

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240007176

APPLICANT REQUESTS: through counsel:

- removal and/or transfer of General Officer Memorandum of Reprimand (GOMOR) from his Army Military Human Resource Record (AMHRR)
- reinstatement in the U.S. Army Reserve (USAR)
- Special Selection Board

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Letter
- Self-authored Statement
- Memorandum for Record (MFR), Subject: GOMOR
- MFR, Subject: Filing Determination
- MFR, Subject: Acknowledgement
- Two Officer Evaluation Reports (OER)
- Orders 0007801543
- Three Letters of Support

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:

a. The GOMOR is untrue and unjust. Since the time of the GOMOR was issued, he has showed complete rehabilitation. Since the GOMOR was made final, his two OERs recommend promotion. His goal is to continue his service to the country he loves and to the Soldiers and military community to whom he is dedicated. This GOMOR on his record will hinder his ability to fulfill this purpose, and it is an unjust characterization of

his actions. In his 19 years of honorable service, he has been dedicated to the Army and its values.

b. The applicant reiterates the above and through counsel states, he served honorably for 19 years, yet he was denied continuation to retirement. The GOMOR that he received in 2021 was the singular blemish on his otherwise perfect military record. He first enlisted in 2005 and thereafter accepted an appointment at the United States Military Academy at West Point, from which he graduated in 2010. From there, he served as an aviation officer, including a deployment to Afghanistan and Oman. After his assignment to company command, he attended the Interservice Physician Assistant Program (IPAP) Midway through that program, he came under investigation for allegedly attempting to fraternize, for which he received the GOMOR that is the subject of this petition. Following the filing of the GOMOR in May 2021, the applicant transferred from active duty to the USAR, in which he continued to earn the praise of his superiors for his outstanding character and duty performance. In total, he has served in the military for 19 years, yet he was denied the opportunity to continue to retirement due to the GOMOR and his resulting non selection for promotion.

c. Due to his non selection, he was separated from the USAR effective 1 May 2024. The Board should remove the GOMOR as untrue and unjust. The applicant has more than learned his lesson. He has demonstrated consistent dedication to the Army Values and the traits expected of an Army officer, both before and after the time of the GOMOR, throughout his 19 years of service. His senior Army supervisors all agree, the applicant should not be separated without retirement after 19 years of honorable military service.

3. The applicant provides:

a. Two Officer Evaluation Reports (OER) periods covered 1 July 2021 through 4 May 2022 and 5 May 2022 through 4 May 2023 show the applicant was highly qualified.

b. Three statements of support from officers he has worked for and with to include:

(1) COL DTH__ shows the applicant has been assigned to the brigade since April 2022. The applicant completed all the planning, coordination, and published the scheduling sync matrix for all units, including their weapons density, number fires, and time available. The applicant character has been flawless based on his work performance, demeanor, willingness to volunteer, and responsiveness to his leadership. When discussing the applicant's education, Captain Career Course, he was made aware of this past and that he received a GOMOR. He was shocked based on his work performance and character.

(2) COL SCM__ a Team Chief has been in the Army 32 years and has watched the applicant grow as an officer. His relationship with the applicant spans nearly three years. He has found the applicant to be a pleasant generous person who is never afraid to take on a challenging task. He has been one of his most dedicated Soldiers. The applicant is independent self-directed and can communicate effectively and meet even the most demanding challenges. He has performed at a high level.

(3) Lieutenant Colonel/LTC TCS__ has been in the Army 25 years, the applicant has been assigned to his operations section since early 2022. He has been a steadfast dependable officer. He is known to deliver top level performance even on the toughest assignments. While performance defines his work mantra, care for Soldiers defines his reputation. LTC TCS__ is aware of the GOMOR and the applicant maintains he did not attempt any fraternization and that his access of medical records was in good faith as a PA student.

4. The applicant's service record shows the following information:

- a. He enlisted in the USAR on 15 July 2005.
- b. He entered active duty on 15 July 2005. His DD Form 214 (Certificate of Release or Discharge from active Duty) shows he was honorably released from active duty to enter service academy and transferred to the USAR. He completed 11 months and 11 days net active service.
- c. The applicant was appointed and executed an Oath of Office as a Regular Army Commissioned Officer, Aviation in the rank of second lieutenant/2LT on 22 May 2010.
- d. The Military Protective Order, 26 February 2021 shows the applicant's having inappropriate contact with an intensive outpatient (IOP), PFC RS__. Patient relayed a desire not to be contacted by the applicant. In December 2020, he was informed by MAJ KJ__ not to contact patient again. The applicant broke the verbal order and contacted patient in an inappropriate manner on or about 25 February 2021. All contacts were not within a provider-medical capacity but were of a personal nature.
- e. The Developmental Counseling Form shows the applicant was counseled on 1 March 2021 for notification of flagging action for a commander's investigation and for performance/professional. He was in the behavior health clinic to observe a IOP Stabilization group per the request of his supervisor. On 14 or 15 December after his group observation the applicant approached a patient and started a conversation with her while she was sitting in her car in the parking lot of the clinic. They exchanged phone numbers. His behavior is in violation of the Individual Student Assessment Plan.

f. Report of Proceedings by Investigating Officer (IO), 3 March 2021 shows the findings and recommendations:

(1) Findings:

- the applicant's actions and behavior did meet criteria for inappropriate professional conduct as a Physician Assistant (PA) student and healthcare provider
- his actions and behavior did violate relationships between Soldiers of different grades
- he did fail to follow corrective guidance from a supervisor and superior officer after being counseled in December
- his actions and behaviors did not fall under the definition of sexual harassment
- he and redacted did not develop a reciprocal relationship that resulted in extramarital conduct
- he did inappropriately access the patient's electronic medical record
- he did not make deliberate or repeated unwelcome verbal comments, acts, gestures, or physical contact of a sexual nature
- his actions and conduct did have the effect of creating an intimidating, hostile, or offensive environment for PFC S__

(2) Recommendations:

- appropriate action under the Uniform Code of Military Justice (UCMJ) should be considered given the findings
- he be considered for nonacademic disenrollment (relief) from the PA program
- the behavioral health clinic preceptors provide PA students (and all other students) a welcome brief that addresses the clinic's ethical guidelines, to include instructions to avoid approaching behavioral health patients outside of the clinic
- the PA site director and other student supervisor, review the code of conduct with students upon their arrival as part of the supervisor's initial expectation; a signed copy of the code of conduct should be maintained in the student's personnel file; if this policy is already in place, then it should be sustained

g. MFR, Subject: Findings and Recommendations, Investigation of the applicant, 19 March 2021, in effect, shows on 3 March 2021, the investigating officer (IO) was appointed as an to conduct an investigation into the facts and circumstances surrounding the applicant's behavior and conduct relating to redacted. The IO found that the allegations of inappropriate professional conduct, fraternization, failure to follow corrective guidance from a supervisor and superior officer, inappropriate access of redacted electronic medical record (EHR), and creating an intimidating, hostile, or offensive environment are substantiated. The IO found that the allegations of sexual harassment and extramarital conduct are unsubstantiated.

(1) On 14 December 2020, the applicant initiated a text message conversation with redacted. The applicant stated "Hey, it's W__ from group!" he(r) reply stated "Hello Sir this is redacted. He then stated, "Can we call each other W__ and R__?" Her replay stated, "Yes sir."

(2) On 15 December (no year) the applicant sent a text message to Private First Class/E-3/PFC S__ stating "Wanna get lunch?"

(3) On 25 February 2021, the applicant sent a text message to redacted stating "I'm going with a few friends on a hike after church on Sunday if you're interested." on 25 February (no year) redacted sent a text message to Command Sergeant Major (CSM) B__. In her message, she stated that "a CPT at group therapy (IOP) who was a PA student asked me out on a date and made me feel uncomfortable. They removed him from IOP and told him to never contact me again, he didn't until today, again asking me to go out with him. I told the IOP staff, and they said I should tell you I guess." She then stated that his name was "CPT WA__"

(4) On 25 February (no year), the applicant sent a text message to Major/MAJ P__ indicating that he was being issued a military protective order "over a text saying that you're hope you're doing okay."

(5) On 2 March (no year), MAJ J__ sent the applicant a text message stating "I also told you it caused distress, and the texts [were] unwanted and to not contact her again."

(6) On 14 December, 3 February, 16 February, and 25 February, the applicant accessed PFC S__ EHR in AHLTA between these visits to her EHR, he accessed the following sections: Demographics, Previous Encounters, Problems, Lab, Radiology, Vital Signs Review, Readiness, and Obstetrics Summary.

h. MFR, Subject: Legal Review, 24 March 2021, shows the investigation was legally sufficient.

i. MFR, Subject: GOMOR, 22 April 2021, shows the applicant was reprimanded for attempting to fraternize with a junior enlisted Soldier, and for wrongfully accessing the medical records of the same junior enlisted Soldier. Between on or about 14 December 2020 and 25 February 2021, you engaged in unprofessional behavior toward Private First Class/PFC RS__ when you sent her personal text messages which made her feel uncomfortable. He also wrongfully accessed PFC RSs__ medical electronic health record in your official capacity as a physician's assistant. This behavior is unacceptable.

(1) As a commissioned officer, the applicant is charged with setting the example for subordinates to emulate. His actions fell below the standards expected of a

commissioned officer in the United States Army and raise doubt about his potential for further service.

(2) This reprimand is imposed under the provisions of AR 600-37 and is not punishment under Article 15, UCMJ. Filing in his Army Military Human Resource Records (AMHRR) was being considered. The applicant may submit matters to convince the Major General (MG) such filing is unwarranted. He may submit any matters the applicant wished in rebuttal to the allegations or in extenuation or mitigation. The applicant may also seek legal assistance from the Fort Carson, CO Legal Assistance Office or from civilian counsel at no expense to the Government.

j. The applicant acknowledged receipt of this reprimand by signing and dating the prepared acknowledgment on 26 April 2021.

k. MFR, Subject: Filing Request for GOMOR, 27 April 2021, the applicant humbly requests that the MG consider filing his GOMOR in his local file instead of his AMHRR. He first encountered PFC RS__ in a parking lot while she was in apparent distress. He has helped numerous Soldiers struggling with depression and suicide during his 16 years of military service in similar fashion and preserved the morale, welfare, and readiness that he raised his right hand to swear to uphold. Fraternization has never been his intent nor a consequence.

(1) On 14 December 2020 he was informed that PFC RS__ was uncomfortable with the very brief conversation her and he exchanged via text messages, the context of her discomfort was alluded to him attending the same suicide prevention outpatient class as her, not that he said anything to make her uncomfortable. Consequently, when he messaged her on 25 February 2021, he was simply checking on her status. The allegation that he wrongfully accessed PFC RSs__ medical electronic health record is based on an expectation that the applicant should know how much access is warranted or unwarranted. While he agrees that a standard should be determined, none is set. In his capacity as a student, not a Physician Assistant, the applicant's understanding of right and wrong is based on the example and practice that preceptors teach him during clinic.

(2) The applicant now understands he should have exercised better judgement as a medical provider regardless of his capacity as a student, and he also understand more the expectation of accessing medical records. In consequence, he has been dismissed from the Physician Assistant program and will be dismissed from active duty. He humbly asks for consideration in filing the GOMOR locally so he may continue service to our Nation in the Army Reserves demonstrating and building on his potential.

l. MFR, Subject: Commanders Recommendation on Filing Determination, undated show the GOMOR would be permanently filed in the applicant's AMHRR. The

commander's opined the conduct displayed by this officer and provider is in violation of basic ethical standards; meets egregious criteria and should be documented for future consideration. The applicant's actions are not in line with Army values. He knowingly violated patient rights and privacy. The standard of practice and access to protected medical records fall well outside of established acceptable guidance.

m. The applicant was honorably released from active duty on 1 July 2021 and transferred to the USAR. His DD Form 214 shows he was released under the provision of Army Regulation 600-8-24 (Officer Transfers and Discharges) for non-selection, Permanent Promotion. He completed 11 years, 1 month, and 10 days net active service.

n. Order 0007801543, 10 April 2024 shows the applicant was involuntarily discharged. Effective 1 May 2024.

o. Retirement Accounting Statement, 2 May 2024 shows 2 years, 9 months, and 18 days qualifying for retirement and 5060 points creditable.

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. After reviewing the application and all supporting documents, 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.

- Removal and/or Transfer GOMOR to Restricted Folder. Deny. Upon review of the applicant's petition and military records, the Board determined there was no error or injustice in the GOMOR the applicant was administered on 22 April 2021 and filed in the applicant's performance folder of his Army Military Human Resource Record (AMHRR). The Board noted the applicant failed to uphold the high standards of an officer violating the military protective order and not following orders, which is inexcusable. Therefore, the Board concluded, based on a preponderance of evidence found in the military record, the applicant's request for the GOMOR to be removed or placed in his restricted folder is not warranted and denied relief.
- Referral to an SSB for promotion to Major/O4. Deny. As it relates to the applicant's request for a special selection board (SSB) to Major/O4, upon review of the applicant's petition and military records, the Board determined there was insufficient evidence to warrant a special promotion board to Major/O4 based on the applicant's serious misconduct; therefore, the Board denied relief.

- Reinstatement in the USAR. Deny: The Board determined pursuant to Army Regulation, there was no error or injustice when the applicant discharged based on being a non-select for promotion to Major/O4, and as a result was discharged from the USAR. Therefore, the Board denied relief

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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 600-8-24 (Officer Transfers and Discharges) provides for officer transfers from active duty to the Reserve component and discharge functions for all officers on active duty for 30 days or more.

a. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearly for reasons that do not involve acts of misconduct.

b. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive a general discharge when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Additionally, paragraph 1-22 provides, in pertinent part, that a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. An officer will normally receive a discharge under other than honorable conditions when they resign for the good of the service, are dropped from the rolls of the Army, or are involuntarily separated due to misconduct, moral or professional dereliction, or for the final revocation of a security clearance as a result of an act or acts of misconduct, including misconduct for which punishment was imposed.

d. Chapter 4 (Eliminations) states an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

e. Chapter 4 provided the tasks, rules, and steps for eliminating officers in the Active Army for substandard performance of duty, misconduct, moral or professional dereliction, and in the interests of national security. Paragraph 4-2a (Reason for Elimination) states while not all inclusive, when one of the several listed or similar conditions exist, elimination action may be or will be initiated for Substandard performance of duty.

(1) A downward trend in overall performance resulting in an unacceptable record of efficiency, or a consistent record of mediocre service.

(2) Failure to keep pace or to progress with contemporaries, as demonstrated by a low record of efficiency when compared with other officers of the same grade and competitive category.

(3) Failure to exercise necessary leadership or command expected of an officer of their grade.

(4) Failure of an officer to absorb technical proficiency required for grade and competitive category.

(5) Failure to properly perform assignments commensurate with an officer's grade and experience.

(6) Apathy, defective attitudes, or other characteristic disorders to include inability or unwillingness to expend effort.

(7) Failure to respond to alcohol or drug problem rehabilitation efforts in a reasonable length of time. (See AR 600–85 for further explanation.) Elimination action will be initiated. Care should be taken to avoid the inclusion of limited use evidence, as defined in AR 600–85, chapter 6.

(8) Failure to conform to prescribed standards of dress, personal appearance, or military deportment.

(9) Failure to achieve satisfactory progress after enrollment in the Army weight control program or failure to maintain the weight/body fat standards established under the provisions of AR 600–9 after removal from an established weight control program. Elimination action will be initiated.

(10) Failure of a course at a service school for academic reasons by a probationary or non-probationary RA officer. For failure by an RC officer, see paragraph 2–33.

(11) Failure of a probationary officer to resign under paragraph 3–9 when their commander determines the best interest of the Government, and the individual can be served by the officer's discharge.

(12) The discovery of other conditions concerning a probationary officer that, had they been known at the time of appointment, would have precluded appointment.

(13) The discovery of any other condition concerning a probationary officer that indicates the officer's retention in the Army would not be in the best interest of the United States.

(14) Probationary RA commissioned and warrant officers entering AD who are confirmed Human Immunodeficiency Virus (HIV) positive within 180 calendar days of their original appointment or probationary USAR, ARNG commission and warrant officers who report for initial entry training in an AD (other than ADT) status and are confirmed HIV positive within 180 calendar days of reporting to AD will be processed for elimination.

(15) Failure to establish an adequate Family Care Plan in accordance with AR 600-20, paragraph 5-5.

f. Paragraph 4-5 (Separation date) states an officer approved for involuntary separation by the Secretary of the Army or his designee, or whose request for resignation or discharge in lieu of elimination is approved for misconduct, moral, or professional dereliction, or in the interest of national security will be separated according.

3. Army Regulation (AR) 600-37 (Unfavorable Information), currently in effect, sets forth policies and procedures to ensure the best interests of both the Army and Soldiers were served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's official military personnel file (OMPF).

a. Paragraph 1-1 (Purpose). The regulation's intent is to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's OMPF.

b. Paragraph 3-2 (Policies). Unfavorable information will not be filed in official personnel files unless the recipient was given the opportunity to review the documents and was given a reasonable amount of time to make a written response.

c. Paragraph 3-5 (Filing of Non-Punitive Administrative Memoranda of Reprimand, Admonition, or Censure).

(1) Authority to issue and direct the filing of such memoranda in an officer's local file is restricted to the recipient's immediate commander or higher-level commander; the designated rater, intermediate rater, or senior rater, per AR 623-3 (Evaluation Reporting System); or a general officer who is senior to the recipient.

(2) A memorandum, regardless of issuing authority, can be placed in a recipient's OMPF upon the order of a general officer who exercised general court-martial convening authority over the recipient.

d. Paragraph 7-2 (Policies and Standards).

(1) Once an official document has been properly filed in an OMPF, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority.

(2) For removal of derogatory information, there was no time restriction for submitting an appeal for removal of unfavorable information

(a) The recipient had the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

(b) Evidence submitted in support of the appeal may include but was not limited to the following: an official investigation showing the initial investigation was untrue or unjust; decisions made by an authority above the imposing authority overturning the basis for the adverse documents; notarized witness statements; historical records; official documents; and/or legal opinions.

(c) Appeals that merely allege an injustice or error without supporting evidence or a compelling argument were not considered.

4. AR 600-8-29 (Officer Promotions), currently in effect, includes guidance on special selection boards (SSB) in chapter 6 (SSB).

a. SSBs may be convened under Title 10 (Armed Forces), U.S. Code, section 628 (SSB) to consider or reconsider commissioned or warrant officers for promotion when HQDA determines that one or more of the following circumstances exist: administrative error or material unfairness.

b. An SSB will consider the record of the officer as it should have been considered by the original board. The record will be compared with a sampling of those officers of the same competitive category, who were recommended and not recommended for promotion by the original selection board.

c. Officers selected for promotion by an SSB will, as soon as practicable, be appointed to that grade. When appointed to the next higher grade as the result of the recommendation of an SSB, the officer will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the

ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her.

5. AR 350-1 (Army Training and Leader Development), currently in effect, prescribes policies and procedures for developing and conducting Army training and leader development. Chapter 3 (The Army Institutional Training and Education System), paragraph 3-45 (U.S. Army War College) outlines the requirements for War College attendance.

a. The U.S. Army War College (USAWC) is the Army's center for strategic thought. The USAWC's mission is to educate and develop leaders for service at the strategic level while advancing knowledge in the global application of Land power. Toward this end, the USAWC conducts a resident education program (REP) and a distance education program (DEP).

b. The website (<https://www.armywarcollege.edu/programs/policies.cfm>) details enrollment requirements:

(1) The USAWC requires students to submit verification of a baccalaureate degree from a regionally accredited institution; USAWC is a Master's granting institution.

(2) Military students are selected to attend the USAWC by their respective Services. Selected students are considered to hold considerable potential for promotion and future service in positions of increasing responsibility. Officers are eligible for attendance after being promoted to O-5, through their 25th year of service. Applicants must have completed the Command and General Staff College, or equivalent, and should possess a baccalaureate degree. The USAWC does not accept individual applications into its Senior Service College programs except through special exceptions. Students are centrally selected by their component, thus USAWC receives its list of students by component, rather than receiving and processing individual applications.

(3) Senior Service College is voluntary for all Troop Program Unit (TPU), Individual Ready Reserve (IRR), Individual Mobilization Augmentee (IMA) officers, and Active Guard Reserve (AGR) officers. Within the USAR, the Chief, Army Reserve (CAR) convenes a board annually in October that selects and ranks by competitive category qualified officers in the AGR program, TPU program, and IMA program. The board lists selected officers as either a primary or an alternate in an Order of Merit List (OML) for either the resident program or distance education program. The CAR is the approving authority for the board's recommendation.

(4) Department of the Army Civilians who wish to attend the program must apply according to the standards in AR 350-1. Other services should contact their appropriate personnel office to determine eligibility and admission procedures. Civilian employees of other federal agencies wanting to enroll need to do so through their component's chain of command.

6. Public Law 110-252 established the legal requirements for the transferability of unused Post 9/11 GI Bill benefits; however, the transfer is limited to those members who were serving on active duty or as a member of the Selected Reserve on or after 1 August 2009.

7. On 22 June 2009, Department of Defense (DOD) established the criteria for eligibility and transfer of unused educational benefits to eligible family members. The policy states eligible individuals include any member of the Armed Forces that was serving on or after 1 August 2009, and who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, was eligible for the post-9/11 GI Bill. Additionally, the individual had to:

a. Have completed at least 6 years of service in the Armed Forces on the date of election and agreed to serve an additional 4 years in the Armed Forces from the date of election; or

b. Had at least 10 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election, but was precluded by either standard policy (service or DOD) or statute from committing to the 4 additional years, and had agreed to serve for the maximum amount of time allowed by such policy or statute

c. From 1 August 2009 through 1 August 2013, temporary rules applied with regard to the additional service obligation (ADSO); based on years of service, on 1 August 2009, the Soldier incurred following ADSO:

- 20 or more years of service, on 1 August 2009 – no ADSO
- Approved retirement with a date from 1 September 2009 to 1 June 2010 – no ADSO
- Attained 20 years of service between 2 August 2009 and 1 August 2010 – 1-year ADSO, starting from the transfer of educational benefits request date
- Attained 20 years of service between 2 August 2010 and 1 August 2011 – 2 years ADSO, starting from the TEB request date
- Attained 20 years of service between 2 August 2011 and 1 August 2012 – 3-year ADSO, starting from the TEB request date
- Attained 20 years of service after 1 August 2012 – 4-year ADSO, starting from the TEB request date

8. Army Regulation (AR) 600-8-104 (Army Military Human Resource Records (AMHRR) Management) prescribes the policies governing the Official Military Personnel File, the Military Personnel Records Jacket (MPRJ), states:

a. That the performance section is used for filing performance, commendatory, and disciplinary data. Once placed in the AMHRR, the document becomes a permanent part of that file. The document will not be removed from or moved to another part of the file (AMHRR) unless directed by the proper authorities listed in the regulation.

b. The AMHRR is a permanent record remaining under Army control for 62 years from a Soldier's final separation date to include retirement, separation, and death. Only documents pertaining to a Soldier's military career and listed in this regulation will be filed in the AMHRR. No more than one copy of a document will be uploaded into the AMHRR. The document will not be removed from or moved to another part of the AMHRR unless directed by certain agencies, to include this Board.

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

a. Chapter 1 stipulates an administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising General Court-Martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. Chapter 7 states a memorandum of reprimand may be filed in a Soldier's OMPF only upon the order of a general officer-level authority General Court-Martial Convening Authority and is to be filed in the performance section. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 of AR 600-37.

c. Paragraph 7-2 (Policies and Standards) 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 the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

10. Title 10, USC, section 1552 states The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

11. AR 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. Chapter 7 provides for SSBs.

a. Paragraph 7-2 states the SSBs may be convened under Title 10, U.S. Code, section 628 to consider or reconsider commissioned or warrant officers for promotion when HQDA discovers one or more of the following:

(1) An officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error. This would include officers who missed a regularly scheduled board while on the temporary disability retired list and who have since been placed on the active-duty list (SSB required).

(2) The board that considered an officer from in or above the promotion zone acted contrary to law or made a material error (SSB discretionary).

(3) The board that considered an officer from in or above the promotion zone did not have before it some material information (SSB discretionary).

b. Paragraph 7-3 (Cases not considered) states an officer will not be considered or reconsidered for promotion by an SSB when the following occurs.

(1) The officer is pending removal from a promotion or recommended list, and the removal action was not finalized by the Secretary of the Army 30 days before the next selection board convened to consider officers of his or her grade. The officer will be considered by the next regularly scheduled selection board.

(2) An administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error in the Officer Record Brier (ORB) or OMPF. It is the officer's responsibility to review his or her ORB and OMPF before the board convenes and to notify the board, in writing, of possible administrative deficiencies in them.

c. Paragraph 7-11, officers who discover that material error existed in their file at the time they were non-selected for promotion may request reconsideration.

12. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers other Than General Officers) prescribes policy and procedures used for selecting and promoting commissioned officers (other than commissioned warrant officers) of the Army National Guard of the United States (ARNGUS) and of commissioned and warrant officers (WO) of the U.S. Army Reserve (USAR). Paragraph 3-18(10) states Commanders and the Commander (CDR), HRC, Office of Promotions (Reserve Component (RC) will continuously review promotion lists to ensure that no officer is promoted who has become mentally, physically, morally, or professionally disqualified after being selected. Commanders and CDR, HRC, Chief, Office of Promotions (RC) may recommend officers for removal for the following reasons:

- a referred evaluation or academic report; evaluation and academic reports referred under AR 623 will be used as a basis for removal action only if forwarded to CDR, HRC, Office of Promotions (RC) under separate memorandum of recommendation
- a memorandum of reprimand placed in the OMPF
- any adverse documentation being placed in the OMPF

//NOTHING FOLLOWS//