

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20240002990

APPLICANT REQUESTS:

- removal of the general officer memorandum of reprimand (GOMOR), 29 March 2016, with allied documents from his Army Military Human Resource Record (AMHRR)
- a personnel appearance hearing before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored Letter, 5 January 2024

FACTS:

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

2. The applicant states he would like the GOMOR, 29 March 2016, removed from his records so he may be commissioned in the Texas Army National Guard (TXARNG).

a. He believed he had erased his criminal records when he submitted his judge advocate general (JAG) application, believing he didn't need to list them. He now realizes he should have been more transparent with his history, even though nothing shows up when his criminal record is searched.

b. He would like a chance to rectify his biggest regret and go back and serve in the U.S. Army with the TXARNG. He believes that if the Board reviews his officer evaluation reports and reaches out to his chiefs (Lieutenant Colonel (LTC) A\_\_\_\_ T. A\_\_\_\_ and Major (MAJ) K\_\_\_\_ B\_\_\_\_), the Board will see he was well-liked in the Army. He has worked hard and he loved serving his country. He did everything he could do to get into the Army and that included omitting information from his application that he thought he

could omit. Again, he realizes what he did was wrong. He listed the information about his criminal history on his first few applications, but omitted them once he had his records erased because he firmly believed they could be omitted. He wishes he could do it all over again as he would list everything.

c. He would like to join the TXARNG as a JAG officer; therefore, he needs the GOMOR removed from his records so he can apply for appointment with a fully transparent application, listing everything from his past (even the information that doesn't show up in a background investigation since the records have been erased). He wants to serve his State and country. His family has been serving in the military since 1775 and every generation has served. He requests that the Board allow him to serve honorably and continue his family's legacy and show his son they are a family that serves their country.

3. He was appointed as a Reserve commissioned officer of the Army in the JAG Corps in the rank/grade of first lieutenant/O-2 and executed his oath of office on 24 March 2015.

4. U.S. Army Human Resources Command Orders C-03-504697, 27 March 2015, assigned him to the 75th Legal Operations Detachment Team 8 in the rank/grade of first lieutenant/O-2 effective 24 March 2015.

5. His DA Form 1059 (Service School Academic Evaluation Report), 30 July 2015, shows he attended and successfully completed the Judge Advocate Officer Basic Course from 18 May 2015 through 30 July 2015.

6. Headquarters, III Corps and Fort Hood, Orders HO-253-0001, 10 September 2015, ordered him to deploy with his unit in a temporary change of station status in support of Operation Enduring Freedom (Continental United States Support Base) with a reporting date of 5 September 2015 for a period not to exceed 361 days.

7. The U.S. Army Criminal Investigation Command (CID) Form 94 (Agent's Investigation Report), 4 March 2016, shows the Fort Hood CID Office was notified by LTC S\_\_\_\_ L\_\_\_\_, Judge Advocate, Executive Officer, III Corps, Fort Hood, at about 1400 on 1 March 2016 that the applicant fraudulently enlisted in the Army (see attachment for details).

a. LTC L\_\_\_\_ stated the applicant made three attempts to join the U.S. Army Reserve (USAR) before succeeding the fourth time. LTC L\_\_\_\_ stated on the first three attempts, the applicant was asked if he has ever been indicted or summoned into court as a defendant in a criminal proceeding regardless of the outcome and the applicant answered "Yes" and listed his offenses and dispositions. LTC L\_\_\_\_ stated the applicant checked "No" on the fourth attempt and was accepted. LTC L\_\_\_\_ provided

the CID special agent with a copy of the applicant's application information, appointment memorandum, DA Form 71 (Oath of Office), Basic Officer Leadership Course orders, and orders assigning him to Fort Hood.

b. The investigation reviewed the applicant's applications and noted the timelines of his attempts and his answers to the legal questions on the applications. The investigation notes his criminal offenses and the outcomes. A law enforcement records check was conducted which revealed no derogatory information. On 1 March 2016, the applicant was advised of his rights, which he subsequently invoked and requested a lawyer. His fingerprints and photograph were taken and he declined to take a polygraph examination. On 2 March 2016, a National Crime Information Center (NCIC) check revealed three offenses in California.

8. The applicant was reprimanded in writing by Major General J\_\_\_\_ U\_\_\_\_, Commanding General, Headquarters, Fort Hood, on 29 March 2016, wherein he stated:

You are hereby reprimanded for procuring a fraudulent appointment into the armed forces and for making a false official statement. You obtained an appointment as a commissioned officer in the Judge Advocate General's Corp by knowingly misrepresenting and withholding material facts on your application and continued to misrepresent that information once appointed. In late 2014, you submitted an application affirmatively indicating you had no criminal history, which you knew to be false. You were subsequently appointed as a Judge Advocate in the Reserve Component. In 2015, you applied to transition to the Regular Army and again affirmatively indicated on your application that you had no criminal history. Your actions were in violation of Articles 83 and 107, Uniform Code of Military Justice.

Commissioned officers are expected to exercise sound moral and legal judgment. Instead, your actions indicated a lack of integrity and maturity, and fell far below the standards expected of an officer in the United States Army. Further, you violated the special trust and confidence placed in you as a Judge Advocate. There is no excuse for your irresponsible and improper behavior. Further incidents of misconduct may result in more serious action being taken against you.

This is an administrative reprimand imposed under the provisions of Army Regulation (AR) 600-37 (Unfavorable Information), 9 December 1986, and not as punishment under the Uniform Code of Military Justice. You are advised that in accordance with AR 600-37, paragraph 3-4b, I am considering whether to direct this reprimand be filed permanently in your Army Military Human Resource Record.

You will be provided, by separate cover, a copy of the evidence that forms the basis for this reprimand. You will immediately acknowledge receipt of this reprimand in writing. You will forward any matters you wish me to consider through your chain of command within seven calendar days, using the format prescribed in AR 600-37, paragraph 3-6. Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal.

9. He acknowledged receipt of the GOMOR and elected to submit matters in his own behalf. On 7 April 2016, he requested local filing of the GOMOR for the following reasons (see memorandum for details):

a. He went through all the legal processes he thought he needed to so he could put forth the best application possible. The question on the JAG Corps application asked whether he had been "indicted or summoned into court as a defendant in a criminal proceeding regardless of outcome; or convicted, fined, imprisoned, placed on probation, paroled, or pardoned." The GOMOR packet he received states CID performed an NCIC check on him and three items came up in the check. Two were arrests that did not fall within the scope of the question since he did not go to court, he wasn't convicted or fined. He was released to his parents for the first arrest and the case was dismissed for lack of evidence for the second arrest. The third case involved a ticket he received in Newport Beach, CA, in 1999, that was ultimately dismissed. Seeing the NCIC report was the first recollection of this ticket that he had in 17 years, and he certainly did not knowingly omit it.

b. He sincerely believed the records of his conviction in Indiana and the two in New Jersey were cleared through their respective processes. This is why he did not list them on his application. These three convictions did not come up in the NCIC check that CID ran because these convictions had been cleared. He was 19 years old when he was convicted for these misdemeanors, which would later be cleared. He was a kid who was raised without a father figure since his parents divorced when he was 8 years old after his father walked out on their family. He freely admits that he made numerous mistakes in his teenage years and his early twenties.

c. As for the fine in the Czech Republic, this was a complete oversight on his part and he accepts full responsibility for not listing it on his application. It was a mistake that he certainly regrets, but he did not knowingly omit it. It occurred in his twenties when he was not sober and he did not get sober until he was 30 years old. He has remained sober for 8 years now and has done his best to make amends for his actions during that part of his life.

10. After carefully considering the matters submitted in rebuttal, Major General U\_\_\_\_\_ directed filing the GOMOR in the applicant's AMHRR on 19 April 2016.

11. A review of the applicant's AMHRR revealed the GOMOR, 29 March 2016, with auxiliary documents is filed in the performance folder of his Official Military Personnel File (OMPF).

12. Headquarters, III Corps and Fort Hood, Orders 131-0189, 10 May 2016, released him from active duty to the control of his unit effective 17 May 2016.

13. He was honorably released from active duty by reason of completion of required active service on 17 May 2016. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 months and 17 days of net active service this period. Item 18 (Remarks) contains the entry: "Ordered to Active Duty in Support of Operation Enduring Freedom IAW [in accordance with] 10 USC 12302 [Title 10, U.S. Code, section 12302]."

14. Headquarters, USAR Command, Orders 19-015-00011, 15 January 2019, discharged him from the USAR effective 14 January 2019. His service was characterized as general under honorable conditions. The additional instructions state: "Soldier elected to Resign in Lieu of Involuntary Separation IAW [in accordance with] AR [Army Regulation] 135-175 [Separation of Officers], [paragraph] 2-13."

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 reviewing the applicant's petition and military records, the Board considered the applicant's rebuttal statement for his GOMOR, in which he asserted that his two arrests at the age of 17 did not fall within the scope of the question, as he was never convicted, fined, or formally taken to court. For the first arrest, he was released to his parents, while the second case was dismissed due to lack of evidence. Additionally, the applicant referenced a 1999 ticket in Newport Beach, CA, which was ultimately dismissed.

2. After thorough review, the Board concluded that the applicant knowingly misrepresented and withheld material facts in his application and continued to do so after his appointment. Evidence indicates that in late 2014, he submitted an application affirmatively stating he had no criminal history, despite knowing this claim to be false. Furthermore, the Board noted that the removal of a General Officer Memorandum of Reprimand (GOMOR) is generally unwarranted unless it is factually inaccurate. In this case, the applicant failed to demonstrate, by a preponderance of evidence, that a procedural error had occurred to his detriment. Additionally, he did not provide sufficient

proof that the contents of the GOMOR were substantially incorrect to support removal. Based on these findings, the Board concluded that there was insufficient evidence to support the applicant's request for removal of the GOMOR from his Army Military Human Resource Record (AMHRR).

3. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR 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 evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
3. Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Paragraph 5-2 states investigating officers may use whatever method they deem most efficient and effective for acquiring information. Although witnesses may be called to present formal testimony, information may also be

obtained by personal interview, correspondence, telephone inquiry, or other informal means.

4. Army Regulation 135-175 (Separation of Officers) prescribes the policies, criteria, and procedures governing the separation of Reserve officers of the Army. Paragraph 2-13 (Acts of Misconduct or Moral or Professional Dereliction) states while not an all-inclusive list, the existence of one of the following or similar conditions, at the standard of proof required by Army Regulation 15-6, authorizes involuntary separation of an officer by the separation authority due to moral or professional dereliction. Officers discharged for intentional misrepresentation of facts in obtaining an appointment or in official statements or records may receive an honorable, general (under honorable conditions), or other than honorable conditions discharge.

5. 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. Ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files. 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.

a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

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

c. Paragraph 7-2 (Policies and Standards) states that once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.



6. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) shows memorandums of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

//NOTHING FOLLOWS//