an outsider. He also worried that due to the small size of the Army, these rumors would go beyond his own battalion. He wonders now, with each person he meets, whether they think they know something about him that they are not telling him.

(20) Every time his leadership positions change, or if he changes assignments, he has an internal battle whether he should seek the support of his leadership and explain his situation or if he should try to let them have an unbiased point of view of who he is, his work ethic, his virtues, his strengths, his character, and his behavior. In his

experience. When he does choose to reveal to them what he is going through, they are surprised to hear that these allegations were made against him considering his demeanor, his behavior, and his values. Many times, he has chosen to tell them, hoping they might know where he might turn to make this right.

(21) His church leadership found out about the allegations quickly after his chain of command told him about it. He still does not know how they found out but his bishop said he was required to ask him whether he had solicited sexual favors at a massage therapy office in order to evaluate his standing in the church. He was honest with the bishop and the bishop believed him when he told him he had not done that but their relationship felt different after that. The bishop refused to tell him how he found out. He does not know who else knew in the church but his wife ended up not going to that congregation anymore having lost trust in the leadership and having been shunned, he decided to serve in a different meeting house (same church, but different congregation).

(22) This event has also affected his family life. His wife felt like it was her fault for trusting the chiropractic place because she had gotten the massage as a gift certificate. He had also called her shortly after the massage because it ended after 47 minutes instead of the expected 60 minutes (he was unaware, at the time, that they only did 50 minutes in order to use the last 10 minutes to prep for the next person). Because they thought it ended 13 minutes early, she had complained to the management, and he did as well. After the accusations were made, she felt like she made a mistake trusting the chiropractic office to provide a professional massage. She was torn because she knew he needed support in his situation, but she also was upset and needed support. She met the same challenge of needing people to talk to but understanding that in sharing their struggles, it left them vulnerable to judgement and potential loss of friends. Though she supported him throughout the process, bringing it up gives her too much anxiety. When he seeks support over the phone, while at home, she has to leave the room because it causes too much stress.

(23) Following the investigation, he was denied the opportunity to attend the Military Mountaineering Course and Cold Weather Leadership Course. The first sergeant, at the time, refused to place him on an order of merit list to go to the course saying that he did not put him on it because "that course is for leaders." It is this kind of judgement that he must worry about with potentially all of his leadership. He wants to tell them because he knows they are going to find out eventually but he tries to wait so they can see who he is first because he does not want this to identify him. It is not who he is.

(24) He was not able to be promoted with his peers and he believes all of his friends and classmates know that he was not on the promotion list. He feels that there can easily be a perception that he did something wrong because he has been a 1LT for

so long. Sometimes he explains himself, other times he just lets them wonder but both ways, it is miserable having to suffer this.

(25) He has gone to legal assistance multiple times to try to find a solution of how he can get proper justice. The support he has received has been limited to what he is able to find online and inquire about. He feels like he has not been able to find the support he needs to give him equal opportunity to justice.

(26) He has developed a fear of being in the presence of a female without someone else around. He gets anxiety and he starts to sweat, worried that he could be accused of something he did not do. He gets uncomfortable in situations like that because he does not want to be accused of anything like this ever again. He cannot hug people anymore, out of fear. He gets stressed out thinking that they might be uncomfortable with a hug, and if someone hugs him, he ends up being uncomfortable as well for the same reason. He wishes he could hug people without anxiety but he thinks it would take some time and therapy.

(27) Though he has experienced pain in his lower back, hip flexors, psoas, and groin, he has limited his therapy options because he does not trust people as much as he used to. He does not bring up where he feels pain at times because he feels like he has to be overly cautious, when he describes where he is hurting.

(28) The allegations made against him are not who he is. They are not part of who he wants to be. They are not in line with his character, his values, nor the level of respect he intends for every interaction both in the work place and in civilian life. However, they have affected his life for years now, and he begs that this might be taken off his AMHRR, that he might continue in his career without this following him for the remainder of his days in service. He has suffered tremendously, and even if this is removed, he will never forget the impact this has had on him and his family.

(29) Throughout his efforts to refute the GOMOR, he was regularly discouraged by the lack of assistance in how he might remove this information from his record. Despite the mental and emotional discouragement that this has caused him and his family, he has done everything he could to continue supporting the missions of his unit, improving himself, and the overall betterment of the Army.

(30) Since the issuance of the GOMOR, he participated in, and earned, the ESB. The Brigade Commander, COL [REDACTED] ordered that all the able and qualified personnel participate in the EIB/ESB assessment. The Brigade's MTOE allows 3,657 personnel; 1,998 are assigned to non-infantry battalions. At the conclusion of the event, 36 of those 1,998 individuals were awarded the ESB. Seven individuals from his battalion of 510 MTOE personnel, received the badge, including him. This was the first time non-infantrymen were permitted to participate in an attempt to earn this badge in this unit. At

his following unit, he was the only person in his battalion who had the badge, and he was sent to Camp Zama, Japan to be an instructor/grader for the first ESB conducted outside the continental United States, and the first ESB not conducted in tandem with an EIB. He continues to motivate and encourage Soldiers to prepare for these tasks and to participate to learn these basic Soldiering skills and to develop themselves under a stressful environment.

(31) He attended the USASOC Jumpmaster Course and graduated in the top 10 percent of his class, three out of an estimated 42. He was selected as one of the top students to represent the battalion in a joint jump week as a jumpmaster with the Royal Thai Army. He will also be participating in a joint jump week in Korea, again representing the battalion as a jumpmaster. As he participates in exercises with our partner forces, and as he mentioned in his rebuttal, he takes his role as a Soldier very seriously, in that he knows that his actions reflect not only himself, but his family, his battalion, the Army as a whole, and the United States.

(32) As the Battalion CBRN OIC, he represented the battalion as the CBRN OIC in two joint CBRN exercises with the JGSDF. He seeks to learn their language and honor their cultural norms. After the first exercise, they were invited to observe a CBRN exercise conducted by the JGSDF on Naha Air Base, Okinawa. This was a direct reflection on the success our Soldiers had on fortifying relationships with our partner forces.

(33) In the fall of 2022, he participated in the Maritime Assessment Course in preparation for the Special Forces Combat Diver School Qualification Course. Of the eleven original students, four completed the course. He was recognized as the top performer by CSM [REDACTED]. He is currently eligible to attend the Combat Diver School Qualification Course, pending reconsideration for promotion.

(34) He is a trusted and active member of his church and he has been teaching Sunday school for the five year old class for the past year. He was also asked to teach the Missionary Preparation Course for students ages 16 to 21 who are preparing to serve a two year mission around the world. Starting in December 2022, he will teach the 8 year old Sunday school class for the next year, so long a he is still there.

(35) He understands that it would be easy to replace him as a number but he promises, there are few people that he has met with as much integrity and with as decent a moral compass as him. He hopes the DASEB can consider these memoranda, his OERs after the referred one, and the letters attached in his behalf that this derogatory information might be removed from his record, that he might continue to set an example to those in his purview. There is nothing he would rather do than continue to serve those around him and our country in this capacity. He cherishes his position with the utmost respect, honor, loyalty, and dignity. He requested the DASEB consider

removing this GOMOR and referred OER from his records so he could continue to serve.

c. DA Form 2823 (Sworn Statement) from [REDACTED] which states:

(1) Prior to 10 December 2019, did you have any contact with [the applicant]?
"No."

(2) Are video records maintained of customers as they enter/leave Artic Chiropractic? Are videos maintained of customers, while they are given a massage?
"No. We do not have video surveillance in any of the main areas of the clinic, and having video in the massage rooms where people undress would be illegal."

(3) In the event that a customer makes suggestive comments/exposes themselves, what is the protocol or steps taken to document/report the incident at Arctic Chiropractic? "The therapist reports to the office manager who reports to the doctor/owners."

(4) Was anyone else in the massage room when [the applicant] was getting his massage/possibly made suggestive comments/and/or exposed himself? "No."

(5) During the interview with CID, you mentioned that it was tough to depict [the applicant's] demeanor, intentions, and the tone of his voice, could you expand upon each of these in detail? "I do not recall saying this or phrasing it this way. His demeanor: unsettling; Intentions: sexual in nature; Tone of voice: suggestive. Overall he was a little hard to read but it was clear he was seeking more than a massage."

(6) How many times, after you first walked in the massage room and [the applicant] did not have the blanket and drape covering himself did he continue to remove the blanket and/or drape exposing himself to you? "Between 2-3 times after I recovered him initially."

(7) During the interview with CID, you stated [the applicant] "would toe the line" of being inappropriate and then go back to being appropriate when he identified you were getting upset. Could you go into detail of how he was being inappropriate - specific statements and/or actions? "Asking for me to massage his 'groin'. Repeatedly asking me to work on him without the drape. Acting like it would be okay to go against professional medical massage practices because he went to massage school too. Talking about/making implications about his personal/sexual relationship with his wife."

(8) During the massage did [the applicant] specifically ask for anything sexual? i.e. oral, etc. or was he vague saying "I really need a massage, not just for my muscles, but because my wife doesn't touch me at home"? If he did, what exactly did he say? "He

did not ask for anything explicitly. He mentioned several times that he preferred 'skin to skin contact' when referring to his glutes and also his 'groin' (his verbiage) while I worked on his quads. He said this was okay because he also went to massage therapy school and mentioned it several times, even after I told him that was not how professional/medical massages are conducted." She indicated he said "I really need a massage, not just for my muscles, but because my wife doesn't touch me at home."

(9) Did you witness [the applicant] masturbate in front of you? Or do you believe he did with your inability to see him due to him either being covered at the time or face down? "I believe that he was touching himself inappropriately, mostly while he was face down."

(10) You stated, during the interview with CID, that [the applicant] would "adjust" himself and it was not quick, but longer than necessary. What do you consider longer than necessary? "Anything done with sexual intent is not necessary but also not appropriate. Adjusting any part of your body because you are uncomfortable on the table is sometimes necessary."

(11) At the end of the interview, CID told you that this incident met the statute for harassment as a misdemeanor if you reported it through the Anchorage Police Department, why did you chose not to? "Mainly because that seemed like it would be more disruptive to my life but also because while I believe that [the applicant's] actions were gross, inappropriate, and even predatory, my intent with reporting it is not to ruin his life but to let him be aware that he cannot do things like this and not have consequences that people will not speak out. My hope is just that he won't do this again to anyone else or anything worse."

(12) Has an incident like this ever occurred prior to or after the incident with [the applicant] involving you at [REDACTED]? "I'm not sure how this is relevant but no. Not to this extent."

(13) Is there anyone else you recommend I speak with? Is there anything you would like to add? "No."

d. Character statement from SGM [REDACTED] 18 December 2022, states in pertinent part, the SGM had the pleasure of working with the applicant over the last six months. During the time, he has been nothing less than phenomenal in the conduct of his duties and as a leader and advocate for the personnel underneath him. He continues to demonstrate his desire to learn and desire to become a better officer, person, and leader. The SGM personally observed his courage as a leader, as he has been able to expertly articulate and advocate for personnel within the S-3 section in spite of leadership above him perhaps not sharing the same views. He is one of the most genuine, empathetic, and natural leaders the SGM had come across in 28 years of

service. The SGM believed he has outstanding continued potential and it would be a great loss to the force, if he were not permitted to continue service. Despite his career progression delays, he continues to remain motivated and performs at the highest level consistently volunteering for the most difficult and challenging tasks. He has demonstrated time and time again that his values and purposes are coherent and congruent with those of the U.S. Army and the United States of America.

e. Character letter from COL [REDACTED] 21 December 2022, states in pertinent part, the COL recommends that the Army find a way to keep the applicant in the service of the nation. The COL has known and worked with him in a supervisory capacity from 2018 through 2020. He found the applicant to be a person of character, pious, and supported by his family. The applicant received a GOMOR...if the GOMOR intended to rehabilitate him following an incident of poor judgment, it achieved its effect. This incident does not define the applicant. Since the incident, the COL has not witnessed or received any reports of conduct outside of the Army values. He is an average performer who lives the Army values, promotes the Army profession, and develops subordinates by sharing his experience. He is an officer of good moral character that placed himself in a situation where he was accused of wrongdoing. A tiny part of the COL still thinks he could have been a victim of circumstances or misunderstanding. The accusation was out of character for him. The COL is confident that he learned from this situation and deserves a place within their profession. He cares deeply for the profession and demonstrates the expectations of a commissioned officer.

f. Letter of support from LTC [REDACTED] 18 December 2022, states in pertinent part, the LTC has served as the applicant's commander for approximately six months. The LTC has consistently observed the applicant as extremely dedicated to professional excellence, having strong moral fortitude and respect for others, courageously honest and candid, unrelenting in the pursuit of adversity, and exceptionally resilient in the face of stress and adversity. The LTC has watched the applicant as a staff officer take charge and adroitly enforce standards even as a junior officer in a Special Forces Brigade containing many seasoned special operators. One thing has been clear to the LTC, the applicant has consistently demonstrated great moral fortitude, which complements his dedication to duty and professional excellence. If his past performance is an indicator of his future actions, then the LTC would strongly assess that he would be an incredible asset to the U.S. Army. He truly embodies the Army Values. If retained, the LTC believes he would maintain the highest standard of moral and professional conduct, and that he has the potential to rise through the ranks to become a significant positive force for any formation under his charge.

g. Letter of support from MAJ [REDACTED] 16 December 2022, states in pertinent part, the MAJ had the pleasure of working with the applicant for 18 months. During this time, he clearly demonstrated the Army Values, particularly respect for others in the unit. Special Forces battalions commonly face the challenge of ensuring a climate of

inclusiveness between operators and enablers. The applicant navigated this environment by earning the ESB alongside their support Soldiers and performing exceptionally well in the Maritime Assessment Course with their combat diver candidates. His example fosters inclusivity within their formation. The MAJ is confident that the applicant will continue to demonstrate both strong moral character and performance if given the opportunity for continued service.

h. Memorandum of support from CSM [REDACTED] 8 December 2022, states in pertinent part, the applicant served as the Battalion Chemical Officer during approximately 24 months of the CSM's tenure. The applicant's performance was nothing short of remarkable. While in his role, he realigned the duties of the paratroopers within his charge to ensure a streamlined approach trending toward administrative excellence. He provided purpose to his paratroopers, while instilling a sense of pride within his section as to their importance to the success of the battalion. The applicant is an officer and leader that Soldiers flock to and look to for guidance and direction. His is a transparent and honest leader who serves as an example for others to emulate. He takes ownership, accepts responsibility, and works diligently to overcome his shortcomings and mistakes. His personalized approach to the leadership of Soldiers is awe-inspiring. While the CSM does not condone the decision that led to the receipt of a GOMOR, he asks that the applicant's GOMOR does not prevent him from further service. The applicant is learning and will continue to learn from his mistake.

i. Memorandum of Support From [REDACTED] 29 March 2020, states in pertinent part, Mr. [REDACTED] has known the applicant since early 2007. They became close friends through attending the same church. Mr. [REDACTED] was aware that an investigation was initiated into circumstances surrounding the applicant. The applicant is one of the smartest and most personable and driven people Mr. [REDACTED] knows. He's always been good at making friends and helping others feel welcome. The applicant became a leader in their congregation and he was someone who everyone looked forward to being around. Throughout the years, the applicant has continued to be an exemplary friend to all who know him, these qualities make the applicant a critical asset to the U.S. Army. His intelligence and self-drive would have served him well in multiple career paths. Mr. [REDACTED] is appalled that a GOMOR action might even be considered against the applicant. He has the qualities of high ethical and moral character, passion for mentoring and empowering others, and continuous drive to improve himself. Mr. [REDACTED] hope is that these character traits and leadership strengths, which the applicant embodies, are the exact characteristics the U.S. Army strives to recognize and reward in its Soldiers.

j. Rebuttal to GOMOR from Mr. [REDACTED] 29 March 2020, states in pertinent part, Mr. [REDACTED] met the applicant nearly a decade ago. They became great friends, during their two years as missionaries, and have deepened that friendship over the years since. Several of the experiences Mr. [REDACTED] has had with the applicant illustrate the strength of his character. He demonstrates extreme integrity, discipline, and honesty. He goes above

and beyond what is required and does it with a smile. He leads by example, getting the most out of those he leads by only asking them to do what he is doing. The applicant struggled to find a career but then he found the U.S. Army and it was like he had come home. For someone as disciplined and high achieving as the applicant, only the military could offer the challenges necessary to keep him engaged and happy with his work. All of the values of the military align perfectly with his personal values. Respect, loyalty, duty, hard-work, and integrity all resonate with him at a deeply personal level. There is no one Mr. ■ would rather have defending the freedoms that he cherishes than the applicant because he knows there is nothing the applicant would not do to that end.

k. Letter from Mr. ■ DMD, 29 March 2020, states in pertinent part, the applicant is one of the few people Mr. ■ has met that he can attest to having both the utmost moral character values and a constant desire to improve himself in every aspect of his life. The applicant is a valuable asset to his community and the U.S. Army. Mr. ■ has known the applicant for over thirteen years when they were attending college. Neither of them enjoyed the the college party scene and Mr. ■ introduced him to The Church of Jesus Christ of Latter-Day Saints. The applicant was impressed by the caliber of like-minded people he met in the church and decided to become a member of the church. Though he began with high moral character, Mr. ■ watched as his commitment to moral excellence deepened and he developed a drive to continue to better himself morally, and to challenge himself to be better at everything he did. The applicant is one of the best people Mr. ■ knows and continues to be a source of inspiration for Mr. ■. Mr. ■ knows he is a valuable asset to his unit and is sure that those who work with him can also attest to this. He has been living the Army values long before he ever joined the military.

l. Letter of rebuttal to GOMOR from Mrs. ■ 28 March 2020, who is married to the applicant's friend and is a close friends with his wife. In all of her interactions with the applicant, he has always demonstrated that he is a man of strong moral character. He values his marital relationship and does not deviate from it. He upholds the oath he made to the U.S. Army and his loyalty to it bears witness of his indispensable leadership qualities: his exceptional performance in his duties, his intuition evidenced in the responsibilities given him, his respectful interactions with his superiors, and his produced results that consistently exceed expectations. He is honest in all of his dealings with his fellow man. She trusts and believes his account of the events that occurred. He is a man of integrity, honesty, and honor. She requested the accusations made against him be dismissed and the suggested disciplinary actions be withdrawn.

m. Letter from Mr. ■ 30 March 2020, who is the uncle of the applicant and was aware of the charge that had been levied against him. His uncle was shocked by it and is having a difficult time believing the allegations. The applicant was always an excellent student, always an overachiever, and was always of upstanding moral character. After the loss of his cousin in combat in Afghanistan, he made it his intention

to join the Army. He dedicated himself to a life-long commitment in pursuit of what he hoped would be a stellar career. He is a dedicated Soldier. His capabilities, whether dealing with HAZMAT, commanding other Soldiers, jumping out of planes, or learning foreign languages, are unsurpassable. Mr. [REDACTED] strongly believes no adverse action should be taken in this matter. As indicated, the applicant has always proven himself to be of good moral character, continued high performance, and efficiency. He is extremely smart and physically fit and he has never had any disciplinary problems.

n. Rebuttal to GOMOR from Mr. [REDACTED] Ph.D. who would describe his relationship with the applicant as a friend, former roommate, and landlord. They also worshipped together at the same church. The applicant has been an extremely conscientious and loyal individual. As a roommate, he demonstrated responsibility and high moral standards. Mr. [REDACTED] has never seen him sink to being sarcastic, crass, vulgar, or having fun at another person's expense. When he is given opportunities to grow, he has taken those opportunities and run with them. Mr. [REDACTED] feels the applicant is the type of Soldier and officer we need in the military. He seeks to do the right thing. He is a deep thinker who is also deeply loyal to those around him. He is the type of individual that would be a strong mentor to junior officers as his career proceeds. Mr. [REDACTED] believes the applicant's high moral character and passion for serving our country in the military should be considered as part of his proceedings. It is Mr. [REDACTED] hope that no actions will be taken against the applicant's Army service and that he is given the mentorship and growth opportunities necessary to fully develop him.

o. Memorandum of support from Chaplain (CPT) [REDACTED] 29 March 2020, who worked with the applicant on staff for over a year. CPT [REDACTED] is aware of the investigation concerning sexual harassment allegations made against the applicant. The applicant is a hardworking Soldier who constantly looks for ways to improve in his profession. He is of the highest moral standing, which no one would question. When examining the applicant's tract record and character attributes, nothing qualifies him for dismissal from the U.S. Army. The Army is stronger as a result of his dedication to doing the right thing and standing against those who promote otherwise. The GOMOR action should not be imposed against the applicant because of his outstanding moral character and his continued high performance and efficiency. The shocking accusations against him are not in line with his daily character and behavior and do not sound like anything the applicant would do. There must have been a big misunderstanding and a more plausible explanation for what actually took place.

p. Rebuttal to GOMOR from 1LT [REDACTED] 30 March 2020, who met the applicant in January 2018. The 1LT has witnessed the applicant enforce the Army Values. His beliefs and good moral standings are essential to his character. His integrity is above other officers within the Army. He has proven himself as a hard-working and upstanding individual. Not once did he act disrespectful toward any fellow officer, subordinates, or the 1LT's wife. He continually assisted others and never portrayed a Soldier that would

neglect his personal and professional responsibilities. He has never received any disciplinary action to include a verbal counseling. The 1LT is surprised to learn of the behavior the applicant is charged with. The circumstances surrounding this incident are out of character and the 1LT wholeheartedly believes it was a misunderstanding between the parties involved. The applicant is one of the most honorable officers the 1LT has come to meet, and he would not hesitate to work with the applicant.

q. Memorandum of support from 1LT [REDACTED] 27 March 2020, who has known the applicant for 14 months. The loss of the applicant in the U.S. Army would be a detriment to the Army itself and with whom he would associate in continued service. The applicant has consistently produced outstanding results in the duties he is called upon to execute. His behavior on and off duty exemplifies that of a true officer in the U.S. Army; he well and faithfully discharges the duties of the office on which he has entered. He has already proven an asset and will continue to do so. The GOMOR action should not be imposed on the applicant. He is the epitome of high moral character and is well known for the high standards he lives by. This is true of all aspects of his life and his performance within the Army. His service is free both from impropriety and the appearance of impropriety and he has earned the unquestionable trust of his associates. The 1LT is confident that these accusations of impropriety are a fabricated exaggeration of the actual events that occurred and are completely unfounded.

r. Memorandum of support from 1LT [REDACTED] 30 March 2020, who has served with the applicant for ten months. The applicant has shown himself to be of good character, integrity, and having a manner of which the 1LT sees as being above reproach. He has consistently and faithfully shown himself to have his moral compass set to a higher standard. He is a true patriot who is willing to serve his country long after those reading the memorandum. He is an asset to the Army, not a liability. The GOMOR should not be imposed on the applicant because his character, integrity, and moral compass are that which should be emulated by both peers and subordinates. The 1LT questions the very concept of a GOMOR being initiated in the case given the circumstances surrounding the accusations. The 1LT only hopes the GOMOR be rescinded and the applicant be allowed to continue his very promising career, for the benefit of both his family and the U.S. Army.

s. Rebuttal to GOMOR from 1LT [REDACTED] 30 March 2020, who worked with the applicant for four months and is his friend. The 1LT knows the applicant as an excellent performer and someone who is always willing to help others in need. He is open-minded, selfless, and resilient. These qualities along with his strong determination, his self-discipline, and his willingness to learn make him an asset to the U.S. Army and give him great potential to excel as a leader. The 1LT believes the GOMOR should not be imposed because the applicant possesses one of the best moral characters of any person the 1LT has met. It is extremely difficult for him to believe that the applicant has received any disciplinary actions especially one indicative of poor morals. His

impression of the applicant is one of a man who cares deeply for his family and friends, is devoted to his wife, and is determined to strive toward greatness and excel as a leader.

t. DA Form 2823 (Sworn Statement) from [REDACTED] 24 February 2020, states she was not in the office at the time of the incident between the applicant and the therapist. The therapist called her after to advise. The therapist stated the applicant was very inappropriate, during his massage, pulling his covers off to expose his genitalia, saying things like his wife never touches him, and consistently asking for only groin work encouraging her to get closer to his genitalia area. The therapist told Ms. [REDACTED] she repeatedly advised him about the inappropriate nature of his request. She ended up ending the massage about 10 to 15 minutes early due to him not stopping the inappropriate behavior.

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

a. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was an enlisted member of the Regular Army from 17 October 2017 through 15 April 2018. He was honorably discharged to accept a commission or warrant in the Army.

b. DA Form 71 (Oath of Office - Military Personnel) shows he took the oath of office in the Regular Army Chemical Corps on 16 April 2018.

c. DA Form 67-10-1 (OER) show he was rated as:

(1) From 16 April 2018 through 31 July 2019 in the rank of second lieutenant. He was as proficient. He is an adaptive top 20 percent officer that finds ways to impact the battalion. His actions were in accordance with the Army Values and he is a strong supporter of the Army's SHARP, EO, and Equal Employment Opportunity (EEO) programs. He carries himself in a manner uncommon to his peers. His ability to adapt to his environment led to his election as the OIC for the Army Award for Maintenance Excellence. He embraces opportunities to place himself outside of any comfort zone. His efforts as the Battalion Chemical Officer in fostering the professional growth of the Battalions CBRN NCOs allowed each battery/company to successfully pass their yearly inspection. His efforts as the Battalion HAZMAT representative were instrumental in repeatedly deploying their firing batteries. He was rated as highly qualified by his senior rater who states he demonstrates the potential to succeed as a company grade officer and promote with peers.

(2) From 1 August 2019 through 18 June 2020 in the rank of 1LT, his referred OER. He was rated as capable. He satisfactorily performed all prescribed duties and responsibilities as the Battalion Chemical Officer, safety, HAZMAT, and USR officer. He

received a GOMOR for engaging in sexual harassment. He demonstrated excellent physical fitness and resilience while overcoming both physical and professional adversity throughout the rating period. He is a highly intelligent and analytical officer that communicates with a high degree of professionalism and tact. He built relationships that extended influence outside of the organization, while fulfilling his assigned duties. He demonstrates an acute awareness of perceived strengths and weaknesses and frequently seeks out guidance and mentorship. He was instrumental in the planning, coordination, and execution of the Battalion Saint Barbara's Ball. He was rated as qualified by his senior rater who states he is a capable chemical officer, and with continued development demonstrates the potential for future service. Select for promotion if able. In response to the referred OER, the applicant states:

(a) He was notified on 20 December 2019 that he had been accused of sexual harassment. He was unaware of what specifically he had been accused of until late March 2020 when he was granted access to the investigation. Surprised by the allegations, he submitted a rebuttal to the GOMOR on 31 March 2020. He described his relationship and temple marriage with his wife, his commitment and service to his religious convictions, his service as a full-time missionary, and his understanding that his actions represent himself, his family name, his country, and his religion. He also described his military successes and his quantifiable commitment to physical fitness. He attached eleven character references from lifelong friends, prior missionary companions, co-workers, prior Basic Officer Leadership Course (BOLC) and Officer Candidate School (OCS) classmates, and his current chaplain. He included his previous OERs, his school evaluations and certificates. Finally, he denied the allegations of inappropriate conduct placed against him and he asserted he would never act in such a manner to disrespect neither the individual, his faith, his family, nor his service. He also requested the GOMOR not be placed in his AMHRR.

(b) Despite his rebuttal and an open-door meeting with the Commanding General, in the presence of his full chain of command, and presenting additional evidence in his favor, he was notified on 21 April 2020 that the filing determination was that the GOMOR would be filed permanently in his AMHRR. Concerning how these determinations were made, the Commanding General stated, "I made these decisions based only on the evidence in this investigation and after consultation with my legal advisor who also read the investigation and character references."

(c) The decision to place this permanently in his AMHRR was made before he was given due process or had even been made aware of what allegations had been levied against him. By the time he had presented his case, such a strong negative stigma was placed against him, as to eliminate any chance of fair treatment in this matter.

(d) He believes that the decision to be rated as he was, was based on the indefensible GOMOR placed against him. The derogatory remarks were made out of obligation and were reflected in the remainder of the OER without consideration of his true character, the nature of the situation surrounding the accusations, and without an understanding of his actions, during the rated period.

(3) From 19 June 2020 through 18 June 2021, in the rank of 1LT, he was rated as proficient. He is a quiet professional focused on supporting the mission in any capacity. He unfailingly supported the Army's SHARP and EO programs. He set an example for physical fitness and Soldier skills by testing for and ultimately earning the ESB. He is a detail-minded individual. He personally guided 161 paratroopers through the process of applying for their Government Travel Card. He assumed the role of USR coordinator. He planned and executed a battalion-wide holiday event. He was rated as highly qualified by his senior rater who states his performance during the rating period was outstanding. He clearly demonstrates the potential to excel at higher levels.

(4) From 19 June 2021 through 27 March 2022 in the rank of 1LT, he was rated as proficient. He enthusiastically prepares himself and the battalion to be proficient in its CBRN related mission essential tasks. He exemplifies the Army Values through his daily commitment to the unit and the mission. He fostered an environment of unequivocal fairness, cultural awareness, and resiliency with his section championing the SHARP and EO programs. He maintained high levels of fitness throughout the entire rating period. He served as the property book holder for the battalion operations section responsible for \$444,025 worth of equipment. He conducted multiple CBRN training events with the III Marine Expeditionary Force and the JGSDF on Okinawa. He took initiative as the senior CBRN Soldier in the battalion to train company CBRN NCOs. He was a critical advisor in the redesign of the battalion's crisis response company as it reevaluated CBRN related tasks. He was rated as highly qualified by his senior rater who states he is among the top three 1LTs in the battalion. Must promote to CPT. He has the potential to excel as a Chemical Company Commander.

(5) From 28 March 2022 through 27 March 2023 in the rank of 1LT, he was rated as proficient. He is the number one company grade chemical officer his rater has worked with in 14 years of service. He embodies the Army Value and Warrior Ethos in all that he does. He fully supports the Army SHARP, EO, and EEO programs. He exhibits excellent military and professional bearing. He demonstrated excellent mental agility, rapidly switching between tasks in support of unit readiness reporting, chemical readiness, antiterrorism, and airborne program management. He consistently extends influence beyond the chain of command working with chemical officers from other joint service units. He pursued multiple mission enhancing qualifications in addition to his workload to include becoming a qualified static line jumpmaster. He revived a nonexistent antiterrorism program and established a battalion SOP that was validated in a base defense exercise. He was rated as highly qualified by his senior rater who states

he is number 1 of six 1LTs and in the top five percent of chemical officers the senior rater has served with. His potential is unlimited. Promote to CPT.

d. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) shows he was flagged for commander's investigation on 17 February 2020.

e. An Executive Summary, which summarizes the incident between the applicant and the massage therapist, which is available for the Board's review.

f. DA Form 1574-2 (Report of Proceedings by Investigating Officer) and memorandum AR 15-6 conduct unbecoming an officer and a gentlemen findings and recommendations, 3 March 2020, states in pertinent part:

(1) The IO found on 10 December 2019, the applicant acted in a manner unbecoming an officer and a gentleman, while at Arctic Chiropractic. His conduct, while in the massage room with Mrs. ■ present has compromised his character as a gentleman and has dishonored himself as an officer. He allowed his standards to fall below the limit of tolerance compromising his good standing as an officer.

(2) Based on the findings the IO recommended, he receive appropriate administrative action and appropriate remedial training.

g. On 5 March 2020, an administrative law attorney completed a legal review of the AR 15-6 investigation and states he reviewed the report and IO's findings and recommendations. He found the investigation legally sufficient and recommended approval of the findings and recommendations.

h. GOMOR, 23 March 2020, which reprimands the applicant for engaging in sexual harassment of Mrs. ■ on 10 December 2019. Specifically, he exposed himself to Mrs. B-, made sexually suggestive statements, and touched her upper thigh without her consent. On 24 March 2020, the applicant acknowledged receipt of the GOMOR and elected to submit written matters. On 31 March 2020, the applicant submitted a rebuttal to the GOMOR, which states:

(1) He would respectfully request the GOMOR be withdrawn. He did not engage in sexual harassment and vehemently asserts that this type of action goes against his core beliefs and religious convictions. He understands the severity of the allegations and is working hard to prove himself and retain his career.

(2) On 10 December 2019, he did go to Arctic Chiropractic for a massage. It was a gift from his spouse. She knows that he works hard to maintain his physical fitness and that he has a background in massage therapy. She knows he prefers a deep tissue massage and that is not something she is able to do.

(3) He and his wife have been married for six years. They have a strong relationship founded on love and a mutual respect for their faith. They are members of the Church of Jesus Christ of Latter-Day Saints and were married in the Temple. He would not disrespect her, their marriage, or their faith in the manner described in the allegations.

(4) The allegations are not within either his personality or character. He has been advised by counsel he should remain silent. More to the point, he recognizes that this is at best his word against hers. He does not know why she would make these allegations. He can say that he believed he was in a professional and clinical environment, where he was to receive a therapeutic massage from a certified massage therapist. He did not expose himself or touch himself inappropriately. He did not touch the massage therapist and he did not seek, solicit, intend, or hope to receive anything other than a professional and clinical massage from a certified massage therapist.

(5) His character is one of integrity, obedience, and discipline. This is demonstrated by the statements of people who have known him personally. It is further demonstrated by his actions, during his mission for the Church of Jesus Christ of Latter-Day Saints.

(6) Before he left for his mission, he knew what kind of missionary he wanted to be. He knew there would be a strict schedule and strict rules that he promised to follow to the best of his ability. He was determined to never back down even in the face of adversity. Every day, for two years, he knew that the nametag he wore on his chest represented who he was, who his family was, who the Church of Jesus Christ of Latter-day Saints was, and serving in another country, it also represented who our country was. He knew that his actions were being watched and he was determined to be a light that would shine before men so that the more important name of what he represented would be reflected through him.

(7) As he made his way into the Army, he realized when he first put on the Army Service Uniform that from then on his mission had extended beyond the two years he had served in the Dominican Republic. He knew that every moment of everyday his actions would represent much more than himself. On the right side, his name and the name of his family and on the left the name of his country. He knows what he represents and he knows what he stands for. He does not stand for that, which he is being accused.

(8) He is working hard to overcome this allegation. He is continuing to work with his chain of command and confirm their trust and belief in him. He values being a member of the Army and is proud to serve. He works hard to be a good representative of the Army and serve the community to the fullest of his ability.

(9) He was raised in a family that has a proud history of serving this country. He joined the Army in 2017 to continue this tradition of service and to honor the memory of his cousin who was killed in Afghanistan in March 2011. At the time of his cousin's death, he was serving as a missionary in the Dominican Republic. He returned from his mission that December and continued his education at Brigham Young University in Idaho. His brother had joined the military as a tribute to their cousin, and after getting married and graduating college, he proudly followed in his brother's footsteps.

(10) In the two and a half years he has so far committed to the Army, he has consistently maintained a physical training score of 90 percent in each event, receiving a 300 in basic training, OCS, and in BOLC. He received an Army Achievement Medal for the work as an Assistant Executive Officer of a training company at Fort Leonard Wood. He received a Gold German Armed Forces Badge during BOLC, and walked onto the Antiterrorism Level II course as a Blackbird afterwards. He walked onto the Technical Transportation of HAZMAT course upon arrival to Joint Base Elmendorf-Richardson. He completed the Operations Security II course shortly after he arrived in Alaska.

(11) He currently holds positions in the 2-77th PFAR [sic] Battalion related to all of these courses as well as battalion safety and government travel card manager. He looks forward to seeking slots for many other schools including jumpmaster and ranger. He is proud of what he does in the Army, proud of his physical performance, proud of the schools he has attended, and proud of what he represents. He is committed to making a career of service to this country.

(12) He respectfully requests the GOMOR be withheld and withdrawn. He affirmatively denies the allegations of inappropriate conduct and asserts he would never act in such a manner to disrespect the individual or his faith, his family, and his service. Specifically, he would request that any such allegation of conduct unbecoming an officer not be placed in his AMHRR.

i. His chain of command recommended the GOMOR be permanently filed in his AMHRR. On 20 April 2020, the GOMOR issuing authority directed the GOMOR be placed permanently in his AMHRR. On 21 April 2020, the applicant acknowledged the filing determination of his GOMOR.

j. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably dismissed on 1 June 2023. He was dismissed for non-selection, permanent promotion.

k. On 11 April 2023, the DASEB made a determination regarding his request to remove the GOMOR and his referred OER. The DASEB states:

(1) The evidence presented does not establish clearly and convincingly that the document under consideration is untrue or unjust. Therefore, by unanimous vote, the DASEB determined the overall merits of the case do not warrant removal of the GOMOR.

(2) However the DASEB, by majority vote, determined the evidence submitted was sufficient to warrant partial relief and determined that the GOMOR, 23 March 2020, and all allied documents be transferred to the restricted portion of the AMHRR. This action is not considered retroactive and, therefore, does not constitute grounds for promotion reconsideration, if previously non-selected.

I. The applicant's service record is void of any disciplinary actions other than the GOMOR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, the Board determined that the applicant was issued a General Officer Memorandum of Reprimand (GOMOR) for sexual harassment. The applicant subsequently applied to the Department of the Army Suitability Evaluation Board (DASEB) for removal of the GOMOR and was granted partial relief. As a result, the GOMOR dated 23 March 2020, along with all associated documents, was transferred to the restricted portion of the applicant's Army Military Human Resource Record (AMHRR).

2. The applicant and his counsel provided several Officer Evaluation Reports (OERs) for consideration, including two evaluations outside the timeframe of the incident. The Board took note of numerous letters of support attesting to the applicant's leadership qualities, strong work ethic, professionalism, empathy, and moral character. Many of the letters described the applicant as a natural leader with outstanding future potential, stating that the accusations were out of character and that there were no reports of misconduct outside Army values. Despite these endorsements, the Board found that the overall merits of the case were insufficient to warrant further correction of the applicant's records. Evidence indicated that the applicant had responded positively to the reprimand, as reflected in subsequent evaluations and continued service.

3. The Board determined removal of a GOMOR is generally not warranted unless it is factually incorrect. In this case, the Board determined that neither the applicant nor his

counsel provided a preponderance of evidence demonstrating procedural errors that were prejudicial to the applicant. Additionally, the applicant did not establish that the contents of the GOMOR and OER were substantially incorrect to justify removal. Based on the preponderance of evidence, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. Army Regulation 600-37 (Unfavorable Information), sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files.

a. Paragraph 1-1 states, in pertinent part, that the intent of AR 600-37 is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and, to ensure that the best interests of

both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

b. Paragraph 1-4 stipulates that the objectives of AR 600-37 are to apply fair and just standards to all Soldiers; protect the rights of individual Soldiers and, at the same time, permit the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility; to prevent adverse personnel action based on unsubstantiated derogatory information or mistaken identity; to provide a means of correcting injustices if they occur; and, to ensure that Soldiers of poor moral character are not continued in Service or advanced to positions of leadership, trust, and responsibility.

c. Paragraph 3-2c states that unfavorable information that should be filed in official personnel files includes indications of substandard leadership ability, promotion potential, morals, and integrity. These traits must be identified early and shown in permanent official personnel records that are available to personnel managers and selection board members for use in making decisions that may result in selecting Soldiers for positions of public trust and responsibility or vesting such persons with authority over others. Other unfavorable character traits of a permanent nature should be similarly recorded.

d. Paragraph 7-2a, states that once an official document is properly filed in the Army Military Human Resource Record (AMHRR), it is presumed to be administratively correct and 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. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

2. Army Regulation 600-8-29 (Officer Promotions) provides the officer promotion function of the military personnel system. It further provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support officer promotions. Chapter 7 provides for SSBs.

a. Paragraph 7-2 states the SSBs may be convened under Title 10, United States Code (USC), section 628 to consider or reconsider commissioned or warrant officers for promotion when Headquarters Department of the Army discovers one or more of the following:

(1) An officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error. This would include officers

who missed a regularly scheduled board while on the temporary disability retired list and who have since been placed on the active duty list (SSB required).

(2) The board that considered an officer from in or above the promotion zone acted contrary to law or made a material error (SSB discretionary).

(3) The board that considered an officer from in or above the promotion zone did not have before it some material information (SSB discretionary).

b. Paragraph 7-3 (Cases not considered) states an officer will not be considered or reconsidered for promotion by an SSB when an administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error in the officer record brief or OMPF. It is the officer's responsibility to review his or her ORB and OMPF before the board convenes and to notify the board, in writing, of possible administrative deficiencies in them.

c. Paragraph 7-11, officers who discover that material error existed in their file at the time they were non-selected for promotion may request reconsideration.

4. Army Regulation 623-3 (Evaluation Reporting System) policy and tasks for the Army Evaluation Reporting System Officer Evaluation Reports focused on the assessment of performance and potential. Paragraph 3-26 (Referred Evaluation Reports) provides that Officer evaluation reports with the following entry "Unsatisfactory Performance/Do Not Promote" are referred, or adverse, evaluation reports. Such reports will be referred to the rated officer by the senior rater for acknowledgment and an opportunity to comment before being submitted to HQDA.

a. Paragraph 1-9 provides that Army evaluation reports are independent assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army's Officer Corps or NCO Corps within the period covered by the report. Performance will be evaluated by observing actions, demonstrated behavior, and results from the point of view of the Army Values, the Army's leadership framework, and responsibilities identified on evaluation report forms and counseling forms. Potential evaluations will be performance-based assessments of rated officers' or NCOs' ability to perform in positions of greater responsibility and/or higher grades/ranks compared to others of the same rank. These assessments will apply to all officers and NCOs, regardless of their opportunity to be selected for higher positions or grades, and will ignore such factors as impending retirement or release from active duty; potential evaluations continually change and are ultimately reserved for Headquarters Department of the Army (HQDA).

b. Paragraph 1-11 provides that when it is brought to the attention of a commander or commandant that a report rendered by a subordinate or a subordinate command may

be illegal, unjust, or otherwise in violation of this regulation, that commander or commandant will conduct an inquiry into the matter. The commander's or Commandant's Inquiry (CI) will be confined to matters related to the clarity of the evaluation report, the facts contained in the report, the compliance of the evaluation with policy and procedures established by HQDA, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official.

c. Paragraph 3-7a(3)(c) provides in pertinent part, for LTCs and below (DA Form 67-10-1 and DA Form 67-10-2), Part IV will be an assessment of the rated officer's performance during the rating period. This performance is evaluated in terms of the majority of officers in the population. If the performance assessment is consistent with the majority of officers in that grade the rater will place an "X" in the "PROFICIENT" box. If the rated officer's performance exceeds that of the majority of officers in the rater's population, the rater will place an "X" in the "EXCELS" box. (The intent is for the rater to use this box to identify the upper third of officers for each rank).

(1) Part IV, block b (DA Form 67-10-1) will be an assessment of the rated officer's overall performance when compared with all other officers of the same rank the rater has previously rated or currently has in their population.

(2) In order to maintain a credible profile, the rater must have less than 50 percent of the ratings of a rank in the "EXCELS" box. 50 percent or more in the "EXCELS" box will result in a "PROFICIENT" label. If the rated officer's performance is below the majority of officers in the rater's population for that grade, and the rater believes the rated officer should be further developed, the rater will place an "X" in the "CAPABLE" box. If the rated officer's performance is below the majority of officers in the rater's population for that grade, and the rater does not believe the rated officer's performance has met standards required of an Army officer, the rater will place an "X" in the "UNSATISFACTORY" box. To ensure maximum rating flexibility when rating populations change, or to preclude an "EXCELS" box check from inadvertently profiling as a "PROFICIENT" rating, raters need to maintain a "cushion" in the number of "EXCELS" ratings given, rather than impending to the line at less than 50 percent. This is best accomplished by limiting the "EXCELS" box to no more than one-third of all ratings given for officers of a given rank. Comments are mandatory and should compare the performance of the rated officer with his or her contemporaries during the evaluation period. The focus is on the results achieved and how they were achieved.

d. Paragraph 3-33k provides that the rated Soldier will always be the last individual to sign the evaluation report. The rated Soldier's signature will verify the accuracy of the administrative data in Part I, including the accuracy of the name and social security number on the evaluation report, rank and date of rank, branch or military occupational

specialty data, period covered and nonrated time; the rating officials in part II; Army physical fitness test and height and weight entries. This procedure ensures that the rated Soldier has seen the completed report. It also increases the administrative accuracy of the report and will normally preclude an appeal by the rated Soldier based on inaccurate administrative data. In the event the rated Soldier is not available or refuses to sign, senior raters will provide an explanation in their narrative or bullet comments. If significant changes are made to a final evaluation after the rated Soldier has signed it, the senior rater will ensure the rated Soldier has an opportunity to see the changed evaluation report.

e. Paragraph 4-1 provides the Evaluation Report Redress Program consists of several elements at various command levels. The program is both preventive and corrective in that it is based upon principles structured to prevent, and provide a remedy for, alleged injustices or regulatory violations, as well as to correct them once they have occurred.

f. Paragraph 4-2 provides that an OER may have administrative errors or may not accurately record the rated Soldier's potential or the manner in which he or she performed his or her duties. The Redress Program protects the Army's interests and ensures fairness to the evaluated officer. At the same time, it avoids impugning the integrity or judgment of the rating officials without sufficient cause. A commander's inquiry (CI) and an evaluation report appeal are separate and distinct actions. Rated Soldiers may seek an initial means of redress through a CI; however, a CI is not a prerequisite for the submission of an appeal.

g. Paragraph 4-11 provides evaluation reports accepted for inclusion in the Soldier's official record 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 establishing 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.

h. Paragraph 4-11 provides evidence will be material and relevant to the appellant's claim. In this regard, note that support forms (or equivalent) or academic counseling forms may be used to facilitate writing an evaluation. However, these are not controlling documents in terms of what is entered on the evaluation report form. Therefore, no appeal may be filed solely because the information on a support form (or equivalent) or counseling form was omitted from an evaluation, or because the comments of rating

officials on the evaluation report form are not identical to those in the applicable support form or counseling form.

//NOTHING FOLLOWS//