

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006218

APPLICANT REQUESTS:

- Removal/Correction of a Army Regulation 15-6 investigation from her Army Military Human Resource Record (AMHRR)
- Removal of a Referred DA Form 67-10-2 (Field Grade Plate Officer Evaluation Report (OER)) from her AMHRR
- Personal appearance before the Board

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

- DD Forms 149 (Application for Correction of Military Record)
- Memorandum Correction of Military Record
- DA Form 2823 (Sworn Statement) from Brigadier General (BG) O-
- DA Form 1574-1 (Report of Proceedings by Investigating Officer (IO))
- Army Regulation 15-6 Rebuttal
- Army Regulation 15-6 Rebuttal Interview

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states in investigation came to several false, derogatory findings and conclusions related to counterproductive and toxic leadership on her part. She is also seeking correction of all references to any such findings such as her referred OER from 2020-2021. The initial 15-6 was primarily based on two biased and self-interested witnesses who both had reasons to lie, exaggerate, and mischaracterize of performance and leadership.

3. The applicant provides the following documents:

a. DA Form 2823 from BG L- A. O-, 18 November 2021, which states in pertinent part, the applicant is an extremely dedicated and devoted officer. The BG personally witnessed her perseverance and steadfastness in getting the job effectively done.

b. DA Form 1574-1, 28 June 2021, and the entire Army Regulation 15-6 investigation. The findings and recommendations are available for the Board's review.

c. Army Regulation 15-6 Rebuttal, 18 October 2021, states in pertinent part, the findings of this investigation are based entirely on the testimony of witnesses that are indisputably biased against the applicant who have motive to fabricate claims against her, have acted out of prejudice fueled by petty personal conflict, and have influenced others to join their side of a clear schism between them and the leadership. Given their preeminent role in creating this divide, it is manifestly unjust to penalize the applicant for an inability to mend fences, after being thrust to the forefront of a losing battle. As such, the adverse findings should be disapproved. The IO provided a summary of an interview between the applicant's attorney and the IO. Both documents are available for the Board's review.

4. The applicant's service record contains the following documents:

a. She took the oath of office as a Reserve Commissioned Officer) on 30 January 2012.

b. DA Forms 67-10-2 show she was routinely rated as Excels/Proficient and Highly/Most Qualified from 15 October 2015 through 22 September 2020.

c. Her OER for the period ending 5 January 2022 (the OER in question) shows a rating of qualified. The following statements appear on her OER "however, during the rating period, an AR 15-6 investigation concluded she exhibited counterproductive leadership behaviors, that she acted in an unprofessional manner at times, and lacked adequate communication skills to establish a positive and trustful environment," and "the AR 15-6 further found that her actions contributed to an environment of tension and distrust in the DO Division." She refused to sign the OER.

d. An undated, unsigned memorandum, final action administrative separation board, states in pertinent part, the board found the alleged substandard performance of duty and/or misconduct did not occur and did not warrant separation and recommended the applicant be retained in the U.S. Army Reserve.

e. Her service record is void of the Army Regulation 15-6 investigation.

5. The ABCMR may, in its discretion, hold a 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.

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 and standard review based on law, policy and regulation. Notably, the applicant's official record is void of the AR 15-6 investigation; the only version available for review was submitted by the applicant herself. As such, there is no official document for the Board to consider for removal. One potential basis for relief was the Commanding General's determination that the alleged misconduct did not warrant separation, and that the applicant should be retained in service. However, this alone does not invalidate the findings documented in the referred OER.

2. The Board acknowledged the applicant's contention that the investigation was based on biased and self-interested witnesses and resulted in false and derogatory conclusions regarding her leadership. While the applicant submitted a rebuttal and a character statement from a senior officer attesting to her dedication and professionalism, these materials do not sufficiently refute the findings or demonstrate a clear error or injustice. The contested OER accurately reflects the conclusions of the investigation, including evidence of counterproductive leadership behaviors and a breakdown in communication that contributed to a climate of tension and distrust.

3. Although the applicant's record includes a history of strong performance prior to the rating period in question, favorable evaluations from earlier periods do not negate the substantiated findings of the investigation. Furthermore, the administrative separation board's recommendation to retain the applicant does not render the referred OER or its basis inappropriate. The Board found no compelling evidence to support removal or correction of either document and agreed that the OER remains properly filed and relevant to the applicant's official record. Therefore, relief is denied.

4. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority.

5. 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

:	XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR may, in its discretion, hold a 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.

3. Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another regulation or directive, but in that case, its provisions are not mandatory.

a. The primary function of any preliminary inquiry, administrative investigation, or board of officers is to ascertain facts, document and preserve evidence, and then report the facts and evidence to the approval authority. It is the duty of the investigating officer or board to thoroughly and impartially ascertain and consider the evidence on all sides of each issue, to comply with the instructions of the appointing authority, to make findings that are warranted by the evidence, and, where appropriate, to make recommendations to the approval authority that are consistent with the findings.

b. Paragraph 2-8c (Action of the Approval Authority – Referral of Adverse Information) states:

(1) When an investigation includes a finding containing adverse information (as defined in the glossary) regarding a field grade officer, the portion of the report of investigation and supporting evidence pertaining to the adverse information must be referred to that officer in accordance with paragraph 5-4.

(2) For those findings that are adverse to a field grade officer, which the approval authority intends to approve, the approval authority will give the officer notice and an opportunity to respond before taking final action. The servicing SJA or legal advisor will ensure that the referral is properly made (see subparagraph (5), below).

(3) A redacted copy of the investigation will be referred to the officer by memorandum (see figure 2-6). The referral must notify the officer of the general nature of the adverse information. In addition, the referral must notify the officer that:

(a) the officer has the right to remain silent, and that anything the officer may say or submit in response to the adverse information may be used against him or her in ongoing or subsequent adverse administrative or Uniform Code of Military Justice proceedings;

(b) adverse information from an officially documented investigation or inquiry must be furnished to a selection board for promotion to a grade above COL in accordance with Title 10, U.S. Code, section 615, and may be provided to other selection boards; and

(c) the approval authority will consider any response the officer provides and may use it to approve, modify, or disapprove any relevant finding(s) or recommendation(s), or as evidence in current or future actions resulting from the investigation.

(4) The officer will be granted at least 10 business days to respond to the referral. Reasonable requests for an extension of this deadline should be granted for good cause to ensure that the officer has an adequate opportunity to gather evidence and prepare a response.

(5) Action on Receipt of Rebuttal.

(a) Upon receipt of any material in response to the adverse information, the approval authority's servicing staff judge advocate (SJA) or legal advisor will package the materials as an exhibit to the report of proceedings and provide them to the approval authority for his or her consideration. If the subject officer elects not to respond, or fails to do so within the period authorized, the servicing SJA or legal advisor will attach a memorandum stating that the officer elected not to respond or did not respond within the period authorized, along with the referral documents, to the report of proceedings.

(b) When considering the officer's response and whether to substantiate any finding as adverse, the approval authority should consider only evidence that is relevant to the matter under investigation. For instance, evidence of the officer's character or past performance is relevant only to the extent that it reflects on the officer's integrity if his or her statements are contrary to the statements of others.

c. Paragraph 2-9 (Request for Reconsideration) states:

(1) Right to Request Reconsideration. A subject, suspect, or respondent (such as an officer against whom an adverse finding was made) may request reconsideration of the findings of an inquiry or investigation upon the discovery of new evidence, mistake of law, mistake of fact, or administrative error. New evidence is that information that was not considered during the course of the initial investigation and that was not reasonably available for consideration. New evidence neither includes character-reference letters nor information that, while not considered at the time of the original

investigation, the subject of the investigation could have provided during the course of the investigation.

(2) Limitations.

(a) A request for reconsideration is not permitted when the investigation resulted in administrative, nonjudicial, or judicial action, or any action having its own due process procedural safeguards.

(b) Requests for reconsideration must be submitted to the approval authority within 1 year of the approval authority's approval of the investigation. The approval authority may entertain a request outside of 1 year for good cause. While not exhaustive, good cause is the discovery of new relevant evidence beyond the 1-year time limitation, which the requester could not have discovered through reasonable diligence, or the requester was unable to submit, because duty unreasonably interfered with his or her opportunity to submit a request. The approval authority's determination of good cause is final.

(c) Standing. A request for reconsideration will only be considered if the material presented impacts a finding concerning the requester.

(3) Procedure.

(a) All requests for reconsideration must be submitted through the Office of the SJA/legal advisor responsible for advising the approval authority at the time he or she approved the original investigation. If the approval authority has changed assignments or duty location, the SJA or legal advisor receiving the request, will present it to the approval authority's successor who, for purposes of the request for reconsideration, will be the approval authority.

(b) Upon receipt of a request for reconsideration, the approval authority will determine whether the material presented would impact any finding concerning the requester and, if so, whether the impact is such that the finding is no longer supportable by a preponderance of the evidence.

(c) If, after considering a request for reconsideration, the approval authority determines that the finding is no longer supportable, the approval authority will modify the approved findings and update any database or record where the original findings were sent.

(d) Whether or not the approval authority takes favorable action, he or she will ensure the requester is informed of the action taken on the request. The failure to

inform, however, does not create a substantive right that impacts the request or the original findings.

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; ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and ensure that the best interests of both the Army and the Soldier are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. Paragraph 1-4 states the objectives of Army Regulation 600-37 are to apply fair and just standards to all Soldiers; protect the rights of individual Soldiers and, at the same time, permit the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility; to prevent adverse personnel action based on unsubstantiated derogatory information or mistaken identity; to provide a means of correcting injustices if they occur; and, to ensure that Soldiers of poor moral character are not continued in service or advanced to positions of leadership, trust, and responsibility.

b. Paragraph 3-2c states unfavorable information that should be filed in official personnel files includes indications of substandard leadership ability, promotion potential, morals, and integrity. These traits must be identified early and shown in permanent official personnel records that are available to personnel managers and selection board members for use in making decisions that may result in selecting Soldiers for positions of public trust and responsibility, or vesting such persons with authority over others. Other unfavorable character traits of a permanent nature should be similarly recorded.

//NOTHING FOLLOWS//