

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007218

APPLICANT REQUESTS: through counsel:

- removal of his name and personally identifying information from the U.S. Army Criminal Investigation Command (CID) Memorandum (Law Enforcement Report (LER) – 1st Corrected Final), 22 October 2019 and any index items or entry in the Defense Central Index of Investigations (DCII), and any other record maintained in connection with such a report
- an upgrade to his under honorable conditions (General) discharge
- removal of the general officer memorandum of reprimand (GOMOR), 14 April 2020, from his Army Military Human Resource Record (AMHRR)
- a personal appearance hearing before the Board (via video/telephone)

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Counsel Letter, 8 March 2024
- CID Form 94 (Agent's Investigation Report), 28 June 2019
- U.S. Army CID Memorandum (LER – 1st Corrected Final), 22 October 2019
- Office of the Staff Judge Advocate, Headquarters, I Corps and Joint Base Lewis-McChord Memorandum (Declination of Participation), 10 March 2020
- Headquarters, Eighth Army Memorandum (GOMOR), 12 March 2020
- Headquarters Eighth Army Memorandum (Withdrawal and Dismissal of Court-Martial Charges - U.S. versus (Applicant)), 12 March 2020
- U. S. Army Trial Defense Service, Pacific Region Memorandum (Legal Matters for GOMOR (Applicant)), 14 April 2020
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 3 September 2020
- CID letter, 16 August 2023
- Power of Attorney, 7 December 2023
- Closed-circuit television screenshots (8 pages)
- Two Character Letters, 26 March 2020 and 1 April 2020
- Applicant self-authored statement, undated

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 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 defers to counsel.

3. Counsel states, in part, probable cause does not exist to support the titling of the applicant for the offense of rape, in violation of Article 120, Uniform Code of Military Justice (UCMJ), or that he committed the offense of aggravated assault by strangulation, in violation of Article 128, UCMJ. The alleged victim in this matter has repeatedly indicated that she voluntarily participated in these interactions and that she did not ever verbally indicate she was not consenting to the acts in question. At the very least, the alleged victim's own admissions indicate the applicant had a legitimate mistake of fact as to consent and should not have been titled/indexed for these allegations. The applicant's name and personally identifiable information must be removed from all investigative databases.

a. Closed-circuit television footage clearly shows Specialist (SPC) [REDACTED] pulling at the applicant and otherwise attempting to prevent him from leaving the immediate area prior to the alleged rape. While SPC [REDACTED] claims that the applicant was trying to "seal the deal" and she felt that she could not walk away from the conversation, her recorded actions at that time clearly reveal that she was the one who prevented the applicant from leaving and was responsible for prolonging the conversation she claims she wanted to get out of. Moreover, SPC [REDACTED] did not attempt to contact her friends or seek assistance from any of the numerous law enforcement agents who were in the immediate vicinity. These are not the actions of someone who is looking to distance themselves from a situation.

b. Additionally, SPC [REDACTED] admitted during her interview that she never told the applicant she did not want to engage in sexual acts with him and freely provided to the CID agents that she voluntarily engaged in these sexual activities on her own free will. She indicated that she performed oral sex on the applicant and then freely took off her pants before transitioning to vaginal sex. She did not allege that any threats were made by the applicant or that he used any force during their sexual encounter.

c. The applicant does not deny that sexual acts took place but has provided a very different version of events. He has indicated that SPC [REDACTED] initiated the sexual contact occurring at the pavilion by grabbing his hand and placing it down her pants towards her vaginal area. He has also stated that SPC [REDACTED] willingly performed oral sex and willingly got on top of the applicant immediately before vaginal sex occurred.

d. There is no credible evidence in the investigative file to lead a reasonably prudent person to believe that the applicant committed the offense of aggravated assault against SPC [REDACTED]. SPC [REDACTED] did not indicate during her interview that she ever told the applicant not to place his hands around her neck. The applicant's testimony indicated that SPC [REDACTED] indicated that she liked to be strangled and that she asked him to do so while the two were kissing. It is highly illogical to believe that a Soldier would physically assault another servicemember in the back of a taxicab, which contains a video recorder, in the presence of the cab driver and another Soldier. When these facts and circumstances are considered, it is clear that probable cause does not exist to support this accusation.

4. The applicant provides:

a. CID Form 94 (Agent's Investigative Report), 28 June 2019, shows Special Agent [REDACTED] interviewed SPC [REDACTED] wherein she stated on 22 June 2019 she was raped by a male, she believed to be the applicant. The report states, in part:

(1) SPC [REDACTED] stated she and three friends, went off post to have a night out in "Ville." SPC [REDACTED] stated they went to a couple of bars and in that time frame she consumed approximately two bottles of soju and three Jack and Cokes but was always in control of her drinks.

(2) She met the applicant while she walked back to the main gate and initiated a conversation, but during the conversation SPC [REDACTED] lost her friends in the crowd. The applicant tried to convince SPC [REDACTED] to have sex with him through long conversation which SPC [REDACTED] felt she could not walk away from.

(3) After they moved to the pavilion, the applicant became more aggressive and began to kiss her lips and pulled her pants down. The applicant successfully penetrated SPC [REDACTED] and forced her to perform oral sex. At the time, she came to the conclusion she would not be able to get out of the situation and decided to just "do it so they could go."

(4) While in a cab back to the barracks, the applicant continued to choke SPC [REDACTED] to the point where she had to put her hand in-between her neck to clean an airway. As the cab got closer to the barracks, she asked the cab to stop and got out.

(5) A review of the camera footage showed SPC [REDACTED] and the applicant walking up to the main pedestrian gate through [REDACTED] area. During their walk there was separation between the two of them and neither of them appeared to stumble. The applicant appeared to have a bag in one hand and a cigarette type item in his other hand. Once they reached the door of the building, the applicant and SPC [REDACTED] stopped and had a conversation for approximately five minutes, during which the

applicant placed his hand on SPC [REDACTED] elbow once, in order to guide her because two military policemen walked behind her. The applicant and SPC [REDACTED] appeared to be animated during their conversation, but it did not appear as if they were fighting, just using their hands to speak. SPC [REDACTED] did not appear to stumble, not did she lean on the applicant to be held up. The applicant did no places his hands near or on SPC [REDACTED] neck, not did he attempt to pull/push her anywhere.

b. U.S. Army CID Memorandum (LER – 1st Corrected Final), 22 October 2019 names the applicant as the subject/suspect for the offenses of assault by strangulation (Article 128, UCMJ) and rape (Article 120, UCMJ) from 23 June 2019. The Report of Summary states:

(1) This office was notified by Captain [REDACTED] Special Victims Counsel, Camp Humphreys, Korea, who reported SPC [REDACTED] was sexually assaulted.

(2) SPC [REDACTED] stated that during the early morning hours of 23 June 2019, she walked toward Camp Humphreys with the applicant, who she had just met that night. Once inside the installation, the applicant guided SPC [REDACTED] to a pavilion just inside the main gate where he forced her to perform sexual acts against her will. After the incident, the applicant and SPC [REDACTED] shared a taxi to the barracks. During the taxi ride, the applicant placed his hands around SPC [REDACTED] throat and applied pressure sufficient to obstruct her airway.

(3) The applicant was advised of his rights, which he waived, and corroborated all of SPC [REDACTED] statement. The applicant further stated that all the acts were consensual and that he was asked by SPC [REDACTED] to place his hands around her neck when they were in the taxi.

(4) Multiple witnesses stated they observed SPC [REDACTED] and the applicant interacting outside of the camp Humphreys pedestrian gate. They further stated they received a Snap Chat message the night of the incident from SPC [REDACTED] that stated "Help." Witnesses further stated SPC [REDACTED] got out of a taxi and reported to them that she was forced to preform sexual acts against her will.

(5) Private (PVT) [REDACTED] 2-1 Air Defense Artillery Battalion, Camp Casey, Korea stated he observed the applicant and SPC [REDACTED] introduce themselves and walk towards the pedestrian gate. PVT [REDACTED] stated while he was at the taxi line waiting for a taxi, SPC [REDACTED] and the applicant met with him at which time the applicant pressured SPC [REDACTED] to swear she would not "SHARP" him several times in front of PVT [REDACTED]. PVT [REDACTED] further stated after arriving to Building 725, In-Processing Barracks, SPC [REDACTED] exited the taxi crying and ran to her friends. PVT [REDACTED] stated he asked the applicant what happened the following day and the applicant related he and SPC [REDACTED] had sex at the pavilion area near the Pedestrian Gate.

(6) On 8 October 2019, Captain [REDACTED] Trial Counsel, opined probable cause exists to believe the applicant committed the offense of rape in violation of Article 120, UCMJ and the offense of Aggravated Assault (by strangulation) in violation of Article 128, UCMJ.

c. Office of the Staff Judge Advocate, Headquarters, I Corps and Joint Base Lewis-McChord Memorandum (Declination of Participation), 10 March 2020, shows SPC [REDACTED] declared that she no longer wished to participate in the prosecution of the applicant for sexual assault against her. She understood the applicant was accused of sexual assault, and that she was the victim. She also understood that without her testimony or cooperation, the Government would probably not prosecute the applicant for crimes against her.

d. On 12 March 2020, the Commanding General, Headquarters, Eighth Army, issued the applicant a GOMOR for sexual assault and strangulation, in violation of Article 120 and Article 126, UCMJ.

e. Headquarters Eighth Army Memorandum (Withdrawal and Dismissal of Court-Martial Charges - U.S. versus (Applicant)), 12 March 2020, shows the Commanding General, Headquarters, Eighth Army withdrew and dismissed the charges and specifications that were preferred against the applicant on 29 January 2020 and were referred for trial by general court-martial on 6 March 2020.

f. The U. S. Army Trial Defense Service, Pacific Region Memorandum (Legal Matters for GOMOR (Applicant)), 14 April 2020, shows the applicant's defense counsel submitted a request to the Commander, Eighth Army, to withdraw the GOMOR that was initiated against the applicant based upon the evidence conflicting with SPC [REDACTED] account on 23 June 2019 and the due to CID's failure to obtain video evidence which is not biased and would have supported the applicant's account of the events on 23 June 2019.

g. The CID letter, undated, notified the applicant that his request to appeal the denial of his amendment request (not in evidence) concerning the CID LER, 22 October 2019, was denied. He had the right to appeal the amendment denial by petitioning the ABCMR.

h. A Power of Attorney, 7 December 2023, shows the applicant designated the law firm of [REDACTED] to serve as his attorneys in all matters relating to and/or arising out of his service with the U.S. Army.

i. Eight pages of closed-circuit television screenshots showing the applicant and SPC [REDACTED] engaging in conversation while standing outside and notes that SPC [REDACTED] prevented the applicant from leaving the area.

j. Two character letters, from 26 March 2020 and 1 April 2020, from the applicant's enlisted and officer leadership, wherein they state the applicant loves being a Soldier and serving in the Army. He leans on great leadership advice and catches on quickly. He has shown all the qualities to expect from a great Soldier, he is also a team player and helps his team be successful. He has always had an incredible work ethic and unwavering dedication to mission success and self-improvement.

k. A self-authored statement, wherein the applicant states in part, when he and SPC [REDACTED] began talking, they both had been drinking. While they were talking, they began to kiss and SPC [REDACTED] never once asked him to stop. When he was accused of the charges preferred against him, he requested legal guidance, but told nothing more could be done. He was eventually discharged with an under honorable conditions (general) characterization of service. He was unaware of the blemish on his Federal Bureau of Investigation fingerprints report. She should not have the blemishes on his report because he never committed a crime.

5. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 21 August 2018.

b. Page 1 of his DA Form 458 (Charge Sheet), 29 January 2020, shows the following court martial charges were preferred against the applicant:

(1) Charge 1, Violation of Article 120 (Rape), UCMJ:

(a) Specification 1: In that he did, at or near Camp Humphreys, Republic of Korea, on or about 23 June 2019, commit a sexual act upon SPC [REDACTED] by penetrating SPC [REDACTED] vulva with the applicant's body part to wit: finger, with an intent to gratify the sexual desire of the applicant, without the consent of SPC [REDACTED]

(b) Specification 2: In that he did, at or near Camp Humphreys, Republic of Korea, on or about 23 June 2019, commit a sexual act upon SPC [REDACTED] by penetrating SPC [REDACTED] vulva with the applicant's penis, with an intent to gratify the sexual desire of the applicant, without the consent of SPC [REDACTED]

(c) Specification 3: In that he did, at or near Camp Humphreys, Republic of Korea, on or about 23 June 2019, commit a sexual act upon SPC [REDACTED] by penetrating SPC [REDACTED] mouth with the applicant's penis, with an intent to gratify the sexual desire of the applicant, without the consent of SPC [REDACTED]

(2) Page 2 of the DD Form 458 is not available for the Board to view

c. On an unspecified date, his company level commander notified him that he was initiating action to separate him, under the provision of Army Regulation 635-200, Chapter 14-12c, for commission of a serious offense, with a characterization of service as under honorable conditions (general). The reason for his proposed action: "On or about 23 June 2019 you sexually assaulted and strangled Specialist [REDACTED]" He notified the applicant:

(1) He had the right to consult with military and/or civilian counsel at no expense to the Government.

(2) He could request a hearing before an administrative board or could provide written statements instead of request board proceedings.

(3) He could submit a conditional waiver of his rights to have his case heard by an administrative separation board.

d. The applicant's record does not contain, and he did not provide evidence that he acknowledged the notification of initiation separation from service or that he provided written statements on his own behalf.

e. On 18 June 2020, the separation approval authority approved the applicant's separation from service, under the provision of Army Regulation 635-200, chapter 14-12c, for commission of a serious offense. He directed the applicant's service be characterized as under honorable conditions (general).

f. On 3 September 2020, he was discharged in the rank/grade of specialist/E-4 by reason of misconduct (serious offense) under the provisions of Army Regulation 635-200 with a under honorable conditions (General) discharge. He received a separation code of "JKQ" and a reentry code of "3". He completed 2 years and 13 days of active service. His DD Form 214 shows he was awarded or authorized the following awards:

- National Defense Service Medal
- Korea Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon

6. A review of his AMHRR revealed the GOMOR with associated documents is interfiled in the service folder associated with the applicant's approved separation documents.

7. By regulation, an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

8. Chapter 14-12c states Soldiers are subject to separation under the provisions of this paragraph for a commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted. Counsel's contentions, the applicant's military records, and regulatory guidance, including Department of Defense Instruction 5505.07, were carefully considered.

2. The Board determined a preponderance of the evidence shows an error or injustice did not occur when the applicant's request to be untitled for assault by strangulation and rape were denied by the Criminal Investigation Division (CID). The Board found that probable cause existed at the time of titling and still exists to show the offenses occurred and the applicant committed the offenses.

3. The Board first noted the victim declared that she did not want to participate in the prosecution of the applicant for sexual assault against her. Despite the victim deciding not to cooperate in the prosecution, the Board found probable cause existed at the time of titling for these offenses and still exists and the applicant should remain titled even though the victim did not participate in court-martial proceedings. The Board additionally considered the withdrawal and dismissal of court-martial charges.

4. Next, the Board considered the General Officer Memorandum of Reprimand for sexual assault and strangulation in violation of Article 120 and 128 of the Uniform Code of Military Justice and subsequent separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense for sexual assault and strangulation.

5. The Board carefully reviewed the various statements provided by the applicant, brief submitted by counsel, and statement by the applicant in support of his application. After reviewing all the evidence, the Board concluded the preponderance of the evidence supports the victim's account and probable cause still exists that the applicant committed the offenses.

6. 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and

record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing sexual assault and strangulation. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

7. Upon review of the applicants petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the General Officer Memorandum of Reprimand, issued on 12 March 2020 is substantially incorrect and supports removal. The Board noted the applicant's GOMOR is interfiled with his separation packet and not filed separately in his AMHRR.

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

BOARD VOTE:

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.

5/5/2025

X 




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 (Armed Forces), 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 Army Board for Correction of Military Records (ABCMR). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record.

a. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The 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.

3. DOD Instruction 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), 8 August 2023, establishes policy, assigns responsibilities, and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DOD law enforcement activity (LEA) reports and indexing them in the DCII.

a. Public Law 106-398, section 552, and Public Law 116-283, section 545, codified as a note in Title 10, U.S. Code, section 1552, establishes procedures for DOD personnel through which:

(1) covered persons titled in DOD LEA reports or indexed in the DCII may request a review of the titling or indexing decision; and

(2) covered persons titled in DOD LEA reports or indexed in the DCII may request their information be corrected in, expunged, or otherwise removed from DOD LEA reports, DCII, and related records systems, databases, or repositories maintained by, or on behalf of, DOD LEAs.

b. DOD LEAs will title subjects of criminal investigations in DOD LEA reports and index them in the DCII as soon as there is credible information that they committed a criminal offense. When there is an investigative operations security concern, indexing the subject in the DCII may be delayed until the conclusion of the investigation.

c. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Judicial or adverse administrative actions will not be taken based solely on the existence of a DOD LEA titling or indexing record.

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DOD LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion of their information in the DOD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DOD LEA report, DCII, and any other record maintained in connection with the DOD LEA report when:

(a) probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred;

(b) probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense; and

(c) such other circumstances as the DOD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs 3.2.a.(1) and (2).

(2) In accordance with Public Law 116-283, section 545, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DOD LEA head or designated expungement official will also consider:

(a) the extent or lack of corroborating evidence against the covered person with respect to the offense;

(b) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and

(c) the type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

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; ensures that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and ensures 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. Chapter 1-4 stipulates that 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. Chapter 3 (Unfavorable Information in Official Personnel Files) states 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.

c. Chapter 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) states nonpunitive administrative letters of reprimand, admonition, or censure in official personnel files, such as a memorandum of reprimand, may be filed in a Soldier's AMHRR only upon the order of a general officer-level authority and is to be filed in the performance folder. 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 AMHRR, the recipient's submissions are to be attached. Once filed in the

AMHRR, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

d. Chapter 7-2 (Policies and Standards) states once an official document has been properly filed in the AMHRR, 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 AMHRR.

e. Chapter 7-2a, states that once an official document is properly filed in the AMHRR, it is presumed to be administratively correct and 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 AMHRR. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

5. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12b for Misconduct (Serious Offense) would receive a separation code of "JKQ"

6. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.

7. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 May 2014, prescribes policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the Official Military Personnel File, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Chapter 3-6 states that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency.

b. Appendix B shows letters/memorandums of reprimand, censure, and admonition are filed in the performance folder unless directed otherwise by the Department of the Army Suitability Evaluation Board.

8. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Chapter 14 establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Paragraph 14-12c states Soldiers are subject to separation under the provisions of this paragraph for a commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense.

//NOTHING FOLLOWS//