

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 December 2024

DOCKET NUMBER: AR20240004577

APPLICANT REQUESTS: through counsel:

- removal of the general officer memorandum of reprimand (GOMOR), 8 July 2022, from his Army Military Human Resource Record (AMHRR)
- removal of the Department of the Army Suitability Evaluation Board (DASEB) Report of Board Proceedings, 19 October 2022, from his AMHRR
- redaction of any reference to the alleged misconduct (assault) from his AMHRR
- consideration for promotion to major (MAJ) by a special selection board
- in the alternative, transfer the unfavorable information from the performance folder of his AMHRR to the restricted folder
- any other relief the Board considers just and equitable
- a personal appearance hearing before the Board

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)
- Counsel's Memorandum (Request for Removal of GOMOR and Report of DASEB Proceedings and Related Relief), 28 January 2024, with enclosures –
 - Enclosure 1 – Headquarters, Joint Readiness Training Center (JRTC) and Fort Polk (GOMOR), 8 July 2022
 - Enclosure 2 – Memorandum for President, DASEB ((Applicant) – Request for Removal of GOMOR), 25 August 2023, with 13 enclosures, including –
 - Enclosure 3 – Memorandum for Commanding General, JRTC and Fort Polk, (Matters in Response to GOMOR), 27 July 2022
 - Enclosure 5 – Military Police Report, 4 October 2021
 - Enclosure 8 – Officer Record Brief and four DA Forms 67-10-1 (Company Grade Plate (O1 – O3; WO1 – CW2) Officer Evaluation Report (OER)) covering the periods 25 May 2015 through 28 February 2022
 - Enclosure 9 – Memorandum for Applicant (Initiation of Elimination), 8 July 2022

- Enclosure 3 – Supplemental Memorandum for President, DASEB ((Applicant) – Request for Removal of GOMOR), 30 August 2023, with Enclosure 14 (DA Form 67-10-1 Covering the Period 1 March 2022 through 28 February 2023)
- Enclosure 4 – DASEB Docket Number AR20230010909, 3 October 2023, with Allied Documents

FACTS:

1. The applicant defers to counsel.
2. Counsel states the applicant was improperly issued a GOMOR on 8 July 2022 (see enclosure 1). He was acquitted of "assault" by a Board of Inquiry but was still improperly substantiated by the same panel for violation of Article 133, Uniform Code of Military Justice (UCMJ). Thus, matters of propriety and equity dictate removal of the GOMOR and DASEB Record of Proceedings from the applicant's AMHRR. Removal of these matters will allow the applicant to remain competitive for promotion and continue his service. Expedited removal of these matters is requested due to the applicant's pending consideration for continuation of service. The GOMOR, DASEB decision, and Board of Inquiry findings are marred by legal and factual insufficiency and procedural errors that created a substantial prejudice and resulted in gross inequity (see enclosures 2 through 4).
 - a. The GOMOR should be removed because it was based on unsubstantiated derogatory information. Specifically, the evidence proves the applicant did not engage in assault, domestic violence, or threats of violence. The applicant's wife repeatedly stated her initial claim was untruthful and she unknowingly fabricated the allegation in her distressed mental state. Collectively, the applicant and his spouse's statements are corroborated and irrefutable. Clear and convincing evidence shows the GOMOR is untrue or unjust and should be removed from the applicant's AMHRR.
 - b. The requested relief requires an objective review of the matters presented and honest discussion, missing during the investigation and Board of Inquiry in this case. The law enforcement's reported facts and circumstances, as adopted by leadership, are either wholly untrue or misrepresentations of the truth, which resulted in unsupported and misguided adverse administrative actions.
 - c. On 3 October 2023, the DASEB denied all requested relief. The applicant understands perception can be reality, yet has never given up hope of faithfully continuing his service. The applicant begs the Board's forgiveness for any perceived wrongs and requests the opportunity to serve Soldiers and his fellow countrymen.

d. Counsel requests that the Board review the matter objectively, dispassionately, and fully examine:

- (1) the command's misinterpretation and misapplication of the facts and circumstances in substantiation, the issuance criteria, and the references;
- (2) the damaging effects caused by the improper application of the references, issuance of the GOMOR, and findings of conduct unbecoming an officer and gentleman in violation of Article 133, UCMJ;
- (3) that the GOMOR and Board of Inquiry findings resulted in the applicant's non-selection to MAJ and denied him the ability to provide continuity of care and life insurance to his family; and
- (4) the applicant's complete service record; the positive observations by his colleagues, friends, and family providing evidence of good military character for consideration in disproving the false allegations.

e. Counsel includes the following as important aspects of the case:

- (1) The available evidence, facts, and circumstances, clearly and convincingly prove the applicant did not commit any offense under the UCMJ on or about 4 October 2021, despite opinions of the of law enforcement and/or command representatives.
- (2) Counsel asserts:
 - (a) The DASEB determined the applicant had not "received any OERs outside of the period of the GOMOR" (see enclosure 14). The incident occurred on 4 October 2021 and the GOMOR was issued 8 July 2022. The applicant submitted consecutive OERs covering periods 26 March 2016 through 28 February 2023 to the DASEB (see enclosures 8 and 14).
 - (b) The DASEB later noted the applicant had met the conditions to request transfer of the GOMOR because he had received at least one nonacademic evaluation report (see enclosure 4, paragraph 8).
 - (c) The DASEB again reversed the opinion when noting "careful consideration was given to the time period that has elapsed...no OERs outside the period of the misconduct, awards or schools" (see enclosure 4, paragraph 10). It would be unfair and inequitable to state the applicant had not subsequently completed any school because he was on administrative hold awaiting completion of the Board of Inquiry.

(d) The DASEB placed unreasonable emphasis on the absence of a memorandum from the issuing authority (IA) or new evidence (see enclosure 4, paragraph 3). The Board of Inquiry findings should have been viewed as new evidence.

(e) The DASEB incorrectly determined the applicant's memoranda (enclosures 2 and 3) did not unsubstantiate the alleged misconduct by clear and convincing evidence (see enclosure 3, paragraph 6). The matters presented to the DASEB did establish clear and convincing evidence that the applicant did not commit assault.

(f) The DASEB incorrectly determined the extent the applicant was denied due process because he was offered an opportunity to consult with a lawyer before providing a statement to law enforcement. Law enforcement hastily and erroneously concluded its investigation before the applicant's statement could be provided or otherwise considered. The DASEB did not consider the new evidence – the Board of Inquiry findings that an assault did not occur.

(g) The DASEB misstated the Board of Inquiry's limitations by claiming the only decision was a retention or separation recommendation. The DASEB missed that the Board of Inquiry was charged with rendering a binding decision of the findings – not recommendation – or the merits of the alleged misconduct.

(h) The DASEB incorrectly determined the applicant failed to provide sufficient evidence to show the GOMOR had served its intended purpose and that it was in the best interest of the Army to transfer the GOMOR (see enclosure 4, paragraph 10).

(i) The applicant was retained on active duty without reassignment by a Board of Inquiry that convened in October 2022 to determine whether he committed the very misconduct reported in the GOMOR; specifically, whether he assaulted his spouse and demonstrated conduct unbecoming of an officer (see enclosure 9). The board acquitted the applicant of assault but substantiated his violation of Article 133, UCMJ. Thus, matters of propriety and equity dictate the Report of Board Proceedings should also be removed from his AMHRR. The applicant was retained on active duty without reassignment.

3. Following prior enlisted service in the South Dakota Army National Guard, the applicant was appointed as a Regular Army commissioned officer in the Infantry Branch in the rank/grade of second lieutenant/O-1 effective 15 December 2010.

4. The applicant was serving in the Regular Army in the rank of rank/grade of captain/O-3 when he became the subject of a 2021 military police investigation (MPI) for an allegation of domestic violence in violation of Article 128b, UCMJ.

5. The Commanding General, Headquarters, JRTC and Fort Polk, reprimanded him in writing on 8 July 2022 wherein he stated:

A Military Police Investigations (MPI) investigation determined that on or about 4 October 2021, at or near Fort Polk, Louisiana, you threatened to hit you [sic] spouse, Mrs. E.M. while engaging in a verbal altercation. The incident culminated in you throwing a dog bone across the house and pushing Mrs. E.M. against a door with your hands. This is a violation of Article 128b, Uniform Code of Military Justice (UCMJ). You are hereby reprimanded for your actions.

The U.S. Army and this command have consistently emphasized the consequences of domestic violence. As a commissioned officer, you are charged with the responsibility of setting the example for others to emulate. Clearly, your actions fell below the standards expected of a commissioned officer in the U.S. Army. There is no excuse for your irresponsible behavior. Further incidents of this nature may result in more serious action being taken against you. I trust that your future duty performance will reflect the degree of professionalism expected of every commissioned officer assigned to this command.

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

6. On 27 July 2022, the applicant's spouse submitted a letter to the Commanding General, Headquarters, JRTC and Fort Polk, describing the events on 4 October 2022 and her behavior. She stated her husband did not assault her and did not commit an act of domestic violence. She stated she is a survivor of domestic violence from a prior relationship. The argument with her husband triggered disturbing memories of prior abuse, which prompted her call to the military police. The military police investigator coached her through her answers. She sat in her kitchen, desperately wanting the three huge men to leave her house and leave her alone. The next day during a follow-up interview with the investigator, she attempted to explain her past trauma and how it affected her. She explained that her husband did not assault her and the investigator informed her that she didn't get to make that determination. The statements she made

during the follow-up interview are not included with the GOMOR packet. She and her husband were wrong for arguing as they did; however, no one committed domestic violence that night.

7. The applicant's memorandum for Commanding General, Headquarters, JRTC and Fort Polk (Matters in Response to GOMOR), 27 July 2022, states:

Sir, I take full responsibility for my actions on 4 October 2021. My lack of self-control caused the confrontation with my wife, E_____. I failed to manage my stress and to control my emotions. This is not how an officer, and a husband must behave. I am determined to control my anger in all situations and especially in my marriage.

I am grateful that the Family Advocacy Case Review Committee determined that the argument between E_____ and I on 4 October did not meet the criteria for abuse; however, I regret that my actions caused pain for E_____, detracted from the Fort Polk mission, and undermined the wellbeing of our community.

Please review the CRC [Case Review Committee] decision and letter from the FAP [Family Advocacy Program] counselor, Ms. B_____, at Enclosure 1. Please pay particular attention to E_____'s letter at Enclosure 2. Please also read the message E____ wrote in January to her behavioral health provider at Enclosures 2a and 2b. I respectfully disagree with the conclusions of the Military Police Investigator – while my behavior on 4 October was wrong and inexcusable, I did not commit an act of domestic violence.

When I asked E____ to write a letter of support, I did not expect such a comprehensive analysis of what occurred on 4 October. My wife is an exceptional and talented person.

E____ and I have made tremendous strides both individually and as a couple since October 4. We have taken deliberate actions to strengthen our marriage and overcome the stressors in our lives. We have diligently worked with Family Advocacy, the Operations Group Chaplain, the Military & Family Life Counselor, as well as sought the help of a local church to strengthen our bond as a united couple. We have remained patient in our tribulation and remain bound to each other.

I completed anger management counseling and have continued to speak with a behavioral health provider. I am better able to regulate my reaction to stressors. Our marriage is stronger now than at any time. I am determined to be a better husband, father, and officer.

I respectfully ask that you file the reprimand locally. E____ and I remain committed to service and wish to be given the opportunity to continue to serve the Army and the Fort Polk community.

8. On 18 August 2022 after carefully considering the circumstances of the misconduct; the recommendations made by the applicant's chain of command; and all matters submitted by the applicant in defense, extenuation, or mitigation; the commanding general directed permanently filing the GOMOR and all enclosures in the applicant's AMHRR.
9. On 9 September 2022, a Board of Inquiry was appointed to determine whether the applicant should be retained in the Army under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraphs 4-2b (Acts of Personal Misconduct) and 4-2c (Derogatory Information).
 - a. The board convened on 19 October 2022. The board determined the applicant did not assault his spouse on 4 October 2021 and his actions did not warrant his separation. The allegation that the applicant engaged in conduct unbecoming of an officer was supported by a preponderance of the evidence; however, this finding did not warrant his separation.
 - b. The board recommended the applicant's retention without reassignment.
 - c. The Commanding General, JRTC and Fort Polk, directed the applicant's retention on active duty.
10. On 25 August 2023, counsel requested removal of the GOMOR from the applicant's AMHRR or transfer of the GOMOR to the restricted folder of his AMHRR on the basis that the GOMOR had served its intended purpose.
11. Counsel's supplemental memorandum for the DASEB ((Applicant) – Request for Removal of GOMOR), 30 August 2023, requests consideration of the applicant's OER covering the period 1 March 2022 through 28 February 2023.
12. On 3 October 2023 in Docket Number AR20230010909, the DASEB determined the evidence presented did not provide substantial evidence that the GOMOR had served its intended purpose or was untrue or unjust, and that its transfer or removal would be in the best interest of the Army. The board directed filing the decision memorandum in the applicant's AMHRR and filing the appeal documentation in the restricted folder of the applicant's AMHRR.
 - a. The Summary of Evidence:

(1) Counsel provided a copy of the MPI with statements detailing the allegations which led to the imposition of the GOMOR.

(2) Counsel provided numerous volunteer awards for the applicant's spouse and successful OERs, awards, and school completions by the applicant.

(3) Counsel provided several letters of support. All the letters spoke highly of the applicant's leadership, teamwork, professionalism, honesty, awareness of his shortcomings, competence, and diligence, and asserted the allegations were not consistent with his character.

(4) In an undated memorandum, the IA stated elimination action was initiated against the applicant on 8 July 2022 for misconduct, professional or moral dereliction, or in the interests of national security. Considering the findings and recommendations of the Board of Inquiry held on 19 October 2022, the IA directed the applicant's retention in the U.S. Army and closure without further action.

(5) A review of the applicant's AMHRR does not show he has received any OERs outside of the period of the GOMOR, awards, or completed a military school. The OER covering the period involving the GOMOR did not reflect the incident.

b. Neither counsel nor the applicant provided a letter from the IA stating the GOMOR was improperly issued or that new evidence was being considered.

c. The board discussion noted:

(1) In order to remove a GOMOR from an official record, the burden of proof rests with counsel/the applicant to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

(2) Counsel states the applicant would later be "acquitted" of assault by a Board of Inquiry; the applicant was not the aggressor and was in fact trying to de-escalate the situation; the applicant has not had one other blemish on his military record in more than 18 years of service; the applicant wishes he had done more to get his wife the care she needed to deal with the post-traumatic stress disorder, anxiety, loneliness, and depression that stemmed from her traumatic past as a survivor of intimate-partner violence; and there was no assault nor was there ever a threat of assault.

c. After a thorough review of the applicant's official records and the evidence submitted by counsel in support of his petition, the following factors were considered:

(1) The documents submitted did not unsubstantiate the allegations listed/stated in the GOMOR. An administrative reprimand is a management tool within the sole discretion of the IA. The IA may rely on any evidence that he or she deems necessary to decide.

(2) Filing of the GOMOR was not unjust. The governing regulation permits the issuance of a written reprimand when there is reasonable belief that someone has deviated from the Army values, personal conduct, or the expectations of a Soldier. Neither counsel nor the applicant provided substantial proof or evidence that his due process was violated.

(3) The GOMOR clearly states an MPI determined that the applicant threatened to hit his spouse while engaging in a verbal altercation. The incident culminated in the applicant throwing a dog bone across the house and pushing his wife against a door with his hands.

(4) Counsel's contentions regarding the Board of Inquiry findings and recommendations were noted:

(a) Army Regulation 600-8-24 states a Board of Inquiry is limited to deciding whether to retain (with or without reassignment) an officer on active duty or to eliminate an officer. Neither the IA nor the DASEB is bound by the Board of Inquiry's findings or recommendations.

(b) The purpose of the Board of Inquiry was to give the applicant a fair and impartial hearing, determining if he would be retained in the Army. The board may not recommend removal of documents such as OERs; Records of Proceedings under Article 15, UCMJ; and memoranda of reprimand from an officer's AMHRR. The board's recommendations are limited to either retention (with or without reassignment) or elimination.

(5) The governing regulation states the IA who directed filing of an administrative GOMOR, admonition, or censure in an officer's AMHRR may request its revision, alteration, or removal, if a later investigation determines it was untrue or unjust, in whole or in part. The basis for such determination must be provided to the DASEB in sufficient detail to justify the request. Neither counsel nor the applicant provided the DASEB with a new/complete Army Regulation 15-6 investigation.

(6) The DASEB, in compliance with Army Regulation 600-37, does not have a policy of removing unfavorable information based on an alleged injustice resulting from non-selection for promotion, schooling, previous evaluations, or special assignments.

(7) Given the above, neither counsel nor the applicant provided clear and convincing evidence showing the GOMOR was rendered in error or is unjust or untrue.

(8) In the alternative, counsel requests transfer of the GOMOR to the restricted folder of the applicant's AMHRR. To have the GOMOR transferred, counsel/the applicant must show by substantial evidence that it has served its intended purpose and that it is in the best interest of the Army to transfer it.

(9) In accordance with Army Regulation 600-37, paragraph 7-2b(1), the applicant has met the conditions to request transfer of the GOMOR because 1 year has elapsed and he has received one non-academic evaluation report. There are no provisions in governing regulations to automatically transfer a GOMOR based on elapsed time.

(10) The Army has a prevailing interest in protecting the rights of individual Soldiers and, at the same time, permitting the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility. Therefore, the determination as to whether a Soldier has provided substantial evidence that the intent of a GOMOR has been met must be weighed objectively and fairly with the best interests of the Army. The factors considered in reaching a conclusion in the applicant's case are fully discussed below:

(a) The applicant received the GOMOR a little over a year ago (approximately 14 months).

(b) The applicant's AMHRR does not show he has received any OERs outside of the period of the GOMOR, awards, or completed a military school. The OER covering the period involving the GOMOR did not reflect the incident.

(c) Counsel provided several letters of support.

(11) Careful consideration was given to the time that has elapsed; the seriousness of the allegations; the applicant's rank at the time of the misconduct; and no OERs outside the period of the misconduct, awards, or schools; and the DASEB determined neither counsel nor the applicant provided sufficient evidence to show the GOMOR has served its intended purpose and that it was in the best interest of the Army to transfer the GOMOR at this time.

13. The applicant is currently serving on active duty in the rank/grade of captain/O-3 at Camp Shelby, MS.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military record, the Board found that relief was not warranted. The Board carefully considered the counsel's contentions, the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request and available military records, the Board determined that neither the applicant nor his counsel met the burden of proof required to warrant removal or transfer of the General Officer Memorandum of Reprimand (GOMOR) dated 8 July 2022; removal of the Department of the Army Suitability Evaluation Board (DASEB) Report of Proceedings dated 19 October 2022; redaction of references to alleged misconduct; consideration for promotion to major (MAJ) by a special selection board; or, in the alternative, transfer of the unfavorable information from the performance to the restricted folder of his Army Military Human Resource Record (AMHRR).
2. The Board acknowledged that counsel submitted a copy of the Military Police Investigation (MPI), multiple letters of support, documentation of the applicant's successful Officer Evaluation Reports (OERs), awards, and school completions, as well as statements from both the applicant and his spouse disputing the original allegations. While these materials reflect positively on the applicant's character and post-incident conduct, they do not constitute clear and convincing evidence that the GOMOR was untrue or unjust. The Board also considered counsel's assertions regarding procedural irregularities and conflicting interpretations by the DASEB but found no compelling basis to conclude that the DASEB's decision was arbitrary, capricious, or unsupported by the record.
3. Although the applicant met the minimum regulatory conditions to request transfer—having received one non-academic evaluation report and more than one year having elapsed—the Board, consistent with the DASEB's 3 October 2023 decision, found insufficient evidence to conclude that the GOMOR had served its intended purpose or that transfer would be in the best interest of the Army. The applicant's AMHRR did not reflect any OERs outside the period of the GOMOR, nor did it show completion of additional military schooling or receipt of awards that might demonstrate sustained performance improvement. The Board noted that the applicant, a commissioned officer with prior enlisted service, was the subject of a 2021 MPI for alleged domestic violence.
4. Although a Board of Inquiry later determined that the applicant did not commit assault and recommended retention, it substantiated conduct unbecoming an officer under Article 133, UCMJ. The Board emphasized that the scope of a Board of Inquiry is limited to retention decisions and does not extend to the removal of adverse administrative documents. Furthermore, neither the applicant nor counsel submitted a memorandum from the initiating authority (IA) indicating that the GOMOR was

improperly issued or that new evidence warranted reconsideration. The Commanding General's decision to permanently file the GOMOR in the applicant's AMHRR reflects a serious lapse in judgment and leadership.

5. The applicant's own admission of poor emotional regulation and acknowledgment of inappropriate behavior during the incident on 4 October 2021 further supports the Commanding General's determination. While the applicant and his spouse have taken commendable steps toward reconciliation and personal growth, these efforts do not negate the misconduct nor render the GOMOR unjust or untrue. The Family Advocacy Program's assessment and the spouse's subsequent statements were considered; however, the initial findings of the MPI and the Commanding General's reprimand remain valid and supported by the record.

6. In accordance with Army Regulation 600-37, the Board determined that the GOMOR remains a valid and appropriately filed document. The seriousness of the allegations, the applicant's rank at the time of the incident, and the absence of substantial post-GOMOR performance indicators weighed against the requested relief. Therefore, the Board denied the applicant's request for removal or transfer of the GOMOR and associated documents from his AMHRR, removal of the DASEB Report of Proceedings, redaction of misconduct references, and consideration for promotion by a special selection board.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

XXX 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.

//SIGNED//

X

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 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 Army Board for Correction of Military Records (ABCMR). The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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.
2. Army Regulation 600-8-29 (Officer Promotions) prescribes the officer promotion function of military human resources support operations. It provides for career progression based upon recognition of an officer's potential to serve in positions of increased responsibility. Additionally, it precludes promoting officers who are not eligible or become disqualified, thus providing an equitable system for all officers.
 - a. Paragraph 2-7 (Promotion Eligibility) states captains, MAJs, and lieutenant colonels must serve at least 3 years of time in grade to be considered for promotion.
 - b. Chapter 6 (Special Selection Boards) states a special selection board may be convened to consider or reconsider commissioned officers for promotion when

Headquarters, Department of the Army, determines that one or more of the following circumstances exists:

- (1) Administrative Error. An officer was not considered from in or above the promotion zone by a regularly scheduled board because of an administrative error.
- (2) Material Unfairness. The action of the promotion board that considered the officer from in or above the promotion zone was contrary to law in a material to the division of the board or involved material error or fact or material administrative error; or the board that considered the officer from in or above the promotion zone did not have before it for its consideration material information.

3. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

- a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.
- b. A memorandum of reprimand may be filed in a Soldier's Official Military Personnel File (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.
- d. Paragraph 7-3c (Filing Authority to Redress Actions) states an officer who directed filing an administrative memorandum of reprimand, admonition, or censure in the AMHRR may request its revision, alteration, or removal, if evidence or information

indicates the basis for the adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide a copy of the new evidence or information to the DASEB to justify the request.

4. Army Regulation 600-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from active duty to the Reserve Component and discharge functions for all officers on active duty for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges.

a. Paragraph 4-6 states the Board of Inquiry's purpose is to give the officer a fair and impartial hearing, determining if the officer will be retained in the Army. Through a formal administrative investigation conducted under Army Regulation 15-6 and this regulation, the Board of Inquiry establishes and records the facts of the respondent's alleged misconduct, substandard performance of duty, or conduct incompatible with military service. Based upon the findings of fact established by its investigation and recorded in its report, the board then makes a recommendation for the officer's disposition, consistent with this regulation. The Government is responsible to establish by a preponderance of the evidence that the officer has failed to maintain the standards desired for their grade and branch or that the officer's Secret-level security clearance has been permanently denied or revoked by appropriate authorities acting pursuant to Department of Defense Directive 5200.2-R (Department of Defense Personnel Security Program) and Army Regulation 380-67 (The Personnel Security Program). In the absence of such a showing by the Government, the board will retain the officer. However, the respondent is entitled to produce evidence to show cause for his retention and to refute the allegations against him. The Respondent's complete AMHRR will be entered into evidence by the Government and considered by the Board of Inquiry.

b. Paragraph 4-15b(3) states the Board of Inquiry may not recommend removal of documents such as OERs, DA Forms 2627 (Record of Proceedings under Article 15, UCMJ), and memoranda of reprimand from an officer's AMHRR. The board's recommendations are limited to either retention (with or without reassignment) or elimination.

5. 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 Army Board for Correction of Military Records 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//