

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240005622

APPLICANT REQUESTS: through counsel, removal of a referred DA Form 1059 (Service School Academic Evaluation Report (AER)) 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)
- Supplemental statement from counsel
- Referred DA Form 1059, 18 June 2021, with Supplementary Review, 28 June 2021
- Memorandum, subject: Recycle Within U.S. Army Infantry School Course of Instruction, 17 June 2021
- DA Form 1059, 14 January 2022
- Memorandum for President, Department of the Army Suitability Evaluation Board (DASEB), subject: Request for Removal of AER – Referred of [Applicant], 14 November 2023
- Army Special Review Board (ASRB) Record of Proceedings, 13 February 2024
- Memorandum, subject: Reserve Component Maneuver Captains Career Course (RC-MCCC) Policy Memorandum, 27 February 2021

FACTS:

1. Counsel states the applicant requests the DA Form 1059 for the period 7 June 2021 to 18 June 2021 and all associated documents be removed from his record. The DA Form 1059 is unjust and was improperly processed where the supplemental review was performed by the reviewing official rather than a higher authority as required by Army Regulation (AR) 623-3 (Evaluation Reporting System), paragraph 2-16(c)(2)(a).

a. From 7 June 2021 through 18 June 2021, the applicant was a captain and attended the RC-MCCC at Fort Moore, GA (formerly Fort Benning, GA).

b. The applicant was recycled and disenrolled from the course by memorandum dated 17 June 2021 for failure to complete a required briefing exercise to standard. The applicant did not receive the required performance counseling or instruction required from his small group leader (SGL) as required by course policy at the time of this failure to meet the briefing standard.

c. The applicant was issued a referred DA Form 1059 for “failed to achieve course standards.” His reviewing official was Major JG. Because the report was a “failed to achieve course standards” report, it was referred and required a supplementary review. The supplementary review in this case was also conducted by Major JG.

d. From 4 January 2022 through 14 January 2022, the applicant subsequently reenrolled in the course and successfully completed the course with a .91 grade point average out of 1.0.

e. The applicant appealed the referred DA Form 1059 to the U.S. Army Human Resources Command Officer Special Review Board by applicant dated 14 November 2023. In the appeal the applicant requested the DA Form 1059 be removed on the basis of equity.

f. In a decision dated 13 February 2024, the ASRB denied relief on the grounds of equity.

g. Subsequently, the applicant was selected for and promoted to the rank of major.

h. AR 623-3 provides as follows in paragraph 2-16(c)(2)(a):

(2) Academic evaluation reports.

(a) DA Form 1059 and DA Form 1059–2. A supplementary review is required for all “Failed to Achieve Course Standards” (DA Form 1059) and “Non-Graduate” (DA Form 1059–2) part III, block a, “Overall Academic Achievement” box check selections which result in “Did Not Graduate” as the reason for submission in part I, block I. The supplementary review will be conducted by the person in the chain of supervision above the reviewing official, unless the commandant is the reviewing official. Supplementary reviews will go no higher than the school commandant.

i. The pertinent requirement is that the supplementary review “will be conducted by the person in the chain of supervision above the reviewing official.” In this case that did not occur, where Major JG performed as both the rating officer and supplementary reviewer.

j. There can be no dispute that AR 623-3 was not followed and that the required review was conducted in violation of that paragraph in this case. The harm in this case is that Major JG’s supervisor was never able to review the circumstances to ensure Major JG was properly failing the applicant out of the course as intended by the

regulation. Had such a review occurred, the failure to counsel the applicant may have been identified and the applicant would not have been recycled in the first place.

k. The additional error was the failure of the SGL to counsel the applicant upon his examination failure. The course policy provides that "SGLs will counsel all students upon failure of an examination, a hands-on performance evaluation, or a course-critical assignment." This is not an optional counseling, but a mandatory event that should have been documented. This is the primary error that could have been identified by a supplemental review conducted by the proper supervisory authority.

l. At this point, the applicant has been promoted to major, so the impact has been subsequently mitigated to some extent. That said, where the command failed to process a document in accordance with the rules prescribed by Army regulation, the document is not proper and just. It must be removed.

2. On 10 May 2013, the applicant took the oath of office as a reserve commissioned officer in the rank of second lieutenant. He subsequently served on active duty from 9 June 2013 through 1 September 2017, when he was honorably released from active duty and assigned to a United States Army Reserve unit. He was promoted to captain effective 1 May 2017.

3. From 7 June 2021 through 18 June 2021, the applicant attended the RC-MCCC. The performance folder of his AMHRR contains a referred DA Form 1059 that shows the following:

- Part II (Academic Achievement (Academic Rater), block d (Overall Grade Point Average): 0.59 of 1.0
- Part II, block k (Achieves/Lifelong Learner): Did not meet standards
- Part II, block l (Comments): "[Applicant] did not demonstrate comprehension of the troop leading procedures and maneuver tactics at MCCC-RC resident Phase 1. The officer failed to successfully brief a tactically sound, synchronized plan that achieves the decisive point and purpose."
- Part IV (Authentication): the academic rater, Major DE, and the reviewing official, Major JG, signed the form on 18 June 2021
- Part IV: the applicant signed the form on 18 June 2021 and indicated he did not wish to make comments

4. The copy of the referred DA Form 1059 located in the applicant's AMHRR does not include a Supplementary Review. The applicant has provided a copy of the DA Form 1059 with a Supplementary Review attached. Major JG signed the Supplementary Review which stated the following:

Under the provisions of AR623-3, paragraph 2-16, I made an additional review of this AER:

As a result of my review, I submit the following comments:

- a. SGLs conducted counseling with the officer after failing course graded events prior to the officer's release in accordance with course policy.
- b. The DA 1059 AER was prepared as prescribed by AR 623-3.
- c. The AER was returned to the officer for comment.
- d. The officer chose to not make comments and signed the DA1059, and find that MCCC-RC instructors upheld all course policies as per AR 623-3.

5. From 4 January 2022 to 14 January 2022, the applicant again attended RC-MCCC Phase 1 and achieved course standards. From 12 September 2022 to 25 September 2022, he completed the final phase of the RC-MCCC and was assessed has having "superior academic achievement."

6. Effective 21 October 2023, the applicant was promoted to the rank/grade of major/O-4.

7. On 13 February 2024, the ASRB considered the applicant's request to remove the referred DA Form 1059 from his AMHRR. The ASRB denied the request, finding that the evidence presented did not establish clearly and convincingly that the report was untrue, unjust, or that action was warranted to correct a material error, inaccuracy, or injustice.

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 available documentation and evidence showing the applicant failed to meet course standards, as well as all due process rights related to appealing the referred 1059 being offered to the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the requested 1059.

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). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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 the evidence.

2. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policy for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 2-4a (General Rules for Establishing Rating Chains) states the rating chain for a rated Soldier will be established at the beginning of the rating period. This allows the rated Soldier and rating officials to properly execute their roles and responsibilities in the evaluation process. Rating officials must meet grade requirements, as well as time in position, in order to render evaluation reports.

b. Paragraph 2-16 (Review Requirements for DA Form 67-10 (Officer Evaluation Report) Series, DA Form 2166-9 (Noncommissioned Officer Evaluation Report) Series, and DA Form 1059 Series) states in certain situations, persons other than the senior rater (Officer Evaluation Report and Noncommissioned Officer Evaluation Report) or reviewing official (AER) will conduct supplementary reviews. Supplementary reviews will be accomplished after receipt and review of the rated Soldier's comments, if provided. A supplementary review is required for all "Failed to Achieve Course Standards" (DA Form 1059) and "Non-Graduate" (DA Form 1059-2) Part III (Overall Academic Achievement), block a, box check selections which result in "Did Not Graduate" as the reason for submission in Part I (Administrative Data), block I. The supplementary review will be conducted by the person in the chain of supervision above the reviewing official unless the commandant is the reviewing official. Supplementary reviews will go no higher than the school commandant.

c. Paragraph 2-17d (Mandatory Review of Officer and Noncommissioned Officer Relief and Academic Failure Evaluation Reports) states for DA Forms 1059 and DA Forms 1059-2 that reflect "Did Not Graduate" as a result of a "Failed to Achieve Course Standards" (DA Form 1059) or a "Non-Graduate" (DA Form 1059-2) selection in Part III (Overall Academic Achievement), block a, a supplementary review is required by the next individual above the reviewing official in the chain of supervision, unless the school commandant is the reviewing official annotated on the evaluation report. Supplementary reviews will go no higher than the school commandant (see paragraph 2-16 and Department of the Army Pamphlet 623-3 (Evaluation Reporting System)).

d. Paragraph 3-15 (DA Form 1059 and DA Form 1059-2) states AERs are used to document the performance, accomplishments, potential, and limitations of students while attending military schools and courses of instruction or training.

(1) Paragraph 3-15a (Counseling Requirements) states academic performance counseling for students attending Service schools or military courses of instruction or training will be conducted in accordance with procedures established at the local level by the commandant of the school or the Commanding General, U.S. Army Training and Doctrine Command.

(2) Paragraph 3-14f (Active Duty Personnel and U.S. Army Reserve in Active Duty Status) states that in preparing these reports, all significant information that can be evaluated will be reported. The same care and attention will be exercised in preparing AERs as is exercised in preparing officer evaluation reports and noncommissioned officer evaluation reports.

(3) School commandants or training division or brigade commanders will ensure that AER comments are based on observation of a student's qualities, strengths, weaknesses, deficiencies, and overall performance.

(4) Schools will submit AERs to Headquarters, Department of the Army (HQDA), (or the appropriate headquarters) by mail or e-mail, until electronic submission capability is available, for inclusion in the Soldiers' AMHRR.

e. Paragraph 3-18 (Comments) states that in preparing their comments, rating officials will convey a precise but detailed evaluation to communicate a meaningful description of a Soldier's performance and potential. In this manner, both HQDA selection boards and career managers are given the needed information on which to base a decision.

f. Paragraph 3-20e (Unproven Derogatory Information) states evaluation reports will not be delayed to await the outcome of a trial or investigation unless the rated Soldier has been removed from his/her position and is in a suspended status (see paragraphs 3-55 and 3-56). Upon completion of the trial or investigation, processing of evaluation reports will resume. Evaluation reports will be completed when due and will contain what information is verified at the time of the "Thru" date of the evaluation report.

g. Paragraph 3-37 (Modifications to Previously Submitted Evaluation Reports) states an evaluation report accepted by HQDA and included in the official record of a rated Soldier is presumed to:

- (1) be administratively correct,
- (2) have been prepared by the properly designated rating officials who meet the minimum time and grade qualifications, and
- (3) represent the considered opinions and objective judgment of the rating officials at the time of preparation.

h. Paragraph 4-7(f) (Policies) states 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. The determination regarding

adequacy of evidence may be made by the HQDA Evaluation Appeals Branch, National Guard Bureau Appeals Section, or the appropriate State Adjutant General.

i. Paragraph 4-11 (Burden of Proof and Type of Evidence) states the burden of proof rests with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(1) the presumption of regularity referred to in paragraphs 3-36a and 4-7a will not be applied to the evaluation report under consideration; and

(2) action is warranted to correct a material error, in accuracy, or injustice.

j. Paragraph 4-12 (Appeals Based on Substantive Inaccuracy) states a decision to appeal an evaluation report will not be made lightly. Before deciding whether or not to appeal, the prospective appellant will analyze the case dispassionately. This is difficult but unless it is done, the chances of a successful appeal are reduced. The prospective appellant will note that:

(1) Once the decision has been made to appeal an evaluation report, the appellant will state succinctly what is being appealed and the basis for the appeal. For example, the appellant will state:

(a) whether the entire report is contested or only a specific part or comment, and

(b) the basis for the belief that the rating officials were not objective or had an erroneous perception of his or her performance. Note that a personality conflict between the appellant and a rating official does not constitute grounds for a favorable appeal; it will be shown conclusively that the conflict resulted in an inaccurate or unjust evaluation.

(2) Most appellants will never be completely satisfied with the evidence obtained. A point is reached, however, when the appellant will decide whether to submit with the available evidence or to forgo the appeal entirely. The following factors are to be considered:

(a) The evidence must support the allegation. The appellant needs to remember that the case will be reviewed by impartial board members who will be influenced only by the available evidence. Their decision will be based on their best judgment of the evidence provided.

(b) Correcting minor administrative errors or deleting one official's rating does not invalidate the report.

3. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army's Evaluation Reporting System.

a. Table 4-2 (Academic Achievement for DA Form 1059), Part II, block m (Special Project(s) or Paper(s)), states when applicable, the academic rater will list up to three projects or papers that were successfully completed during the course that may have potential value to the Army. This entry will remain blank if the course does not require special projects or papers.

b. Table 4-4 (Authentication for DA Form 1059), Part IV, blocks d1 and d2 (Rated Student's Signature and Date), state the rated student will sign and date the DA Form 1059 after it has been completed and by the academic rater and reviewing official. The rated student's signature acknowledges that he or she has seen the DA Form 1059, Parts I through IV, and verifies the accuracy of the administrative data in Part I; the APFT and height and weight data in Part II, blocks b and c (when applicable); and the rating officials identified in Part IV. Confirmation of the administrative data also will normally preclude an appeal by the rated student based on inaccurate administrative data. Any administrative errors noted by the rated student will be brought to the attention of the rating officials prior to the rated student's signature.

4. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files. Chapter 7 contains the policy for appeals and petitions for removal of unfavorable information from official personnel files. Once an official document has been properly filed in the Official Military Personnel File (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. Only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the OMPF.

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. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency. Table 3-1 (Composition of the OMPF) shows a DA Form 1059 is filed in the performance folder of the OMPF.

//NOTHING FOLLOWS//