

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2025

DOCKET NUMBER: AR20240004470

APPLICANT REQUESTS:

- Removal of a referred DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER) from his official military personnel file (OMPF)
- To appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Enclosure 1 – Referred OER (DA Form 67-10-2), rating period 20210216 through 20211018
- Enclosure 2 – Screen Capture of OER Filing in OMPF
- Enclosure 3 – Two DA Forms 2823 (Sworn Statement), Applicant, respectively dated 28 April and 13 May 2021
- Enclosure 4 – DA Form 2823, Colonel (COL) P__ J. K__, dated 12 April 2021
- Enclosure 5 – U.S. Army Criminal Investigation Division (CID) Memorandum, dated 1 November 2022, and two Redacted CID Law Enforcement Reports (LER), respectively dated 31 August and 1 September 2021
- Enclosure 6 – Memorandum, subject: Comments to Relief for Cause OER of [Applicant], dated 17 March 2022
- Enclosure 7 – Memorandum, subject: Referral of Report of Investigation, dated 30 August 2021, with eight attachments
- Enclosure 8 – Memorandum, subject: Comments to Second Relief for Cause OER of [Applicant], dated 30 April 2022
- Enclosure 9 – Memorandum, subject: Evaluation Report Appeal – [Applicant] 20210216 through 20211018, dated 2 November 2022
- Enclosure 10 – Memorandum, subject: Evaluation Report Appeal (20210216-20211018), dated 6 January 2023
- Enclosure 11 – Memorandum, subject: Request for Reconsideration to AR (Army Regulation) 15-6 (Procedures for Administrative Investigations and Board of Officers), Findings [Applicant], dated 2 November 2022
- Enclosure 12 – Army Special Review Board (ASRB) Record of Proceedings (ROP), dated 7 February 2023

- Enclosure 13 – Two DA Forms 67-10-2, rating periods 20211019 through 20220624 and 20220625 through 20230220
- Enclosure 14 – Memorandum, subject: Facts, Findings and Recommendations, Army Regulation (AR) 15-6 Investigation of Alleged Misconduct of [Applicant], dated 25 May 2021
- Enclosure 15 – Memorandum for Record (MFR), subject: Addendum to Chronology of AR 15-6 Investigation, Alleged Misconduct of [Applicant], dated 25 August 2021
- Enclosure 16 – September 2022 email regarding Defense Organization Climate Survey (DEOCS)
- Enclosure 17 – Officer Record Brief (ORB)
- Enclosure 18 – Four DA Forms 1059 (Service School Academic Evaluation Report), thirteen DA Forms 67-9 (OER), and eleven DA Forms 67-10-2
- Enclosure 19 – Awards
- Enclosure 20 – Memorandum for Department of the Army Suitability Evaluation Board (DASEB), subject: Command Endorsement – DASEB Application for Endorsement to Remove Referred OER – [Applicant], dated 5 January 2024
- Enclosure 21 – Four Army Board for Correction of Military Records (ABCMR) Redacted ROPs (AR20140007255, AR20120020936, AR20130006621, and AR20120002418)
- Enclosure 22 – Evidence of Superlative Performance
- Enclosure 23 – Affidavit, Command Sergeant Major (CSM) D__ M. S__, U.S. Army Retired (Ret), dated 25 August 2025
- Enclosure 24 – Affidavit, Sergeant Major (SGM), J__ Z. W__, dated 20 April 2023
- Enclosure 25 – Affidavit, Staff Sergeant (SSG) M__ G. W__, dated 30 September 2021
- Enclosure 26 – Affidavit, Captain (CPT) C__ A. M__, dated 30 September 2022
- Enclosure 27 – Affidavit, Specialist (SPC) M__ K__, dated 6 October 2022

FACTS:

1. Counsel states:

- The Board should remove the referred OER because it was based on an improper AR 15-6 investigation report; the report claimed the applicant failed to foster a positive command climate for SHARP (Sexual Harassment Response and Prevention) policies; the applicant continues to maintain his innocence
- On 25 March 2021, prior to any CID involvement, and as affirmed in COL P__ J. K__'s sworn statement, the command conducted a "targeted" female-only sensing session

- After COL K___ "gained a clearer understanding" that a formal investigation was required, he notified "AA6 (call sign for Commanding General (CG), 82nd Airborne Division) of the 5Ws (i.e., who, what, where, when, and why); the CG subsequently opened an AR 15-6 investigation"
- Between 7 and 15 April 2021, the investigating officer (IO) interviewed "some" of the female Soldiers, along with other members attached or assigned to the battalion; according to the IO, he then interviewed additional service members who he believed might have more information about the allegations
- Missing from the IO's "Facts, Findings and Recommendation" memorandum are any statements confirming that either the IO or the command turned over documentation or information to the SARC (Sexual Assault Response Coordinator) and CID, as required by AR 600-20 (Army Command Policy)
- (Paragraph 7-6c (SHARP – Program Fundamentals) states commanders who become aware of reported or suspected sexual assault will immediately contact the SARC and CID)
- On 27 April 2021, CID initiated its own investigation, using the unit's AR 15-6 investigation as a reference; CID coordinated its findings with a trial counsel, who determined there was no probable cause to believe the applicant had committed an offense under the Uniform Code of Military Justice (UCMJ)
- While the AR 15-6 investigation was still pending, the command initiated the referred OER; despite numerous attempts to handle the unjust allegations at the lowest possible level, the command continued to pursue the finalization of the referred OER

2. Counsel argues:

- The applicant did not engage in inappropriate conduct; CID exonerated him of criminal wrongdoing; and, as to command climate, the evidence collected by the AR 15-6 investigation demonstrated the applicant's factual innocence
- After the applicant received the referred OER, the Army has entrusted him with leadership positions, and he has excelled; this demonstrates that the intended purpose of the adverse OER has been served
- The applicant's exceptional service as an infantry officer further supports that the OER has served its intended purpose
- Previous ABCMR decisions bolster counsel's contention that the referred OER should be removed:
- In past decisions, the ABCMR has directed either the removal of derogatory information or its placement in the Soldier's restricted folder, after determining the adverse administrative action had served its purpose

- Additionally, the "ABCMR often looks to how well the applicant has 'rebounded' since the incident and to what extent the applicant has taken action to improve himself, both professionally and personally"
- "As a measure of how well the applicant has rebounded, the Board has emphasized solid post-derogatory action OERs...it has also placed significant weight on the recommendations from an applicant's chain of command..."
- "At least one case focused significantly on the fact that the applicant had been promoted since he received a GOMOR (general officer memorandum of reprimand)"
- The applicant was commissioned as an infantry officer, and he can establish a positive performance record that is at least as strong as the ABCMR cases cited by counsel; his service record shows he has not only rebounded, but has worked diligently to improve himself both professionally and personally
- Counsel concludes, the OER's reliance on a flawed investigation is unjust; additionally, one simply cannot ignore the fact that the command and the AR 15-6 IO violated SHARP policy by failing to notify the SARC and CID

3. The applicant provides service record documents, to include the referred OER, and the following:

- Memorandum, subject: Facts, Findings and Recommendations, AR 15-6 Investigation of Alleged Misconduct of [Applicant], dated 25 May 2021
- The AR 15-6 IO reported that the applicant had failed to foster a positive command climate, in regards to Army MEO (Military Equal Opportunity) and SHARP policies, and that he engaged in counterproductive leadership measures that contributed to a negative command climate
- The IO additionally determined the applicant had acted in a manner that made Soldiers uncomfortable, and that he had threatened witnesses with reprisal
- The applicant assumed battalion command in May 2020 (sic, March 2020)
- In June 2020, the applicant's battalion deployed to Kuwait/Iraq in support of Operation Inherent Resolve
- Between 11 January and 6 February 2021, the command conducted a trust survey; there were 22 specific comments pertaining to observed or perceived violations of the Army's SHARP, MEO, or leadership policies
- On 25 March 2021, the brigade combat team (BCT) commander (COL P__ J. K__) conducted sensing sessions with Soldiers from the applicant's battalion
- Eight of the eleven females who had deployed with the applicant stated either that the applicant had personally harassed them, or that they had witnessed the applicant harassing other female Soldiers

- Female SSG J__ B__ reported that, while deployed, the applicant:
 - Lifted her off the ground without her permission
 - Insisted she show her midriff for a "before" picture to document her weight loss
 - Knowing she was married to another female, the applicant indirectly asked if she was bisexual
 - On more than one occasion, the applicant blocked SSG J__ B__ from leaving his presence, once at the doorway to a co-ed bathroom and, in other instances, from his office
- Lieutenant (LT) M__ S__ (female officer and Physician's Assistant) stated, during the deployment:
 - She reported a harassment incident to the applicant involving a civilian contractor; the applicant did not take the complaint seriously and made jokes about it
 - While helping her perform the "leg tuck" exercise from the Army Combat Fitness Test (ACFT), the applicant positioned himself so that his groin touched her buttocks on the down portion of each repetition
 - On one occasion, the applicant entered her room while she was asleep and touched her leg to wake her in order to resolve a discrepancy in the number of patients reported after a casualty event
- CPT N__ Z__, female officer, stated:
 - In February 2021, the applicant made an inappropriate comment, insinuating she was having a sexual relationship with another officer; he also made tactless comments about her sexual relations with her husband
 - On multiple occasions, the applicant opened the door to her office unannounced, and said, "Glad you're dressed" or "Good thing you have your clothes on"
 - After the investigation began, the applicant entered her office, closed the door, and attempted to coerce her into revealing information about the investigation
- The applicant gave two sworn statements, in which he affirmed the following:
 - He was surprised and hurt when he read some of the comments from the Command Climate/Gender Integration Survey
 - He acknowledged that he did not know why 20 paratroopers made comments about him acting "creepy," "unprofessional," "touchy," and that he was

- "openly harassing females" and making "consistent unwanted sexual advances"
- As to the survey comment that he treated females more favorably, the applicant declared every paratrooper was treated equally, and that same comment had come up during the last climate survey, conducted right when he assumed command
 - Regarding female Soldiers feeling cornered during the unit's deployment, the applicant pointed out, "The set up of...our S-1 NCOIC's (noncommissioned officer in charge) office...could make a female feel...as though she was 'cornered' or not free to leave"
 - Concerning SSG J__ B__'s remark that he had picked her up off the ground, the applicant had no recollection of this event
 - He acknowledged entering LT M__ S__'s room unaccompanied and said he had done so "out of necessity to ensure a false report was not sent to (higher headquarters) following a combat incident, and also sent on time..."
 - Additionally, "the storyboard and the SITREP (situation report)...did not match the information/number Sergeant J__ B__ had given me for casualties... I went straight to LT M__ S__...to verify the numbers as she was the Physician's Assistant who evaluated each paratrooper"
 - "I knocked, identified myself, called out to LT S__ several times prior tapping her feet and taking multiple steps back into the doorway...She did not hear me identify myself or call out her name because she had EarPods in her ears"
 - Some Soldiers had claimed the applicant had made comments such as, "When somebody makes allegations or creates such rumors, the investigation will eventually point back to them" and "People actually read those command climate survey remarks and the storm is coming"
 - The applicant confirmed he had said, "People actually read those command climate survey remarks" but denied making the other statements
- Final CID LER, dated 31 August 2021, which shows the applicant titled for the alleged offense of Abusive Sexual Contact (Article 120, UCMJ)
 - On 27 April 2021, CID received a report stating, between 11 September 2020 and 22 January 2021, while deployed to Syria, the applicant had inappropriately touched a female LT in an unwanted sexual manner when he was assisting her with leg tucks
 - CID coordinated its findings with a trial counsel, who opined that "there was no probable cause to believe [applicant] committed the offense of abusive sexual contact..."
 - Final CID LER, dated 1 September 2021, listed the applicant in the titling block for the alleged offense of abusive sexual contact (Article 120, UCMJ)

- On 27 April 2021, CID was notified that, on or about 5 August 2020, the applicant had inappropriately touched a female sergeant; while working late in the office one night, the applicant had picked her up by her waist and touched her in an unwanted sexual manner
- CID coordinated its findings with a trial counsel, who opined that "there was no probable cause to believe [applicant] committed the offense of abusive sexual contact..."
- Five affidavits:
 - On 30 September 2021, female SSG M__ G. W__ stated she deployed to Syria the same time as the applicant; the AR 15-6 IO never interviewed her; she experienced some issues with members of the applicant's battalion, and she spoke to the chaplain and the applicant about trends in the battalion; From SSG M__ G. W__'s observation, the applicant supported SHARP and did not treat females differently from males
 - On 25 August 2022, CSM D__ M. S__ stated he served as the applicant's CSM; during his interview by the AR 15-6 IO, he felt he was being interrogated, not interviewed, and the IO was pressuring him to say that the applicant did something wrong; the IO appeared to have a preconceived notion about what he wanted for answers
 - On 30 September 2022, CPT C__ A. M__ stated he deployed with the applicant to Iraq and Syria; the AR 15-6 IO never interviewed him; he never had any negative interactions with the applicant and felt the applicant was a good commander; in Iraq, no one had issues with the applicant, but that changed in Syria; a lot of Soldiers seemed hostile towards and there were grumblings about the applicant; many Soldiers made accusations but, on closer examination, the accusations were based on rumors, not fact
 - On 6 October 2022, female SPC M__ K__ stated she is in the Army National Guard and served under the applicant in Syria; the applicant was always friendly and, in her view, always supported SHARP; he seemed to interact well with all Soldiers and led by example; she never witnessed any sexual harassment
 - On 20 April 2023, SGM J__ Z. W__ stated, in effect, that, in his capacity as the J/G-3 Operations SGM, he interacted with the applicant and learned the applicant had been placed there pending the outcome of an investigation; the applicant projected a genuine personality who conducted himself in a distinguished and tactful manner; the applicant improved the sections

efficiency and positively changed the morale; he is a caring leader and someone the Army needs

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

- On 11 May 2002, after prior enlisted service in the Georgia and Virginia Army National Guards, graduating from a university, and completing Reserved Officers' Training Corps requirements, the applicant executed his oath of office as a U.S. Army Reserve commissioned officer
- On 11 May 2002, the applicant entered active duty; on or about 1 June 2002, the applicant executed his oath of office as a Regular Army commissioned officer; (the associated DA Form 71 (Oath of Office – Military Personnel) is not available in his service record)
- Between July 2003 and September 2009, the applicant deployed to Iraq four times; effective 1 December 2018, the Army promoted him to lieutenant colonel (LTC)/O-5
- On or about 20 February 2020, the applicant arrived at Fort Bragg, NC and, on or about 3 March 2020, he assumed command of an airborne infantry battalion within the 82nd Airborne Division
- On 28 June 2020, he deployed with his battalion to Southwest Asia; on or about 22 January 2021, he and his battalion redeployed to Fort Bragg
- Between 11 January and 6 February 2021, the applicant's BCT completed a battalion "Falcon Trust Survey"; in March 2021, the applicant's BCT commander received the survey results
 - According to the BCT commander's 12 April 2021 sworn statement, the results indicated, "there was a communication and perception issue...The climate was frustrated due to the lack of explaining the 'why' down to the lowest Paratrooper"
 - "Not having clear understanding of the issues based on some of the feedback, I directed a targeted survey to clarify vague assertions and validate if a formal investigation was necessary"
 - The BCT commander conducted multiple sensing sessions with members of the applicant's battalion, to include all female Soldiers who had recently deployed with the applicant, as well as those female Soldiers who had interacted with the battalion while deployed
 - The BCT commander's impressions were, "Still believe there is a communication and perception issue...I did have a clearer understanding that there needed to be a formal investigation based on the sensing session feedback"
- On 1 April 2021, the CG, 82nd Airborne Division appointed an AR 15-6 IO to investigate the facts and circumstances surrounding any alleged misconduct by

the applicant; (the appointment memorandum is not available in the applicant's service record and he has not submitted a copy)

- In or around April/May 2021, the CG, 82nd Airborne Division (as the applicant's senior rater) suspended the applicant from command
- On 25 May 2021, the IO filed his initial results; in August 2021, after the applicant submitted a rebuttal and witness statements, the IO received instructions to address the rebuttal and interview witnesses
 - In his rebuttal, the applicant asserted there had been a conspiracy perpetrated against him, and he identified three individuals who could support his claim (CPT K__ M. F__, CPT D__ L__, and SFC J__ B__)
 - The applicant stated that, while deployed in Syria, a platoon sergeant in one of his subordinate units (Sergeant First Class (SFC) J__ B__) stated some officers and senior NCOs had spread rumors that he was having inappropriate relationships with female officers
 - SFC J__ B__ additionally said that these officers and senior NCO had claimed they would "overload the command climate and gender integration surveys with negative command climate and SHARP comments" to undermine him
 - In April 2021, a subordinate company commander (CPT K__ M. F__) told the applicant that several leaders within the battalion were actively working against the applicant, and they had tried to convince CPT K__ M. F__) to join their effort
- Between 12 and 24 August 2021, the IO interviewed the three individuals named by the applicant
 - CPT K__ M. F__, commander of a forward support company, stated numerous peers and a senior NCO had approached him, asking if he had noticed a problem with the unit's climate since the applicant took command; he responded he disagreed with their assessment and went on with his work
 - CPT K__ M. F__ felt an obligation to tell the applicant about what had happened; however, he affirmed no one had asked him to provide misleading or false information; there was merely a discussion that could cause a weak-minded individual to believe the applicant's leadership was detrimental
 - CPT D__ L__, S-2 during the battalion's deployment, stated he never personally saw the applicant violate the Army's SHARP policy; however, he noted there were two instances where the applicant's actions could have been perceived as granting undue favoritism to females
 - CPT D__ L__ observed the applicant conducting morning physical training (PT) with the Physician's Assistant (female LT M__ S__); this was odd because he never conducted personal PT with other male officers or NCOs

- The applicant also attempted to house all females in the Command Shack; if he did this to prevent any SHARP-related incidents, it was odd that he did not also segregate the latrines or showers, which were all "dual-use"
- CPT D__ L__ said he did not feel the applicant fostered a positive command climate in support of the Army's EO policies; the applicant had a very "unproductive relationship" with the S-2 section, particularly with CPT T__ H__; the applicant continually criticized everything CPT H__ did or said
- CPT D__ L__ affirmed the applicant had not approached him about the investigation, and neither had other members of the battalion; no one tried to get him to provide false or misleading information against the applicant
- SFC J__ B__ stated that, while deployed with the applicant's battalion, he never saw the applicant violate SHARP policy, and he believed the applicant fostered a positive command climate in support of the Army's EO policy
- Some had pointed out that the applicant frequently conducted PT with LT M__ S__ (Physician's Assistant), but he (SFC J__ B__) also worked out with the applicant a few times
- SFC B__ noted that female SSG J__ B__ appeared to have been promoted quickly, but he attributed this to the workload she had been assigned, with no officer-in-charge to assist her, and due to the fact she was in an SFC position
- SFC J__ B__ said he had no examples of how the applicant engaged in counterproductive leadership styles; he maintained the applicant had been painted in an negative light because the applicant had not worked well with the leaders in one of the companies
- Concerning whether anyone had encouraged paratroopers in the battalion to lie on the command climate survey, SFC J__ B__ noted that, one evening, 1SG B__ had come back from a battalion meeting and was very upset
- The 1SG remarked that he could not wait for the command climate survey to get rid of the battalion commander (applicant) and the CSM; someone said they would take care of it and added, "we do it multiple times"; the 1SG laughed and said "Do it"
- Upon completing the foregoing interviews, the IO concluded that there was no evidence of a conspiracy to produce false statements to undermine or discredit the applicant
- Concerning whether some members encouraged paratroopers to make multiple comments on the survey, the IO found this was possible; however, the IO maintained the sworn statements he had obtained outweighed the comments made in the survey
- The IO declared his initial determination remained that two of the companies had a low level of trust and confidence in the applicant; that the applicant had engaged in counterproductive leadership; and that the applicant did not provide a command climate that supported MEO and SHARP

- CID issued its two final LERs, respectively dated 31 August and 1 September 2021; both found the evidence was insufficient to show the applicant had committed abusive sexual contact (Article 120, UCMJ)
- On or about 17 March 2022, the applicant received an initial version of the referred OER; on 17 March 2022, he provided his comments, arguing the command had committed procedural violations and that there had been a substantive violation of his rights
- On or about 29 April 2022, the applicant received the final referred OER, a "Relief for Cause" evaluation covering rating period 20210216 through 20211018 and for the principal duty title of "Battalion Commander"
 - Part II (Authentication), subsection f (Supplementary Review Required): Commanding General, XVIII Airborne Corps (Lieutenant General (LTG) M__ E. K__) performed the supplementary review; (any comments submitted by LTG K__ have not been added to the applicant's service record)
 - Part IV (Performance – Evaluation Professionalism, Competencies, and Attributes (Rater)):
 - Subsection d-1 (Character) – the rater (BCT commander) stated applicant "fully supported Army EO and EEO programs...He was relieved from current position based on inability to create a command climate supportive of the Army's SHARP program"
 - Subsection e (This Officer's overall Performance is Rated as): "Capable"
 - Part VI (Senior Rater)
 - Subsection a (Potential Compared with Officers Senior Rated in Same Grade): "Qualified"
 - Subsection c (Comments on Potential): "Restricted potential for advancement...Removed from command based on inability to foster a command climate supportive of the Army's SHARP program...Select for promotion if needed...I directed his relief"
- On 30 April 2022, the applicant submitted his comments on the referred OER
 - He requested the removal of all derogatory information and cited additional procedural violations and the substantive violations of his rights
 - He noted that, with the second OER, he saw that a supplementary review had been added; he went on to request specific changes to the OER
- On 2 November 2022, the applicant requested reconsideration of the AR 15-6 findings; the applicant argued:

- "At the outset, I want to highlight that the basis for this Inquiry into the climate of my command was an outrageous accusation that I put hands on one of my troopers in a sexual way."; the applicant made reference to CID's LERs
- "Several of the findings in the AR 15-6 investigation were clearly erroneous and constitute substantial error"
- "The IO failed to make the required credibility assessment when there was conflicting evidence, the greater weight of evidence did not lend itself to derogatory findings"
- "The IO failed to account for bias and relied on second and third party hearsay, rather than evidence of action or inaction on my part, rendering the findings made as failing to achieve the greater weight of evidence.
- "The IO indicated bias in his write up"
- "The IO failed to apply any actual standards or articulate how my behavior fell short of those standards"
- "...the process denied me full participation in the investigation...The resulting findings and recommendations can hardly represent a meaningful investigation"
- "...the IO fails to address that (SSG J__ B__) failed to mention her presence with me to wake up (LT M__ S__, Physician's Assistant) to obtain the required information to submit our report to (higher headquarters) in the required timeline"
- "...the Division Chief of Staff added to the investigation that threatening comments were made, which led the Commanding General to temporarily suspend me from command...I was never told what those alleged comments were or who made the alleged comments"
- "Despite...multiple witnesses (describing) an environment that fosters respect, the IO does not resolve the contradiction between their (the favorable witnesses') recollection and the recollection of other witnesses"
- On 2 November 2022, the applicant applied to the Army Special Review Board (ASRB), asking the board to either redact the referred OER's derogatory language and remove his submitted comments or remove the OER entirely from his OMPF; he contended, in effect:
 - The contested OER was defective because the rating officials violated AR 623-3 (Evaluation Reporting System) by including unsubstantiated and incomplete derogatory information
 - The rating officials received final CID investigations, which proved allegations of misconduct were unsubstantiated
 - Despite the applicant's urgings, the command failed to follow proper referral procedures for the AR 15-6 investigation
 - Instead of a "Relief for Cause" OER, the report should be a "Change of Rater"

- On 22 February 2023, the ASRB considered the applicant's arguments and evidence and voted to deny relief
- The ASRB found that the evidence he presented did not establish that the referred OER's ratings and comments were inaccurate, unjust, or inconsistent with the applicant's demonstrated duty performance; nor that the applicant's due process rights were violated
- The applicant is currently serving

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. Removal of an OER is generally not warranted unless it is factually incorrect. However, upon review of the applicant's petition and available military records, the Board determined that the applicant has a stellar career and demonstrated by a preponderance of evidence that procedural error occurred that was prejudicial to him. Based on this, the Board determined that the contents of the OER are substantially incorrect and support removal.

2. The Board found the comments on the referred OER to be uncharacteristic of the applicant's leadership and performance. In the Board's opinion, the unit appeared to be toxic and wanted him out. 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. There does appear to be evidence the contested OER was unjust or untrue or inappropriately filed in the applicant's AMHRR. In the best interest of the Army and the applicant's continued service, the Board granted relief.

3. 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>	
XX	XX	XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the DA Form 67-10-2 covering the period 16 February 2021 through 18 October 2021 from his AMHRR, and replacing it with a memorandum of non-rated time.



X //SIGNED//

CHAIRPERSON

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

REFERENCES:

1. Army Regulation (AR) 623-3 (Evaluation Reporting System), in effect at the time, prescribed policies and procedures for officer and enlisted evaluations.

a. Paragraph 1-8 (Standards of Service).

(1) The evaluation report system encompassed the means and methods needed for developing people and leaders. It assessed the quality of Soldiers and determined the selection of future Army leaders and the course of their individual careers.

(2) Evaluation reports, which needed to be thoughtful and fair appraisals of Soldiers' abilities, were to be based on personally observed performance and potential. Each evaluation report had to be accurate and complete to ensure that sound personnel management decisions could be made and that a rated Soldier's potential could be fully developed.

b. Paragraph 1-9 (Assessments of Performance and Potential on Evaluations). Army evaluation reports were independent assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army's Officer Corps within the period covered by the report. Performance was to be evaluated by observing actions, demonstrated behavior, and results from the point of view of the Army Leadership Requirements Model and responsibilities identified on evaluation reports and Support Forms.

c. Paragraph 2-12 (Rater). The regulation required raters to document any substantiated findings from a finalized Army or Department of Defense investigation or inquiry in which the Soldier:

- Committed an act of sexual harassment or sexual assault or failed to report sexual harassment or sexual assault
- Failed to respond to a complaint or report of sexual harassment or sexual assault
- Retaliated against a person making a complaint or report of sexual harassment or sexual assault

d. Paragraph 2-15 (Review of Evaluation Reports). The senior rater was normally responsible for the review of an officer evaluation report (OER). A documented supplementary review was to be performed by a uniformed Army advisor designated in the officers rating chain who was senior to the rated officer, and normally senior to the senior rater within the organization, in the following instances: "Relief for Cause" reports when the senior rater was the individual directing the relief.

e. Paragraph 3-20 (Unproven Derogatory Information). No reference could be made to an incomplete investigation (formal or informal) concerning a Soldier. References were to be made only to actions or investigations had been processed to completion, adjudicated, and had final action taken before submission of an evaluation report to Headquarters, Department of the Army (HQDA). This restriction was intended to prevent unverified derogatory information from being included in evaluation reports. It was also done to prevent unjustly prejudicial information from being permanently included in a Soldier's official military personnel file (OMPF).

f. Paragraph 3-26 (Evaluation of Adverse Actions). Adverse actions encompassed a variety of situations that were not in accordance with Army Values, Leadership Requirements Model, and/or good order and discipline, and which need to be addressed appropriately in evaluation reports.

(1) AR 600-20 (Army Command Policy) stated that the following items could be mentioned in a Soldier's evaluation report when substantiated by a completed command or other official investigation: AR 15-6 investigations, EO complaint investigations, and/or investigations by official military or civil authorities.

(2) The items that required comments on evaluation reports included substantiated EO complaints, substantiated findings of sexual harassment and/or sexual assault, substantiated failure to respond to a complaint or report of sexual harassment and/or sexual assault, and substantiated retaliation against a person making a complaint or report of sexual harassment and/or sexual assault.

g. Paragraph 3-27 (Referred DA Form 67-10 Series). OERs containing certain entries were deemed referred or adverse reports and were to be referred to the rated officer by the senior rater for acknowledgement and the opportunity to submit comments prior to HQDA submission. Those entries included rater performance evaluation of "Capable" in Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes (Rater)); senior rater potential evaluation of "Qualified" in Part VI (Senior Rater), where the required explanation had derogatory information; any negative or derogatory comments in Parts IV or VI; and "Relief for Cause" OERs.

h. Paragraph 3-55 ("Relief for Cause" Report (DA Form 67-10 Series)). A "Relief for Cause" OER was required when an officer was relieved for cause, regardless of the rating period involved. "Relief for Cause" was defined as an early release of an officer from a specific duty or assignment directed by superior authority and based on a decision that the officer had failed in their performance of duty.

i. Section II (Commander's or Commandant's Inquiry). Commanders were required to look into alleged errors, injustices, and illegalities in evaluation reports. The primary purpose of a Commander's Inquiry was to provide a greater degree of command

involvement in preventing obvious injustices to the rated Soldier and correcting errors before they became a matter of permanent record. A secondary purpose was to obtain command involvement in clarifying errors or injustices after the evaluation was accepted at HQDA. If the commander found no fault with the evaluation, then the Commander's Inquiry was filed locally and a copy was given to the rated Soldier. There was no requirement to send the Commander's or Commandant's Inquiry forward to HQDA.

j. Section III (Evaluation Appeals).

(1) Paragraph 4-7 (Policies). An evaluation report submitted and accepted for inclusion in the rated Soldier's OMPF was presumed to be administratively correct; to have been prepared by the proper rating officials; and represented the considered opinion and objective judgment of the rating officials at the time of preparation.

(a) An appeal had to be supported by substantiated evidence. An appeal that alleged an evaluation report was incorrect, inaccurate, or unjust without usable supporting evidence was not considered. The determination regarding adequacy of evidence was made by U.S. Army Human Resources Command (HRC).

(b) Appeals based on administrative error were only adjudicated by HRC.

(c) Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error were substantive in nature and were to be adjudicated by the Army Special Review Board (ASRB).

(2) Paragraph 4-11 (Burden of Proof and Type of Evidence). The burden of proof rested with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant had to produce evidence that established clearly and convincingly that the presumption of regularity could not be applied to the evaluation report under consideration and action was warranted to correct a material error, inaccuracy, or injustice.

(a) Clear and convincing evidence had to be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. If the adjudication authority was convinced that an appellant was correct in some or all of the assertions, the clear and convincing standard had been met with regard to those assertions.

(b) For a claim of inaccuracy or injustice of a substantive type, evidence needed to include statements from third parties, rating officials, or other documents from official sources. Third parties were persons other than the rated officer or rating officials who had knowledge of the appellant's performance during the rating period. Such statements were afforded more weight if they were from persons who served in

positions allowing them a good opportunity to observe firsthand the appellant's performance as well as interactions with rating officials.

(c) Statements from rating officials were also acceptable if they related to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements were to include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the evaluation report was rendered. To be acceptable, evidence had to be material and relevant to the appellant's claim.

(3) Paragraph 4-13 (ASRB and Army Board for Correction of Military Records (ABCMR)).

(a) The ASRB operated within the guidelines established in this regulation. The board, which was comprised of senior officers and evaluated and acted on evaluation report appeals. The president and assistant president for each board, under the direct authority and supervision of the Army's Director of Military Personnel Management, were delegated the authority to take action on evaluation report appeals. At least three members of the board constituted a quorum for voting on each case. Board recommendations were based on a majority vote. Board proceedings were administrative and non-adversary; the provisions of AR 15-6 did not apply. Although not bound by the rules of evidence for trials by court-martial or other court proceedings, the board did keep within the reasonable bounds of evidence that were competent, material, and relevant. Neither the appellant nor their agent were authorized to appear before the board.

(b) A Soldier could always appeal further to the ABCMR. The ABCMR is the highest level of administrative review within the Department of the Army and acts for the Secretary of the Army. The ABCMR can determine a final decision, or, when required, forward the decision to the Secretary of the Army for a final decision.

2. AR 15-6 (Procedures for Administrative Investigations and Boards of Officers), in effect at the time, stated:

a. Paragraph 1-6 (Types of Procedures). A preliminary inquiry was a procedure used to ascertain the magnitude of a problem, to identify and interview witnesses, to summarize or record witnesses' statements, to determine whether an investigation or board would be necessary, or to assist in determining the scope of a subsequent investigation. An appointing authority could conduct a preliminary inquiry personally or could appoint an inquiry officer orally or in writing.

b. Paragraph 1-12 (Use of Results of Preliminary Inquiries, Administrative Investigations, and Boards of Officers in Adverse Administrative Actions).

(1) The regulation did not require that a preliminary inquiry, administrative investigation, or board of officers be conducted before taking adverse administrative action, such as relief for cause, against an individual.

(2) The evidence gathered during an inquiry, investigation, or board conducted under the provisions of this regulation could be used in any administrative action against an individual, regardless of the particular procedures used, and regardless of whether that individual was a subject or designated as a respondent.

(3) When adverse administrative actions were contemplated against a Soldier, including one designated as a respondent, based upon information obtained as a result of a preliminary inquiry, administrative investigation, or board of officers conducted pursuant to this regulation, the appropriate military authority had to observe the following minimum safeguards before taking final action against the individual:

- Notify the Soldier, in writing, of the proposed adverse action and provide a copy of those parts of the findings and recommendations of the inquiry, investigation, or board and the supporting evidence gathered during the proceeding upon which the proposed adverse action was based
- Give the Soldier a reasonable opportunity to reply, in writing, and to submit rebuttal matters
- Review and evaluate any matters submitted by the Soldier
- There was no requirement to refer the inquiry, investigation, or board to the individual if the adverse action contemplated was prescribed in regulations or directives that provided procedural safeguards, such as notice to the individual and an opportunity to respond
- However, AR 623–3 prescribed that the referral procedures specified in AR 15–6 were to be followed before initiating or directing a relief for cause, if the relief was contemplated on the basis of an AR 15–6 investigation

3. AR 600-20 (Army Command Policy), in effect at the time, prescribed the policies and responsibilities of command.

a. Paragraph 2-18 (Relief for Cause).

(1) When a higher ranking commander lost confidence in a subordinate commander's ability to command due to misconduct, poor judgment, the subordinate's inability to complete assigned duties, or for other similar reasons, the higher ranking commander had the authority to relieve the subordinate commander. Relief was normally preceded with formal counseling by the commander or supervisor unless such action were not deemed appropriate or practical under the circumstances.

(2) If a relief for cause was contemplated on the basis of an investigation under AR 15–6, the referral and comment procedures of that regulation must be followed before initiating or directing the relief. This did not preclude a temporary suspension from assigned duties pending completion of the procedural safeguards contained in AR 15–6. Any action purporting to initiate or direct a relief for cause on the basis of an investigation under AR 15–6 that was taken prior to completion of the procedural safeguards of AR 15–6 was to be considered for all purposes as a temporary suspension from assigned duties.

b. Chapter 6 (the Equal Opportunity (EO) Program in the Army) stated the Army's EO policy and outlined a process for EO complaints to address allegations of unlawful discrimination or unfair treatment on the basis of race, color, religion, gender, and national origin. Attempts were always be made to solve the problem at the lowest possible level within an organization.

(1). Paragraph 6-2c (EO Policy – Definitions).

(a) Discrimination. Any action that unlawfully or unjustly resulted in unequal treatment of persons or groups based on race, color, gender, national origin, or religion.

(b) Disparaging terms. Terms used to degrade or connote negative statements pertaining to race, color, gender, national origin, or religion. Such terms could be expressed as verbal statements, printed material, visual material, signs, symbols, posters, or insignia. The use of these terms constituted unlawful discrimination.

(2) Paragraph 6-9 (Procedures for Processing EO Complaints) stated Soldiers, Family members, and Department of the Army (DA) civilians had the right to present a complaint to the command without fear of intimidation, reprisal, or harassment; communicate with the commander concerning their complaints; and receive assistance when submitting a complaint. It was recommended that the individual attempt to resolve a complaint by first informing the alleged offender that the behavior had to stop.

(3) Paragraph 6-11 (Evaluation Reports).

(a) The performance evaluation process provided commanders and supervisors an excellent opportunity to discuss their goals, objectives, and expectations of the EO and Equal Employment Opportunity (EEO) programs. In counseling sessions, commanders and supervisors were to discuss these programs as expressions of the Army's values and encourage support of these programs and how they intended to evaluate individual behaviors and actions.

(b) Substantiated EO complaints as a result of AR 15-6 investigations required a "Does not support Equal Opportunity" comment on the OER. This document could also

include administering appropriate administrative, disciplinary, or legal action(s) to correct offensive behavior.

(c) Appeals of OERs due to alleged unlawful discrimination, sexual harassment, or reprisal were addressed in AR 623-3.

c. Chapter 7 (Sexual Harassment/Assault Response and Prevention (SHARP) Program). The SHARP Program implemented Department of Defense and Army policy regarding sexual harassment and sexual assault. The Army did not tolerate or condone sexual harassment, sexual assault, or associated retaliatory behaviors. The SHARP Program enhanced Army readiness by fostering a culture free of sexual harassment and sexual assault through prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhanced the safety, well-being, readiness.

(1) Paragraph 7-5 (Responsibilities). Commanders, supervisors, and managers at all levels were responsible for the effective implementation of SHARP Policy and execution of the SHARP Program. Military and DA Civilian officials at each management level were required to advocate a strong SHARP Program and provide education and annual training that would enable them to prevent and appropriately respond to sexual harassment and sexual assault.

(2) Paragraph 7-6c (Program Fundamentals). Commanders who became aware of reported or suspected sexual assault, including reports from a third party, were to immediately contact the Sexual Assault Response Coordinator (SARC) and U.S. Army Criminal Investigation Division (USACIDC). Commanders were not initiate any AR 15-6 investigations into reports of sexual assault and were instead to contact their servicing legal office for consultation if it was unclear whether a reported act was sexual harassment or sexual assault.

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

//NOTHING FOLLOWS//