

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240002754

APPLICANT REQUESTS, in effect:

- Correction of Department of Veterans Affairs (VA) records to accurately reflect his service in the Regular Army, Massachusetts Army National Guard (MAARNG), and the U.S. Army Reserve (USAR)
- Correction of VA records, and a DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 15 June 1987, to show he started his active duty service in May (not June) 1983
- Correction of VA records to reflect that, following his release from active duty (REFRAD), on 15 June 1987, he continued his USAR service from 1987 to 1991
- Correction of VA records to confirm he served in the MAARNG starting in 1995, vice 1991, and transferred to the USAR, in 2002, where he remained until his transfer to The Retired Reserve, in 2011
- Correction of item 11 (Primary Specialty) on a DD Form 214, ending 25 May 2010, so that it states he held his primary specialty of 35D (All Source Intelligence) for a period between 11 and 15 years, with a secondary specialty of 11B (Combat Arms/Branch Immaterial)
- Review of the leadership of former Military Intelligence Readiness Command (MIRC) Commanding General (CG) (then Brigadier General L\_\_ A. P\_\_) who issued the applicant his general officer memorandum of reprimand (GOMOR)
- Removal of now retired Major General (MG) L\_\_ A. P\_\_ from her position with the Secretary of the Army, along with her reduction to private (PV1)/E-1 and imprisonment
- Reinstatement of the content he completed for the Air War College course and provide him the opportunity to graduate from the War College
- Upon correction of the foregoing, promote him to colonel (COL)/O-6, with an effective date in 2009, followed by promotions to BG, in January 2015, and MG, in January 2018
- Reduction of the applicant's former military intelligence brigade commander, then COL R\_\_ P. A\_\_, to PV1/E-1
- Payment of lost wages from his separation date in 2011 to a retirement date in 2023, after completing 40 years of service

- Correction of his military service records to show the Army approved him for the Transfer of Education Benefits (TEB) to his family member, under provisions of the Post-9/11 GI Bill
- Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant's requests pertaining to the correction of VA records cannot be addressed by the Board. The VA and the Army (under the Department of Defense) operate under separate provisions of the U.S. Code (respectively Title 38 (Veterans' Benefits) and Title 10). Title 10, U.S. Code limits the ABCMR's role to correcting Army service records; it has no authority to direct changes to records maintained at the VA.

3. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

b. Additionally, no action will be taken on the applicant's requests to review BG L\_\_\_ A. P\_\_\_ leadership and direct the demotion to PV1 of both BG L\_\_\_ A. P\_\_\_ and then COL R\_\_\_ P. A\_\_\_. The Board is not an investigative body and, because it is limited by law to correcting Army service records, it does not direct the reduction in rank or imprisonment of military personnel.

(1) In determining what corrections to make in Army service records, the Board begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of documentary evidence, meaning the

applicant offers sufficient substantiation for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

4. The applicant states, following the completion of a successful battalion command in Iraq, the Army should have been promoted him to COL; however, his leadership inappropriately fabricated documents that blocked his selection.

a. After the Inspector General (IG) refused to investigate his leadership's actions, the Chief of the U.S. Army Reserve offered the applicant several options; he selected retirement.

b. The applicant maintains his DD Form 214 (apparently referring to his DD Form 214 ending 25 May 2010) should show at least 14 years for primary AOC 35D and perhaps 3 years for 11B as a secondary AOC (sic, 11B is an enlisted military occupational specialty (MOS); for officers, the AOC is 11A (Infantry)).

c. On his application, the applicant has checked the block for "Reprisal/Whistleblower." He states, regarding the reprisal question, "I rather loudly complained about deficiencies in training at mobilization station (insufficient time permitted in the SCIF (Sensitive Compartmented Information Facility) for his team to properly review classified materials).

d. On top of the discrimination he has had to face due to his military service (despite having a Master's in Business Administration from Harvard), he has experienced problems obtaining sustained employment and still seeks customers for his own business. He notes that the VA has refused to grant him service connection of his injuries and, because of this, he is ineligible for "Service Disabled" status.

e. As to his TEB request, his daughter begins college next fall, so the applicant has pursued "correcting the military connection to my disabilities (back and hip) and the transfer of educational benefits so they are available when she starts school. Since he will require a new identification (ID) card for transferring benefits, it would be appropriate to have his promotion to COL so that his ID accurately states his rank/grade.

f. The applicant provides additional information and arguments in a self-authored statement:

(1) After summarizing his military career, the applicant states, "While it is true that the Military Intelligence Readiness Command (MIRC) leadership went on a campaign against me after hearing I was awarded a (Bronze Star Medal) for my battalion command work leading up to and in Iraq, we trust a review of her leadership will confirm the MIRC commander at the time, (Brigadier General (BG)) L\_\_ P\_\_), had a

massive chip on her shoulder due to treatment from men in her junior years, and her actions were inappropriately prejudicial, at best, and perhaps criminal."

(2) "In addition to back-dated promotion to COL, I trust my Post 9/11 education benefits will also be transferred to my (dependent)...since I should have been informed prior to retiring in 2011 regarding the terms under which I might transfer my education benefits...."

(3) The applicant goes on to offer more details about his Army career and describes the civilian businesses with which he worked while a member of the MAARNG and USAR.

g. Among the categories checked by the applicant on his DD Form 149, the applicant has indicated he has a disability issue; however, other than reporting problems with the VA recognizing his back and hip injuries as service-connected, he offers no further information or evidence.

5. A review of the applicant's service record shows the following:

a. On 8 April 1983, the First ROTC (Reserve Officers' Training Corps) Region issued orders to the applicant, announcing that he had been tendered an appointment as Regular Army commissioned officer in the rank/grade of second lieutenant and branched military intelligence (MI). The orders specified that he was to report not earlier than 15 June 1983 to Fort Huachuca, AZ for the MI Officer Basic Course; his ultimate assignment was Korea.

b. On or about 27 May 1983, the applicant graduated from a university and subsequently executed his oath of office as a Regular Army commissioned officer; his DA Form 71 (Oath of Office – Military Personnel) is unavailable for review. On 14 June 1983, he entered active duty and, in January 1984 after completing of his initial entry training, he arrived at his new unit in Korea.

c. At some point in March/April 1985, the applicant completed his tour in Korea and orders reassigned him to Germany; he arrived at his unit, on or about 29 April 1985. On 9 June 1987, Headquarters, VII Corps Permanent Orders awarded him the Meritorious Service Medal for the period 29 April 1985 to 15 June 1987.

d. On 15 June 1987, orders REFRAD the applicant and transferred him to a USAR command in Massachusetts. His DD Form 214 shows he completed 4 years and 2 days of net active duty service, with 19 days of prior inactive service; item 11 lists his primary specialty as "35A Military Intelligence 03YRS 7MTHS."

e. Effective 29 November 1991, U.S. Army Reserve Personnel Center Orders honorably discharged the applicant from the Ready Reserve. On 4 April 1997, he executed his oath of office as an MAARNG commissioned officer and, on 28 April 1997, National Guard Bureau (NGB) Special Orders announced the Federal recognition of that MAARNG appointment. On 28 November 1997, the applicant executed his oath of office as a commissioned officer in the Army of the Reserve.

f. Effective 26 May 1998, the NGB Federally recognized the applicant's promotion to major (MAJ)/O-4. On an unknown dated in 2000, the applicant submitted his unqualified resignation from the MAARNG; on 22 August 2000, the MAARNG honorably discharged the applicant and transferred him to the USAR. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 3 years, 4 months, and 19 days of MAARNG service. Item 13 (Primary Specialty Number, Title, and Date Awarded) states, "35D MILITARY INTELLIGENCE 970404."

g. On 15 May 2001, the applicant successfully completed the Command and General Staff Officer Course. On 18 January 2002, he started an assignment at a Troop Program Unit in Rhode Island; on 13 October 2004, U.S. Army Human Resources Command (HRC) orders called him to active duty in support of Operation Noble Eagle.

h. On 14 December 2004, HRC announced the applicant's promotion to lieutenant colonel (LTC)/O-5. The applicant remained on active duty until his REFRAD, on or about 29 July 2005; the associated DD Form 214 is unavailable for review. Orders subsequently reassigned him to a TPU in Illinois as a battalion commander.

i. On 10 May 2005, orders mobilized the applicant and, on 28 June 2007, the applicant deployed with his unit to Iraq. On 15 January 2008, based on his brigade commander's recommendation (COL R\_\_ P. A\_\_), Headquarters, Multi-National Corps – Iraq Permanent Orders awarded the applicant the Bronze Star Medal. On 18 March 2008, the applicant and his unit redeployed, and, on 15 May 2008, orders REFRAD him and returned him to the USAR.

(1) His DD Form 214 shows he completed 1 year and 6 days of net active duty service, with 4 years and 2 days of prior active service and 14 years, 7 months, and 8 days of prior inactive service.

(2) Item 11 lists the following: "35B STRATEGIC INTELL – 1 YR 0 MOS// 35D ALL SOURCE INTELLIGEN – 10 YRS 1 MOS"

j. In or around June 2008, the applicant arrived at a TPU on Fort Belvoir, VA. On 13 June 2008, the MIRC commanding general (BG L\_\_ A. P\_\_) issued the applicant a GOMOR. The GOMOR stated:

(1) "An investigation conducted under the provisions of Army Regulation (AR) 15-6 (Procedures for Investigating Officers and Boards of Officers) disclosed that you were derelict in the performance of your duties while assigned as Commander (of a military intelligence battalion and brigade special troops battalion) from 2005 to 2007. Specifically, the investigation revealed that you were aware that MAJ T\_\_ P\_\_ repeatedly made sexually inappropriate comments in your presence and that of other unit members, yet you failed to take immediate, effective action to correct his behavior and discipline him for his misconduct."

(2) "Additionally, a unit survey and an informal Commander's Inquiry revealed that you exhibited a leadership style that created an unhealthy command climate. Survey and inquiry comments depicted you, in part, as being self-centered to the detriment of your mission and Soldiers, lacking 'people skills' in interactions with Soldiers, and ignoring officer misconduct while punishing enlisted Soldiers for the similar infractions. The survey and inquiry show that you negligently allowed your unit to become ineffective and caused irreparable harm to Soldier morale."

k. On 24 July 2008, the applicant filed his rebuttal, in which he "vehemently den(ied) allegations that I observed egregious sexual harassment uncovered by the Commander's Inquiry about MAJ P\_\_. When this egregious behavior was brought to my attention I took prompt action. In addition, accusing me of treating Soldiers unfairly or inconsistently based on rank structure is inaccurate, while accusations of negative leadership and self-centered behavior are also inaccurate and unfair." The applicant continued:

(1) "My command environment would NOT have given anyone the impression that harassing behavior was permissible, and I was not the subject of either investigation provided. The first Commander's Inquiry led to MAJ P\_\_'s Article 15 (nonjudicial punishment under Article 15, Uniform Code of Military Justice) and the other informal investigation provided was conducted due to verbal allegations made in my presence against another officer subordinate to my command."

(a) "When offering me command in October of 2005, COL J\_\_ Y\_\_ told me 'This is my worst Battalion. There is nowhere to go but up.' I accepted the challenge and immediately set about correcting problematic systems and behaviors, many of which were obvious from standard organizational statistics...During the change of command process I observed several patterns of behavior that I felt were inappropriate and quietly corrected MAJ P\_\_'s informal approach. I corrected MAJ P\_\_ several times for making 'off-color' remarks (that were not sexually harassing) since our working relationship began in November 2005."

(b) "Although I discussed removing MAJ P\_\_ with COL Y\_\_, the previous Theater Support Commander, prior to departing for Iraq, I did not have adequate

justification to do so – until several months after we deployed." "During BG A\_\_\_'s Article 15 proceeding regarding MAJ P\_\_\_'s behavior and comments, MAJ P\_\_\_ produced a letter from a female Master Sergeant stating he had made inappropriate comments to her before our mobilization, but that he stopped making the comments when told to stop. I was appalled with the letter: COL Y\_\_\_ and I would have replaced MAJ P\_\_\_ before mobilization had we been aware of this behavior."

(c) "...when MAJ P\_\_\_'s comments came to my attention, I requested COL G\_\_\_ permit me to remove MAJ P\_\_\_ immediately. MAJ P\_\_\_ was removed as XO (executive officer) within days of this request."

(2) "While I did adopt a practice of sharing anecdotes from my career, I believe accusations regarding self-centered behavior are unfair. I adopted this coaching approach, leveraging personal anecdotes more extensively, primarily based on advice given during Fort Huachuca's battalion and brigade pre-command course, which I attended in 2006. One of the allegations which COL D\_\_\_ made about me at Fort Dix was an outright lie (I never said the words 'There is a reason my name begins with the letters \_\_\_'), as were many of the other comments I read Soldiers stated about me."

(a) "COL D\_\_\_ informed me several weeks after I requested a transfer to the IRR (Individual Ready Reserve) that I had been flagged. My email, which you found offensive, reflected concern regarding her motives for a tardy flagging action and was intended to communicate my rationale for the request for this transfer in no uncertain terms."

(b) "MAJ P\_\_\_'s place of duty after his Article 15 and relief (in spite of protests from me and others in my leadership) was at (unit's Illinois headquarters) for over four months following his return. This delay of action and choice of duty location allowed MAJ P\_\_\_'s perceived (and perhaps actual) ability to meddle with personnel files of Soldiers he harassed (and others he perceived were persecuting him for his misdeeds). This situation contributed to the concerns voiced in my email to COL D\_\_\_."

(3) "While I found evidence that Soldiers colluded to negatively influence the command climate survey, I believe the Fort Dix training environment, tardy MOS utilization in combat, and MAJ P\_\_\_'s egregious behavior drove negative morale within the team...I most certainly made mistakes during my two and a half years as commander. In retrospect, however, given the facts when they were available, I still believe my decisions were well considered, humane, and fair."

I. On 31 July 2008, the GOMOR imposing official directed the GOMOR's placement in the applicant's official military personnel file. Orders relocated the applicant to a different TPU in Massachusetts. On 21 December 2009, the applicant entered active duty for training, with duty at the Defense Intelligence Agency in the Washington, D.C.

area. On 10 February 2010, the applicant petitioned the ABCMR, requesting the removal of the GOMOR; the applicant argued the GOMOR had caused his non-selection for promotion and attendance at the War College.

m. On 25 May 2010, self-terminating orders honorably REFRAD the applicant and returned him to the USAR. His DD Form 214 shows he completed 5 months and 5 days of net active duty. The report additionally reflected the following in item 11 (Primary Specialty): "35D ALL SOURCE INTELLIGEN – 0 YRS 5 MOS."

n. On 23 August 2010, the Army Review Boards Agency (ARBA) administratively closed the applicant's request because he had failed to exhaust all administrative remedies; ARBA advised him to first submit his request to the Department of the Army Suitability Evaluation Board (DASEB). (The applicant's record is void of any requests for relief to the DASEB).

o. On 27 January 2011, the U.S. Army Reserve Command (USARC) issued the applicant a memorandum requiring him to show cause for his retention on active duty. On 28 February 2011, after consulting with counsel, the applicant elected to request his transfer to The Retired Reserve, in lieu of involuntary separation. On 5 May 2011, HRC sent the applicant his notification that he had completed the required years of qualifying Reserve service to be eligible for retired pay at age 60 (20-Year Letter). On 31 May 2011, USARC orders reassigned the applicant to The Retired Reserve, effective 30 June 2011.

p. On 7 September 2021, after the applicant filed an application, HRC placed him on the Army of the United States Retired List, effective 21 April 2021; the orders listed the applicant's retired grade as LTC.

6. On 9 August and again on 22 August 2024, HRC provided advisory opinions. The first concerned the applicant's TEB request, and the second pertained to his request for promotion to COL.

a. With regard to the applicant's TEB request, HRC recommended disapproval.

(1) The applicant had access to numerous Department of Defense and Army resources during his 2-year period of eligibility; relief should not be granted based on not being aware of the law, of program rules, or of procedures unless the Soldier left the Army during the program's implementation phase.

(2) On 20 July 2024, HRC contacted the Defense Manpower Data Center (DMDC) to see whether the applicant ever submitted a TEB request. "The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is accessed, and when a TEB-related transaction is submitted. DMDC



confirmed (See Enclosure One) that [applicant] only accessed the milConnect website on 18 October 2023 and 4 April 2024. However, these periods were after his retirement date and outside his program eligibility period."

(3) HRC noted that the applicant's military service could make his dependents eligible for other types of assistance and provided the applicant a list of agencies that could help.

b. Concerning the applicant's request for promotion to COL:

(1) "Based on a review of our records and the information provided, a promotion to COL is not warranted, nor should full relief be granted for this appeal. [Applicant] was in the promotion zone (PZ) for the Fiscal Year 2009 (FY09) Reserve Component (RC), Colonel (COL), Army Promotion List (APL), Non-Active Guard Reserve (Non-AGR, Promotion Selection Board (PSB). Based on [applicant's] date of rank (DOR), he was considered but not recommended for promotion, and was not recommended for promotion on the FY10 RC COL APL."

(2) "After further review of [applicant's] records, a GOMOR is permanently filed and recommend that the officer submit an appeal through the ABCMR on the basis which he described on his DD Form 149, specifically citing the fabrication of documents. If [applicant] successfully appeal(s) the removal of the GOMOR, and is granted relief, he may qualify for a Special Selection Board (SSB) under his next eligible board. Also, [applicant] should specify on his appeal that, if granted relief...he requests that the Secretary of the Army grant a date of rank based on his original board."

7. On 30 August 2024, ARBA provided both advisory opinions to the applicant of his review and comment and the ability to submit additional evidence in rebuttal. On 31 August 2024, the applicant responded.

a. "Because of J\_\_ S\_\_ (Lieutenant General J\_\_ S\_\_, USAR Retired and former Chief of Army Reserve), B\_\_ A\_\_ (former COL R\_\_ P. A\_\_, applicant's brigade commander while deployed in Iraq), and L\_\_ P\_\_ (MG L\_\_ A. P\_\_, USAR Retired, and former CG of MIRC) misconduct, the Army has been guilty of conspiring with commercial employers to withhold appropriate employment from me." The applicant lists the corrective measures he contends should be performed, and these include VA disability payments, reinstatement to the War College, his retroactive promotions through MG, and punishments for the aforementioned officers.

b. The applicant again summarizes his military career and spells out the corrections that should be made to VA's records. He closes with, "There apparently arose a question regarding an Army attempt to reduce my retirement pay (falsely claiming my retirement is calculated based on my last three years of service, ignoring the policy

under which I was commissioned with the rest of my graduating class at (his university) on May 25th, 1983) or to avoid the payments owed me for encouraging me to leave...instead of promoting me to Colonel/O-6 in 2009 and otherwise informing me of requirements to transfer my Education Benefits to my daughters in exchange for serving another four years."

BOARD DISCUSSION:

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

- Correction of multiple VA records: NO ACTION TAKEN. The ABCMR has no authority to correct VA records
- Correction of DD Form 214 to show he started his active duty service in May (not June) 1983: DENY, based upon insufficient evidence showing his active duty service for the period of active duty service began in May 1983, not June 1983.
- Correction of item 11 (Primary Specialty): DENY, based upon the applicant's DD Form 214 showing also the period of active duty service greater than 90 consecutive days and the applicant period of service reflected on the requesting DD Form 214 covering 5 months of service, Primary Specialty period of service is properly annotated as reflected.
- Review and removal of other Soldiers' records: NO ACTION TAKEN. The applicant has no authority to request correction of other member's service records.
- Reinstatement of the content he completed for the Air War College course and provide him the opportunity to graduate from the War College: DENY, based upon insufficient evidence of an error or injustice which would warrant such action.
- Promote him to colonel (COL)/O-6: DENY, based upon the available records failing to show that the applicant was recommended for promotion to COL and confirmed for such promotion during his period of military service. The applicant is advised that the ABCMR has no authority to promote individuals to higher grades.

- Payment of lost wages: DENY, based upon the available records failing to show the applicant performed military duties at any time where proper compensation was failed to be paid.
- Transfer of Education Benefits (TEB): DENY, based upon the findings and recommendations outlined within the HRC advisory opinion.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-5 (Separation Documents), in effect at the time, stated, for item 11 (Primary Specialty) on the DD Form 214 (Certificate of Release or Discharge from Active Duty), DD Form 214 preparers were to:

a. Locate the area of concentration (AOC) listed on the officer's officer record brief and enter all AOCs held by the officer for at least one year.

b. The entry was to include the number of years and months, and when the officer had served in the AOC for 16 or more days, the DD Form 214 preparer was to count the period as a month.

3. Army Regulation (AR) 600-37 (Unfavorable Information), currently in effect, sets forth policies and procedures to ensure the best interests of both the Army and Soldiers were served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's official military personnel file (OMPF).

a. Paragraph 1-1 (Purpose). The regulation's intent is to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's OMPF.

b. Paragraph 3-2 (Policies). Unfavorable information will not be filed in official personnel files unless the recipient was given the opportunity to review the documents and was given a reasonable amount of time to make a written response.

c. Paragraph 3-5 (Filing of Non-Punitive Administrative Memoranda of Reprimand, Admonition, or Censure).

(1) Authority to issue and direct the filing of such memoranda in an officer's local file is restricted to the recipient's immediate commander or higher level commander; the designated rater, intermediate rater, or senior rater, per AR 623-3 (Evaluation Reporting System); or a general officer who is senior to the recipient.

(2) A memorandum, regardless of issuing authority, can be placed in a recipient's OMPF upon the order of a general officer who exercised general court-martial convening authority over the recipient.

d. Paragraph 7-2 (Policies and Standards).

(1) Once an official document has been properly filed in an OMPF, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority.

(2) For removal of derogatory information, there was no time restriction for submitting an appeal for removal of unfavorable information

(a) The recipient had 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.

(b) Evidence submitted in support of the appeal may include but was not limited to the following: an official investigation showing the initial investigation was untrue or unjust; decisions made by an authority above the imposing authority overturning the basis for the adverse documents; notarized witness statements; historical records; official documents; and/or legal opinions.

(c) Appeals that merely allege an injustice or error without supporting evidence or a compelling argument were not considered.

4. AR 600-8-29 (Officer Promotions), currently in effect, includes guidance on special selection boards (SSB) in chapter 6 (SSB).

a. SSBs may be convened under Title 10 (Armed Forces), U.S. Code, section 628 (SSB) to consider or reconsider commissioned or warrant officers for promotion when HQDA determines that one or more of the following circumstances exist: administrative error or material unfairness.

b. An SSB will consider the record of the officer as it should have been considered by the original board. The record will be compared with a sampling of those officers of the same competitive category, who were recommended and not recommended for promotion by the original selection board.

c. Officers selected for promotion by an SSB will, as soon as practicable, be appointed to that grade. When appointed to the next higher grade as the result of the recommendation of an SSB, the officer will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her.

5. AR 350-1 (Army Training and Leader Development), currently in effect, prescribes policies and procedures for developing and conducting Army training and leader development. Chapter 3 (The Army Institutional Training and Education System), paragraph 3-45 (U.S. Army War College) outlines the requirements for War College attendance.

a. The U.S. Army War College (USAWC) is the Army's center for strategic thought. The USAWC's mission is to educate and develop leaders for service at the strategic level while advancing knowledge in the global application of Land power. Toward this end, the USAWC conducts a resident education program (REP) and a distance education program (DEP).

b. The website (<https://www.armywarcollege.edu/programs/policies.cfm>) details enrollment requirements:

(1) The USAWC requires students to submit verification of a baccalaureate degree from a regionally accredited institution; USAWC is a Master's granting institution.

(2) Military students are selected to attend the USAWC by their respective Services. Selected students are considered to hold considerable potential for promotion and future service in positions of increasing responsibility. Officers are eligible for attendance after being promoted to O-5, through their 25th year of service. Applicants must have completed the Command and General Staff College, or equivalent, and should possess a baccalaureate degree. The USAWC does not accept individual applications into its Senior Service College programs except through special exceptions. Students are centrally selected by their component, thus USAWC receives its list of students by component, rather than receiving and processing individual applications.

(3) Senior Service College is voluntary for all Troop Program Unit (TPU), Individual Ready Reserve (IRR), Individual Mobilization Augmentee (IMA) officers, and Active Guard Reserve (AGR) officers. Within the USAR, the Chief, Army Reserve (CAR) convenes a board annually in October that selects and ranks by competitive category qualified officers in the AGR program, TPU program, and IMA program. The board lists selected officers as either a primary or an alternate in an Order of Merit List (OML) for either the resident program or distance education program. The CAR is the approving authority for the board's recommendation.

(4) Department of the Army Civilians who wish to attend the program must apply according to the standards in AR 350-1. Other services should contact their appropriate personnel office to determine eligibility and admission procedures. Civilian employees of other federal agencies wanting to enroll need to do so through their component's chain of command.

6. Public Law 110-252 established the legal requirements for the transferability of unused Post 9/11 GI Bill benefits; however, the transfer is limited to those members who were serving on active duty or as a member of the Selected Reserve on or after 1 August 2009.

7. On 22 June 2009, Department of Defense (DOD) established the criteria for eligibility and transfer of unused educational benefits to eligible family members. The policy states eligible individuals include any member of the Armed Forces that was serving on or after 1 August 2009, and who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, was eligible for the Post-9/11 GI Bill. Additionally, the individual had to:

a. Have completed at least 6 years of service in the Armed Forces on the date of election and agreed to serve an additional 4 years in the Armed Forces from the date of election; or

b. Had at least 10 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election, but was precluded by either standard policy (service or DOD) or statute from committing to the 4 additional years, and had agreed to serve for the maximum amount of time allowed by such policy or statute

c. From 1 August 2009 through 1 August 2013, temporary rules applied with regard to the additional service obligation (ADSO); based on years of service, on 1 August 2009, the Soldier incurred following ADSO:

- 20 or more years of service, on 1 August 2009 – no ADSO
- Approved retirement with a date from 1 September 2009 to 1 June 2010 – no ADSO
- Attained 20 years of service between 2 August 2009 and 1 August 2010 – 1 year ADSO, starting from the transfer of educational benefits request date
- Attained 20 years of service between 2 August 2010 and 1 August 2011 – 2 years ADSO, starting from the TEB request date
- Attained 20 years of service between 2 August 2011 and 1 August 2012 – 3 year ADSO, starting from the TEB request date
- Attained 20 years of service after 1 August 2012 – 4 year ADSO, starting from the TEB request date

8. Title 10, U.S. Code, section 1034 (Military Whistleblower Protection Act (MWPA), enacted 29 September 1988, amended Title 10 provisions relating to communications with a Member of Congress by prohibiting any person from restricting a member of the U.S. Armed Forces to communicate with an Inspector General (IG), except for communications that were prohibited by statute.

a. The law prohibited retaliatory personnel actions against a member for making or preparing to make such a communication.

b. The law also directed the Department of Defense IG (DOD IG) to promptly investigate any allegation that a prohibited personnel action has taken place or been threatened with respect to any communication to a Member of Congress or IG complaining or disclosing information reasonably believed to evidence a violation of law, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Within 10 days of completing such an investigation, the IG was required to report the results to the Secretary of Defense.

c. Members of the U.S. Armed Forces could, within 30 days after receipt of a copy of such investigative report, to petition the appropriate military board for correction of his or her military record concerning the matter, and the members were entitled to receive legal assistance by a judge advocate in any such matter before a military corrections board. The Act provided administrative procedures for the hearing of such petitions, together with appropriate corrective and disciplinary action to be taken and allowed for judicial review of any order resulting from such hearing, if petitioned for within 60 days after notice of the hearing's result.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.



10. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR) Hearings. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

d. Chapter 3 (Claims/Expenses). The Army, by law, may pay claims for amounts due to applicants based on the correction of military records. The ABCMR will further the Defense Finance and Accounting Service (DFAS) copies of decisions that potentially affect monetary entitlements or benefits. DFAS will settle claims after computing any amount that may be due. The applicant's acceptance of a settlement fully satisfies the claim concerned.

//NOTHING FOLLOWS//