

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 April 2025

DOCKET NUMBER: AR20240010554

APPLICANT REQUESTS:

- removal of the DA Form 67-10-1 (Company Grade Plate (O1-O3; WO1-CW2) Officer Evaluation Report (OER) covering the period 14 December 2015 through 5 January 2017 (hereafter referred to as the contested OER) from his Army Military Human Resource Record (AMHRR)
- 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 under the Provisions of Title 10, U.S. Code, Section 1552)
- DA Form 638 (Recommendation for Award), 24 September 2016
- Contested OER

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he received the contested OER as a first lieutenant (1LT) while serving in Iraq. The evaluation conflicts with his honorable service and achievements detailed in his end of tour award that was submitted by his rater. His request for a Commander's Inquiry into his evaluation was never rendered and he never received support for the 451st ESC [Expeditionary Sustainment Command] Judge Advocate Group at the time of his demobilization.
3. After having prior enlisted service in the U.S. Army Reserve (USAR), he was appointed as a Reserve commissioned officer in Regular Army Quartermaster (QM) Corps in the rank/grade of second lieutenant/O-1 and executed an oath of office, effective 12 May 2012. He was promoted to first lieutenant/O-2, effective 25 November 2013.

4. 4th Sustainment Command (Expeditionary), Joint Base-San Antonio Fort Sam Houston, TX, Orders 15-350-00003, dated 16 December 2015, ordered him to active duty as a member of his Reserve component unit to report to Fort Hood, TX on 28 February 2016 for a period of 400 days for the purpose of mobilization in support of Operation Inherent Resolve (OIR).

5. He received the referred OER covering the period 14 December 2015 through 5 January 2017 on or about 1 February 2018, which addressed his duty performance as the Supply and Services Officer for the 300th Sustainment Brigade Detachment 2 (Forward), Camp Taji, Iraq. His rater was the Medical & Operations Supply Officer-In-Charge and his senior rater was the Chief of Operations. His rater and senior rater digitally signed the OER on 29 December 2016. He digitally signed the OER on 1 February 2018. The OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry "REFRAD [released from active duty]";

b. Part II (Authentication), block d (This is a referred report, do you wish to make comments?), a checkmark was placed in the appropriate block, signifying to the applicant that he was receiving a referred report. In that same block, a checkmark was placed in the "Yes" block, indicating the applicant wished to make comments;

c. Part IV, block b (This Officer's Overall Performance is Rated as), he was rated "Capable" and his rater entered the following comments:

[Applicant] is capable of performing well. His overall performance for the deployment was commensurate to his rank. There is room for improvement. He did well on things that are of importance to him. He did not take well to constructive criticism and is not receptive to other points of views. He was given ample opportunity to excel at the A&A [Advise and Assist] mission and his performance was deficient. Should have been proactive on LE's. He was focused on being the S4 than A&A. He missed execution on directed A&A tasks, but executed as a team member.

d. Part IV, block c2 (Presence), his rater entered the following comments:

[Applicant] needs to continue to define and refine himself as a leader. At times, he was the utmost professional, and at others, he was very difficult and had conflict with multiple unit members. He must always remember that as an Officer, he will always be watched by others. Respect is earned out of action, not demanded. The whole and complete truth and trust is of the utmost importance.

e. Part IV, block c3 (Intellect), his rater entered the following comments:

[Applicant] shows the mental capacity to be a good logistical staff officer. To succeed, and perform well, he must always remember interpersonal tact and positive communication skills can make or break relationships, and those relationships are needed to complete tasks and mission. There is a time to talk, there is a time to learn and there is a time to listen to both superiors and subordinates.

f. Part IV, block c4 (Leads), his rater entered the following comments:

[Applicant] was able to overcome personal issues and win the loyalty of his NCOIC. Definitely communicates outside of the Command. Has worked in coordination and collaboration with the 1st TSC and CJFLCC-OIR to complete S4 requirements as required.

g. Part IV, block c5 (Develops), his rater entered the following comments:

[Applicant] was able to justify and convince the Command to send his NCOIC to GCSS-Army training that was not critical to mission, but the soldier's future career. Must focus on developing others regard to supply to enhance the team, rather than validate self-knowledge.

h. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), he was rated "Qualified."

i. Part VI, block c (Comments on Potential), his senior rater entered the following comments:

[Applicant] has great potential as an officer as he listens and takes advice from his leaders. He has skills that can benefit the Army if mentored and shaped. He effectively utilized interpersonal skills working with his NCOIC to better their relationship. [Applicant] leans forward on things that he is motivated about however, on objectives that he is less motivated about he is not as forward leaning. Promote after peers.

6. He acknowledged receipt of the referred OER on 4 January 2017 and submitted the following comments:

Since arriving to Iraq, I had an extremely difficult time working with Major S____ (Rater) and have expressed my concerns with my Senior Rater on multiple occasions. My concerns included my worry that I would receive a negative OER from Major S____ and that there was a lack of mentorship despite my multiple attempts to receive a completed OER Support Form. An OER Support Form has never been completed for me and I have submitted a written request for a Commanders Inquiry

to my referred OER which has yet to be responded to. S-4 duties that I had been in charge of were met with resistance and have been used against me to make it appear that I chose to not focus on the organizations mission (Advise and Assist). I have been accused of neglecting my organizational mission but there is no instance where I have done such a thing or fell short in achieving mission requirements. Whether I was serving as a Mission Commander or simply driving a tactical vehicle, I consistently benefited my Supply and Services teams deployment mission. There have been no instances which can provide proof that I have had any shortfalls or been deficient in my deployed mission. Major S_____ has mentioned to me in a recent counseling that I had failed to schedule leadership engagements at the Chemical Warehouse which is true only because a decree was established that no coalition forces can visit the facility; this decree has been spoken multiple times by our linguist and I have personally informed Major S_____. My rater submitted end of tour award (ARCOM [Army Commendation Medal]) conflicts with all negative statements included in my OER. My ARCOM shows the great work that I put into the organizations mission and how I was a valuable team player. I also received documentation from my rater stating that I had no negative counseling which appears to have been part of his plans to keep me mislead to his intentions of giving me a negative evaluation.

7. A review of the applicant's AMHRR shows the contested OER is filed in the performance folder of his Official Military Personnel File.
8. His records are void of documentation and he did not provide any evidence showing a Commander's Inquiry (CI) was conducted. Further there is no evidence indicating he appealed the contested OER to the U.S. Army Human Resources Command and the Officer Special Review Board.
9. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 28 January 2017 and released back to his USAR unit. Item 18 (Remarks) shows he served in Iraq from 6 April 2016 through 24 December 2016.
10. He provided a DD Form 638, dated 24 September 2016 that shows he was recommended for and was awarded the ARCOM on 23 November 2016 for his service in Iraq.
11. He was promoted to the rank/grade of major/O-4 effective 1 July 2024 and is currently serving with his USAR troop program unit in Ohio.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to deny relief based upon the lack of demonstrated error in the processing and/or preparation of the contested OER. However, based upon the information reflected on the DA Form 638 and the contested OER, which was drafted by the same rater, the Board concluded the entries provide contradictory language of the applicant during the rated period. As a result, the Board recommended granting removal of the contested OER and replacing it with a memorandum of non-rated time.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XXX	:XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- removing from his record DA Form 67-9 for the rating period 14 December 2015 through 5 January 2017
- placing a statement in his record for the rating period 14 December 2015 through 5 January 2017

//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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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. 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. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to: Official Military Personnel File, finance-related documents, and non-service related documents deemed necessary to store by the Army. Paragraph 3-6 provides that once a document is

properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or another authorized agency.

4. Army Regulation 623-3 (Evaluation Reporting System) prescribed the policy for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System. It provided principles of support, standards of service, and policy governing all work required, including Army evaluation policy and guidance regarding redress programs, which include Commander's Inquiries and appeals.

a. Paragraph 1-11 (Commander's or Commandant's Inquiry) provides that when it is brought to the attention of a commander that a report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, that commander will conduct an inquiry into the matter. The Commander's Inquiry 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 Headquarters, Department of the Army (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.

b. Paragraph 3-26 (Referred Evaluation Reports) provides that any report with negative remarks about the rated officer's values or leader attributes/skills/action in rating official's narrative evaluations will be referred to the rated officer by the senior rater for acknowledgment and comment before being forwarded to HQDA.

c. Paragraph 3-28 states the referral process ensures the rated Soldier knows his/her OER contains negative or derogatory information and affords him/her the opportunity to sign the evaluation report and submit comments, if desired.

(1) The senior rater will refer a copy of the completed OER or academic evaluation report (AER) (an OER or AER that has been signed and dated by the rating officials) to the rated Soldier for acknowledgment and comment.

(2) Upon receipt of the rated officer's acknowledgment (for example, receipt of a signed OER or AER, email, signed certified mail document, signed acknowledgment statement accompanying memorandum, submission of signed comments, and so forth), the senior rater will enclose it, any written comments provided by the rated officer, and the referral memorandum, with the original OER or AER for forwarding to the reviewer (if applicable).

(3) If the senior rater (for OERs) or reviewing official (for AERs) decides the comments provide significant new facts about the rated Soldier's performance that could affect the evaluation of the rated Soldier, he or she may refer the comments to the other

rating officials, as appropriate. The rating officials, in turn, may reconsider their evaluations of the rated Soldier. The senior rater or reviewing official will not pressure or influence another rating official. Any rating official who elects to raise their evaluation as a result of this action may do so. However, the evaluation may not be lowered because of the rated Soldier's comments. If the OER or AER is changed but still requires referral, the OER or AER will again be referred to the rated Soldier for acknowledgment and the opportunity to provide new comments, if desired. Only the latest acknowledgment ("YES" or "NO" on OER or AER signed by the rated Soldier) and the rated Soldier's comments, if submitted, will be forwarded to HQDA.

d. Paragraph 4-7 provides evaluation reports accepted for inclusion in the official record of a Soldier 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. 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. Appeals based on administrative error only will be adjudicated by the HQDA Evaluation Appeals Branch. Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are substantive in nature and will be adjudicated by the Army Special Review Board. These are generally claims of an inaccurate or an unjust evaluation of performance or potential or claims of bias on the part of the rating officials.

e. Paragraphs 4-11a and 4-11b state an evaluation report accepted for inclusion in the official record of a rated Soldier's OMPF is presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of the rating officials at the time of preparation. The burden of proof rests with the applicant. Accordingly, to justify deletion or amendment of a report, the applicant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration and action is warranted to correct a material error, inaccuracy, or injustice.

f. Paragraph 4-11d states 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 (see Department of the Army Pamphlet 623-3). 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 report was rendered.

5. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to Department of the Army. It provides that:

a. If a referred OER is required, the senior rater will place an "X" in the appropriate box in Part II, block d, on the completed OER. The OER will then be given to the rated officer for signature and placement of an "X" in the appropriate box in Part II, block d.

b. The rated officer may comment if he or she believes that the rating and/or remarks are incorrect. The comments must be factual, concise, and limited to matters directly related to the evaluation rendered on the OER; rating officials may not rebut rated officer's referral comments.

c. The rated officer's comments do not constitute an appeal. Appeals are processed separately. Likewise, the rated officer's comments do not constitute a request for a Commander's Inquiry. Such a request must be submitted separately.

//NOTHING FOLLOWS//