

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2025

DOCKET NUMBER: AR20240006036

APPLICANT REQUESTS: through counsel:

- a. removal of the DA Form 67-10-1 (Company Grade Plate (O1 – O3; WO1 – CW2) Officer Evaluation Report (OER)) covering the period 16 April 2021 through 22 June 2022 (hereafter referred to as the contested OER) from his Army Military Human Resource Record (AMHRR);
- b. promotion to the rank/grade of captain (CPT)/O-3 backdated to May 2022; and
- c. a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Brief in Support of Application for Removal of Adverse Information from AMHRR, undated
- Investigating Officer (IO) memorandum (Findings and Recommendations, Army Regulation (AR) 15-6 Investigation, 20 October 2021 Sexual Harassment Complaint Against (Applicant)), 4 January 2021 (sic – should read 2022) with allied documents
- Commander, 7th Transportation Brigade memorandum (Referral of Report of Investigation – (Applicant Sexual Harassment Complaint)), 13 January 2022
- IO memorandum (AR 15-6 Investigation Findings and Recommendations), 24 March 2022 with allied documents
- Commander, 7th Transportation Brigade memorandum (Referral of Report of Investigation – (Applicant Sexual Harassment Complaint)), 1 April 2022
- Contested OER
- Army Special Review Board (ASRB) Record of Proceedings Docket Number AR20230010815, board date 31 October 2023
- AR 600-20 (Army Command Policy), 7 November 2014 – excerpt
- Richter Private Investigations LLC Report of Investigation, 16 July 2023
- Photographs

- Memorandum For Record (Request for Removal of (Applicant) OER dated 22 June 2023), 7 December 2023

FACTS:

1. The applicant requests, in effect, reconsideration of the ASRB's decision in Docket Number AR20230010815, considered on 31 October 2023, regarding denial of removal of the contested OER. He also requests promotion to CPT backdated to May 2022. He states:

a. He believes his former leadership retaliated against him for assisting another Soldier with a sexual harassment complaint. The Soldier complained about a well-liked senior warrant officer sexually harassing her, and he helped her make the complaint. The Soldier was separated, but the warrant officer was allowed to retire. Around the same time, he was the subject of two separate AR 15-6 investigations.

b. The first one was re-done because he proved the IO acted in a dishonest, biased manner towards him and used the wrong regulation. Even after he presented significant legal, factual, and procedural matters in his defense, his leadership still approved the second investigation. His speculation was that they approved the findings despite not meeting the preponderance of the evidence standard to retaliate against him for assisting the Soldier against the warrant officer. His leadership gave him a referred OER for the sexual harassment findings.

c. He notes there were multiple issues that arose from witness testimony on whether the alleged statement occurred and the motive of the complainant in making her statement. The new investigation revealed new information that questioned the motivations of the complainant bragging about making SHARP [Sexual Harassment/Assault Response and Prevention] complaints. He notes it is a clear injustice, and it goes contrary to the spirit and purpose of the Army SHARP program. He was set to be promoted to CPT prior to these false allegations being made and wants his name cleared.

2. Counsel states the applicant requests his contested OER (a referred OER) be removed from his AMHRR. It came as the result of a biased improperly conducted sexual harassment investigation riddled with factual and legal error, and, therefore, it is unjust. He fought the investigation every step of the way, and believes the investigation is retaliation for him supporting a Soldier making her own sexual harassment complaint against a senior chief warrant officer that his leadership chose to protect. As a result, he lost his promotion to CPT and faces separation from the Army. Accordingly, he requests the Board consider the facts and circumstances of his case and remove the OER from his AMHRR in the interest of fairness, clear legal error, and justice (see attached for further details).

3. The applicant was appointed in the Regular Army Transportation Corps in the rank/grade of second lieutenant/O-1 and executed an oath of office on 29 May 2018. He was promoted to the rank/grade of first lieutenant/O-2, effective 26 November 2019.

4. He became the subject of an AR 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation into the facts and circumstances surrounding a SHARP complaint against him for making sexually explicit comments. On 15 November 2021, an IO was appointed to investigate and address, at a minimum, the following:

- a. To what unit(s) are (Applicant), Sergeant (SGT) M____ P____, and Staff Sergeant (SSG) V____ W____ assigned?
- b. How long has (Applicant) been assigned to the current unit? What are (Applicant's) duties and responsibilities?
- c. How long has SSG V____ W____ and SGT M____ P____ been assigned to the current unit? What are their duties and responsibilities?
- d. What is the working relationship of (Applicant), SSG W____, and SGT P____?
- e. What was the nature of the interaction between (Applicant), SSG W____, and SGT P____ on 29 October 2021?
- f. On 29 October 2021, did (Applicant) make comments that were sexual in nature to either SSG W____ or SGT P____? If so, who witnessed what was said?
- g. Did (Applicant) make sexual comments to SSG W____ or SGT P____ prior to 29 October 2021? What were those comments? Did anyone witness those comments?
- h. Any other matters you deem relevant.

5. The IO memorandum (Findings and Recommendations, AR 15-6 Investigation, 20 October 2021 Sexual Harassment Complaint Against (Applicant)), 4 January 2021 (sic - should read 2022) with allied documents shows the IO completed the investigation and determined the following:

- a. Based on a preponderance of evidence, he found the applicant made sexual comments which interfered with SGT P____'s work performance and made an offensive work environment. Furthermore, the investigation discovered that he was present for duty while under the influence of a controlled drug which was prescribed by his medical provider. Finally, the investigation discovered that he made false official statements during his interview.

b. Recommendation. He recommended:

(1) Appropriate adverse, administrative, or corrective action for (Applicant) for using sexually explicit language that interfered with SGT P____'s work performance and created an offensive work environment. (Per AR 600-20 (Army Command Policy), paragraph 7-4a(3))

(2) Enrollment in the Army Substance Abuse Program for being at work while under the influence of a controlled substance.

(3) Appropriate adverse or administrative action for knowingly making a false official statement. (Per Title 10 U.S. Code, section 907: Article 107)

6. In a 13 January 2022 memorandum, the appointing authority referred the IO's findings and recommendations to the applicant per statutory and regulatory guidance.

a. Specifically, the IO found that his interaction with SGT P____ constituted sexual harassment, that he was under the influence of a controlled substance while on duty, and that he knowingly made false official statements. As the appointing authority, I am recommending approval of the IO's findings and am recommending appropriate action after considering your rebuttal matters.

b. He had ten calendar days from the date of the memorandum to provide comments for the approval authority to consider before he acts upon the investigation. He acknowledged receipt of the memorandum on 20 January 2022 with his intent to submit written matters in response.

7. He and his counsel provided rebuttal memoranda, 30 January 2022, with exhibits, requested that the findings and recommendations of the investigation be disapproved, or alternatively, appoint a new IO to fairly and impartially assess the evidence and the matters raised by him in his personal statement.

a. Counsel notes the investigation was legally insufficient due to the IO using the wrong version of AR 600-20 when conducting the investigation and drafting her findings and recommendations, which materially prejudices him. The IO failed to properly execute her duties in an unbiased and impartial manner.

b. The applicant notes he never intended to make anyone uncomfortable and sincerely apologizes if his comments were interpreted out of context. He denies he intentionally said things to sexually harass anyone. To the best of his knowledge, the original sexual harassment complaint was made against him under the basis that he made an inappropriate joke implying "masturbation" at the staff duty desk. This is where SSG W____ and SGT P____ were at. He only learned of the claim against him when

the IO interviewed him. He further notes he was on prescribed and unprescribed medications for his injuries and conditions.

c. They provide exhibits showing three OERs covering the periods from 28 May 2018 through 15 April 2021; an exhibit titled Officer Record Brief; however, it was not present for review, and photographs.

8. Although the exact circumstances are unknown and not available for review, the appointing authority appointed another IO to conduct a second AR 15-6 investigation against the applicant on 11 February 2022. The IO was appointed to conduct an investigation into the facts and circumstances surrounding a SHARP complaint against him for making sexually explicit comments. The IO was instructed to investigate and address, at a minimum, the following:

a. To what unit(s) are (Applicant), SGT M____ P____, and SSG V____ W____ currently assigned and where were they assigned in Fall 2021?

b. How long was (Applicant) assigned to 11th Transportation Battalion? What were (Applicant's) duties and responsibilities?

c. How long have SSG V____ W____ and SGT M____ P____ been assigned to the current unit? What are their duties and responsibilities?

d. What was the working relationship of (Applicant), SSG W____, and SGT P____?

e. Did any conversations occur between (Applicant), SSG W____ and SGT P____ on 29 October 2021? If so, where did the conversation occur? Who else was present and did they overhear any of the interactions?

f. On 29 October 2021, did (Applicant) make comments about "wrestling a snake" or "masturbating" to either SSG W____ or SGT P____? If so, who witnessed what was said? If any of the comments referenced "wrestling a snake," what does the term refer to in common parlance and how did the individuals present perceive the term?

g. Did (Applicant) make any statements to the effect of "that's a basic bitch drink" to SGT P____? If so, what was the context of the statement? Did he use the term "bitch" in her presence otherwise?

h. During the conversation on 29 October 2021, did SGT P____ ask (Applicant) to leave? If so, what was his response? Was anyone else required to facilitate his departure?

i. Was Specialist (SPC) N____ present during the conversation? If so, what did he hear?

j. Who did SGT P____ disclose the incident to? What was their response and how was the complaint reported to the chain of command?

k. Did SGT P____ or SGT A____ R____ have prior Issues or concerns with (Applicant) or any potential motive to fabricate allegations against (Applicant)?

(1) Specifically, were any FLIPLs [Financial Liability Investigation of Property Loss] executed against SGT P____ or SGT R____ that would bias them against (Applicant)?

(2) Also, specify what, if any, working relationship SGT R____ and (Applicant) had prior to the events in October 2021. Characterize any past interactions.

l. If any of (Applicant's) statements were sexual in nature, analyze whether they constitute sexual harassment as defined by AR 600-20, dated 24 July 2020 to include whether the statements impacted SGT P____ or were such that a reasonable person would consider them as hostile or offensive.

m. What, if any, prior relationships did (Applicant) and CPT M____ Q____ have? Characterize their relationship and examine whether any bias existed between the two.

n. Any other matters you deem relevant.

9. The IO memorandum (AR 15-6), 24 March 2022, with allied documents shows the IO completed the investigation and determined the following:

a. After conducting a thorough investigation, he determined that the following allegations were substantiated: (Applicant) sexually harassed SGT P____ in accordance with the July 2020 version of AR 600-20, paragraph 7-7 because he made sexual comments (wrestling snake/masturbation) that created an offensive work environment for SGT P____. Furthermore, he discovered that (Applicant) violated AR 600-20, paragraph 4-19 for failure to treat SGT P____ with dignity and respect by using the term "bitch/bitching" when she asked him to leave the staff duty area. Additionally, no evidence, motive, or bias was present that impacted the complaint. Finally, (Applicant) continues to deny any wrong and has provided false official statements that contradict multiple witness's sworn statements and testimonies.

b. Recommendation. He recommended:

(1) Appropriate adverse action against (Applicant) for his jokes about masturbation In front of SGT P____.

(2) Appropriate adverse action against (Applicant) for failing to treat SGT P____ with dignity and respect.

(3) Appropriate adverse action against (Applicant) due to his provision of false official statements during the course of the investigation.

10. In a 1 April 2022 memorandum, the appointing authority referred the IO's findings and recommendations to the applicant per statutory and regulatory guidance.

a. Specifically, the IO found that his interaction with SGT P____ constituted sexual harassment and that he knowingly made false official statements. As the appointing authority, I am recommending approval of the investigating officer's findings and am recommending appropriate action after considering your rebuttal matters.

b. He had ten calendar days from the date of the memorandum to provide comments for the approval authority to consider before he acts upon the investigation.

11. Counsel provided a memorandum (Second Legal Response to Findings and Recommendations of AR 15-6 Investigation – (Applicant)), 14 April 2022 with exhibits, noted this AR 15-6 makes findings and recommendations inconsistent with the evidence, does not resolve internal inconsistencies, and fails to objectively assess the evidence in a neutral and unbiased manner (see memorandum for further details).

12. The applicant received the contested OER covering the period 16 April 2021 through 22 June 2022 (14 months) on or about 1 September 2022, which addressed his duty performance as an Assistant Plans Officer, Headquarters and Headquarters Detachment, 11th Transportation Battalion (Terminal), Fort Story, VA. His rater is shown as CPT T____ C. J____, Plans Officer, and his senior rater is shown as MAJ R____ A. J____, Support Operations Officer. His rater and senior rater digitally signed the contested OER on 24 August 2022 and 29 August 2022, respectively. The applicant digitally signed the contested OER on 1 September 2022. The contested OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry "Extended Annual";

b. Part II (Authentication), block d (This is a Referred Report, Do You Wish to Make Comments?), a checkmark was placed in the appropriate block, signifying to the applicant that he was receiving a referred report. In that same block, a checkmark was placed in the "Yes" block, indicating the applicant elected to make comments;

c. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block b (This Officer's Overall Performance is Rated as), his rater rated his overall performance as "Proficient" and entered the following comments: "[Applicant's] performance over this rating period has been commensurate with his grade and time in service. He accomplished assigned tasks and enabled mission success.";

d. Part IV, block c1 (Character), his rater entered the following comments: "[Applicant] failed to uphold and support the Army SHARP program when a substantiated AR 15-6 investigation revealed he sexually harassed a junior E-5. He also failed to uphold the Army Values when a 15-6 substantiated that [Applicant] provided a false statement during the investigation.";

e. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), his senior rater rated his overall potential as "Qualified";

f. Part VI, block c (Comments on Potential), his senior rater entered the following comments: "[Applicant] is a dedicated and hard-working officer, however he requires tailored mentorship and counseling. A substantiated AR 15-6 investigation revealed [Applicant] sexually harassed a junior E-5, and provided a false statement during the investigation. [Applicant] will need opportunities for personal development and increased levels of maturity in order to continue his career. Recommend promoting and selecting for advanced schooling with or after peers."

13. His senior rater notified him by Letter of Referral, 1 September 2022. He acknowledged receipt of the referred OER on the same date and submitted the following comments:

This referred OER is the result of an AR 15-6 Investigation that determined I made an inappropriate joke of a sexual nature, and then lied about it. I would like to say that I most certainly did not commit the alleged misconduct and therefore do not agree with the findings of the investigation. I am currently working on presenting new evidence and witness statements that will exonerate me of this. I ask that the adverse information contained in this evaluation not be used as grounds to deter my career any further.

14. A review of his records revealed the contested OER is filed in the performance folder of his AMHRR.

15. The applicant appealed the contested OER to the ASRB. On 31 October 2023 in Docket Number AR20230010815, the Board, by unanimous vote, determined the overall merits of the evidence presented did not warrant removal of the contested OER.

16. He provides in addition to the above:

a. An excerpt of AR 600-20, 6 November 2014 that shows the overview, chain of command responsibilities, policies, and definitions of categories and types of sexual harassment.

b. An investigation report, dated 16 July 2023 by a private investigation company that he hired to investigate the alleged sexual harassment complaints (see attached for further details).

c. Photographs of him handling a snake and one of his fellow section personnel.

d. A Memorandum For Record (Request for Removal of (Applicant's) OER dated 22 June 2022), 7 December 2023 from CPT T____ J____, his rater on the contested OER, notes he does not question the validity of the investigation and had to treat it as the absolute truth. He had conversations with the higher level commanders who made it clear that this was a "bump in the road" for him and not a career killer. It was simply "unacceptable behavior that needed to be addressed." CPT J____ believes that due to a permanent mark on his career being contrary to the intent of his punishment, he endorses the removal of (Applicant's) referred OER from his records.

17. The applicant is currently assigned to the 266th Quartermaster Battalion in the rank of 1LT at Fort Gregg-Adams, VA.

BOARD DISCUSSION:

1. 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. Upon review of the applicants petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence justification to support removal of the contested OER. All comments appearing on the contested OER came from a legally sufficient AR 15-6 investigation. Therefore, the Board denied relief.

2. Promotion to the CPT/O-3 backdated to May 2022. Deny. The Board does not have the authority to promotion commissioned officers. The Board also found, however, that based upon the lack of justification to review the contested OER, referring the applicant's record to an SSB for consideration for promotion to CPT was not warranted.

3. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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. 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 15-6 establishes procedures for investigations and boards of officers not specifically authorized by any other directive. This regulation or any part of it may be made applicable to investigations or boards that are authorized by another directive, but only by specific provision in that directive or in the memorandum of appointment. In case of a conflict between the provisions of this regulation, when made applicable, and the provisions of the specific directive authorizing the investigation or board, the latter will govern. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another directive, but in that case its provisions are not mandatory. The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority. It is the duty of the IO or board to ascertain and consider the evidence on all sides of each issue thoroughly and impartially and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

3. 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, a 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 67-9 and DA Form 67-10-1 are filed in the performance folder of the Soldier's OMPF.

4. Army Regulation 600-20 (Army Command Policy and Procedure), in effect at the time, prescribed the policy and responsibility of command, which includes the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Equal Opportunity Program, and the Army Sexual Harassment/Assault Response and Prevention Program (formerly the Army Sexual Assault Victim Program).

a. Paragraph 4-14 (Relationships Between Soldiers of Different Grade) states, in part, Soldiers of different grades must be cognizant that their interactions do not create an actual or clearly predictable perception of undue familiarity between an officer and an enlisted Soldier, or between a noncommissioned officer and a junior enlisted Soldier. All relationships between Soldiers of different grade are prohibited if they:

- compromise, or appear to compromise, the integrity of supervisory authority or the chain of command
- cause actual or perceived partiality or unfairness
- involve, or appear to involve, the improper use of grade or position for personal gain
- are, or are perceived to be, exploitative or coercive in nature
- create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission

b. Commanders should seek to prevent inappropriate or unprofessional relationships through proper training and personal leadership. Commanders have a wide range of responses available should inappropriate relationships occur. These responses may include counseling, reprimand, order to cease, reassignment, or adverse action. Potential adverse action may include official reprimand, adverse evaluation report(s), nonjudicial punishment, separation, bar to reenlistment, promotion denial, demotion, and courts martial. Commanders must carefully consider all of the facts and circumstances in reaching a disposition that is warranted, appropriate, and fair.

c. Paragraph 7-7 (Sexual Harassment) states Title 10, U.S. Code, Section 1561 defines the term "sexual harassment" to mean any of the following:

(1) Conduct that involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when –

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; or
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment; and
- Is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the Armed Forces or a Civilian employee of the DoD.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature by any member of the Armed Forces or Civilian employee of the DoD.

(4) There is no requirement for concrete psychological harm to the complainant for behavior to constitute sexual harassment. Behavior is sufficient to constitute sexual harassment if it is so severe or pervasive that a reasonable person would perceive, and the complainant does perceive, the environment as hostile or offensive.

(5) Sexual harassment can occur through electronic communications, including social media, other forms of communication, and in person.

(6) The use of disparaging and/or sexualized terms may contribute to an unlawful hostile environment and thus will not be tolerated. Leaders at all levels will protect their teams against sexual harassment and proactively ensure that their environments are free from all forms of sexual harassment.

(7) This paragraph is punitive, and violations may be punished under UCMJ, Article 92. Leaders who fail to address complaints or document sexual harassment may also be subject to punitive and/or adverse administrative action.

(8) Categories of sexual harassment –

(a) Verbal. Examples of verbal sexual harassment may include telling sexual jokes; using sexually explicit profanity, threats, sexually oriented cadences, or sexual comments; whistling in a sexually suggestive manner; and de-scribing certain attributes of one's physical appearance in a sexual manner. Verbal sexual harassment may also include using terms of endearment such as "honey," "babe," "sweetheart," "dear," "stud," or "hunk" in referring to Soldiers, DA Civilian coworkers, or Family members.

(b) Nonverbal. Examples of nonverbal sexual harassment may include: cornering or blocking a passageway; in-appropriately or excessively staring at someone; blowing kisses; winking; or licking one's lips in a suggestive manner. Nonverbal sexual harassment also includes offensive printed material (for example, displaying sexually oriented pictures or cartoons); using electronic communications as defined in paragraph 4-19; or sending sexually-oriented faxes, notes, or letters.

(c) Physical contact. Examples of physical sexual harassment may include: touching, patting, pinching, bumping, grabbing, kissing; or providing unsolicited back or neck rubs. There is significant overlap between that physical contact which constitutes sexual assault and that physical contact which constitutes sexual harassment. If the SARC [Sexual Assault Response Coordinator] receiving the sexual harassment complaint determines that the victim describes sexual assault and not sexual harassment, the SARC will advise the victim that the unwanted physical contact will be handled as a sexual assault; advise each victim of the role availability of a victim advocate; their victim rights; their potential right to an SVC [Special Victims' Counsel], with SVC eligibility determined by coordinating with the servicing legal office regarding SVC services; explain the victim's options for restricted and unrestricted reporting; and clearly describe the required response protocol for each type of reporting option. Unwanted physical touching that does not meet the legal definition of sexual assault may still be addressed using the sexual harassment complaint process.

(9) Types of sexual harassment—

(a) Quid pro quo. "Quid pro quo" is a Latin term meaning "this for that." This term refers to conditions placed on a person's career or terms of employment in return for favors. Examples include demanding sexual favors in exchange for a promotion, award, or favorable assignment. An example would be a Soldier who is not recommended for pro-motion and who believes that his or her squad leader recommended another Soldier in his or her squad for promotion on the basis of provided or promised sexual favors, not upon merit or ability.

(b) Hostile environment. A hostile environment, to include the work environment, can occur when Soldiers or DA Civilians are subjected to offensive, unwanted and unsolicited comments, or conduct of a sexual nature. An abusive or hostile environment need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive. A hostile environment brings the topic of sex or gender into the environment in any one of a number of forms. Conduct considered under the hostile environment definition generally includes nonviolent, gender-biased sexual behaviors (for example, the use of derogatory gender-biased terms, comments about body parts, suggestive pictures, and explicit jokes).

5. Army Regulation 600-37 (Unfavorable Information) provides that once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

6. 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 3-26 (Referred Evaluation Reports) provides, in pertinent part, that any report with negative remarks about the rated officer's Values or Leader Attributes/Skills/Action in rating official's narrative evaluations will be referred to the rated officer by the senior rater for acknowledgment and comment before being forwarded to HQDA.

b. Paragraph 3-28 provides that the referral process ensures the rated Soldier knows that his/her OER contains negative or derogatory information and affords him/her the opportunity to sign the evaluation report and submit comments, if desired.

(1) The senior rater will refer a copy of the completed OER or AER (an OER or AER that has been signed and dated by the rating officials) to the rated Soldier for acknowledgment and comment.

(2) Upon receipt of the rated officer's acknowledgment (for example, receipt of a signed OER or AER, email, signed certified mail document, signed acknowledgment statement accompanying memorandum, submission of signed comments, and so forth), the senior rater will enclose it, any written comments provided by the rated officer, and the referral memorandum, with the original OER or AER for forwarding to the reviewer (if applicable).

(3) If the senior rater (OER) or reviewing official (AER) decides that the comments provide significant new facts about the rated Soldier's performance that could affect the evaluation of the rated Soldier, he or she may refer the comments to the other rating officials, as appropriate. The rating officials, in turn, may reconsider their evaluations of the rated Soldier. The senior rater or reviewing official will not pressure or influence another rating official. Any rating official who elects to raise their evaluation as a result of this action may do so. However, the evaluation may not be lowered because of the rated Soldier's comments. If the OER or AER is changed but still requires referral, the OER or AER will again be referred to the rated Soldier for acknowledgment and the opportunity to provide new comments, if desired. Only the latest acknowledgment ("YES" or "NO" on OER or AER signed by the rated Soldier) and the rated Soldier's comments, if submitted, will be forwarded to HQDA.

c. Paragraph 4-7 provides that evaluation reports accepted for inclusion in the official record of an officer are presumed to be administratively correct, been prepared by the proper rating officials, and represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

d. Paragraphs 4-11a-b state an evaluation report accepted for inclusion in the official record of a rated Soldier's OMPF is presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of the rating officials at the time of preparation. The burden of proof rests with the applicant. Accordingly, to justify deletion or amendment of a report, the applicant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration and action is warranted to correct a material error, inaccuracy, or injustice.

e. Paragraph 4-11d states 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 (see Department of the Army Pamphlet 623-3). 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 report was rendered.

f. Paragraph 4-13a(2) states limited support is provided by statements from people who observed the applicant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances); letter of commendation or appreciation for specific but unrelated instances of outstanding performance; or citations for awards, inclusive of the same period.

7. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to Department of the Army. Paragraph 2-28 provides that:

a. If a referred OER is required, the senior rater will place an "X" in the appropriate box in Part IId of the completed OER. The OER will then be given to the rated officer for signature and placement of an "X" in the appropriate box in Part IId.

b. The rated officer may comment if he or she believes the rating and/or remarks are incorrect. The comments must be factual, concise, and limited to matters directly related to the evaluation rendered in the OER; rating officials may not rebut rated officer's referral comments.

c. The rated officer's comments do not constitute an appeal. Appeals are processed separately. Likewise, the rated officer's comments do not constitute a request for a Commander's Inquiry. Such requests must be submitted separately.

8. Army Regulation 600-8-29 (Officer Promotions) prescribes the officer promotion function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support officer promotions.

a. Promotion eligibility is determined by the Deputy Chief of Staff, G-1, and approved by the Secretary of the Army. For centralized promotions, eligibility is based

on an officer's active date of rank and time in grade. Promotion boards make recommendations to the President of the United States. The President has delegated authority to the Secretary of Defense to approve or disapprove promotion board reports. Promotions to the grade of MAJ and above must be confirmed by the Senate in accordance with Title 10, U.S. Code, section 624c.

b. The Secretary of the Army will provide guidance and instructions in a memorandum of instruction (MOI) to the board. The Secretary or his or her designee may modify, withdraw, or supplement the MOI before the board adjourns; however, once the board has convened, the maximum number of officers to be selected may not be increased without the written permission of the Office of the Secretary of Defense.

c. Promotion selection boards will: (1) base their recommendations on impartial consideration of all officers in the zone of consideration as instructed in the MOI; and (2) keep confidential their reasons for recommending or not recommending any officer considered. For commissioned officers, one of the following methods of selection is used, as directed by the MOI:

(1) The "Fully Qualified" method, when the maximum number of officers to be selected, as established by the Secretary, equals the number of officers above, in, and below the promotion zone. Although the law requires that officers recommended for promotion be "Best Qualified" for promotion when the number to be recommended equals the number to be considered, an officer who is fully qualified for promotion is also best qualified for promotion. Under this method, a fully qualified officer is one of demonstrated integrity, who has shown that he or she is qualified professionally and morally to perform the duties expected of an officer in the next higher grade. The term "qualified professionally" means meeting the requirements in a specific branch, functional area, or skill.

(2) The "Best Qualified" method, when the board must recommend fewer than the total number of officers to be considered for promotion. However, no officer will be recommended under this method unless a majority of the board determines that he or she is fully qualified for promotion. As specified in the MOI for the applicable board, officers will be recommended for promotion to meet specific branch, functional area or skill requirements if fully qualified for promotion.

d. Special selection boards are convened to consider commissioned officers for promotion when HQDA discovers that an officer was not considered from in or above the promotion zone by a regularly scheduled board due to an administrative error; or when the action by a board which considered an officer in or above the promotion zone was contrary to law or involved a material error; or the board which considered an officer from in or above the promotion zone did not have before it for consideration some material information. Material error in this context is one or more errors of such a

nature that, in the judgment of the reviewing official (or body), it caused an individual's non-selection by a promotion board and, that had such error(s) been corrected at the time the individual was considered, a reasonable chance would have resulted that the individual would have been recommended for promotion.

//NOTHING FOLLOWS//