

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2025

DOCKET NUMBER: AR20240004613

APPLICANT REQUESTS: through counsel, he be reinstated in the U.S. Army at the same rank/grade of first lieutenant (1LT)/O-2 at the time of his discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief, which provides the applicant's contentions and outlines the sequence of events related to the applicant's discharge; the entire brief can be reviewed and considered within the supporting documents
- Exhibit 1 – DD Form 214 (Certificate of Release or Discharge from Active Duty) period ending on 8 May 2015, showing the applicant entered active duty on 30 December 2003 and was discharged to accept a commission in the Army on 8 May 2015; it also shows he served in Iraq on multiple occasions
- Exhibit 2 – Criminal Investigation Division (CID) Agent's Investigation Reports dated 25 March, 18 April, and 7 June 2019, which state, in part, a special agent from the North Pole Police Department reported Captain (CPT) S_ [the victim/accuser] was sexually assaulted and the case would be sent to the District Attorney, but they will mostly deny the case
 - The report provides comments from the agent and outlines the sequence of events; it also shows comments from the applicant and CPT S_ of what happened and the actions which led to the sexual assault investigation
 - The complete investigation can be considered and reviewed in its entirety within the supporting documents
- Exhibit 3 – General Officer Memorandum of Reprimand (GOMOR) dated 26 November 2019, issued to the applicant for sexually assaulting "Ms. E.N.S." [CPT S_], an officer in the U.S. Army, after attending a concert on or about 24 March 2018; it further states:
 - During the night, CPT S_ awoke to the applicant pulling down her underwear and inserting his penis between her buttocks without consent

- His actions, lack of judgment, and failure to respect a fellow commissioned officer were a great disappointment to the Commanding General and all those who depended on the applicant for leadership
 - As an officer, the applicant was charged with the responsibility of setting the example for Soldiers to emulate and fostering a work environment that leads to mission accomplishment
 - Clearly, the actions fell below the standards expected of an officer in the United States Army; the applicant showed a lack of professionalism and seriously compromised his standing as an officer
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- Exhibit 4 – Initiation of Elimination dated 27 April 2020, which shows, the applicant was required to Show Cause for retention on Active Duty under the provisions of Army Regulation (AR) 600-8-24, paragraphs 4-2b and 4-2c, because of misconduct and derogatory information filed in his Army Military Human Resource Record (AMHRR)
 - Exhibit 5 – Acknowledgment of Receipt of Notification of Elimination dated 21 May 2020, which shows, the applicant elected to submit a request for a Board of Inquiry (BOI)
 - Exhibit 6 – Referral to a BOI for Applicant dated 26 June 2020, which referred the applicant to the standing BOI in accordance with AR 600-8-24 and the provisions of AR 15-6 applicable to formal proceedings with respondents; the board will give the applicant a fair and impartial hearing determining if the applicant will be retained in the Army
 - Exhibit 7 – Notification to Appear Before Separation Board [Applicant] dated 30 July 2020, notifying the applicant that a Standing BOI was appointed by Appointment of Fort Wainwright BOI Memorandum, dated 6 November 2019, by command of Major General P_ A_, and would be held at 0900 on 14 August 2020
 - Exhibit 8 – DA Form 1574-2 (Report of Proceedings by Board of Officers) dated 14 August 2020, which shows the BOI found and recommended that:
 - On or about 24 March 2018, the applicant did sexually assault CPT S_ after attending a concert, and that the finding was supported by a preponderance of the evidence and warranted the applicant's separation because CPT S_ was asleep and therefore could not consent to the sexual contact
 - The Applicant did commit conduct unbecoming of an officer in violation of Article 133, Uniform Code of Military Justice (UCMJ), and the finding was supported by a preponderance of the evidence and warranted the applicant's separation because his actions involved "unwanted sexual contact" which "fell below the standards of decency expected of an officer of his experience and background"
 - The GOMOR permanently filed in the applicant's AMHRR warranted cause for separation

- The applicant be separated from the Army with an Honorable characterization of service
- Exhibit 9 – Applicant's Request for Retention on Active Duty dated 5 November 2020, wherein, the applicant requested that he be retained in the Army, so he may soon retire after nearly 17 years of honorable service; in the alternative, he asked that a new BOI be convened due to the procedural and substantive unfairness in his case; he further provided his contentions and reasoning
- Exhibit 10 – Post-Board of Inquiry Matters, AR 600-8-24, [Applicant], dated 10 February 2021, wherein, the applicant requested that the Commanding General retain him in the Army based up his service contributions, and the irreparable financial impact the loss of retirement benefits would have on his life
- Exhibit 11 – Army Review Boards Agency (ARBA), Deputy Assistant Secretary of the Army (DASA) (Review Boards), Officer Elimination determination dated 5 May 2022, which shows the ARBA DASA Review Boards determined the applicant would be involuntarily eliminated from the Army with an Honorable characterization of service
- Exhibit 12 – Notification of Discharge dated 22 June 2022, which notified the applicant of his discharge determined by the ARBA DASA Review Boards
- Exhibit 13 – Letters of Recommendation/Character Reference Letters, which attested to the applicant's great service, character, and leadership; the letters can be reviewed and considered in their entirety within the supporting documents
- Exhibit 14 – DA Forms 67-10-1 (Company Grade Plate (O1 - O3; WO1 - CW2) Officer Evaluation Report (OER)) and DA Forms 2166-8 (NCO Evaluation Report (NCOER)), various periods covered; which show favorable ratings
- Exhibit 15 – OER period covered 23 October 2018 through 15 November 2019, which shows the applicant received an extended annual OER that was referred report and he refused to sign the OER (the OER was referred but the applicant did not provide any comments)

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 through counsel in part:

- He respectfully requests that he be reinstated in the U.S. Army at the same rank as the time of his discharge
- On 7 December 2018, a complaint was made against the applicant alleging that he had sexually assaulted a female Soldier following an evening out at a concert

- The CID Agent's Investigation Report dated 25 March 2019, states that the accuser, CPT S_ alleged that while staying overnight at her residence the applicant "inserted his penis inside her vagina" without her consent while she was sleeping, and that when she told him to stop, "he rolled away from her in the bed"
- The CID Agent's Investigation Report dated 18 April 2019, states that the District Attorney "declined to prosecute the case due to lack of evidence, and that the case turned into a 'he said, she said' situation"
- The same report states that the Applicant reported that the pair "hung out together for the weekend" and that he was invited to stay at CPT S_'s residence
- It also states that the applicant reported that "later that night he massaged CPT S_'s back and buttock, but stopped after CPT S_ pushed his hand away"
- A subsequent Agent's Investigation Report dated 7 June 2019, states different information [the complete report can be reviewed and considered within the supporting documents]
- On 26 November 2019, a GOMOR was issued to the applicant
- On 20 December 2019, the applicant submitted a rebuttal to the GOMOR, stating that the government failed to satisfy its burden of "showing a preponderance of evidence to support the claim" that the applicant had committed the sexual assault
- On 8 January 2020, the GOMOR was ordered to be made part of the applicant's AMHRR
- On 27 April 2020, the applicant was notified of the U.S. Army's intent to initiate his elimination and was ordered to Show Cause for his retention on Active Duty
- On 21 May 2020, the applicant elected to submit a request for a BOI
- On 5 November 2020, the applicant submitted a Request for Retention on Active Duty asking that he either be retained or that a new BOI be appointed; he also provided his contentions [the request can be reviewed and considered in its entirety within the supporting documents]
- On 10 February 2021, the applicant submitted a Post-BOI Matters Memorandum; in this memorandum, he stated that his discharge would cause him irreparable financial harm, including loss of retirement benefits
- On 5 May 2022, a determination was made, and a memorandum issued, stating that the applicant would be involuntarily eliminated from the U.S. Army based on "misconduct and moral or professional dereliction, and derogatory information, with an Honorable characterization of service"
- The applicant was separated accordingly on 7 July 2022
- The applicant's discharge was patently unjust because CPT S_'s statements about the event that led to his separation were demonstrated to be untrustworthy
- Not only did CPT S_ make glaringly contradictory statements about the events of the evening, but testimony was also offered at the BOI which called into question her reputation for honesty; the applicant had an impeccable record of service

- Multiple character references letters were provided in support of the applicant and both NCOERs and OERs show favorable ratings
- Considering the facts and arguments presented herein, the applicant respectfully requests that he be reinstated in the U.S. Army at the same rank as the time of his discharge; as the investigation report stated, this case was a matter of "he said, she said"

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

- Having prior enlisted service in the Regular Army, on 9 May 2015, the applicant was appointed as a Regular Army Medical Service Corps Officer and executed his oath of office
- On 18 September 2015, he completed the Basic Officer Leader Course
- On 7 November 2016, Order Number 312-060 promoted the applicant to the rank/grade of 1LT/O-2, effective 23 November 2016
- On 7 February 2019, the applicant was issued a No Contact Order, and on 12 March 2019, CPT S_ received her No Contact Order
- Fort Wainwright CID Agent's Investigation Reports dated 25 March, 18 April, and 7 June 2019, state in part, a special agent from the North Pole Police Department reported CPT S_ was sexually assaulted and the case would be sent to the District Attorney, but they will mostly deny the case
- The report provides comments from the agent and outlines the sequence of events; it also shows comments from the applicant and CPT S_ of what happened on the day of the sexual assault under investigation, and the actions/events which led to the sexual assault investigation
- The CID completed reports can be considered and reviewed in their entirety within the supporting documents
- On 20 July 2019, U.S. Army Criminal Investigation Command Memorandum – Subject: Law Enforcement Report – SIR (Category 3)/Final shows, the applicant was listed as the suspect for the offenses of sexual assault and abusive sexual contact (adult) of CPT S_; it further shows:
 - The applicant stated penetrative sex did not occur between him and CPT S_ but he did participate in consensual sexual acts
 - The legal office opined no probable cause existed to believe the applicant committed the offense of Sexual Assault as the elements were not met but Abusive Sexual Contact existed; no additional investigative efforts were required and there was sufficient evidence to provide to the commander for consideration of action

- On 26 November 2019, the applicant received a GOMOR for sexually assaulting "Ms. E.N.S." [CPT S_], an officer in the U.S. Army, after attending a concert on or about 24 March 2018; during the night, CPT S_ awoke to the applicant pulling down her underwear and inserting his penis between her buttocks without consent
- On 20 December 2019, the applicant submitted a rebuttal to the GOMOR and requested the pending GOMOR be rescinded, and no further action be taken in this case, as a careful perusal of the evidence plainly shows the underlying allegation is unfounded; he also provided his reasons and contentions
- On 23 December 2019, the applicant's chain of command recommended permanently filing the GOMOR in the applicant's AMHRR
- On 8 January 2020, the Headquarters, U.S. Army Alaska, Commanding General (CG) considered the reprimand of the applicant and circumstances of the misconduct, and all matters submitted by the applicant in defense, extenuation or mitigation, if any, along with recommendations of subordinate commanders; and the CG directed:
 - The GOMOR be placed permanently in the applicant's AMHRR
 - All enclosures were forwarded with the GOMOR for filing as appropriate
- On 27 April 2020, the applicant was required to Show Cause for retention on Active Duty under the provisions of AR 600-8-24, paragraphs 4-2b and 4-2c, because of misconduct and derogatory information filed in his AMHRR
- On 21 May 2020, the applicant elected to submit a request for a BOI
- On 26 June 2020, the CG referred the applicant to the standing BOI in accordance with AR 600-8-24 and the provisions of AR 15-6 applicable to formal proceedings with respondents; and stated the board will give the applicant a fair and impartial hearing determining if the applicant will be retained in the Army
- On 14 August 2020, DA Form 1574-2 (Report of Proceedings by Board of Officers) shows the BOI found and recommended that:
 - On or about 24 March 2018, the applicant did sexually assault CPT S_ after attending a concert, and that the finding was supported by a preponderance of the evidence and warranted the applicant's separation because CPT S_ was asleep and therefore could not consent to the sexual contact
 - The applicant did commit conduct unbecoming of an officer in violation of Article 133, UCMJ, and the finding was supported by a preponderance of the evidence and warranted the applicant's separation
 - The GOMOR permanently filed in the applicant's AMHRR warranted cause for separation
 - The applicant be separated from the Army with an Honorable characterization of service

- On 5 November 2020, the applicant requested that he be retained in the Army, so he may soon retire after nearly 17 years of honorable service; in the alternative, he asked that a new BOI be convened due to the procedural and substantive unfairness in his case
 - On 10 February 2021, the applicant requested that the CG retain him in the Army based upon his described service contributions, and the irreparable financial impact the loss of retirement benefits would have on his life
 - On 22 February 2021, the CG recommended the applicant be discharged from the Army with an Honorable characterization of service
 - On 5 May 2022, after an Ad Hoc Review Board reviewed the applicant's case, the ARBA DASA Review Boards determined the applicant would be involuntarily eliminated from the Army with an Honorable characterization of service
 - On 22 June 2022, the applicant's immediate commander notified him of his discharge determined by the ARBA DASA Review Boards
 - On 7 July 2022, the applicant was honorably discharged from the Army, by reason of unacceptable conduct; he completed 7 years, 1 month, and 29 days net active service this period with 11 years, 4 months, and 9 days total prior active service; he received multiple awards and decorations, and served on multiple combat tours in Iraq and Afghanistan
4. On 3 October 2024, the applicant and counsel were provided with a copy of the Military Police Report from the U.S. Army Criminal Investigation Command, Quantico, Virginia. They did not respond.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. The Board determined the applicant has not demonstrated by a preponderance of the evidence that relief is warranted. The applicant was the subject of a CID investigation wherein he was accused of sexual assault. He was issued a GOMOR on 26 November 2019 for sexual assault which was filed in his AMHRR. A BOI determined a preponderance of the evidence warranted his separation due to conduct unbecoming of an officer. Ultimately, he was separated with an honorable characterization of service upon decision by the DASA-RB. The Board considered the CID report that the victim changed her statement about what happened, and the accuser violated the no contact order. The Board further noted the applicant stated everything happened after they broke up romantically months later. Additionally, it is noted it is true the accuser broke the no contact order, and the applicant did something inappropriate. Overall, this Board finds that the applicant's discharge from the Army was fair and equitable, and the

applicant has not demonstrated that an error or injustice occurred warranting corrective action to be reinstated into the Regular Army in the rank/grade of 1LT/O-2.

BOARD VOTE:

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

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. 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. AR 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 Army Military Human Resource Record (AMHRR). In pertinent part, paragraph 3-4 (Filing of information on sex-related offenses) states:

a. Commanders will ensure that a Soldier's performance disciplinary folder is annotated when a court-martial conviction, non-judicial punishment, or punitive administrative action for a sex-related offense is received. Punitive administrative action means any adverse administrative action initiated as a result of the sex-related offenses identified below and includes, but is not limited to, memoranda of reprimand, admonishment, or censure, from all levels of command. This requirement applies to Soldiers in all components, regardless of grade. Commanders do not have the authority to designate any of the following documents be filed in the restricted folder of the AMHRR or locally (see paragraph 3-5).

b. If an action is taken against a Soldier resulting in an Army Law Enforcement Report in a civilian court, the disposition will be recorded on a DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) in accordance with AR 190-45. Possible action(s) taken against a Soldier may include military action, civilian action, or both. (1) The appropriate Army Criminal Investigation Division (CID) office will enter the law enforcement report into CID's reporting system (The Army and state requirements to register as a sex offender contributes to this reporting, if applicable). (2) Cases where an Army Law Enforcement Report does not exist for a conviction in civilian court. Once the Army is made aware of the incident/conviction (that is, sexual offense), the appropriate CID office will generate a DA Form 4833 and enter the report into CID's reporting system (the Army and state requirements to register as a sex offender contributes to this reporting, if applicable).

c. Unless exempt from referral (see paragraph 3-3), the Soldier will be given notice of the requirement to file the information in the AMHRR and will be given the opportunity to respond before adverse administrative action is included in the Soldier's performance-disciplinary folder. The Soldier's response will be filed with the adverse administrative action. Mandatory filing in the performance folder. Documents will be filed in the performance-disciplinary folder of the AMHRR.

d. A Soldier may appeal the placement of the information in their AMHRR to the Army Board for Correction of Military Records.

3. AR 600-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from active duty (AD) to the Reserve Component (RC) and discharge functions for all officers on AD for 30 days or more. In pertinent part, Paragraph 4-2 (Reasons for elimination) provides that, while not all inclusive, when one of the following or similar conditions exist, elimination action may be or will be initiated as indicated:

a. Paragraph 4-2b (Misconduct, moral or professional dereliction, or in the interests of national security) states, (1) Acts of personal misconduct (including, but not limited to, acts committed while in a drunken or drug intoxicated state); and (2) Conduct unbecoming an officer.

b. Paragraph 4-2c (Derogatory information) states, the following reasons require an officer's record to be reviewed for consideration of terminating appointment. Standing alone, one of these conditions may or may not support elimination, however, this derogatory information combined with other known deficiencies form a pattern that, when reviewed in conjunction with the officer's overall record, requires elimination.

- Punishment under UCMJ, Article 15
- Conviction by court-martial
- The final denial or revocation of an officer's Secret security clearance by appropriate authorities acting pursuant to DODI 5200.02 and AR 380-67
- A relief for cause OER issued in accordance with AR 623-3
- Adverse information filed in the AMHRR in accordance with AR 600-37
- Failure of a course at a service school
- Any substantiated adverse finding or conclusion from an officially documented investigation, proceeding, or inquiry (except minor traffic infractions)

//NOTHING FOLLOWS//