

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 August 2025

DOCKET NUMBER: AR20240009895

APPLICANT REQUESTS:

- Removal of DA Form 2166-9-2 (Noncommissioned Officer Evaluation Report (NCOER)) for the period ending 29 September 2020 from his Army Military Human Resource Record (AMHRR)
- Reinstatement into the Army National Guard (ARNG)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Enclosure 1 - NCOER
- Enclosure 2- Memorandum Non-Selection for Continued Unit Participation
- Enclosures 3 and 4 - Excerpts from Army Regulation 623-3 (Evaluation Reporting System)
- Enclosures 6 through 10 - 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, in pertinent part:

- His requesting that the entire NCOER from 1 October 2019 through 29 September 2020 be removed from his AMHRR
- The NCOER contains unproven derogatory information in contradiction with Army Regulation 623-3 (Evaluation Reporting System)
- He is also asking to be reinstated in the ARNG
- He received the NCOER and it was submitted to his AMHRR in 2022
- On 7 July 2023, he was notified he was not considered for retention by the Calendar Year 2023 Qualitative Retention Board

- He would be discharged from the Massachusetts ARNG no later than 31 December 2023
- His rater wrote his performance was severely impacted due to his lapse of judgment; he was never counseled for this lapse of judgement nor was an investigation conducted
- The first he heard about poor performance was when he received his NCOER
- The letters of support demonstrate the unproven derogatory information in this NCOER

3. The applicant provides and his service record shows:

- On 17 May 1999, he enlisted in the ARNG
- NCOERs from 5 December 2016 through 30 September 2019 show he was consistently rated as met standard, exceeded standard, and far exceeded standard and qualified or highly qualified
- His NCOER for the period ending 29 September 2020 (the NCOER in questions) shows he was rated as met standard, exceeded standard, and far exceeded standard with the comments "failed to seek clarifying guidance when not assigned a task; often frustrated in the face of adverse conditions"; "struggled to meet the general expectations of follow on missions and forward planning post ammunition related tasks"; and "Soldier's otherwise great performance was severely impacted due to his lapse in judgement during rating period; failed to continue acting with the commensurate ability and performance and attend to his duties effectively"; his senior rater rated him as qualified
- NCOERs from 29 September 2021 through 26 December 2024 show he was consistently rated as met standard, exceeded standard, and far exceeded standard and qualified or highly qualified
- On 7 July 2023, he received a memorandum non-selection for continued unit participation stating he was considered for qualitative retention and was not selected for retention; he would be discharged from the ARNG no later than 31 December 2021
- The applicant includes excerpts from Army Regulation 623-3 (Evaluation Reporting System) and letters of support for the Board's consideration

BOARD DISCUSSION:

1. 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.

- a. Removal of DA Form 2166-9-2 (NCOER) for the period ending 29 September

2020 from his AMHRR. Deny. 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 DA Form 2166-9-2 (NCOER) for the period ending 29 September 2020 is substantially incorrect and support removal. Therefore, the Board denied relief.

b. Reinstatement into the ARNG. Deny. The Board noted he received a memorandum for non-selection for continued unit participation, was considered for qualitative retention and was not selected for retention; therefore, he would be discharged from the ARNG. The Board determined the applicant has not demonstrated by a preponderance of the evidence that relief is warranted and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 623-3 (Evaluation Reporting System), effective 1 April 2014 and in effect at the time, prescribed the policies and tasks for the Army's Evaluation Reporting System.

a. The rater will document any substantiated finding an an Army or Department of Defense investigation or inquiry, that the rated Soldier committed an act of sexual harassment or sexual assault. Paragraph 2-14 (The Senior Rater) will do the same.

b. Army Regulation 60-20 (Army Command Policy) provides policy for when items will be mentioned in a Soldier's evaluation report when substantiated by a completed command or other official investigation to include investigations by civil authorities.

c. No reference will be made to an incomplete investigation concerning a Soldier. References will be made only to actions or investigations that have been processed to completion, adjudicated, and had final action taken before submitting and evaluation.

d. Any verified derogatory information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged or awaiting trial. While the fact that a rated Soldier is under investigation or on trial may not be mentioned in and evaluation until the investigation or trial is completed, this does not preclude the rating chain's reference to verified derogatory information. For example, when an interim evaluation report with verified information is made available to a commander, the verified information may be included in the evaluation report. For all evaluation reports, if previously reported information later proves to be incorrect or erroneous, the Soldier will be notified and advised of the right to appeal the evaluation report.

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

f. Substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Failure to submit an appeal within this time would require the appellant to submit his or her appeal to the ABCMR. The Army Special Review Board will not accept

appeals over 3 years old or appeals from Soldiers who are no longer serving on active duty or as part of the U.S. Army Reserve or Army National Guard.

g. The burden of proof in the appeal process rests with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(1) the presumption of regularity will not be applied to the evaluation report under consideration and

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

h. Clear and convincing evidence will be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. If the adjudication authority is convinced that an appellant is correct in some or all of the assertions, the clear and convincing standard has been met with regard to those assertions.

i. For a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources. Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions allowing them a good opportunity to observe firsthand the appellant's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the evaluation report was rendered. The results of a Commander's or Commandant's Inquiry or Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation may provide support for an appeal request.

3. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), 31 March 2014, provided procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army's Evaluation Reporting System. Paragraph 6-1 (Deciding to Appeal) states an appellant who perceives that an evaluation report is inaccurate in some way has the right to appeal for redress to the appropriate agency. However, before actually preparing an appeal, an objective analysis of the evaluation report in question should be made.

4. Army Regulation 600-8-104 (AMHR Management) prescribes Army policy and procedure for the creation, utilization, administration, maintenance, and disposition of the AMHRR.

a. This regulation states the OMPF is reflective of a Soldier's permanent record stored in iPERMS. There are various folders within the OMPF, which document a Soldier's military career. Not every Soldier's OMPF will have the same number and types of folders. The types and number of folders will differ based on career path and status. Table 3-1 notes the OMPF folders in the AMHRR.

b. The performance folder of the OMPF contains performance related information. The primary purpose of this folder is to provide necessary information to officials and selection boards tasked with assessing Soldiers for promotion, special programs, or tours of duty. This folder populates various board related applications (for example, Army Selection Board System and National Guard Army Board System).

c. The restricted folder of the OMPF contains documents that may normally be considered improper for viewing by selection boards or career managers. Includes masked documents defined in paragraph 3-10.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets forth the basic authority for the separation of enlisted personnel. Chapter 19 pertains to policy and procedures for voluntary and involuntary separation for the convenience of the Government under the Qualitative Management Program (QMP).

a. The QMP is designed to enhance the quality of the career enlisted force, selectively retain the best qualified Soldiers, deny continued service to nonproductive Soldiers, and encourage Soldiers to maintain their eligibility for further service.

b. The appropriate selection boards review the performance portion of the OMPF, Personnel Qualification Record, Enlisted Record Brief, official photograph, and other authorized documents pertaining to the Soldiers in the QMP zone of consideration. This material forms the basis for the Board's evaluation of the Soldier's past performance and potential for continued service, leading to a determination of whether a Soldier does or does not warrant retention.

c. QMP selection criteria include, but are not limited to the following:

- moral or ethical conduct incompatible with the values of the noncommissioned officer (NCO) corps and the Army ethic
- lack of potential to perform NCO duties in current grade
- decline in efficiency and performance over a continued period, as reflected by noncommissioned officer evaluation report of failure of Noncommissioned Officer Education System (NCOES) courses

- recent or continuing disciplinary problems, as evidenced by conviction by court-martial, nonjudicial punishment, or administrative reprimand
- other discriminators such as imposition of a field commander's bar to reenlistment, inability to meet physical fitness standards, and failure to comply with requirements of the Army body composition program

d. A Soldier denied continued service under the QMP may appeal the determination and request retention on active duty on the basis of improved performance and/or presence of material error in the Soldier's record when reviewed by the selection board.

e. Except as otherwise provided in this section, Soldiers who choose not to appeal the QMP selection for denial of continued service or whose appeal is denied, will be involuntarily discharged.

f. Soldiers with 20 or more years of active Federal service at the time of notification of QMP selection, who choose not to appeal or where appeal is denied, may apply for voluntary retirement under the provisions of chapter 12 (Retirement for Length of Service) of this regulation. Soldiers with a minimum of 17 years, 9 months of active Federal service at the time of notification of QMP selection, who choose not to appeal, will be retained to 20-year retirement eligibility upon request.

//NOTHING FOLLOWS//