

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 May 2025

DOCKET NUMBER: AR20240008718

APPLICANT REQUESTS:

- removal of DA Form 67-9 Company Grade Officer Evaluation Report (OER)) for the rating period 15 May 2015 through 21 April 2016 from his Official Military Personnel File (OMPF)
- removal of any documents covering this rating period be added to his restricted fiche or removed altogether

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

- DD Form 149 (Application for Correction of Military Record)(online)
- Two Signature Pages
- Orders 22-5279-00001, 6 Oct 15
- Evaluation Entry System (ESS) (U.S. Army Human Resources Command) Screenshot
- Letter of Support DPG__, 30 Jun 23

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 that in April 2016, he was given a relief for cause OER for his actions in March 2016. This evaluation resulted in several injustices:

- Inaccurate rating period
- He was rushed into signing the OER without being allowed to seek resources to either understand the ramifications or the importance of his comments on the OER
- No initial or quarterly counseling
- No OER support form from his rater or senior rater

- He was never given the opportunity to provide an OER support form to his rater, which is a crucial part of the evaluation process
- The rater was unduly pressured to change their rating of him by his senior rater, which compromised the fairness of the evaluation
- Inaccurate or not concise rater and senior rater comments

a. His OER was submitted without any counseling being completed (per Army Regulation (AR) 623-3 (Evaluation Reporting System) Section II Para 1-8 e). He was also rushed into signing the OER by his senior rater without being given any time to consult a mentor or a lawyer as to what this could mean for him and his career moving forward. He was never provided an OER support form from his rater or senior rater. He never provided his rater with an OER support form for this rating period.

b. The rater and senior rater's remarks were not concise; they mentioned a General Officer Memorandum of Reprimand (GOMOR) but did not mention that it was a locally filed GOMOR. Had he been given the opportunity to provide comments, he would have noted that the GOMOR was locally filed and believed the relief for cause was excessive. His rater was also pressured to change his rating of him by his senior rater, and he knows this because the evaluation went through several versions to be submitted (per AR 623-3 Section III Para 1-10 a). The rating period of the OER was not accurate. As seen in his Active-Duty Operational Support (ADOS) orders, he joined Area Support Group-Qatar in October 2015, mobilizing him to the CENTCOM Area of Responsibility (AOR). Due to these injustices, he requests that this OER (HQDA# 599697) and any documents covering this rating period be added to his restricted fiche or removed altogether.

c. The OER in question has denied him several opportunities, i.e., assignment to a Joint Duty assignment and serving as his unit's Sexual Assault Prevention and Response Victim Advocate. After being denied the opportunity to apply for SAPR Victim Advocate (VA), he spoke to his mentor about why he was denied, and he informed him that this process existed because he had no prior knowledge before then. He is now an Active Guard/Reserve (AGR) Soldier in the Army Reserves and plans to make it a career. Since this took place, he has done his best to live his life by the Army values and be an example to his family and his Soldiers. Having this OER in his file has been an impediment and does not indicate who he is as a man, husband, father, friend, officer and Soldier.

3. The applicant provides and his service record shows:

- He enlisted in the Air Force National Guard (ARNG) and entered active duty on 1 September 2009. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty on 19 February 2010 and

transferred to the Maryland ARNG, he completed 5 months and 19 days net active service

- He entered active duty on 26 June 2011, his DD Form 214 shows he was released from active duty on 31 August 2010 and transferred to the Maryland AFARNG, he completed 1 year, 2 months and 5 days net active service
- NGB Form 22 (Report of Separation and Record of Service), 3 October 2012 shows the applicant was transferred to the U. S. Army
- He enlisted in the Army on 4 October 2012 as a Cadet
- NGB Form 22, 14 May 2014 shows the applicant was discharged from the MDARNG
- He was appointed and executed an Oath of Office a Reserve commissioned officer on 15 May 2014 in the grade of second lieutenant/2LT
- He entered active duty on 21 September 2014, his DD Form 214 shows he was released from active-duty training on 29 January 2015 and transferred to the Maryland ARNG, he completed 4 months and 9 days net active service
- Orders 22-5279-0001, 6 October 2015 show the applicant was ordered to active duty in support of Operation Enduring Freedom

4. His OER for the period of 15 May 2015 through 21 April 2016 shows he received an evaluation due to a "Relief for Cause" submission. The Relief for Cause was directed by the brigade executive officer as the result of the applicant receiving a GOMOR for Driving Under the Influence (DUI). The OER further shows:

(1) The applicant has supported the Army SHARP program, he exhibited strong motivation for his duties, he continuously sought ways to improve help desk operations. He obtained the additional skill identifier "3C" for operation contract support and improved telephone control officer program to support more than 40 users and trained 37 representatives.

(2) He received a GOMOR for a DUI. He has high potential for continued service as an effective leader in the U. S. Army. While under investigation he continued to demonstrate his dedication to the mission by successfully completing all assigned duties and living by the Army values. His continued devotedness to the unit demonstrated maturity and personal courage to overcome his lapse in judgment. He was rated as not qualified.

5. His record further shows:

- He entered active duty on 16 October 2015 his DD Form 214 shows he was released from active duty on 27 March 2017 and transferred to the Maryland ARNG, he completed 4 months and 9 days net active service
- ESS HRC Screenshot, shows his support form, raters, and senior raters

- He entered active duty on 12 June 2019 his DD Form 214 shows he was released from active duty on 2 June 2020 and transferred to the USAR, he completed 11 months and 21 days net active service
- Letter of Support from retired Major General DPG___, 30 Jun 23, shows he recommends the OER, and associated documents be removed immediately; the applicant made a poor decision on 5 March 2016 but he has since turned his life around and became an effective leader with great potential to serve at higher levels, he reiterates the applicant's accomplishment as stated on the OER; the GOMOR served his purpose; the applicant has exceptional potential for future service in our Army and enable our Army to take advantage of his skills and professionalism
- His retirement Accounting Statement, 17 January 2025 shows 15 years qualifying for retirement and 3730 points creditable
- Orders 0022083433, 4 March 2025 shows his permanent change of station effective 30 June 2025 to Joint Base San Antonio (JBSA) Fort Sam Houston, TX
- His record is void of a GOMOR

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board, upon careful consideration of the evidence of record, determined that the applicant has not demonstrated by a preponderance of the evidence that a procedural error occurred which was prejudicial to the applicant. Likewise, the applicant has not established by a preponderance of the evidence that the contents of the referred OER was substantially incorrect so as to warrant removal.

The governing regulation provides that, in order to justify deletion of an evaluation report, the presumption of regularity must be overcome by clear and convincing evidence. While support forms or academic counseling forms may be utilized to facilitate the preparation of an evaluation report, such documents are not controlling with respect to the content ultimately entered on the evaluation report itself. Accordingly, no appeal may be sustained solely on the basis that information contained in a support form or associated counseling document was omitted from the evaluation report. Therefore, the Board concludes that the applicant has failed to meet the requisite burden of proof, and relief is denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

//SIGNED//

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 623-3 (Evaluation Reporting System) prescribes the policy for completing the DA Form 67-9, and DA Form 67-10-1, that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 1-9 states, in relevant part, Army evaluation reports are independent assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army's Officer Corps or NCO Corps within the period covered by the report. Performance will be evaluated by observing actions, demonstrated behavior, and results from the point of view of the Army Values, the Army's leadership framework, and responsibilities identified on evaluation report forms and counseling forms. Potential evaluations will be performance-based assessments of rated officers' or NCOs' ability to perform in positions of greater responsibility and/or higher grades/ranks compared to others of the same rank. These assessments will apply to all officers and NCOs, regardless of their opportunity to be selected for higher positions or grades and will ignore such factors as impending retirement or release from active duty; potential evaluations continually change and are ultimately reserved for Headquarters Department of the Army (HQDA).

b. Paragraph 1-11 states when it is brought to the attention of a commander or commandant that a report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, that commander or commandant will conduct an inquiry into the matter. The commander's or Commandant's Inquiry (CI) will be confined to matters related to the clarity of the evaluation report, the facts contained in the report, the compliance of the evaluation with policy and procedures established by HQDA, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official.

c. Part IV, block b (DA Form 67-10-1) will be an assessment of the rated officer's overall performance when compared with all other officers of the same rank the rater has previously rated or currently has in their population.

d. Paragraph 3-33k states the rated Soldier will always be the last individual to sign the evaluation report. The rated Soldier's signature will verify the accuracy of the

administrative data in Part I, including the accuracy of the name and SSN on the evaluation report, rank and date of rank, branch or military occupational specialty data, period covered and nonrated time; the rating officials in part II; Army physical fitness test and height and weight entries. This procedure ensures that the rated Soldier has seen the completed report. It also increases the administrative accuracy of the report and will normally preclude an appeal by the rated Soldier based on inaccurate administrative data.

e. Paragraph 3-33e states CDRs should exercise due diligence in maintaining rating schemes and ensuring the rendering of reports that are due. As a result, requests for issuance of nonrated time statements should be minimized. Requests for the issuance of nonrated time statements will be submitted only for periods when an evaluation report should have been rendered but was not, and all efforts by the rated Soldier and his or her unit to obtain a report have been exhausted. Such requests will be reviewed on a case-by-case basis and may or may not be approved by Headquarters Department of the Army.

f. Paragraph 4-1 states the Evaluation Report Redress Program consists of several elements at various command levels. The program is both preventive and corrective in that it is based upon principles structured to prevent, and provide a remedy for, alleged injustices or regulatory violations, as well as to correct them once they have occurred.

g. Paragraph 4-2 states an OER may have administrative errors or may not accurately record the rated Soldier's potential or the manner in which he or she performed his or her duties. The Redress Program protects the Army's interests and ensures fairness to the evaluated officer. At the same time, it avoids impugning the integrity or judgment of the rating officials without sufficient cause. A commander's inquiry (CI) and an evaluation report appeal are separate and distinct actions. Rated Soldiers may seek an initial means of redress through a CI; however, a CI is not a prerequisite for the submission of an appeal.

h. Paragraph 4-11 states evaluation reports accepted for inclusion in the Soldier's official record are presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant must produce evidence establishing clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

3. 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.

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. 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.

5. 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.

//NOTHING FOLLOWS//