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INVESTIGATIONS OF SENIOR OFFICIALS

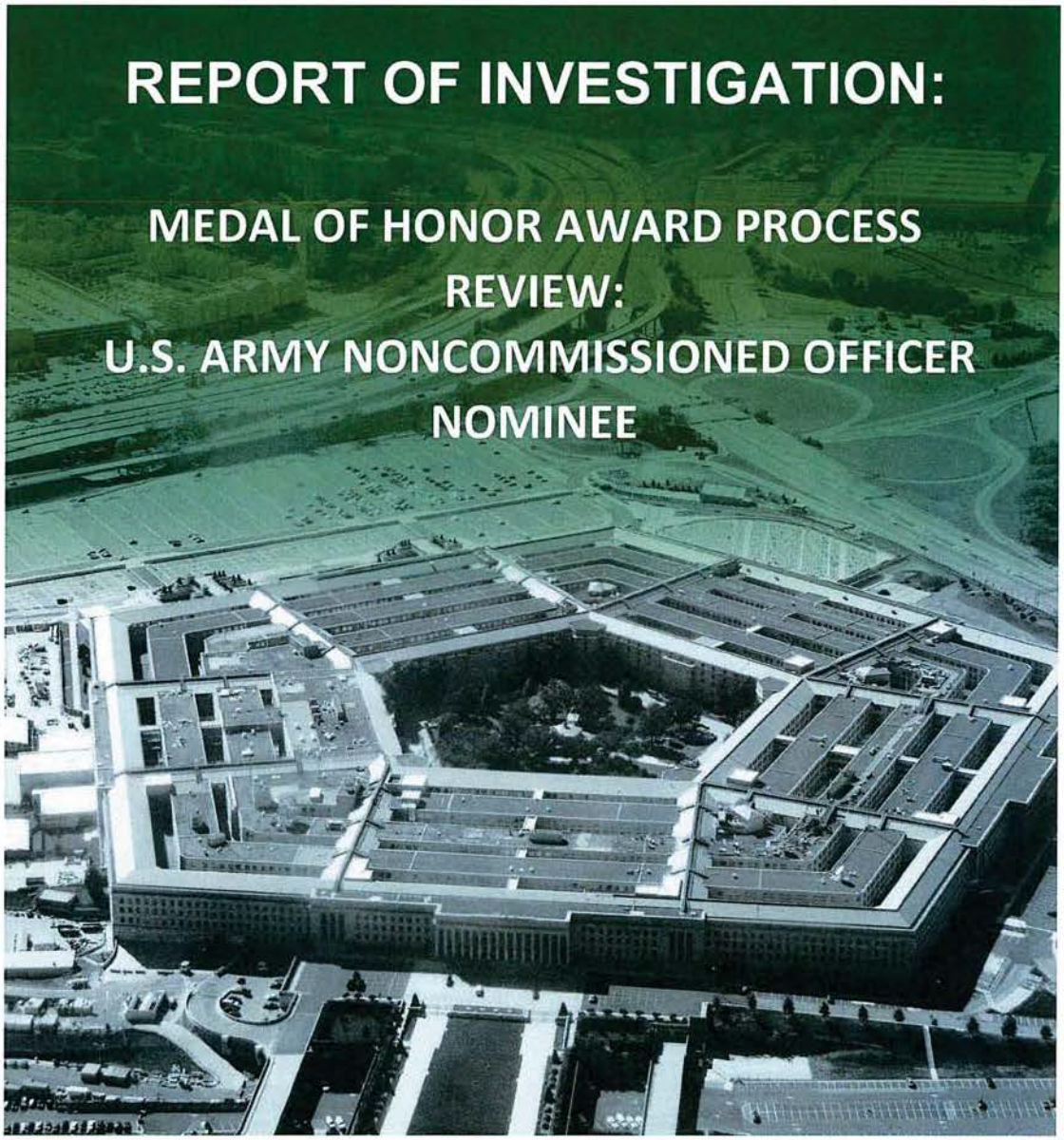
INSPECTOR GENERAL

U.S. Department of Defense

May 4, 2016

REPORT OF INVESTIGATION:

MEDAL OF HONOR AWARD PROCESS REVIEW: U.S. ARMY NONCOMMISSIONED OFFICER NOMINEE



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

The document contains information that may be exempt from mandatory disclosure under the Freedom of Information Act.

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MAY 0 4 2016

MEMORANDUM FOR THE ACTING INSPECTOR GENERAL

SUBJECT: Medal of Honor Award Process Review (Case 20150904-033015)

We recently completed our review of the circumstances surrounding the recommendation to award the Medal of Honor (MOH) to a U.S. Army Noncommissioned Officer for his valorous actions in combat while deployed to Afghanistan in 2013. On two separate occasions, Representative Duncan D. Hunter (R-CA) requested the Secretary of Defense explain why the Secretary of the Army downgraded the nominee's MOH award recommendation to the Silver Star (SS). Specifically, Representative Hunter requested that DoD determine how the Army reached the conclusion to downgrade the nominee's MOH recommendation to a SS; whether the Secretary of the Army has the authority to downgrade a MOH award recommendation; and whether the Army used a U.S. Army Criminal Investigation Command (CID) investigation to downgrade or justify downgrading of the nominee's MOH award recommendation. Subsequent to Representative Hunter's requests, the Deputy Secretary of Defense specifically requested that the DoD Office of the Inspector General determine whether the nominee's award process deviated from the established valor award process.

We determined the nominee's MOH award recommendation followed the established valor award process and that the Secretary of the Army awarded the nominee the SS in accordance with applicable regulations and policies. The Army properly processed the award recommendation in accordance with established regulations and policies. The review process, specifically the Army's Senior Army Decorations Board (SADB), found that the nominee's valorous actions did not meet the MOH criteria outlined in Army Regulation (AR) 600-8-22, "Military Awards," dated June 24, 2013. By majority vote, the SADB recommended the SS.

Department of Defense Manual (DoDM) 1348.33, Volume 1, "Manual of Military Decorations and Awards: General Information, Medal of Honor, and Defense/Joint Decorations and Awards," dated November 23, 2010, and AR 600-8-22, identifies the Secretary of the Army as the approval authority for awards below the MOH. In accordance with applicable regulations and policies, the Secretary of the Army is required to forward to the Secretary of Defense only those Medal of Honor award recommendations he personally endorses. The Secretary of the Army is the approval authority for awards below the Medal of Honor. We found no evidence that the Secretary of the Army relied on the CID investigation in his decision to award the nominee the Silver Star. We determined Secretary McHugh acted within his authority when he decided to award the SS.

We found no evidence that anyone directed CID to initiate its investigation of the Noncomissioned Officer, or that anyone in the awards process used the CID report to justify awarding the SS rather than the MOH. CID began its investigation based on a referral from another law enforcement agency. The Secretary of the Army was made aware of CID's investigation just prior to his review of the MOH award recommendation. Although some in the review process considered the results of the CID investigation, we found that the SADB

members were not aware of CID's investigation when they reviewed the award recommendation and recommended the SS. Further, we found no evidence that the investigation influenced the Secretary of the Army's decision to award the nominee the SS.

Finally, our review identified a potential systemic deficiency involving the use of sworn statements obtained during the course of AR 15-6, "Procedures for Investigating Officers and Boards of Officers," investigations to support valorous award recommendations. We also identified a potential discrepancy regarding the suspension of favorable personnel actions for individuals under criminal investigation. We referred both matters to the Army for review.

Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

MEDAL OF HONOR AWARD PROCESS REVIEW: U.S. ARMY NONCOMMISSIONED OFFICER NOMINEE

I. INTRODUCTION AND SUMMARY

We initiated this review in response to a request from the Honorable Robert O. Work, Deputy Secretary of Defense, to the Inspector General (IG), DoD, to review the circumstances surrounding the recommendation to award the Medal of Honor (MOH) to a U.S. Army Noncommissioned Officer (referred to hereafter as "the nominee") for his valorous actions in combat while deployed to Afghanistan in 2013. On May 19, 2015, and then again on July 13, 2015, Representative Duncan Hunter (R-CA) requested that the DoD explain why the Honorable John M. McHugh, Secretary of the Army, downgraded the nominee's MOH award recommendation to the Silver Star (SS).[1] In a memorandum dated September 2, 2015, Deputy Secretary Work specifically requested that the DoD Office of the Inspector General (OIG) determine whether the nominee's award process deviated from the established valor award process.

On October 15, 2015, Mr. Joseph R. Kasper, Representative Hunter's Chief of Staff, relayed to DoD OIG personnel Representative Hunter's concerns regarding the nominee's MOH award recommendation. Specifically, Representative Hunter requested answers to the following: how the Army reached the conclusion to downgrade the nominee's MOH recommendation to a SS; whether the Secretary of the Army has the authority to downgrade a MOH award recommendation; and whether the Army used a U.S. Army Criminal Investigation Command (CID) investigation to downgrade or justify downgrading of the nominee's MOH award recommendation. Mr. Kasper also expressed Representative Hunter's additional general concern that the MOH award process, as a whole, is being politicized.[2]

We determined the nominee's MOH award recommendation followed the established valor award process and that the Secretary of the Army awarded the nominee the SS in accordance with applicable regulations and policies.

Regarding Representative Hunter's question concerning how the Army concluded to downgrade the MOH recommendation to a SS, we determined that the award recommendation followed the established valor award process. In compliance with established policy, U.S. Army Human Resources Command (HRC) personnel received the nominee's MOH award recommendation and forwarded it to the Army's Senior Army Decorations Board (SADB), the Army's board responsible for reviewing high level valor awards and making recommendations to the Secretary of the Army. The SADB reviewed the nominee's award recommendation packet and recommended that the Secretary of the Army award the nominee the SS. The SADB unanimously concluded that the nominee's valorous actions as documented in the MOH award

[1] The Honorable John M. McHugh left his position as Secretary of the Army on November 1, 2015.

[2] We did not examine Representative Hunter's additional general concern that the MOH award process, as a whole, is being politicized. We determined that issue to be beyond the scope of our review of the MOH award process.

recommendation packet did not meet the MOH criteria outlined in Army Regulation (AR) 600-8-22, "Military Awards," dated June 24, 2013.

The nominee's award recommendation then went to the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA(M&RA)), who, in accordance with established policy, conducted a post-board name check that revealed derogatory information pertaining to the nominee and the attempted trade of a Government rifle scope. The ASA(M&RA) attached this information to the award recommendation packet and forwarded it to the Secretary of the Army. After reviewing the award recommendation packet, the Secretary awarded the nominee the SS for his heroism.

Regarding Representative Hunter's question concerning the Secretary of the Army's authority to downgrade a MOH award recommendation, we found that Department of Defense Manual (DoDM) 1348.33, Volume 1, "Manual of Military Decorations and Awards: General Information, Medal of Honor, and Defense/Joint Decorations and Awards," dated November 23, 2010, and AR 600-8-22, identified the Secretary of the Army as the approval authority for awards below the MOH. DoDM 1348.33 requires Secretaries of the Military Departments to establish MOH processing procedures for their Departments and states that Military Department Secretaries will forward personally endorsed MOH recommendations to the Secretary of Defense. We determined that the Secretary of the Army was authorized to award the SS. We also determined that the Secretary of the Army considered the evidence and recommendations presented, agreed with the recommendations, and decided that the nominee's valorous actions met the criteria for awarding the SS. Accordingly, the Secretary of the Army acted within his authority when he neither endorsed the MOH packet nor forwarded it to the Secretary of Defense for further processing.

Finally, regarding Representative Hunter's question concerning whether the Army used the CID investigation to downgrade the nominee's MOH recommendation, we found no evidence that anyone directed CID to initiate the investigation or used its report to justify denying the nominee the MOH. [redacted] We found no evidence that HRC, the SADB, or the Army's Deputy Chief of Staff for Personnel (G-1) knew of the CID investigation or its findings when they evaluated the award packet and recommended he receive the SS rather than the MOH.[3] The ASA(M&RA) conducted a post-board name check which identified the CID investigation, and included the name check results in the packet forwarded to the Secretary of the Army. Although the Secretary of the Army was made aware of the CID investigation by his staff, we found no evidence that the CID investigation influenced the Secretary of the Army's decision to award the nominee the SS. We found that the Secretary of the Army based his decision to award the SS on his review of the award recommendation packet, and on recommendations from the SADB and his senior staff to award the SS because the nominee's valorous acts did not meet MOH criteria.

This report sets forth our findings and conclusions based on a preponderance of evidence.

[3] The Army's Deputy Chief of Staff for Personnel, also known as the Army G-1, is the principal staff officer responsible for development, management, and execution of all Army manpower and personnel plans, programs, and policies.

II. BACKGROUND

Representative Hunter's Review Requests

On May 19, 2015, and again on July 13, 2015, Representative Hunter wrote to the Secretary of Defense, regarding the nominee's MOH award recommendation. Representative Hunter requested that the Secretary of Defense review the facts and circumstances surrounding the nominee being awarded the SS. Specifically, Representative Hunter requested that the Secretary of Defense determine if there were any deviations from the standard procedures for processing such valor awards. On September 2, 2015, Deputy Secretary Work requested the DoD OIG conduct a review of the matter.

On October 15, 2015, the Director, Legislative Affairs & Communications, DoD OIG, and Mr. Kasper discussed Representative Hunter's concerns regarding the nominee's MOH award recommendation. Mr. Kasper related that Representative Hunter had four concerns: how the Army reached the conclusion to downgrade the MOH recommendation to a SS; whether the Secretary of the Army has the authority to downgrade an MOH award recommendation; whether the Army used the CID investigation to downgrade or to justify downgrading the MOH recommendation; and the MOH award process was being politicized.

III. SCOPE

We interviewed 17 witnesses, including Secretary McHugh, the nominee, HRC Awards Branch personnel, each member of the SADB that considered the MOH award recommendation, and others who reviewed the recommendation during staffing. We also met with Mr. Kasper. We reviewed the MOH award recommendation packet, HRC records, legal opinions from The Army's Office of The Judge Advocate General (OTJAG), and CID records. We interviewed OTJAG officials regarding the legal review process for valor awards. We also reviewed relevant documents maintained by the Office of Investigative Policy and Oversight (IPO), DoD OIG, regarding the Government rifle scope, and other documents and applicable standards.

Representative Hunter's Concerns

We considered Representative Hunter's concerns as we answered Deputy Secretary Work's request that the DoD OIG review the facts and circumstances surrounding the MOH award recommendation, particularly whether the MOH award recommendation deviated from established valor award procedures. In answering Deputy Secretary Work's request, this report also generally addresses Representative Hunter's concerns. We determined, however, that his concern about whether the MOH award process was being politicized was outside the scope of our review and did not address it.

The Nominee's Status as a Former United States Marine

On October 19, 2015, DoD OIG personnel met with Mr. Kasper, who expressed concern at the possibility that the nominee did not receive the MOH because he served in the U.S. Marine Corps (USMC) before becoming a member of the U.S. Army. Witnesses, to include the

nominee, uniformly testified that the nominee's status as a former Marine had no impact on the level of valor award the nominee received.

IV. FINDINGS AND ANALYSIS

Abridged Standards

Appendix A contains full standard citations.

Department of Defense Manual, Number 1348.33, Volume 1, "Manual of Military Decorations and Awards: General Information, Medal of Honor, and Defense/Joint Decorations and Awards," November 23, 2010, (Incorporating both Change 2, effective March 7, 2013, and Change 3, effective July 10, 2014), Enclosure 3, paragraph 8e(1), requires Secretaries of the Military Departments to establish MOH processing procedures for their Departments. It also states that Military Department Secretaries will forward personally endorsed MOH recommendations to the Secretary of Defense.

AR 600-8-22 delineates the Army's awards process, to include MOH processing. It lists the MOH criteria (paragraph 3-8), notes that only the President of the United States may award the MOH (paragraph 3-6), and Table 3-6 states that the Secretary of the Army is the approval authority for the Distinguished Service Cross (DSC) and all lesser decorations including the SS.

AR 600-8-22, paragraph 1-17a, promulgates Title 10, United States Code, Section 3744 (10 U.S.C. 3744), "Medal of Honor, Distinguished Service Cross, Distinguished Service Medal; Limitation on Award," paragraph (c), which states "No medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable."

Secretary of the Army Memorandum, "Composition and Operations of Army Decorations and Unit Awards Boards," May 25, 2010, establishes the SADB, describes its composition, and prescribes the SADB procedures for considering valorous award recommendations. It defines the SADB's purpose, which is to review MOH, DSC, and Distinguished Service Medal (DSM) award recommendations in accordance with applicable law and regulation and make non-binding recommendations to the approving authority. It delegates authority from the Secretary of the Army to the Army G-1 to appoint a MOH Advisor and outlines the MOH Advisor's duties and responsibilities. It allows the MOH Advisor to submit a separate recommendation containing comments regarding the merits of the award recommendation to the Secretary of the Army.

AR 600-8-2, "Suspension of Favorable Personnel Actions (Flag)," dated November 23, 2012, prescribes Army policy for Flags for the military personnel system. Flags prevent or preclude the execution of favorable actions and the movement of Soldiers in an unfavorable status. Commanders should initiate Flags within 3 working days of identifying a Soldier's unfavorable status. Commanders must Flag Soldiers titled in criminal investigations.

Department of Defense Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," dated March 24, 2011, and AR 195-2, "Criminal Investigation Activities," dated July 8, 2010, prescribe DoD and Army policy regarding criminal investigative activity. The Instruction outlines procedures all Defense Criminal Investigative Organizations, including Army CID, must follow when initiating criminal investigations. AR 195-2 identifies CID as the sole agency within the Army responsible for the criminal investigation of felony offenses, including stolen, improperly disposed of, or selling of military property valued greater than or equal to $5,000.00, and that such offenses be reported to Army CID.

Summarized Army Valor Award Process

AR 600-8-22, "Military Awards," dated June 24, 2013, delineates the Army's process for valor awards. The May 25, 2010, Secretary of the Army Memorandum, "Composition and Operations of Army Decorations and Unit Awards Boards" establishes the SADB and provides specific guidance for processing the MOH, DSC, and the Presidential Unit Citation. Below are key areas of AR 600-8-22 and Secretary of the Army Memorandum along with witness testimony from HRC awards personnel responsible for processing such awards that clarify the valor award process:

- A Soldier performs a valorous act.
- Someone other than the Soldier submits an award recommendation to the Soldier's immediate commander.
- Administrative personnel verify the Soldier's award eligibility (Flags).
- If the Soldier is otherwise eligible, the immediate commander makes a recommendation and forwards the award through any intermediate authorities to the approval authority.
- For MOH recommendations, HRC ensures the award recommendation contains a minimum of two eyewitness statements and that an AR 15-6 investigation into the valorous act accompanies the recommendation. It then forwards the packet to the Board.
- The Board considers the recommendation based on specific MOH award criteria and makes a recommendation to the Secretary of the Army.
- Following the Board recommendation, HRC staffs the MOH recommendation packet through members of the Army Staff to Secretary of the Army for a decision.
- If the Secretary of the Army recommends the President award the MOH, he or she forwards the award packet through the Secretary of Defense to the President for decision.
- If the Secretary of the Army decides to award a lesser award than the MOH, he or she signs the form as the approval authority, and forwards the award recommendation to the order issuing authority. The order issuing authority generates award orders,

completes appropriate certificates, and returns the award to the chain of command for presentation

- If the approval authority decides to disapprove the award, he or she returns copies of the award recommendation through command channels to the immediate commander and recommender, and for filing in the Soldier's official records.

MOH Criteria

For a Soldier to receive the MOH, the Soldier must meet all MOH criteria delineated in AR 600-8-22 and the MOH packet must reflect incontestable proof of the Soldier's actions.[4] If the Soldier's actions do not meet the criteria, or if the packet does not reflect incontestable proof the Soldier met the MOH criteria, the Soldier may not receive the MOH but may be eligible for a lesser valor award. To be awarded the MOH, a Soldier must:

- distinguish himself or herself;
- conspicuously;
- by gallantry and intrepidity;
- at the risk of his or her life;
- above and beyond the call of duty;
- while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

Also:

- The deed performed must be one of personal bravery or self-sacrifice;
- so conspicuous as to clearly distinguish the individual above his or her comrades;
- and must have involved risk of life.

Further:

- Incontestable proof of the performance of the service will be exacted; and
- each recommendation for the award of this decoration will be considered on the standard of extraordinary merit.

Facts

In August 2013, while deployed to Afghanistan, the nominee and other U.S. and coalition military personnel engaged in combat with insurgents at a Forward Operating Base (FOB). Subsequent to the engagement, the nominee's chain of command prepared a recommendation to

[4] AR 600-8-22 incorporates portions of Title 10, United States Code, Section 3741, "Medal of Honor: award."

award the nominee the MOH for his combat actions. Ultimately, the Secretary of the Army awarded the nominee the SS for his valor in battle.

Deputy Secretary Work requested that the DoD OIG conduct a review into the circumstances surrounding the nominee's MOH recommendation and the subsequent decision to award him the SS. In particular, he requested that the DoD OIG examine if there were any deviations from the standard procedures for processing such valor awards.

Representative Hunter requested that the DoD OIG answer the following: how the Army reached the conclusion to downgrade the nominee's MOH recommendation to a SS; whether the Secretary of the Army has the authority to downgrade a MOH award recommendation; and whether the Army used a CID investigation to downgrade or justify downgrading of the nominee's MOH award recommendation.

We interviewed the nominee as a witness. He confirmed to us that he did not submit a complaint about receiving the SS rather than the MOH. The nominee told us that he first became aware that an award recommendation had been submitted on his behalf approximately three weeks after his valorous acts in Afghanistan. The nominee recalled that the senior commander of his deployed unit sent a team to interview witnesses regarding the FOB firefight, because the award nomination packet submitted on his behalf sufficed for the SS or Distinguished Service Cross, but needed specific sworn testimony for a MOH recommendation.

The nominee further testified that as the award recommendation process proceeded, he had no real expectations regarding the level of award he might receive. The nominee stated that his command in Afghanistan speculated that the CID investigation played a significant role in his receiving the SS instead of the MOH. He testified that he was not aware of anyone not following policies and procedures in the MOH recommendation or of any improprieties in how his MOH recommendation was reviewed.

The nominee confirmed to us his previous service within the USMC. He told us that while in the USMC, he served with a Marine who now works in Representative Hunter's office. He said that after his SS award ceremony, some of his friends who attended the ceremony talked with members of the nominee's unit, and then approached his Marine friend that works in Representative Hunter's office. They asked the Marine if Representative Hunter's staff could "look into the downgrade" from MOH. We asked the nominee what specific concerns his friends had expressed to Representative Hunter's staff about the SS award, and he explained that his friends felt "that if there was going to be a downgrade [the MOH award recommendation] it should have come down one award," and they did not like that the theater commander had recommended the MOH and the recommendation was downgraded "further down the line."

The nominee told us that he reviewed the MOH recommendation. When asked whether he was upset or felt cheated receiving the SS instead of the MOH, he testified,

[redacted]

The nominee testified that he had reviewed the MOH criteria. We asked him whether, based on his valorous actions, he thought the MOH was the appropriate award. [redacted]

Table 1 provides an overview of the events associated with the processing of the award recommendation. Appendix B contains the full timeline.

Table 1. Events Timeline

Battle and Award Processing	MOH Nominee's Subsequent Conduct
• April 2013 – Nominee deploys to Afghanistan in support of United States Forces-Afghanistan (USFOR-A)	
• August 2013 – Nominee and other U.S. and coalition forces engages enemy forces attacking a FOB.	
• October 30, 2013 – Commanding General (CG), Combined Joint Task Force-101 (CJTF-101)/Regional Command – East (RC-E) recommends MOH for nominee.	
• November 2013, nominee redeploys from Afghanistan to his parent unit at Joint Base Lewis-McChord (JBLM), WA.	
• November 5, 2013 – The nominee's immediate deployed commander initiates the DA Form 638, "Recommendation for Award," recommending him for the MOH. The nominee's deployed chain of command subsequently favorably endorses the MOH recommendation.	
	• December 28-30, 2013 – [redacted]
	• December 30, 2013 – CID notified [redacted]

Battle and Award Processing	MOH Nominee's Subsequent Conduct
• December 31, 2013 - USFOR-A Commander endorses MOH recommendation.*	
	• January 8, 2014 – CID dispatches its initial report and provides a copy to the nominee's JBLM chain of command.
• January 27, 2014 – HRC receives the nominee's MOH award recommendation packet	
• March 17, 2014 – HRC appoints SADB members.	
• March 28, 2014 – SADB members review the MOH award recommendation. By majority vote SADB recommends the nominee receive the SS.	
• April 18, 2014 – HRC staffs MOH packet with SADB recommendation through HRC headquarters to Headquarters, Department of Army (HQDA).	
	• May 2, 2014 – CID completes its Final Report and provides copy to the JBLM chain of command.
• May 13, 2014 – Commander, HRC concurs with SADB - recommends award of SS.	
• May 30, 2014 – HRC forwards award recommendation packet to Army G-1	
	• May 28, 2014 – CID completes its 1st Supplemental Report and provides copy to the JBLM chain of command.
• June 3, 2014 – ASA(M&RA) conducts routine name check on the nominee. Name check reveals the CID investigation.**	
• June 30, 2014 – LTG Howard Bromberg, then-Army G-1 concurs with SADB; recommends SS; forwards award recommendation packet to ASA(M&RA) ***	
	• October 20, 2014 – The JBLM Group Commander issues the nominee [redacted]

Battle and Award Processing	MOH Nominee's Subsequent Conduct
	[redacted] • November 17, 2014 – Despite learning of the misconduct subsequent to MOH recommendation, the JBLM Group Commander recommends favorable consideration of the nominee's MOH recommendation. The nominee's higher chain of command non-concurs with favorable consideration. • December 2, 2014 – A senior level Commander non-concurred with the JBLM Group Commander's recommendation to award MOH. • December 15, 2014 – A second senior level Commander non-concurred with the JBLM Group Commander's recommendation to award MOH.
• January 9, 2015 – OTJAG issues a [redacted] • January 16, 2015 – LTG James McConville, the new Army G-1 non-concurs with SADB; recommends MOH.**** • January 21, 2015 – ASA(M&RA) concurs with SADB; recommends SS. • February 11, 2015 – LTG McConville signs a Flag Note to the Secretary of the Army and Chief of Staff of the Army (CSA), that he supports the MOH recommendation.***** • February 24, 2015 – Vice Chief of Staff of the Army concurs with SADB; recommends SS.	

Battle and Award Processing	MOH Nominee's Subsequent Conduct
• March 8, 2015 – CSA concurs with SADB; recommends SS. • March 12, 2015 – Secretary McHugh approves award of the SS. • May 2015 – Nominee presented the SS.	

* The USFOR-A Commander's recommendation memorandum was not dated. The Deputy USFOR-A Commander recommended approval of the MOH on December 16, 2013. We estimate the latest date the USFOR-A Commander could have endorsed the MOH recommendation was December 31, 2013.
** HRC forwarded the nominee's MOH award recommendation to the Army G-1. ASA(M&RA) initiated a post-board name check prior to the Army G-1 signing of the recommendation packet.
*** LTG Bromberg served as the Army G-1 from July 21, 2012 until August 4, 2014. He retired from active duty on October 1, 2014.
**** LTG McConville was promoted to lieutenant general and assumed duties as the Army G-1 on August 4, 2014. He was the same officer who, while serving as the CG, CJTF-101/RC-E, recommended the MOH.
***** A Flag Note is a note commissioned officers in the grade of O7/Brigadier General-Rear Admiral and above use to communicate a written short message.

The Nominee's Actions at the FOB

In April 2013, the nominee deployed to Afghanistan in support of Operation Enduring Freedom. In August 2013, insurgents attacked a FOB and breached its perimeter. The nominee and other U.S. and coalition Soldiers responded to the attack, killing numerous insurgents and thwarting the attack.

Army Regulation (AR) 15-6 Investigation of the Attack on the FOB

After the August 2013, insurgent attack on the FOB, then-MG McConville, Commanding General, Headquarters, CJTF-101 /RC-E, Bagram Airfield, Afghanistan, directed an AR 15-6 investigation to document the attack and response. On October 30, 2013, after reviewing the AR 15-6 investigation, MG McConville recommended to the nominee's deployed chain of command that he receive the MOH.

MOH Award Initiation and Initial Processing

On November 5, 2013, the nominee's brigade level deployed commander initiated a DA Form 638, "Recommendation for Award," recommending that the nominee receive the MOH for his actions at the FOB. Prior to forwarding any award recommendation to the immediate commander, unit administrative personnel are required to sign block 22 of the DA Form 638, which certifies that the Soldier is administratively eligible to receive the recommended award in accordance with AR 600-8-22 and that all administrative information is correct. Administrative personnel in Afghanistan verified that the nominee was eligible to receive the award, that he was not Flagged, and then signed block 22 of the DA Form 638. The chain of command in Afghanistan, listed below with their accompanying comments, favorably endorsed the MOH recommendation before forwarding it to HRC for further processing:

- MG Austin S. Miller, U.S. Army, Commanding General, North Atlantic Treaty Organization Special Operations Component Command (CG, NATO-SOCC); "[Nominee's] actions exceed any normal expectations…he saved lives while risking his own";
- MG James M. Richardson, U.S. Army, Commander, U.S. National Support Element, USFOR-A (CDR, USNSE/USFOR-A); "[His] heroism is above reproach. He saved the lives of many soldiers without regard of his personal safety. Truly remarkable … most deserving of the Medal of Honor";
- LTG Mark A. Milley, U.S. Army, Commander, International Security Assistance Forces Joint Command (CDR, ISAFJC); "Clear valor above and beyond the call of duty with complete disregard to his own safety. He saved many lives and defeated a significant attack"; and
- General Joseph Dunford, United States Marine Corps, Commander, USFOR-A; "Clearly meets the standard. [Nominee's] heroism was truly extraordinary."

Table 2 reflects the recommendations of those commanders deployed to Afghanistan.

Table 2. In-Theater Commanders' Recommendations

	Concur with MOH	Non-concur with MOH
Cdr, CJSOTF-A	X	
CG, NATO-SOCC	X	
CCA/SOJTF-A	X	
Cdr, USNSE/USFOR-A	X	
Cdr, ISAFJC	X	
Cdr, USFOR-A	X	

[redacted]

In November 2013, the nominee redeployed from Afghanistan to JBLM, WA. On December 30, 2013, CID initiated an investigation [redacted] CID determined that the nominee [redacted] between October and November 2013, while in Bagram, Afghanistan. He redeployed to the United States [redacted] In late December 2013, the nominee [redacted] who notified CID as the matter was within CID's jurisdiction. [redacted] CID completed its investigation on May 28, 2014, [redacted]

[redacted] CID provided their Report of Investigation (ROI) to the JBLM chain of command and legal personnel.

Upon receipt of adverse information, including information that a Soldier is under criminal investigation, commanders must immediately initiate a DA Form 268, "Report to Suspend Favorable Personnel Actions (Flag)," and submit it to the servicing Human Resources Office to input that information into the Army's Human Resource system. The Flag's effective date is the date that the adverse circumstances requiring the Flag occurred, not the Flag initiation date. Commanders notify the affected Soldier about the Flag. Only Army officers authorized to direct initiation of a Flag may direct its removal.

The nominee testified that his unit Flagged him after CID began its investigation. HRC personnel, who would have seen a Flag, testified that they did not see a Flag for the nominee. Similarly, the SADB members testified that they never saw any derogatory information nor did they see any indication during their processing and review of his MOH award recommendation packet that the nominee's command had Flagged him. An HRC audit of the nominee's eMILPO (electronic military personnel record) file revealed no history that a Flag had been initiated during the Army CID investigation.

HRC's Initial Processing of the MOH Award Recommendation

On October 31, 2013, USFOR-A initially notified HRC Awards Branch of nominee's MOH award recommendation. On January 27, 2014, HRC Awards Branch received the complete MOH award recommendation for processing. The SADB Awards Branch Analyst at HRC testified that she received and analyzed the MOH award recommendation packet for quality assurance and compliance with DoD and Army regulations. She also verified that the packet contained the required minimum of two eyewitness statements. She stated that the MOH award recommendation packet was processed in accordance with the DoDM and AR 600-8-22. She further stated that the MOH award recommendation packet was "unremarkable" because it was "very well put together."

The analyst testified that the award recommendation packet remained at HRC for about 2 to 3 weeks after initial processing before the SADB plenary session convened. She stated that after the SADB concluded, she prepared the appropriate documents and staffed the award recommendation packet through HRC before forwarding it to the Army G-1 on May 30, 2014, for further staffing to the Secretary of the Army.

The former HRC Awards Branch Chief testified that the MOH award recommendation met all administrative requirements for the time he served under the recommending command. She stated that after the HRC Awards Branch analyst's quality assurance review, she reviewed the award recommendation packet, confirmed there were no deficiencies or additional information required, and put it with six to eight other valor award recommendation packets pending SADB review.

Both the former HRC Awards Branch Chief and the analyst testified they traveled to the Pentagon to administer the SADB. The analyst confirmed that the SADB voting members who

considered the MOH award recommendation consisted of two lieutenant generals and the Sergeant Major of the Army (SMA). The analyst stated that she selected the members from a list of lieutenant generals serving on the Army Staff, along with the SMA, a required voting member when the nominee is an enlisted member. She stated that at least two of the three voting members were combat arms qualified, as required by regulation. The former Awards Branch Chief and the analyst testified that each SADB board member received a read-ahead copy of the entire MOH award recommendation packet 2 to 4 weeks in advance of the SADB convening. This allowed the SADB members time to conduct a thorough review of the packet's contents before the board convened.

The Chief of HRC's Awards and Decorations Branch, the former Awards Branch Chief, and the analyst each testified that the MOH award recommendation was processed in accordance with applicable regulations and policies. Each stated that the award recommendation packet's content did not deviate from normal procedures nor was the packet processed any differently at their respective levels than any other valor award recommendation packet. Each stated that they did not conduct post-board or "background" checks during the HRC process and that name checks were not part of HRC's processing responsibilities. Each stated that by authenticating block 22 of the award recommendation, the appropriate unit representative at the recommender's level certifies the nominee's eligibility to receive an award.

SADB Procedures and Appointments

The SADB reviews award recommendations in accordance with the Secretary of the Army Memorandum, "Composition and Operations of Army Decorations and Unit Awards Boards," May 25, 2010, to make non-binding recommendations to the award approval authority.

The SADB draws its membership from lieutenant generals who serve in the office of the Secretary of the Army and on the Army Staff. HRC, under the G-1's delegated authority, appoints three members to each SADB based on the members' availability to serve. When the award nominee is an enlisted member, the SMA becomes a mandatory SADB member and replaces one of the lieutenant generals as a member. The senior SADB member serves as board president. At least two of the three board members must be combat arms qualified.[5] The SADB meets in plenary session and considers all relevant information. Member votes count equally during the process and members have the option to recommend that the approving authority approve, upgrade, downgrade, or disapprove the award. The SADB may also return an award without action. The majority vote determines the SADB's recommendation.

When the SADB considers MOH recommendations, a MOH Advisor who may be appointed to the board at the direction of the Secretary of the Army advises the SADB members on MOH law and award criteria. The MOH Advisor is a previous MOH recipient. The MOH Advisor is not a voting SADB member but provides a separate, independent recommendation to the Secretary of the Army. The MOH Advisor's recommendation becomes part of the MOH award recommendation packet as it proceeds through the review process.

[5] The Inspector General of the Army and the Director of the Army Staff, both lieutenant general billets, are exempt from serving on the SADB. The Army combat arms branches are Infantry, Armor, Field Artillery, Air Defense Artillery, Aviation, Special Forces, and Engineer.

SADB Review and Recommendation

On March 17, 2014, in accordance with the Secretary of the Army's memorandum, "Composition and Operation of Army Decorations and Unit Awards Boards," HRC appointed [redacted] as SADB board members to review multiple valor award recommendations, including the nominee's.[6,7] [redacted] served as the board president. MOH recipient [redacted], served as the SADB MOH Advisor, a non-voting position.[8] The analyst served as the SADB recorder responsible for recording the board deliberations, collecting all voting ballots, and retrieving all board documents for safekeeping. The analyst did not vote or participate in deliberations.

On March 28, 2014, the SADB members convened in a plenary session at the Pentagon and reviewed, among other award recommendations, the nominee's MOH award recommendation. After review and consideration of the nominee's MOH award recommendation packet, the SADB members independently and unanimously determined that the nominee's actions did not meet the MOH criteria. Their recommendations were:

- [redacted] voted to recommend the nominee receive the DSC.
- [redacted] voted to recommend the nominee receive the SS.
- [redacted] voted to recommend the nominee receive the SS.
- [redacted] separately recommended to the Chief of Staff of the Army (CSA) and Secretary of the Army that the nominee receive the SS.
- By majority vote, the SADB recommended that the Secretary of the Army award the nominee the SS.

[redacted] testified that he did not recall his specific vote in the matter. Investigators informed [redacted] that his individual voting sheet reflected that he voted to award the DSC and that he checked two blocks on the voting sheet that the degree of heroism or gallantry and services were outstanding; however, they did not meet MOH criteria. [redacted] stated he was still unable to recall the specific reason for his vote for the DSC without conducting another detailed review of the entire awards recommendation packet.[9]

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[6] [redacted] reviewed the valorous award recommendations only for commissioned officer nominees. He did not participate in the deliberation and voting regarding the nominee.

[redacted]

[redacted]

[9] Due to the SADB voting documents' sensitivity and the SADB members' [redacted] status, we did not provide SADB members their voting sheets as read-ahead documents for interviews. We allowed [redacted], whom we interviewed in person, to review his voting sheet during his interview. We interviewed [redacted], [redacted] telephonically. We reminded those SADB members we telephonically interviewed of how they marked their voting sheets, and each testified from memory regarding their reasoning for recommending that the nominee not receive the MOH.

[redacted] testified that he recommended that the Secretary of the Army award the nominee the SS. He stated that his decision "really just came down to the [MOH] criteria." [redacted] added that the SADB members discussed the three award levels and asked themselves, ". . . if we believe this to be a Medal of Honor, do we see the right criteria?" and ". . . the facts in the book . . . which level do they support?" In recollecting specific criteria he considered in his decision to vote for SS, [redacted] noted that he checked the box on his individual voting sheet regarding degree of heroism and gallantry along with the box indicating that the nominee's service was outstanding but did not meet MOH criteria.

[redacted] testified that he recommended that the Secretary of the Army award the nominee the SS. [redacted] confirmed that he annotated his voting sheet by checking the block indicating "outstanding performance of duties, but not of sufficient significance for proposed award" and wrote "valor commensurate with a SS" on his voting sheet. [redacted] stated:

> … from my perspective, as [a noncommissioned officer]…, a [redacted] there's a certain level of leader attributes and competencies and expectation synonymous with the term '[redacted] and especially one who is a senior NCO, versus a private who would be seized by the moment and take extremely valorous and courageous action; there's a difference between those two. One's a leader. One's a Soldier. And so when I looked at the circumstances and, although the battle was ferocious and unfortunately a couple members were killed, I just thought that it wasn't a sufficient level for the Medal of Honor based off of the individual and the circumstances and that, I just felt there was an expectation of a leader who did a phenomenal job, that there was something more that [the nominee] needed to have done in order to, in my mind, to make a recommendation for a Medal of Honor.

[redacted] testified that he recommended that the nominee receive the SS. [redacted] stated that his reasoning "was very simple. There were two eyewitness statements, and the eyewitness statements did not at all meet the criteria for the Medal of Honor." [redacted] testified that the award narrative did not support the eyewitness statements. He testified that, as an example, the award narrative stated that the nominee "single-handedly eliminated 3 of 10 insurgents and wounding a 4th," but this fact was "never mentioned in the eyewitness statements." He further stated, "We don't have incontestable proof and we don't – we cannot accommodate 'conspicuous.'"

To further illustrate the levels of valorous actions that do not meet the MOH criteria, [redacted] testified that an Army Staff Sergeant was one of several U.S. personnel who also took part in the August 2013 firefight at the FOB. This Soldier used his body to shield a Coalition Soldier from an attack by an insurgent wearing a suicide vest. The Soldier died as a result of his wounds and posthumously received the SS for his actions. The Coalition member's Government posthumously awarded this Soldier the Gold Medal of the Polish Armed Forces, an

award equivalent to the U.S. Legion of Merit. [redacted] stated that he learned of this Soldier and his heroic actions from reading the nominee's award recommendation packet.

Each SADB voting member, and [redacted] testified that their vote or recommendation was their own; that the SADB and its members abided by established procedures; that they all had extensive prior experience as SADB members and there were no deviations from standard practices; that they were not aware of any improprieties regarding the SADB's proceedings; and that their vote was not influenced by anyone. They testified that they did not have any discussions with senior Army leadership, including the Secretary of the Army, regarding the nominee's MOH award recommendation. The SADB board members, and [redacted] each testified that they were not aware of any derogatory information when they reviewed and voted on the MOH award recommendation.

Table 3 summarizes the SADB and its members' recommendations in this matter.

Table 3. SADB voting member and MOH Advisor recommendations

	MOH	DSC	SS
[redacted]			X
[redacted]		X	
[redacted]			X
SADB Majority Recommendation			X
[redacted] Recommendation			X

Post-SADB Staffing of the MOH Award Recommendation

At the conclusion of an SADB plenary session, HRC personnel collect all voting sheets, the MOH Advisor recommendation, and all other pertinent documents. They attach these documents to the award recommendation packet that they staff through HRC and later forward to the Army G-1 for review and processing. The former Awards Branch Chief stated the HRC process:

> …consists of preparing a memorandum in regards to what the board members voted, if there was any inconsistencies, anything that we might need to bring to our chain of command's attention that might need to be further addressed, which it wasn't. So, then we take the entire packet, the entire vote sheets, the entire…know, administrative documentation, routing sheets, forms, and then we send it to the chain of command here at HRC, which was consisting of since I was the branch chief at the time, I would sign it. Then I would send it to my division chief… [t]hen it would be seen by the TAG [The Adjutant General], who at the time I think was BG [David K.] MacEwen…and then he would then forward it up to the HRC commander, who at the time was MG [Richard P.]

> Mustion. And then from there, it would get you know, it would then [receive a] legal [review] before it went to the HRC CG. Once he endorsed it, then it would come back to the Awards Branch. Then we would bind it up and then overnight it to the Department of the Army G-1.

Upon receipt of the award recommendation packet, the Army G-1 makes a recommendation and forwards the packet to the ASA(M&RA) for review.

On April 3, 2014, the former Awards Branch Chief and the analyst initiated a DA Form 5, "Army Staffing Form." HRC Awards Branch use the DA Form 5 to coordinate award recommendations through HRC staff members and the HRC chain of command. They created the DA Form 5 to forward the nominee's MOH award recommendation packet, including the SADB's recommendation, through the HRC and to forward it through the HQDA staff to the Secretary of the Army.

On May 22, 2014, the Chief, General Law Branch, Administrative Law Division, OTJAG, reviewed the MOH award recommendation and the SADB recommendation to award the SS. He was unaware of the CID investigation at the time of this legal review. [redacted]

The General Law Branch Chief, in his legal review, [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

On June 30, 2014, LTG Howard Bromberg, then serving as the Army G-1, reviewed the MOH award recommendation packet and concurred with the SADB's recommendation to award the nominee the SS. The packet continued through staffing channels to the office of the ASA(M&RA).

ASA(M&RA) Review, Processing, and Name Check

As part of their review process, ASA(M&RA) personnel conduct post-board name checks on award nominees to ensure no derogatory information or Flags exist. This check includes Department of the Army Inspector General (DAIG) and CID records. When no derogatory information is found, ASA(M&RA) personnel appropriately initial the DA Form 5. When derogatory information is found, ASA(M&RA) personnel contact the nominee's chain of

command to determine the status of the derogatory information and what, if any, action has been taken. ASA(M&RA) suspends further processing of award recommendation packets when an investigation is ongoing or the chain of command has not decided what, if any action, to take. In instances where action has been taken, ASA(M&RA) attaches a copy of derogatory information and action taken to the award recommendation packet and forwards the packet through Army Staff members to the Secretary of the Army for decision.

The former Assistant Deputy for Awards and Promotions, Deputy Assistant Secretary of the Army for Military Personnel Policy (DASA-MPP), Office of the ASA(M&RA), testified that at the time of the nominee's MOH recommendation's staffing, she was the direct liaison between HRC Awards Branch and the Army Secretariat, including ASA(M&RA) and the Office of the Secretary of the Army. She testified that in that role she was responsible for reviewing all valor award recommendations submitted for Secretary of the Army's review. She testified that upon receipt of valor award recommendations, she initiates a post-board or "background" check on the nominee through both CID and DAIG. She stated, "I am the only person that initiates the background checks." She further stated that the nominee's background check revealed the derogatory information involving the rifle scope.

The former DASA-MPP testified that upon receipt of the CID records check results, she contacted the nominee's Joint Base Lewis McChord (JBLM) chain of command to ascertain the matter's disposition. She stated she saw nothing to indicate the nominee had been Flagged when she received his award recommendation packet. She stated that she suspended the processing of the award recommendation because the JBLM commander had not decided what, if any, action he would take [redacted]. She stated that after several months, the JBLM commander provided his disposition results, and she included that information in the award recommendation packet. She then forwarded the award recommendation packet, along with a second Army Staffing Form, for supplemental legal review.

Nominee's Chain of Command Recommendations

On October 20, 2014, the nominee's commander issued the nominee [redacted]. On November 5, 2014, the same Commander directed that [redacted]. On November 17, 2014, the commander then wrote a memorandum, through his higher headquarters to the Secretary of the Army, recommending that the nominee receive the MOH. The commander wrote that "despite [redacted]...the totality of [his] service has been honorable in accordance with AR 600-8-22, paragraph 1-17." He further wrote that he concluded, subsequent to the nominee's valorous act, "the greater part of [the nominee's] honest and faithful service conformed to the conduct, courage, and duty required of a service member of a similar grade, and is therefore honorable."

The nominee's next two higher level commanders, both Army General Officers, reviewed and non-concurred with the nominee's JBLM commander's recommendation. In a separate memorandum, one commander wrote that the nominee's [redacted]

[redacted]

The next higher level commander, in a memorandum to the Secretary of the Army, also non-concurred with the nominee's JBLM Commander. He wrote that despite the nominee's exemplary performance, both before and after [redacted]

Table 4 reflects the recommendations of the nominee's chain of command

Table 4. Chain of Command Recommendations

	Concur w/MOH	Non-Concur w/MOH
Group Level Commander	X	
First Higher Level Commander		X
Second Higher Level Commander		X

Supplemental Legal Review

On January 9, 2015, the Chief, General Law Branch, Administrative Law Division, OTJAG issued a supplemental legal review that considered the derogatory information disclosed. [redacted]

On October 5, 2015, we contacted the General Law Branch Chief regarding his legal opinion. He identified the OTJAG action officer who researched the matter and drafted the legal opinion for his signature.

The action officer who prepared the legal opinion testified she drafted the initial legal opinion for the General Law Branch Chief's signature. She stated that the ASA(M&RA) and the Army G-1 requested the supplemental legal review based on the recently disclosed derogatory information. She stated her office requested ASA(M&RA) obtain the memorandums from the nominee's chain of command regarding his character of service.

[10] Although the Commander's memorandum is dated December 15, 2015, we confirmed he issued it in 2014.

[redacted]

[redacted]

Final Army Staffing

Mr. Anthony Stamilio, Senior Executive Service, Deputy Assistant Secretary of the Army for Military Personnel and Quality of Life, ASA(M&RA), testified that the MOH award recommendation packet reached the ASA(M&RA) office in June 2014. He stated that the former DASA-MPP requested the background checks [redacted]. Mr. Stamilio stated that there were two prevailing reasons he recommended that the Secretary of the Army award the nominee the SS. He stated that his first reason was the SADB's recommendation. He stated, "I rely on their [SADB] recommendations from the perspective of technical expertise, consistency, and continuity, and so the recommendations of the SADB were pretty important to me, and when they said SS that caused me to make that consideration." He added that the SADB also raised concerns regarding whether the nominee's actions met the MOH criteria based on the documentation. Second, he stated that the derogatory information caused him concern regarding the regulatory requirements for honorable service.

On January 16, 2015, LTG McConville, the new Army G-1, reviewed the MOH award recommendation packet and non-concurred with the SADB recommendation to award the SS.[11] LTG McConville wrote that at the time of the firefight at the FOB, he was a major general and the CJTF-101/RC-E Commander. He wrote that after examining the firefight, he and general officers within the nominee's chain of command believed the chain of command should recommend the nominee for the MOH.

On January 21, 2015, Mr. Stamilio, on behalf of the ASA(M&RA), concurred with the SADB's recommendation to award the SS. Mr. Stamilio's recommendation included the comment that "derogatory information coupled with the rationale of the SADB is rationale."

On February 11, 2015, LTG McConville, in a Flag Note to the CSA and Secretary of the Army, explained his non-concurrence with the SADB's recommendation to award the SS. LTG McConville wrote:

[11] Lieutenant General McConville was promoted to lieutenant general on August 4, 2014, and assumed duties as the Army G-1. He mistakenly dated the coordination form January 16, 2014, rather than January 16, 2015.

> I was the CG at RC-E when the incident occurred at [the FOB]. [The Soldier] was killed in action that day saving the life of a [coalition] Soldier. Many thought he deserved the CMH [*sic*] [Congressional [*sic*] Medal of Honor]. I directed a 15-6 with the assistance of my O-6 SJA to determine the levels of valor on that day. The investigation determined that [the Soldier] was deserving of the SS (he was presented also one of [the coalition member country's] highest awards). The investigation also recommended that [the nominee] be awarded the CMH. Based on that investigation, MG Miller, LTG Milley, and GEN Dunford recommended [the nominee] for the CMH. I concur[red] with these recommendations. Since then it has been brought to my attention that [the nominee] [redacted] I have discussed this with [the nominee's senior level commander] and he does not recommend [the nominee] receive the CMH but [rather] the DSC or SS.

LTG McConville testified that while the nominee was not in his direct chain of command, he recommended that he receive the MOH. He stated that had it not been for his action, enemy insurgents could have penetrated FOB's perimeter resulting in a significant impact on operations within Afghanistan. LTG McConville stated that he did not review the MOH award recommendation packet until he became the Army G-1. LTG McConville stated that he believed the nominee's actions were worthy of the MOH; however, after reading the award recommendation packet, he was not sure that a reader would fully grasp what really happened during the firefight. He stated that MOH award recommendations must be constructed to "make sure people fully understand the level of valor that was involved."

On February 23, 2015, the Vice Director of the Army Staff (VDAS) reviewed the MOH award recommendation packet. On February 24, 2015, both the Director of the Army Staff (DAS), and the Vice Chief of Staff of the Army (VCSA) reviewed the MOH award recommendation packet. Both the DAS and VDAS concurred with the SADB recommendation to award the SS. The VCSA also concurred with the SADB recommendation and commented that he was "heavily influenced by the [chain of command] (former RC-E [commander] and [the nominee's senior level commander] and majority of [SADB] board members, [redacted] and MOH recipient [redacted]."

On March 8, 2015, General Raymond T. Odierno, U.S. Army, then-CSA, reviewed the MOH award recommendation packet and concurred with the SADB's recommendation to award the SS.[12]

[12] General Raymond T. Odierno retired on September 1, 2015.

Table 5 depicts the Army Staff member recommendations.

Table 5. Army Staff Recommendations

	Concur w/SADB (Award SS)	Non-Concur	Comment
CDR, HRC	X		
G1		X	Flag Note
ASA(M&RA)	X		
VDAS	X		
DAS	X		
VCSA	X		
CSA	X		

Secretary of the Army Review and Decision Processes

Upon receipt of a valor award recommendation, the Secretary of the Army's staff prepares it for the Secretary of the Army's review. His staff ensures that the recommendation includes all appropriate documentation and provides the Secretary of the Army a synopsis of the valorous act. The Secretary of the Army receives the entire award recommendation packet, including classified and unclassified portions, and legal reviews. The Secretary of the Army may recommend MOH approval and forward the award recommendation packet to the Secretary of Defense; may exercise his authority to approve the award of another decoration; or he may disapprove any award.

Secretary of the Army's Decision

On March 12, 2015, Secretary McHugh reviewed the nominee's MOH award recommendation packet and approved the award of the SS to the nominee for his actions at the FOB in August 2013.

Secretary McHugh told us that he reviewed the MOH award recommendation packet, which included both classified and unclassified documentation. He stated that he concurred with the SADB's recommendation and the recommendations of his senior military leaders to award the SS. He stated he was made aware of CID's investigation; however, he said that it carried no weight in his decision to award the SS. Secretary McHugh testified that because of CID's investigation and that the chain of command took action in the matter, he focused his review on the nominee's actions during the attack, and whether his actions met the MOH award criteria. He stated that the Army CID investigation had no bearing on his decision because he decided that "[redacted] in question had nothing to do with the consideration of the packet."

Secretary McHugh testified that he derived his authority to downgrade or disapprove MOH recommendations from a DoD Manual. DoDM 1348.33, Volume 1, dated November 22, 2010, which states that the Secretary of the Army forwards MOH award recommendations to the Secretary of Defense only if the Secretary of the Army endorses the recommendation. Secretary McHugh stated that this had been the practice over the course of his tenure as the Secretary of the Army.

Silver Star Presentation

In May 2015, the nominee was presented the SS.

Discussion

Regarding Representative Hunter's concerns about how the Army concluded to downgrade the MOH recommendation to a SS, we determined that the award recommendation followed the established valor awards process and that the Secretary of the Army awarded the SS in accordance with applicable regulations and policies. We found that upon receipt of the award recommendation, HRC personnel properly processed it for SADB review. The SADB, in accordance with established policy, reviewed the award recommendation packet and recommended that the Secretary of the Army award the SS. The SADB unanimously concluded that the nominee's valorous actions as documented in the MOH award recommendation packet did not meet the MOH criteria outlined in AR 600-8- 2. The SADB had no knowledge of [redacted]. The SADB did not speak with the Secretary of the Army or any other senior Army leader about the award recommendation and based its recommendation solely on their consideration of the nominee's actions at the FOB.

We determined that HRC properly staffed the MOH award recommendation packet, with the SADB's recommendation, through the HRC staff to the Army G-1. The former Army G-1 reviewed and concurred with the SADB recommendation to award the SS and appropriately forwarded the award recommendation to the ASA(M&RA) where a post-board name check revealed the CID investigation. After considering the results of the name check, the new Army G-1 recommended that the nominee receive the MOH. The ASA(M&RA) appropriately incorporated the derogatory information in the award recommendation packet and forwarded it to the Office of the Secretary of the Army for decision. The ASA(M&RA), the VCSA, the CSA, and several other senior Army staff personnel all concurred with the SADB recommendation to award the SS. The Secretary of the Army decided to award the SS after his review of the award recommendation, and the recommendations of the SADB and his senior leaders who reviewed or provided input during the review process.

Regarding Representative Hunter's concern about whether the Secretary of the Army has the authority to downgrade a MOH award recommendation, we determined that the Secretary of the Army is the approval authority for awards below the MOH. DoDM 1348.33, Volume 1, requires Secretaries of the Military Departments to establish MOH processing procedures for their Departments and states that Military Department Secretaries will forward personally endorsed MOH recommendations to the Secretary of Defense. We determined Secretary McHugh acted within his authority when he decided to award the SS rather than the MOH, and had no obligation to further process the MOH award recommendation to the Secretary of Defense.

We determined the Secretary of the Army awarded the SS in accordance with applicable regulations and policies.

Representative Hunter expressed concern about whether the Army used the CID investigation to downgrade the MOH recommendation. We found no evidence that anyone directed CID to initiate the investigation or used its report to justify awarding the SS rather than the MOH. CID initiated its investigation upon notification from another law enforcement agency. Neither HRC, the SADB, nor the Army G-1 knew of the investigative findings when they evaluated the MOH award recommendation packet. The ASA(M&RA) discovered the derogatory information during a post-board name check, amended the results along with the disposition to the award recommendation packet, and forwarded it through appropriate channels to the Secretary of the Army. Although the Secretary of the Army was made aware of the CID investigation by his staff just prior to considering the nomination, he testified that he considered the MOH award nomination packet as a separate matter from [redacted]. We found no evidence that the CID investigation influenced the Secretary of the Army's decision to award the SS. The Secretary of the Army based his decision to award the SS on his review of the MOH award recommendation, and recommendations from the SADB and his senior staff to award the SS rather than the MOH because the nominee's valorous acts did not meet MOH criteria.

V. CONCLUSION

The MOH award recommendation followed the established valor award process.

VI. OTHER MATTERS

During the course of our review, we learned that MOH award recommendations sometimes include sworn statements (DA Form 2823) from AR 15-6 investigations as the required eyewitness statements. A SADB member testified that witnesses who give sworn statements in support of AR 15-6 investigations may describe an engagement in general terms rather than focusing on an individual's valorous actions in particular. We found that the principal purpose of the DA Form 2823, "Sworn Statement," as stated on the form, is "To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents." This form might not provide sufficient detail by itself to support an individual's valor award recommendation.

Also during the course of our review, we requested HRC to audit the nominee's electronic military records to determine whether he was Flagged at any point during his award recommendation processing. Although the nominee testified that his unit initiated a Flag at the onset of the CID investigation and removed the Flag once CID completed the investigation, the HRC audit revealed no record that he had been Flagged.

VII. RECOMMENDATIONS

We recommend that the Army consider developing a valor award eyewitness statement form that includes an appropriate explanation of valor award criteria and elicits from eyewitnesses sufficient facts and circumstances regarding how an individual's specific valorous actions meet those criteria. We further recommend that the Army consider requiring that valor award recommendations include statements from all eyewitnesses to fully describe the award

nominee's specific actions rather than relying solely on a few sworn statements from an AR 15-6 investigation that focus on other aspects of the incident.

We recommend that the Army remind commanders of the AR 600-8-2 requirement to Flag soldiers under investigation.

Appendix A

Unabridged Standards
Pertaining to Medal of Honor Award Recommendations

Standards

Title 10, United States Code, Section 3744 (10 U.S.C. 3744), "Medal of Honor, Distinguished Service Cross, Distinguished Service Medal; Limitation on Award

Paragraph (c) states "No medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

Department of Defense Manual, Number 1348.33, Volume 1, "Manual of Military Decorations and Awards: General Information, Medal of Honor, and Defense/Joint Decorations and Awards," November 23, 2010, (Incorporating both Change 2, effective March 7, 2013, and Change 3, effective July 10, 2014)

Enclosure 3a, "Procedures," states:

The Secretary of the Military Department concerned shall establish procedures for processing MOH [Medal of Honor] recommendations in his or her Military Department. Minimally, MOH recommendations shall contain the endorsement of the Combatant Commander concerned and the Service Chief concerned.

After required endorsements are obtained, MOH recommendations personally endorsed by the Military Department Secretary concerned will be forwarded to the Secretary of Defense through the USD(P&R). The USD(P&R) shall forward each MOH recommendation to the CJCS for endorsement prior to forwarding them to the Secretary of Defense.

Army Regulation 600-8-22, "Military Awards," Rapid Action Revision (RAR) dated June 24, 2013

Paragraph 1-17, "Character of service," states:

a. Personal decorations. A medal will not be awarded or presented to any individual whose entire service subsequent to the time of the distinguished act, achievement, or service has not been honorable. The determination of "honorable" will be based on such honest and faithful service according to the standards of conduct, courage, and duty required by law and customs of the service of a member of the grade to whom the standard is applied. Commanders will ensure that—

(1) Individuals on whom favorable personnel actions have been suspended are neither recommended for nor receive awards during the period of the suspension.

(2) Other-than-honorable service subsequent to submission of the recommendation for an award is promptly reported to the awards approving authority with a recommendation for appropriate action.

Paragraph 3-6, "Wartime conditions award approval authority," states:

a. The MOH is awarded only by the President of the United States. Other decorations are awarded by the President, the Secretary of Defense, and the Secretary of the Army.

Table 3-4 reflects the Secretary of the Army is the approval authority for the Distinguished Service Cross (DSC) and all lesser decorations.

Paragraph 3-8, "Medal of Honor," states:

a. The MOH, 10 USC 3741, was established by Joint Resolution of Congress, July 12, 1862 (amended by acts of July 9, 1918 and July 25, 1963).

b. The MOH is awarded by the President of the United States in the name of Congress to a person who, while a member of the Army, distinguishes himself or herself conspicuously by gallantry and intrepidity at the risk of his or her life above and beyond the call of duty while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. The deed performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his or her comrades and must have involved risk of life. Incontestable proof of the performance of the service will be exacted and each recommendation for the award of this decoration will be considered on the standard of extraordinary merit.

Paragraph 3-11, "Silver Star," states:

a. The Silver Star, 10 USC 3746, was established by Act of Congress July 9, 1918 (amended by Act of July 25, 21963).

b. The Silver Star is awarded to a person who, while servicing in any capacity with the U.S. Army, is cited for gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in armed conflict against an opposing armed force in which the United States is not a belligerent party. The required gallantry, while of a lesser degree than that required for the [Distinguished Service Cross], must nevertheless have been performed with marked distinction.

d. The Silver Star is a valor award and will not be awarded for service.

Secretary of the Army Memorandum, "Composition and Operations of Army Decorations and Unit Awards Boards," May 25, 2010

The Composition and Operations of Army Decorations and Unit Awards Board memorandum establishes the Senior Army Decorations Board (SADB), the Army Decorations Board, and the Army Unit Awards Board. It prescribes the procedures to be used when considering and processing award recommendations.

The purpose of the SADB is to review Medal of Honor (MOH), Distinguished Service Cross (DSC), and Distinguished Service Medal (DSM) award recommendations in accordance with Title 10, United States Code, Section 1130 and Army Regulation 600-8-22, "Military Awards." The SADB makes non-binding advisory recommendations to assist the approval authority in determining whether to approve, disapprove, upgrade, or downgrade an award recommendation.

The SADB consists of three voting members. For enlisted award recommendations, the Sergeants Major of the Army will be one of the voting members. Each member has one vote and the majority vote rules. The SADB may consider all relevant information considered appropriate and all information considered will be forwarded to the Secretary of the Army for decision.

The Army G-1, under the authority of the Secretary of the Army, will appoint a MOH advisor to the SADB. The primary responsible for the advisor is to provide counsel and support to the SADB and the Secretary of the Army on issues relating to the execution of Army policy concerning the MOH. His duties are solely advisory in nature, any recommendations made by the advisor are independent and non-binding, he may be present for board meetings and deliberations, and may present information and materials to the SADB. The advisor may not render a board vote or veto any recommendations; however, he may submit a separate memorandum containing comments regarding the merits of the award recommendation to the Secretary of the Army.

Department of Defense Instruction 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," dated March 24, 2011.

It is DoD policy that Defense Criminal Investigative Organizations (DCIO), of which Army CID is a part, shall initiate investigations in accordance with law and governing regulations, but do not require approval from any authority outside of the DCIO. Commanders at all levels are required to report criminal allegations or suspected criminal allegations involving persons affiliated with the DoD or any property or programs under their control or authority to the appropriate DCIO or law enforcement organization as soon as possible. The decision to initiate a criminal investigation remains solely with the DCIO.

Army Regulation 195-2, "Criminal Investigation Activities," June 15, 2009, with Rapid Action Revision dated July 8, 2010.

It is Army policy that all criminal incidents in the Army will be reported to the installation law enforcement activity. Serious crimes and incidents, in accordance with this regulation will be reported to, and investigated by, Army CID personnel. The commander of the appropriate Army CID element will direct the initiation of an investigation immediately upon receipt of information that a criminal incident falling within the investigative purview of Army CID has occurred or is suspected. Once initiated, the criminal investigation will continue until completion.

Appendix B, "Offense Investigative Responsibility," Table B-1, states Army CID will initiate a criminal investigation when military property valued greater than or equal to $5,000.00, or sensitive military property is stolen, improperly disposed of, or sold.

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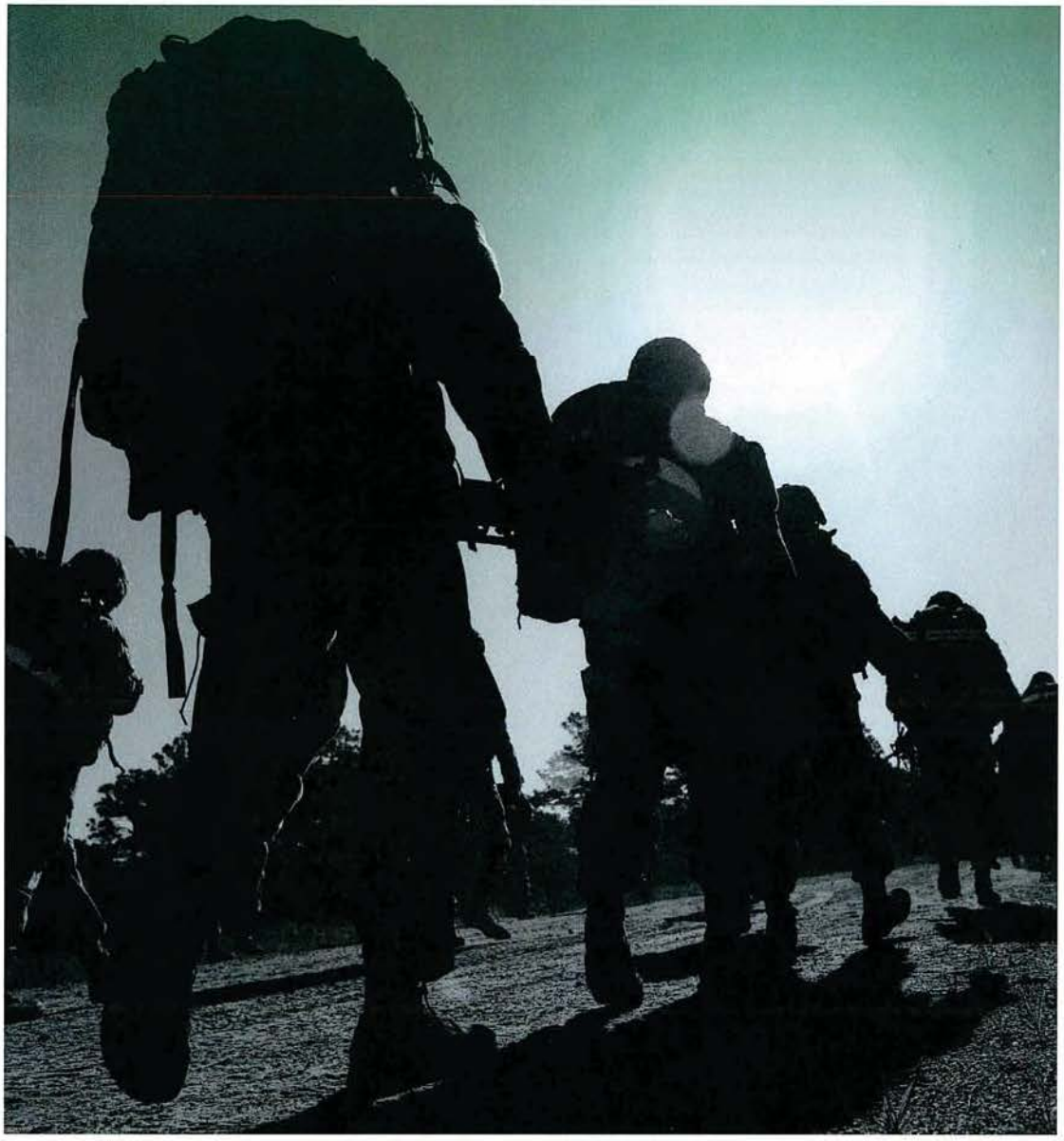

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