

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240005827

APPLICANT REQUESTS:

- reversal of the Secretary of the Army decision to reduce his retired grade from major general (MG)/O-8 to colonel (COL)/O-6
- approval of his retirement in the grade of MG/O-8
- remuneration of retired pay as a MG/O-8 retroactive to and beginning on January 2021 through February 2023
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 30 May 2024
- Counsel Statement, consisting of 41 pages, undated
- chronology of events (4 pages)
- Exhibit (Ex.) A: memorandum, U.S. Army Criminal Investigation Command (CID), dated 9 March 2020, subject: Law Enforcement Report (LER) Serious Incident Report (SIR)/Final-XXXXX-2019 - CID XXX-XXXXXX-XXX/XXXX/XXX
- Ex. B: DD Form 2873 (Military Protective Order) (MPO), 3 January 2020
- Ex. C: Affidavit, Ms. MMD____, undated (8 pages)
- Ex. D: DD Form 2873, 24 February 2020 (signed 24 April 2020)
- Ex. E: Verified Complaint for Injunctive and Other Relief, Plaintiff Ms. MMD____, U.S. District Court for the Eastern District of Virginia, 3 April 2020
- Ex. F: Preliminary Injunctive Order, District Court for the Eastern District of Virginia, 21 April 2020
- Ex. G: DD Form 458 (Charge Sheet), 17 April 2020
- Ex. H: (County) Sheriff's Office Incident Report, 2 October 2016
- Ex. J: Transcript, Article 32 of the Uniform Code of Military Justice (UCMJ) Preliminary Hearing, 21 May 2021
- Ex. K: memorandum, Department of the Army (DA), U.S. Army Trial Judiciary, 8 June 2020, subject: Article 32 Preliminary Hearing Findings and Recommendations, U.S. v. (Applicant)
- Ex. L: memorandum, DA, U.S. Army Military District of Washington, 9 June 2020, subject: Dismissal of Court-Martial Charges

- Ex. M: memorandum, Applicant, 11 June 2020, subject: Request to Retire Without Adverse Administrative Action
- Ex. N: memorandum, DA, Office of the Vice Chief of Staff (VCOS), 22 July 2020, subject: Statement of Counseling
- Ex. O: News Release, "Two-star on Joint Staff was Quietly Removed in January Amid Army Investigation," 11 June 2020
- Ex. P: memorandum, DA, Office of the Chief of Army Reserve (OCAR), 3 August 2020, subject: Option Election upon Completion of Active Duty Assignment
- Ex. Q: email, OCAR, 17 October 2020
- Ex. R: Army Human Resources Command (AHRC)-GO-14-GOMO Orders C-08-010372, DA, AHRC, 13 August 2020
- Ex S: AHRC-ROR-MOB Orders HR-9161-00001A02, DA, AHRC, 24 August 2020
- Ex. T: DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 December 2020
- Ex. U: email, DA, OCAR, to applicant, 4 August 2020
- Ex. V: email, DA, OCAR, to applicant, 14 September 2020
- Ex. W: Involuntary Option Election, 5 April 2021
- Ex. X: memorandum, Army Review Boards Agency (ARBA), 16 July 2021, subject: Army Grade Determination Review Board (AGDRB), ARBA
- Ex. Y: letter, applicant to AGDRB, ARBA, with support letters, 15 August 2021
- Ex. Z: memorandum, Secretary of the Army, 28 January 2022, subject: General Officer Retirement
- Ex. AA: memorandum, Secretary of the Army, 20 January 2023, subject: General Officer Retirement
- Ex. BB: letter, applicant to AGDRB, ARBA, without support letters, 15 August 2021
- Ex. CC: letter, DA, Office of the Chief of Staff of the Army (OCSA), 31 January 2022

FACTS:

1. The applicant states through counsel:

a. The applicant was a graduate of the U.S. Military Academy. After completing a 5 year military service obligation, he was released from active duty, he entered the Active Guard Reserve program in 1997, and he remained on near continuous active duty until December 2020. During nearly 35 years of military service, he was awarded the Distinguished Superior Medal (Second Award), Legion of Merit, Broze Star Medal, Defense Meritorious Service Medal (Second Award), Meritorious Service Medal (Fifth Award), Army Commendation Medal (Third Award), Joint Staff and Army Staff Badges, and numerous service and campaign medals, awards, and ribbons.

b. The Secretary's determination as to whether his service was satisfactory must only be based on his military performance and military conduct and both a brigadier general and a major general.

c. His promotions, positions, and responsibilities, in part, reflect he was selected for brigadier general (BG) and confirmed by the U.S. Senate on 3 December 2012. He was assigned as the J5 Deputy Director of U.S. Northern Command and responsible for all strategic plans, policy formulation, and issues associated with South, Central and North America; assigned to the Joint Staff as J5 Deputy Director for Western Hemisphere; and then selected for promotion to MG. He was confirmed by the Senate and promoted on 2 August 2017; assigned as Director of Army Protection for 23 Army commands; ordered to active duty (AD) to serve as Deputy Director for Global Policy and Partnerships on the Joint Staff (J5); he was the overall Joint Staff lead in work that initially resulted in the Secretary of Defense establishing U.S. Space Command.

d. In January 2020, Ms. MMD___'s allegations of domestic abuse caused him to be reassigned while under investigation.

e. Beginning in December 2018, and again in December 2019, Ms. MMD___made fictional allegations of assault and domestic battery through text message and on various social media platforms to persons with whom she believed were friends. She falsely told these individuals that the applicant had committed acts of domestic battery, including pushing her down a flight of stairs resulting in a broken arm. One individual was the wife of another general who reported the allegations to the Army CID.

f. In December 2019, hearsay statement to Army CID, General M___reported that his wife notified him the applicant assaulted his live-in girlfriend during an Army-Navy sports event weekend; and that she had a broken arm and bruises on her legs. He also reported an incident from a year prior when his live-in girlfriend related a black eye and bruises. General M___did not know the applicant, only that he worked at the Pentagon.

g. In January 2020, Army CID attempted to interview the applicant, but he requested counsel after Army CID agents' aggressive, bad-cop behavior. At approximately the same time, the Commander, Military District of Washington, issued a 10-day MPO to protect Ms. MMD___. This was based on reports received from persons other than Ms. MMD___, that she had been subjected to physical abuse by the applicant. Later that day the applicant was removed from their mutual home, one day after Ms. MMD___had surgery on her arm. She told Army CID agents that she had broken her arm from a fall. She told the agents the injuries were caused by the applicant to cover up her problems with alcohol abuse, and that she had told several of her friends he had caused the injuries. She emphatically and repeatedly stated her injuries were not caused by the applicant.

h. On 8 January 2020, she requested that the MPO be lifted. Her requests were not carried out. On 13 January 2020, the applicant returned to their mutual home.

i. On 26 January 2020, in an affidavit, Ms. MMD____denied she was the victim of abuse, and she would not be seeking a civilian protection of abuse order because the allegations were false. She spoke of her long history of emotional issues, documented post-traumatic stress disorder (PTSD), and alcohol abuse.

j. On 24 February 2020, the MG, MDW, issued a second MPO against the applicant for 180 days.

k. Army CID identified two non-violent non-criminal interactions with civilian law enforcement in October 2016 and in August 2017. The first was a dispute with his second and former wife when law enforcement were called by his adult stepchildren. The second in August 2017 was when the applicant called police regarding an uninvited guest in his home.

l. On 7 April 2020, having been denied relief from the 6 month MPO, Ms. MMD____sued the Army requesting a restraining order from the District Court for the Eastern District of Virginia.

m. On 17 April the District Court for the Eastern District of Virginia held a hearing on Ms. MMD____'s request. The Army falsely told the Court that their continuing investigation identified interviews with the applicant's two former wives who falsely detailed instances of emotional and physical abuse by the applicant during their marriages.

o. On the same date, the applicant was read and acknowledged referral of four court-martial charges with six specifications against him.

p. On 21 April 2020, the Court granted, the request in part and stopped the Army from imposing a total ban on contact between the applicant and Ms. MMD____, providing that any contact was periodic and monitored. The monitored contact was ordered relying on the Army's false statements to the Court.

q. The Army CID investigation contains a verbal statement from the applicant's second wife not accurately documenting her actual statements about her and the applicant's interactions with law enforcement. The first incident on 3 October 2016 was a non-criminal interaction with the County Sheriff's Department. His second wife called to report that the applicant "had poked her in the chest and threw a cup of tea at the wall."

r. The second non-criminal interaction with civilian law enforcement and the County Sheriff's Department was on 27 August 2017. Army CID again inaccurately misstated material facts of this interaction.

s. The prosecutorial decision to proceed with the six specifications in violation of the UCMJ appears to have been an attempt to harass the applicant because Ms. MMD____ would not drop her civil court case. It is evident from the Article 32 proceedings and testimony, Army prosecutors and judge advocates attempted to force a guilty plea. (Counsel's full text and arguments to admit witness testimony in regard to the U.S. Army Legal Services Agency litigation attorney, Major (MAJ) S____'s, communications with Ms. MMD____'s attorney to not pursue her injunction, is detailed in his written presentation of this issue and is available for Board review.)

t. On 9 June 2020, the Commander, MDW, directed that all charges and specifications be dismissed without prejudice. By regulation, authority for administrative punishment was transferred to the VCOS. The applicant requested the VCOS take no further administrative action and permit him to retire.

u. On 22 July 2020, the VCOS issued a non-punitive statement of counseling. He further stated the counseling was not an official reprimand and would not be filed in the applicant's personnel records. However, this counseling was used to support the Secretary's grade determination.

v. On 3 August 2020, the OCAR, issued the applicant his option election upon completion of active-duty assignment and on 11 August 2020, he submitted his request for a non-regular retirement. On 13 August 2020, his request was approved. However, he was not statutorily authorized a non-regular retirement and orders issued retiring him in a non-regular status were revoked. He subsequently requested a regular AD retirement on 5 April 2021.

w. On 16 July 2021, the Secretary of the Army notified him of her intent to request a recommendation from the AGDRB.

x. On 28 January 2022, unbeknownst to the applicant, the Secretary of the Army first approved his retirement in the grade of COL with a retirement effective date of 1 January 2021.

y. The applicant was issued retirement orders (C-11-14351R); however, the Army issued a second identical order on 20 November 2020 (C-08-010372) re-transferring him to the Retired Reserve effective 1 January 2021. Given these orders and with statutory authority to do so, the applicant should have received retired pay at the rank of MG, effective 1 January 2021 but he did not. His retirement was not approved, and he

did not receive his first retired pay payment until 1 February 2023, a delay of more than 24 months.

z. The Army's failure to follow statute and its own regulations in finding the applicant had unsatisfactory service, reduced his retired rank by two grades, and failing to pay retired pay, if only conditionally, pending a final determination of his final retired rank; is a legal error and must be corrected by the Secretary on the recommendation of the ABCMR. The Secretary requires there to be sufficient unfavorable information that the officer's grade, at the time of the alleged misconduct was unsatisfactory.

aa. Department of Defense Instruction 1332.30 defines substandard performance as performance of duty, including leadership; efficiency; response to training in the officer's assigned specialty; attitude or character; or maintenance of satisfactory progress while in an active-duty status skills awarding program. The Secretary of the Army lists 16 reasons to eliminate an officer for substandard performance in Army Regulation 600-8-24, paragraph 4-2a; (the Applicant's) service was not substandard by any of these measures.

bb. He was investigated and cleared of wrongdoing. Even if the Secretary considered the two allegations where probable cause was barely supported for the other charge, those acts do not rise to the level where a MG retired grade should be reduced to COL.

cc. There was not one instance in the applicant's 34 years of military service, and while holding the grades of BG and MG, that he received nonjudicial punishment; was convicted of a court-martial; lost his security clearance; had a relief for cause officer evaluation report; had adverse information filed in his Army Military Human Resource Record; or had any substantiated adverse finding from an investigation, proceeding, or inquiry.

dd. The only official act taken by the Army as a result of the allegations levied against the applicant was that he was counseled. Which, by the very words of the VCSA's counseling, was non-punitive: "You are being counseled ... I am not officially reprimanding you ... this memorandum will not be filed in your personnel records."

ee. The applicant did not commit nor is he guilty of any act of misconduct. The Secretary felt he still needed to be punished. That punishment took the form an illegal, unauthorized form of bureaucratic punishment both in the reduction of the applicant's retired rank, and the 25 month delay of the payment of retired pay he earned after 34 years of faithful and outstanding service to the United States.

2. Through counsel, the applicant provided copies of Ex. A through Ex. CC, already listed above but outlined below in chronological order:

a. A chronology of events outlining administrative actions taken against him, leading to his involuntary retirement.

b. Ex A: A USACID LER, dated 9 March 2020, with a 5-page AIR and 18 exhibits; outlined below in this record of proceedings.

c. Ex B: A DD Form 2873, an MPO signed by the Commanding General, MDW, and the applicant on 3 January 2020, noting the applicant was currently under investigation (CID Case Number XXXXX-2019-CIDXXX) for multiple allegations of aggravated assault and domestic violence; said MPO in the interest of Ms. MMD____, effective for 10 days.

d. Ex C: An 8-page undated affidavit by Ms. MMD____, in which she denies she was a victim of the allegations of abuse/violence and domestic violence from the applicant. She details her history with alcohol abuse and her mental health treatment and describes her mental state as the source of her initial fabricated excuses in her communications with others leading to the allegations against the applicant. The complete affidavit is available for Board consideration.

e. Ex D: A second MPO, signed by the Commanding General, MDW, and the applicant on 23 February 2020 and 24 February 2020, respectively, extending the original MPO until 22 May 2020, with monthly reviews thereafter.

f. Ex E: A 21 page verified complaint for injunctive and other relief, dated 3 April 2020, filed by Ms. MMD____through counsel at the U.S. District Court for the Eastern District of Virginia.

g. Ex F: A U.S. District Court for the Eastern District of Virginia, dated 21 April 2020, partially granting and partially denying the plaintiff, Ms. MMD____'s complaint for injunctive and other relief.

h. Ex G: A DA Form 458 dated 17 April 2020.

i. Ex H: A County Sheriff Incident Report, dated 2 October 2016, in which the sheriff recorded comments related to a domestic dispute that same day in the evening. The applicant's then spouse called because they were having an argument and the applicant had poked her in the chest and threw a cup of tea at the wall. Ex I: A second County Sheriff Incident Report, dated 27 August 2017, in which the applicant and his then spouse were both described as intoxicated and the applicant attempted to talk over the law enforcement officer.

j. Ex J: An Article 32 Preliminary Hearing transcript consisting of 119 pages, dated 21 May 2020.

k. Ex K: A U.S. Army Trial Judiciary 9-page memorandum, dated 8 June 2020, noting the case in U.S. v Applicant "suffers from a proof problem."

l. Ex L: A U.S. Army Military District of Washington memorandum, dated 9 June 2020, dismissing the charges against the applicant.

m. Ex M: Applicant's request to retire without adverse administrative action, dated 11 June 2020.

n. Ex N: A VCOS memorandum, dated 11 July 2020, subject: Statement of Counseling, not an official reprimand.

o. Ex O: A news release from (News Paper) concerning the applicant's removal from his duty assignment amid an investigation for domestic abuse and conduct unbecoming of an officer.

p. Ex P: A memorandum from the OCAR, dated 3 August 2020, subject: Option Election upon Completion of Active Duty Assignment, with an Involuntary Option Election Form attached. The Applicant was given four elections, transfer in grade to the Retired Reserve, if qualified and he applies for the transfer; transfer in grade to the inactive status list of the Standby Reserve, if qualified; discharge from his reserve appointment if qualified and apply for appointment in the reserve grade he held as a reserve officer before his appointment in a General Officer grade; and discharge from his reserve appointment.

q. Ex Q. OCAR email to applicant, dated 17 October 2020, noting DA General Officer Management Office (GOMO) requested a legal opinion from OTJAG regarding whether he could elect to receive non-regular retired pay instead of regular retired pay. In order for him to receive non-regular retired pay under Title 10 U.S. Code, Section 12731, he must NOT be entitled to retired pay from an armed force under any other provision of Title 10. Because he was entitled to receive regular retired pay under Title 10 U.S. Code, Section 7311 and 7329, he was essentially precluded by law from electing to receive non-regular retired pay under Title 10 U.S. Code, Section 12731. DA GOMO also asked OTJAG, even though the law (Title 10 U.S. Code, 12731(a)(4)) said he could not receive non-regular retired pay because he was entitled to retired pay under Title 10 U.S. Code, Section 7311, whether he could request non-regular retired pay as an exception under Title 10 U.S. code, section 12741. However, OTJAG advised that because he did not serve in an active status for at least two years (excluding any active duty periods), he did not qualify for the exception. OTJAG coordinated their opinion with the Office of General Counsel which agreed. The Army Reserve SJA

concurred with the opinion as well. Based on this information, the OCAR GOMO team would reach out to him and coordinate with him to ensure he received his entitled retirement for 1 January 2021.

r. Ex R: AHRC Orders C-08-010372, reassigning him to active duty at the Office of the Chief Army Reserve (Voluntary), dated 13 August 2020 and effective 1 January 2021 and ending beginning.

s. Ex S: AHRC Orders HR-9161-00001A02, amending Orders pertaining to his end date on active duty; from and end date of 12 June 2021 to an end date of 30 December 2020.

t. Ex T: DD Form 214 dated 30 December 2020.

u. Ex U: A four-page email chain with OCAR, with a subject of option memorandum dated 17 August 2020, with an attachment, "Involuntary Option Election."

v. Ex V: An email chain from GOMO, noting his request for regular retirement was returned, noting the OTJAG feedback he was not eligible to retire with non-regular retirement because he did not meet the legal requirements.

w. Ex W: The applicant's Involuntary Option Election form, requesting transfer to the Army Reserve Retired Reserve with regular retirement, if eligible.

x. Ex X: An ARBA AGDRB memorandum, dated 16 July 2021, noting his rights and the evidence which would be presented before the AGDRB; he did not have the right to appear before the AGDRB, he did have the right to present a written statement for the AGDRB to consider.

y. Ex Y: The applicant's 3-page letter to the AGDRB, dated 15 August 2021, which is available for Board review, with two letters of support from lieutenant generals who know him.

Z: Ex Z: Secretary of the Army memo, dated 28 January 2022, notifying him of the grade in which he had successfully served.

AA: Ex AA: A second Secretary of the Army memo, dated 20 January 2023, notifying him of the grade in which he had successfully served.

BB: Ex BB: A second copy of the applicant's 9-page letter to the AGDRB, dated 15 August 2021.

CC: Ex CC: An DA, OCSA letter to the applicant's U.S. Senator.

3. A review of the applicant's service records reflect:

a. On 28 May 1986, he was appointed as a second lieutenant in the Regular Army Corps of Engineers.

b. On 14 June 2019, he was issued AHRC Orders HR-9161-0001, dated 10 June 2019, placing him on AD for operational support of the Joint Staff, following periods of AD service and Active Reserve Component (RC) periods of service; and promotions to the rank/grade of BG/O-7 and MG/O-8.

c. His records contain, or counsel provides a U.S. Army CID Command (USACIDC) LER SIR Final Report Number XXXXX-2019-CIDXXX-XXXXXX-XXX/XXXX/XXX, with a referral date of 16 March 2020, reflecting he was the subject of an investigation for the offense of domestic violence, under Article 128b of the UCMJ; and aggravated assault, under Article 128 of the UCMJ. The dates and locations were 1 December 2018 in (City, State) and on 13 December 2019 in (City, State). The report summary reflects two incidents which involved assault against Ms. (Name Redacted), in December 2018 when Ms. (Name Redacted) confided to Ms. (Name Redacted), she was involved in a verbal altercation with her boyfriend (Applicant) which then turned physical when (Applicant) pushed Ms. (Name Redacted) to the ground resulting in injuries to her face and body. A second incident was reported in December 2019 wherein a second verbal altercation became physical when (the Applicant) broke Ms. (Name Redacted) right arm. Ms. (Name Redacted) further stated her injuries were not caused by (the Applicant). Multiple witnesses were interviewed who stated Ms. (Name Redacted) reported her injuries were caused by (the Applicant). This report includes exhibits 1 through 19, some of which are available for Board review:

(1) Ex. 1: Agent's five-page investigation report (AIR), dated 3 January 2020 in which the agent's redacted final investigation report summarizes his investigation.

(2) Ex 2: withheld under statutory exemption.

(3) Ex 3: A DA form 4137 (Evidence Property Custody Document) listing a compact disk (CD), evidence of which was obtained on 31 December 2019, containing photos of text messages which was a part of CID Military Police Report XXX-19-CIDXXX.

(4) Ex 4: withheld under statutory exemption.

(5) Ex 5: A DA Form 3881 (Rights Warning Procedure/Waiver Certificate), dated 3 January 2020, in which the applicant declined to be questioned or to say anything to an agent(s), Field Investigative Unit, USACIDC, and requested an attorney.

(6) Ex 6: A CID Form 94 (Agent's Investigation Report), reflecting a 7-page summary, dated 13 January 2020 of an agent's investigation up to that point in the investigation. This report reflects detailed interviews outlining witness (name(s) redacted) statements in regard to alleged physical domestic violence by the applicant. The 7-page report is available for Board review.

(7) Ex 7: A DA Form 87-R-E (Consent to Search), dated 9 January 2020, of a witness (Name Redacted) of their text messages and photographs.

(6) Ex 8: withheld under statutory exemption.

(7) Ex 9: a DA Form 4137, dated 10 January 2020, reflecting a DVD was obtained as evidence on that date.

(8) Ex 10: withheld under statutory exemption.

(9) Ex 11 a CID Form 94 dated 26 January 2020, in which the attorney of (Name Redacted) provided to the special agent a sworn affidavit and medical records of emergency room urgent care given to (Name Redacted). She denied she was the victim of abuse or violence at the hands of (the Applicant).

(10) Ex 12: withheld under statutory exemption.

(11) Ex 13: A CID Form 94, dated 29 January 2020, in which Mr. (Name Redacted) provided a statement of an incident in the summer of 2017 during which he confronted the applicant in regard to a TV remote and access to a television program.

(12) Ex 14 and 15: referred to the Freedom of Information Act (FOIA) Section of Defense Security Service, pending release.

(13) Ex 16: A CID Form 94 (Agent's Investigation Report), dated 26 February 2020, noting the agent received a legal opinion for Trial Counsel, Office of the Staff Judge Advocate, notifying him there was probable cause to believe (The Applicant) committed assault in violation of Articles 128 and 128b of the UCMJ.

(14) Ex 17 and 18: referred to the FOIA section, Army Human Resources Directorate, Fort Meyer.

(15) Ex 19: Fingerprint card of the applicant.

d. On 17 April 2020, court-martial charges were preferred against the applicant. A DD Form 458 (Charge Sheet) shows he was charged with three specifications of

Article 128 (assault) of the UCMJ; one specification of Article 131b (Obstruction of Justice); one specification of Article 133 of the UCMJ (Conduct Unbecoming of an Officer and Gentleman); and one specification of Article 134 of the UCMJ (abuse of an Animal).

e. On 21 May 2020, an Article 32 preliminary hearing was convened and concluded the same day. The transcripts of this hearing were provided by counsel for the applicant and are available for Board review.

f. On 8 June 2020, the U.S. Trial Judiciary notified the Commanding General, MDW, by memorandum of the Article 32 preliminary hearing findings and his recommendations in U.S. v. (Applicant). In his conclusion, he noted, in part, "This case fundamentally suffers from a proof problem. A closely related, but separate, issue is the unavailability of one alleged victim and the potential unavailability of the other alleged victim. Both women objected to being labeled by the government, a status not supported by probable cause for one and bar supported for the other. This begs the question of whose interest, if any, will be vindicated by a referral of either the charged or uncharged offenses."

g. On 9 June 2020, the Commanding General, MDW, dismissed the court-martial charges against the applicant without prejudice.

h. On 30 December 2020, he was honorably released from active duty by reason of completion of required active duty. His DD Form 214 reflects his grade and pay grade as MG/O-8, and that he completed 2 years and 2 days of net active service this period with 31 years, 11 months, and 20 days of total prior active service.

i. DA Orders Number 120348900, issued by DA, dated 29 January 2024, reflect the applicant was permanently assigned to the USAR Retired Reserve in the Retired Rank of COL/O-6, effective 31 January 2023.

BOARD DISCUSSION:

1. After a thorough review of the application, supporting documents, and evidence within the military record, the Board determined that relief was not warranted.
2. The applicant was the subject of a substantiated adverse finding from an officially documented investigation and he was counseled by the Vice Chief of Staff of the Army for failing to maintain the standards expected of a General Officer in the United States Army. His retirement request was appropriately forwarded to the Army Grade Determination Review Board (AGDRB). The AGDRB reviewed the matter and made a recommendation to the Secretary of the Army. The Secretary of the Army received the

AGDRB's recommendations, considered the record, and ultimately determined the applicant did not serve satisfactorily in the grades of O-7 and O-8. Upon review of the investigation, relevant documents from the applicant's service record, counsel's arguments, and all the documents provided by the applicant to this Board, a majority of the Board concluded the preponderance of the evidence did not show an error or injustice occurred when the Secretary of the Army retired the applicant in the grade of O-6.

3. The Board members in the majority first carefully considered the description of the applicant's behavior in two sheriff's reports provided by the applicant. The Board members also carefully considered the statements taken from the applicant's ex-spouses, his daughter, and other witnesses during the CID investigation. This evidence supports the Secretary of the Army's decision that the applicant did not serve satisfactorily in the grades of O-7 and O-8. The Board majority also noted the applicant minimized his belligerent and physically confrontational behavior throughout the investigation, the grade determination process, and his application to this Board.

4. The Board members in the majority next considered the applicant's girlfriend's allegations to several acquaintances that the applicant injured her. Allegations were made in December 2018 and December 2019 and were accompanied by photos of the injuries. The applicant's girlfriend subsequently recanted the allegations under oath and continues to deny them. The Board members in the majority weighed the applicant's girlfriend's initial allegations against her recantation and concluded the initial allegations were credible in the context of the applicant's behavior described elsewhere in the supporting documents.

5. The Board members in the majority reviewed the Article 32 Preliminary Hearing Findings and Recommendations and, although there may not have been adequate evidence to support referral to a court martial, the preponderance of the evidence showed the applicant failed to maintain the standards expected of a General Officer. The evidence elicited at the proceeding supported the Secretary of the Army's determination that the applicant's service was unsatisfactory.

6. The Board member in the minority noted the inconsistencies in statements made by the alleged victim who requested the protective order against the applicant be lifted. The panel member noted that, on two separate occasions, the alleged victim altered her account of the events, later claiming that her statements were an attempt to obscure underlying alcohol and mental health challenges. Additionally, the applicant was promoted to O-7 (BG) in 2012 with no nonjudicial punishments or adverse actions recorded while serving in that grade.

7. The Board considered the applicant's request for retired pay for the period January 2021 through February 2023. The Secretary of the Army had the discretionary authority to retire the applicant with a conditional grade while pending resolution of the grade determination process. Since the authority was discretionary, no error occurred when the Secretary of the Army chose not to exercise that authority and instead retired the applicant after approval of a final retired grade. A majority of the Board also determined the preponderance of the evidence did not show an injustice occurred. The applicant served as a General Officer and failed to maintain standards of an officer serving at that grade. The grade determination process for a General Officer involved multiple levels of thorough review and deliberate delay was not apparent in the applicant's retirement process.

8. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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 to grant relief.

[REDACTED]

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).

a. 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.

b. 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), currently in effect, prescribes the officer promotion function of military human resources (HR) support operations. It is linked to Army Regulation 600-8 and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support Active Component officer promotions. U.S. Army Reserve promotions are covered under Army Regulation 135-155. This regulation supports the objectives of the Active Component's officer promotion system, which include filling authorized billets with the best qualified officers. It also 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.

3. Army Regulation 15-80 (Army Grade Determination Review Board and Grade Determinations), currently in effect, governs the actions and composition of the Army grade Determination Review Board established by General Order Number 16, dated 16 July 1985. The Army Grade Determination Review Board determines or recommends the highest grade satisfactorily held for service/physical disability retirement, retirement pay, and separation for physical disability. In discussing the authority of the Board, this regulation also references other organizations that have been delegated authority to make grade determinations on behalf of the Secretary of the Army.

a. Paragraph 2-5, Unsatisfactory service. Service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when:

(1) The highest grade was a result of a terminal leave promotion.

(2) Reversion to a lower grade was—

- expressly for prejudice or cause
- owing to misconduct
- caused by nonjudicial punishment pursuant to UCMJ, Article 15
- the result of the sentence of a court-martial

(3) There is sufficient unfavorable information to establish that the soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory, regardless of the period of time served in grade. However, service retirement in lieu of or as the result of elimination action will not, by itself, preclude retirement in the highest grade

b. Paragraph 2-6. Service in lower grade. If service in the highest grade held was unsatisfactory, the soldier can be deemed to have served satisfactorily in the next lower grade actually held, unless paragraph 2–5 applies.

c. Paragraph 2-8. The soldier whose case is being considered is not entitled to appear before the AGDRB. The AGDRB may consider any evidence relevant to the grade determination regardless of whether or not the information is part of the soldier's official military personnel file (OMPF). Any evidence not contained in the soldier's OMPF will be referred to the soldier for review and comment, as stated in b, below, unless the soldier has previously been provided the evidence or the soldier is known to possess it. Before the AGDRB may consider any evidence, the individual will be advised—

(1) That his or her grade will be considered by the AGDRB.

(2) Of what evidence will be considered.

(3) Of the right to consult with an officer of the Judge Advocate General's Corps or seek private civilian counsel at no expense to the Government.

(4) Of the right within a reasonable period of time to submit matters in writing for consideration by the AGDRB. Thirty days from the date of notification will normally be deemed a reasonable period in which to respond. The DASA (RB) may grant requests for extensions of time to respond based upon a showing of good cause. In cases initiated by a request from the subject individual, the applicant need not be given this notice when the only evidence to be considered is contained in the applicant's OMPF or is submitted by the applicant. These applicants, however, have the same rights to counsel as discussed above.

4. Title 10, U.S. Code, Section 1370 provides:

a. Section 1370(a)(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

b. Section 1370(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander and below lieutenant general or vice admiral, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the nine-year period beginning on October 1, 1990.

c. Section 1370(2)(B) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

d. Section 1370(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

e. Section 1370(b) An officer whose length of service in the highest grade he held

while on active duty does not meet the service in grade requirements specified in

subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

f. Section 1370(c) Upon retirement an officer of the Army, Navy, Air Force, or Marine Corps who is serving in or has served in a position of importance and responsibility designated by the President to carry the grade of general or admiral or lieutenant general or vice admiral under section 601 of this title may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him while serving on active duty.

g. Section 1370(d)(1) Unless entitled to a higher grade, or to credit for satisfactory service in a higher grade, under some other provision of law, a person who is entitled to retired pay under chapter 1225 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary concerned in accordance with this subsection.

h. Section 1370(2)(A) In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

i. Section 1370(2)(B) In order to be credited with satisfactory service in an officer grade above major or lieutenant commander and below lieutenant general or vice admiral, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years. A person covered by the preceding sentence who has completed at least six months of satisfactory service in grade and is transferred from an active status or discharged as a reserve commissioned officer solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service may be credited with satisfactory service in the grade in which serving at the time of such transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade.

j. Section 1370(3) A person whose length of service in the highest grade held does not meet the service in grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

5. Army Regulation 135-156 (Reserve Component General Officer Personnel Management), currently in effect, establishes policies and procedures for the personnel management of Reserve Component (RC) officers of the Army National Guard of the United States (ARNGUS) and the U.S. Army Reserve (USAR), who are on the Reserve Active Status List, to and within general officer (GO) grades. If the policies and procedures established by this regulation conflict with those of any other Army regulation or National Guard regulation, then this regulation shall be considered the controlling policy unless otherwise required by law.

a. Paragraph 4-3a. Officers ceasing to occupy general officer positions. Options. With the exception of Adjutants General, within 30 days after ceasing to occupy a position commensurate rate with his/her grade, an RC GO will elect one of the following options and the SA shall transfer or discharge the officer according to the option the officer elects.

b. Paragraph 4-3b. Options for Adjutants General or Assistant Adjutants General. If an ARNGUS officer who is federally recognized solely because of the officer's appointment as an Adjutant General or Assistant Adjutant General ceases to occupy the Adjutant General position, then within 30 days the SA shall—

(1) Withdraw that officer's Federal recognition.

(2) Require that the officer-

(a) Be transferred in grade to the Retired Reserve if the officer is qualified and applies for the transfer.

(b) Be discharged from the officer's Reserve appointment and appointed in the Reserve grade held by the officer as a Reserve officer immediately before the appointment of that officer as Adjutant General or Assistant Adjutant General, if the officer is qualified and applies for that appointment.

(c) Be discharged from the officer's Reserve appointment.

c. Paragraph 4-3f. Removal based on Secretarial discretion. If the SA determines that an RC GO's service in a position is no longer in the best interest of the Army, the SA may direct the officer's removal from his/her GO position. An officer removed from an RC GO position pursuant to this authority must make one of the elections in paragraph 4-3a or 4-3b(2), above, within 30 days. This will be considered an involuntary separation.

d. Paragraph 4-4b. Regular retirement. An RC GO eligible for regular retirement after completing 20 years AFS must submit his/her request for retirement through the appropriate executive agent for review. If the GO is on active duty at the time the request is made and he/she plans to retire directly from active duty, the executive agent

will submit the request to HQDA.

//NOTHING FOLLOWS//