

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240006387

APPLICANT REQUESTS: removal of the DA Form 1059 (Service School Academic Evaluation Report (AER)) covering the period 10 March 2020 through 20 March 2020 from his Army Military Human Resource Record (AMHRR).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored letter to the President, Department of the Army Suitability Evaluation Board, 17 May 2024
- Three DA Forms 1059, with ending dates 20 March 2020, 17 June 2021, and 2 July 2021
- Two Noncommissioned Officer Evaluation Reports (SSG [Staff Sergeant]-1SG [First Sergeant]/MSG [Master Sergeant]), with ending dates 15 July 2022 and 15 July 2023
- Character Reference, 1SG [REDACTED] as the current 1SG and previous platoon sergeant for the applicant, showing support for removal of the AER

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 he has corrected the problem relating to the negative AER and has not had any negative AERs after the one he is requesting to remove. In accordance with Army Regulation (AR) 600-37 (Unfavorable Information), the applicant requests transfer of the enclosed AER from 10 March 2020 through 20 March 2020, Failure to meet height (HT)/weight (WT) standards, from the performance section to the restricted section of his AMHRR. The regulation allows such transfers when the Service Member reattends and passes successfully, has been for at least one year since the failure, the Soldier is at least a SSG, and has received at least one NCOER or OER since the

failure. The applicant reattended and passed Maneuver Senior Leaders course successfully and has continuously passed the HT/WT standards in accordance with AR 600-9 since failure of professional military education (PME). He was not aware of the appeal process.

3. The applicant's service record shows:

a. He enlisted in the Regular Army on 18 August 2010; he reenlisted on 23 March 2012, 23 October 2013, and 5 November 2015. He was promoted to the rank/grade of staff sergeant/E-6 effective 1 July 2016.

b. His DA Form 1059, for ending period 20 March 2020, shows he attended the Maneuver Senior Leadership Class (SLC) from 10 March 2020 through 20 March 2020 and failed to achieve course standards. This form shows in:

- Part II c., Height: 71, Weight: 241, Within Standard? No
- Part II f. (Character/Accountability), g. (Presence/Comprehensive), i. (Leads/Communication & Engagement), j. (Develops/Collaboration), and k. (Achieves/Lifelong Learner – Did Not Meet Standards; h. (Intellect/Critical Thinking & Problem Solving) – Not Evaluated
- Part II l., states:
 - “[Applicant] was released from the course IAW [in accordance with] AR 350-1, Para [Paragraph] 3-15b (2) (Academic deficiency) and the MSLC Individual Student Assessment Plan (ISAP)”
 - “[Applicant] failed to pass his first HT/WT screening, he was re-screened and failed the re-screening”
 - “After re-screening, he was 27 [percent] of 24 [percent] allotted”
- Part IV c1 (This Is a Referred Report, Do You Wish to Make Comments?), a checkmark in the “Referred” box and a checkmark in the “No” box for comments attached

c. His DA Form 1059, for ending 17 June 2021, shows he attended the Maneuver SLC 21-005, from 6 June 2021 through 17 June 2021 and achieved course standards. This form shows in:

- Part II c., Height: 71, Weight: 247, Within Standard? Yes
- Part II f. (Character/Accountability), h. (Intellect/Critical Thinking & Problem Solving), and k. (Achieves/Lifelong Learner – Exceeded Standards; g.

(Presence/Comprehensive), i. (Leads/Communication & Engagement), and j. (Develops/Collaboration) – Met Standards

- Part II I., states:
 - “[Applicant] presented himself as an extremely capable future Senior Noncommissioned Officer who achieved course standards and is ready to continue in his professional military education”
 - “[Applicant] received an average 93 [percent] on the written evaluations and briefings showing professionalism in communication”
 - “He maintained an academic average of 92.98 [percent] through tests and evaluations”
 - “He contributed to group work to help the adult learning process and was an asset in the experimental learning model”
 - “He embodied professionalism, flexibility, and commitment assisting the mission accomplishment and success during the conduct of this course”

d. His DA Form 1059, for ending 2 July 2021, shows he attended the Maneuver SLC 21-005, from 18 June 2021 through 1 July 2021 and achieved course standards. This form shows in:

- Part II c., Height: 0, Weight: 0, Within Standard? (none entered)
- Part II f. (Character/Accountability), g. (Presence/Comprehensive) and j. (Develops/Collaboration) – Exceeded Standards; h. (Intellect/Critical Thinking & Problem Solving), i. (Leads/Communication & Engagement), and k. (Achieves/Lifelong Learner – Far Exceeded Standards)
- Part II I., states:
 - “[Army Physical Fitness Test] and HT/WT no required/administered for this class/course”
 - “[Applicant] projected the highest level of professionalism and consistently epitomized the role of an exceptional Senior Noncommissioned Officer”
 - “[Applicant] was the leader of his small breakout group room showing professionalism in communication”
 - “His tactical leader evaluated score of 98 [percent] proving a mastery of the courseware and Mission Command principles”
 - “He contributed to group work to help the adult learning process and was an asset in the experiential learning model”
 - “He assisted in teaching the Reconnaissance and Security class to his peers and displayed professionalism”

- “[Applicant] showed flexibility and commitment to mission accomplishment and success [field training exercise]”

e. Two Noncommissioned Officer Reports for periods 3 June 2020 through 30 July 2021 (rank SSG) and 31 July 2021 through 15 July 2022 (rank SFC), show: Principle Duty Title: Assistant Operations Sergeant, Duty MOSC: 19D40, Rater Overall Performance: Far Exceeded the Standard, and Senior Rater Overall Potential: Highly Qualified.

f. The applicant is currently serving in the Regular Army in the rank/grade of sergeant first class/E-7 at Joint Base Lewis-McChord, WA.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. There is no evidence the contested AER was improperly issued or that it was improperly filed in the applicant's OMPF. The evidence confirms he was removed from the service school course, and he attended and successfully completed the course at a later date.
3. Army Regulation 600-37 (Unfavorable Information) does not contain a provision for removing a properly filed AER or transferring an AER from the performance section to the restricted section of his AMHRR. The removal of the contested AER from the applicant's OMPF would leave an undocumented period of service and would not give promotion boards and assignment managers a totally accurate indication of the applicant's past performance and his abilities for future performance. The Board agreed both AERs paint a historically accurate picture of his performance, and there is no error or injustice 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.

5/6/2025

X

CHAIRPERSON

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

REFERENCES:

1. 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 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to, the Official Military Personnel File (OMPF), finance-related documents, and non-service related documents deemed necessary to store by the Army. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency. Table 3-1 (Composition of the OMPF) shows a DA Form 1059 is filed in the performance folder of the OMPF.

3. 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. Administrative processing and the appeal of evaluation instruments are governed by AR 623-3 (Evaluation Reporting System) Chapter 7 contains the policy for appeals and petitions for removal of unfavorable information from official personnel files. It states 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. It further stipulates only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the OMPF.

4. Army Regulation 623-3 (Evaluation Reporting System), in effect at the time, prescribed the policy for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 3-15 (DA Form 1059 and DA Form 1059-2) stated the AER is used to document the performance, accomplishments, potential, and limitations of Soldiers while attending military schools and courses of instruction or training.

(1) Paragraph 3-15f (Active Duty Personnel) stated that in preparing these reports, all significant information that can be evaluated will be reported. The same care

and attention will be exercised in preparing AERs as is exercised in preparing officer evaluation reports and noncommissioned officer evaluation reports.

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

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

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

c. Paragraph 3-20 (Unproven Derogatory Information) stated any mention of unproven derogatory information in an evaluation report can become an appealable matter if later the derogatory information is unfounded.

(1) Paragraph 3-20c stated this restriction is intended to prevent unverified derogatory information from being included in evaluation reports. It will also prevent unjustly prejudicial information from being permanently included in a Soldier's OMPF, such as charges that are later dropped or charges or incidents of which the rated Soldier may later be cleared.

(2) Paragraph 3-20(d) stated any verified derogatory information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged, or awaiting trial.

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

(1) be administratively correct,

(2) have been prepared by the properly designated rating officials who meet the minimum time and grade qualifications, and

(3) represent the considered opinions and objective judgment of the rating officials at the time of preparation.

e. Paragraph 4-7f (Policies) stated an appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. The determination regarding adequacy of evidence may be made by HQDA Evaluation Appeals Branch, National Guard Bureau Appeals Section, or the appropriate State Adjutant General.

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

(1) the presumption of regularity referred to in paragraphs 3-37a and 4-7a will not be applied to the evaluation report under consideration; and

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

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

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

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

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

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

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

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

//NOTHING FOLLOWS//