

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240005258

APPLICANT REQUESTS: through counsel, removal of a referred Officer Evaluation Report (OER) from his Army Military Human Resource Record (AMHRR).

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in Support of Application
- Letter, U.S. Army Human Resources Command (HRC), 6 February 2024
- Army Board for Correction of Military Records (ABCMR) correspondence and Record of Proceedings, case number AR20230001488
- Referred OER
- Email

FACTS:

1. Counsel states, in part, that the ABCMR directed removal of a general officer memorandum of reprimand (GOMOR) and all "allied documents" from the applicant's record. HRC complied with the ABCMR's decision with the exception of the removal of a referred OER that is derivative of the GOMOR. According to personnel at HRC, the ABCMR's direction to remove the GOMOR and "all allied documents" is not sufficient, and specific language must be included in the decision related to this document to justify removal. (*Counsel's brief is available in its entirety for the Board's review.*)

2. Having had prior commissioned service in the Army National Guard and Regular Army, on 2 October 2012, the applicant entered service as a reserve commissioned officer in a United States Army Reserve Troop Program Unit, and he continues to serve in that status.

3. The applicant's AMHRR contains an OER for the period 9 June 2014 through 8 June 2015. The form shows he was serving in the rank/grade of major/O-4 at the time and the OER was referred.

a. The OER shows the following comments in Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes (Rater)):

- block a (Army Physical Fitness Test (APFT)) – “[Applicant] failed to take a record APFT administered by the unit within the 12 month period prior to the ‘Thru’ date of this OER... Officer needs improvement in taking individual responsibility to either take APFT during the reporting period or report it as required.”
- block b (This officer possesses skills and qualities for the following broadening assignments) – “None”
- block c (This officer possesses skills and qualities for the following operational assignments) – “None”
- block d1 (Character) – “[Applicant] was found by a 15-6 investigation to have misused his government credit card contrary to the adherence to Army Values and discipline. Fully supportive of SHARP and EO/EEO programs.”
- block d2 (Provide narrative comments which demonstrate performance regarding field grade competencies and attributes...) – “[Applicant’s] performance was below the performance standards of his peers as a result of an Army Regulation 15-6 investigation that substantiated findings that he misused the government travel charge card. During that time he failed to take the initiative to demonstrate the minimum core competencies required of a field grade officer.”
- block e (This officer’s overall performance is rated as) – the rater marked “unsatisfactory” and commented, “Officer did not complete support form as requested. [Applicant’s] misuse of his government travel credit card privileges, substantiated in a 15-6 investigation, demonstrated a lack of judgment and questionable motives. Consequently, his decision making and performance levels are below that of his peers.”

b. The OER shows the following in Part VI (Senior Rater):

- block a (Potential compared with officers senior rated in same grade) – the senior rater marked “not qualified”
- block c (Comment on potential) – “Do not promote or retain. [Applicant’s] misuse of his government travel credit card privileges substantiated in a 15-6 investigation demonstrated a lack of judgment and deviation from the very cornerstone of the officer corps.”

4. Subsequent OERs for service from 8 June 2015 through 12 April 2020 show his raters consistently rated him as “proficient” and his senior raters consistently rated him as “highly qualified” with the exception of one period (13 April 2017 through 12 April 2018) when he was rated as “most qualified.”

5. Effective 1 May 2020, the applicant was promoted to the rank/grade of lieutenant colonel/O-5.

6. While serving in the rank of lieutenant colonel, the applicant’s raters have consistently rated him as “excels” and his senior raters have consistently rated him as “most qualified” with the exception of one period (2 August 2023 through 15 July 2024) when he was rated as “highly qualified.”

7. On 26 October 2023, in case number AR20230001488, the ABCMR determined the GOMOR the applicant had received based on misuse of his government credit card had served its purpose. The Board determined the GOMOR and all allied documents should be removed from his AMHRR.

8. On 6 February 2024, HRC advised the applicant by letter that his records had been corrected by removing the GOMOR and all allied documents.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the GOMOR relating to only misuse of his government travel card and the OER demonstrating other events during the rating period in which the rater and senior rater annotates the applicant failed to meet expected standards, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the contested OER.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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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 623-3 (Evaluation Reporting System) prescribed the policies for completing evaluation reports that support the Evaluation Reporting System. It also provides guidance regarding redress programs, including commander's inquiries and appeals. The regulation provides that:

a. Evaluation reports are assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army Officer or Noncommissioned Officer Corps. Performance will be evaluated by observing action, demonstrated behavior, and results from the point of view of the values, leadership framework and responsibilities identified on the evaluation forms, counseling forms, and as explained in Department of the Army Pamphlet 623-3 (Evaluation Reporting System). Consideration will be given to the relative experience of the rated officer, the efforts made by the rated officer, and the results that could be reasonably expected given the time and resources available. Potential evaluations will be performance-based assessments of the rated officers of the same grade to perform in positions of greater responsibility and/or higher grades. Assessment of potential will apply to all officers, regardless of their opportunity to be selected for higher positions or grades.

b. The senior rater is the senior rating official in the military rating chain or as officially designated by the academic institution. Senior raters use their position and experience to evaluate the rated Soldier from a broad organizational perspective, military program of instruction, or civilian academic course standards. Senior raters will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods; use all reasonable means to become familiar with a rated Soldier's performance; assess the ability of the rated Soldier;

ensure that rating officials counsel the rated Soldier individually and throughout the rating period on meeting their objectives and complying with the professional standards of the Army; consider the information on the applicable support forms when evaluating the rated individual; evaluate the rated Soldier's potential relative to his or her contemporaries; and ensure that all reports, which the senior rater and subordinates write, are complete and provide a realistic evaluation in compliance with procedures established in Department of the Army Pamphlet 623-3.

c. Each report will be an independent evaluation of the rated Soldier for a specific rating period. It will not refer to prior or subsequent reports. It will not remark on performance or incidents occurring before or after the period covered.

d. When a commander or commandant discovers that an evaluation report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, he or she will conduct an inquiry into the matter. The Commander's or Commandant's Inquiry will be confined to matters related to the clarity of the evaluation report, the facts contained in the evaluation report, the compliance of the evaluation with policy and procedures established by Headquarters, Department of the Army, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official. The procedures used by the commander or commandant to process such an inquiry are described in chapter 4.

e. Paragraph 3-37 stated modification to previously submitted evaluation reports provides an exception to a completed evaluation report filed in a Soldier's AMHRR be altered, withdraw or replaced with another evaluation report will not be honored will only be granted when:

(1) Information that was unknown or unverified when the evaluation report was prepared is brought to light or verified.

(2) This information is so significant that it would have resulted in a different evaluation of the rated Soldier; the following actions will be accomplished in an effort to modify the evaluation report:

(a) If the information would have resulted in a higher evaluation, the rated Soldier may appeal the evaluation report, and rating officials may provide input to support this point.

(b) If the information would have resulted in a lower evaluation, rating officials may submit an addendum to be filed with the evaluation report.

f. The burden of proof rests with the appellant.

(1) Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(a) the presumption of regularity will not be applied to the report under consideration; and

(b) action is warranted to correct a material error, inaccuracy, or injustice.

(2) For a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources. Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant's performance during the rating period. Such statements are afforded more weight if they are 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. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the evaluation report was rendered. The results of a Commander's or Commandant's Inquiry may provide support for an appeal request.

g. Paragraph 4-7 stated an evaluation report accepted for inclusion in the rated Soldier's AMHRR is presumed to be administratively correct, have been prepared by the proper rating officials, and represent the considered opinion and objective judgment of the rating officials at the time of preparation. An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered.

2. Army Regulation 600-8-104 (Army Military Human Resource Records Management) governs the composition of the Official Military Personnel File (OMPF) and states the performance folder is used for filing performance, commendatory, and disciplinary data. Once placed in the OMPF, the document becomes a permanent part of that file. The document will not be removed from or moved to another part of the OMPF unless directed by certain agencies, to include this Board. Appendix B states the DA Form 67-10-2 is filed in the performance folder of the Soldier's OMPF.

//NOTHING FOLLOWS//