

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2025

DOCKET NUMBER: AR20240010613

APPLICANT REQUESTS: removal of the "Victim of Sexual Assault Statement for Administrative Separations," memorandum from his Interactive Personnel Electronic Records Management System (iPERMS) account. Additionally, he requests an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record) (2)
- Memorandum for Record from Sergeant First Class (SFC) R_ dated 16 June 2023, that states the "Victim of Sexual Assault Statement for Administrative Separations," memorandum on behalf of the applicant was mistakenly signed as not filing an unrestricted report. There was an oversight in an attempt to expedite completion of the retirement packet in its entirety.
- Memorandum for Commander, dated 29 September 2021, purportedly by the applicant that shows he answered "NO" in response to question – "Did you file an unrestricted report of sexual assault in which you were a victim within the past 24 months?" The applicant affirms this memorandum was forged, not completed by him, and incorrectly indicates he had not been assaulted prior to discharge.
- DD Form 2910 (Victim Reporting Preference Statement), signed by the applicant and the Sexual Assault Response Coordinator (SARC)/Sexual Assault Prevention and Response Victim Advocate, on 12 April 2021. The form states the principal purpose is to document elements of the sexual assault response and/or reporting process and to comply with procedures set up to effectively manage the Sexual Assault Prevention and Response Program. This form is routinely used to permit disclosure to records of closed cases of unrestricted reports to the Department of Veterans Affairs (VA) for the purpose of providing mental and medical care to former Service members, to determine eligibility for or entitlement to benefits, and to facilitate collaborative research activities between the Department of Defense and the VA.
- Email correspondence between the applicant, a representative from the National Guard Bureau (NGB), and a representative from the Army Review Board Agency in regard to the applicant's request for removal of the memorandum from his iPERMS. Due to his retired status, he was advised that his only recourse was to apply to the Army Board for Correction of Military Records (ABCMR). In

subsequent emails, the applicant provided supporting documents to support his contention that the memorandum was forged and inaccurate.

- Medical progress notes (11 pages), that detail his injuries and illnesses including post-traumatic stress disorder, military sexual trauma.

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 states the "victim statement" memorandum was not completed by him and is incorrect. The memorandum was completed by his Readiness Noncommissioned Officer (NCO), forged, and incorrectly indicates that he had not filed an unrestricted report of sexual assault within the past 24 months. He wants this document removed from iPERMS so that he can submit a corrected memorandum. The NGB does not have the ability to remove this document. Correcting the "Victim of Sexual Assault Statement for Administrative Separations," memorandum will assist the Arkansas Army National Guard (AKARNG) in the processing of his line of duty.

3. A review of the applicant's service record reflects the following:

- a. He enlisted in the AKARNG on 22 August 2001.
- b. He served in Iraq/Kuwait from 7 April 2003 until 16 February 2004.
- c. He served in Iraq from 8 April 2008 to 15 December 2008.
- d. A Memorandum for Commander, dated 29 September 2021, purportedly by the applicant shows he answered "NO" in response to question – "Did you file an unrestricted report of sexual assault in which you were a victim within the past 24 months?" The applicant affirms that this memorandum was forged.
- e. The applicant was honorably discharged and transferred to the Retired Reserve on 27 September 2021. He completed 20 years, 1 month, and 6 days of net service this period.

4. The applicant petitioned the ABCMR requesting removal and/or correction of the "Victim of Sexual Assault Statement for Administrative Separations," memorandum in his iPERMS. On 30 April 2024, the ABCMR Director, closed his application without prejudice or action by the Board, because it appeared the AKARNG had already taken action to correct the error.

5. A review of his Army Military Human Resource Record (AMHRR) indicates the memorandum is contained in his approved separation file.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 concluded based on the preponderance of evidence removal of the "Victim of Sexual Assault Statement for Administrative Separations," memorandum is warranted.

2. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority. However, in the best interest of the Army and the applicant, the Board granted relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	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 AMHRR the "Victim of Sexual Assault Statement for Administrative Separations," memorandum, dated 29 September 2021.

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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states 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 ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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 600-20 (Army Command Policy), chapter 7, states the SARC, will ensure all unrestricted reports of sexual assault, documented with a signed DD Form 2910, are reported to the U.S. Army Criminal Investigation immediately.

4. Army Regulation 600-8-104, Army Military Human Resource Records (AMHRR) Management prescribes policies governing the AMHRR program.

a. The naming convention AMHRR is an umbrella term encompassing human resource records for Soldiers, retirees, veterans, and deceased personnel. The AMHRR contains military service-specific information related to a Soldier's career and 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.

b. The AMHRR is the historical and authoritative source for authentication of veteran or service-related benefits, entitlements, and services.

c. Once properly filed in the AMHRR, the document will not be removed from the record unless directed by an agency or official identified in this regulation which include the Army Board for Correction of Military Records and the Official Record Custodian (ORC).

d. The restricted folder contains documents that may normally be considered improper for viewing by selection boards or career managers. Department of the Army Pamphlet 600-8-104 states do not upload Criminal Investigation/Military Report investigations, SARC, or any other documents as part of the separation packet that would normally be part of the restricted file.

e. A corrected copy of an already filed document may be added to the record at the discretion of the ORC; however, this does not require the original document be deleted. The ORC for the National Guard is the Chief, Personnel Division (ARNG-HRP).

4. National Guard Regulation 600-200 (Enlisted Personnel Management), chapter 6-11, requires that when initiating an administrative separation on any Soldier, for any reason covered in this regulation, commanders must ensure the separation packet contains a statement signed by the Soldier, with the Soldier's answers to the following questions:

a. Did you file an unrestricted report of sexual assault in which you were a victim within the past 24 months?

b. If the answer to the above question is YES, do you believe that his separation action is a direct or indirect result of your sexual assault, or of filing the unrestricted report?

The Special Court-Martial Convening Authority of General Court Martial Convening Authority will all administrative separations involving sexual assault and Soldiers who answered YES to any question listed above.

//NOTHING FOLLOWS//