

# REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

## SECTION I - APPOINTMENT

Appointed by University of California Santa Barbara, LTC George W. Davis  
(Appointing authority)

on 27 September 2011 (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)  
(Date)

## SECTION II - SESSIONS

The (investigation) (board) commenced at Phelps Hall, Room 1309, UCSB Campus at 1000  
(Place) (Time)  
on 20 October 2011 (If a formal board met for more than one session, check here ☐. Indicate in an inclosure the time each session began and  
(Date) ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were  
present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

LTC Erik Krivda, President  
MSG Timothy Malmin, Recorder  
CDT Andrew Corbett, Respondent  
Mr. Haytham Faraj, Esq., Respondent Counsel  
LTC(Ret.) Martin Stokes, Witness  
2LT (ARNG) Ayala Fransico, Witness  
CDT Dean J. Desmet, Witness  
Mr. Sean Lask, Witness  
Mr. Timothy J. Corbett, Witness

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)  
None

The (investigating officer) (board) finished gathering/hearing evidence at 1319 on 20 October 2011  
(Time) (Date)  
and completed findings and recommendations at 1500 on 21 October 2011  
(Time) (Date)

## SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES		YES	NO <sup>1/</sup>	NA <sup>2/</sup>
1	Inclosures (para 3-15, AR 15-6)			
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)				
a.	The letter of appointment or a summary of oral appointment data?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	Copy of notice to respondent, if any? (See item 9, below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	Other correspondence with respondent or counsel, if any?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	All other written communications to or from the appointing authority?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	Privacy Act Statements (Certificate, if statement provided orally)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g.	Information as to sessions of a formal board not included on page 1 of this report?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h.	Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

FOOTNOTES: 1/ Explain all negative answers on an attached sheet.

2/ Use of the NA column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

		YES	NO <sup>1/</sup>	NA <sup>2/</sup>
2	Exhibits ( <i>para 3-16, AR 15-6</i> )			
	a. Are all items offered ( <i>whether or not received</i> ) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	d. Are copies, descriptions, or depictions ( <i>if substituted for real or documentary evidence</i> ) properly authenticated and is the location of the original evidence indicated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board ( <i>para 3-6b, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit ( <i>para 3-16d, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Was a quorum present when the board voted on findings and recommendations ( <i>paras 4-1 and 5-2b, AR 15-6</i> )?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (<i>Chapter 5, AR 15-6</i>)</b>				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment ( <i>para 5-3b, AR 15-6</i> )?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Was a quorum present at every session of the board ( <i>para 5-2b, AR 15-6</i> )?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Was each absence of any member properly excused ( <i>para 5-2a, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7	Were members, witnesses, reporter, and interpreter sworn, if required ( <i>para 3-1, AR 15-6</i> )?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence ( <i>para 5-2d, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (<i>Section II, Chapter 5, AR 15-6</i>)</b>				
9	Notice to respondents ( <i>para 5-5, AR 15-6</i> ):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Was the date of delivery at least five working days prior to the first session of the board?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Does each letter of notification indicate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(1) the date, hour, and place of the first session of the board concerning that respondent?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(2) the matter to be investigated, including specific allegations against the respondent, if any?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(3) the respondent's rights with regard to counsel?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(4) the name and address of each witness expected to be called by the recorder?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(5) the respondent's rights to be present, present evidence, and call witnesses?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Was the respondent provided a copy of all unclassified documents in the case file?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10	If any respondent was designated after the proceedings began ( <i>or otherwise was absent during part of the proceedings</i> ):			
	a. Was he properly notified ( <i>para 5-5, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel ( <i>para 5-4c, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11	Counsel ( <i>para 5-6, AR 15-6</i> ):			
	a. Was each respondent represented by counsel?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Name and business address of counsel: Haytham Faraj, Esq. The Law Firm of Puckett & Faraj, PC, 1800 Diagonal Road, Suite 210, Alexandria, VA 22314			
	( <i>If counsel is a lawyer, check here <input checked="" type="checkbox"/> </i> )			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. If military counsel was requested but not made available, is a copy ( <i>or, if oral, a summary</i> ) of the request and the action taken on it included in the report ( <i>para 5-6b, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality ( <i>para 5-7, AR 15-6</i> ):			
	a. Was the challenge properly denied and by the appropriate officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	b. Did each member successfully challenged cease to participate in the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13	Was the respondent given an opportunity to ( <i>para 5-8a, AR 15-6</i> ):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Examine and object to the introduction of real and documentary evidence, including written statements?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Call witnesses and otherwise introduce evidence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. Testify as a witness?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	f. Make or have his counsel make a final statement or argument ( <i>para 5-9, AR 15-6</i> )?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses ( <i>para 5-8b, AR 15-6</i> )?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it ( <i>para 5-11, AR 15-6</i> )?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FOOTNOTES: <sup>1/</sup> Explain all negative answers on an attached sheet. <sup>2/</sup> Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.				

**SECTION IV - FINDINGS** (para 3-10, AR 15-6)

The *(investigating officer) (board)*, having carefully considered the evidence, finds:

- o CDT Corbett did enter into a valid Senior Army Reserve Officer's Training Corps (ROTC) Cadet contract (DD-597/597-3).
- o CDT Corbett did fail to complete the requirements of the ROTC Cadet Contract. CDT Corbett was a member of the UCSB ROTC Battalion for 3 years and CDT Corbett failed the Army Physical Fitness Test (APFT) on multiple occasions.
- o CDT Corbett was dismissed from LDAC and did not receive credit. This constitutes a breach of contract for failing to maintain Army physical readiness standards; CDT Corbett was given two chances to pass the APFT and failed both attempts.
- o CDT Corbett did not receive advanced educational assistance in the form of ROTC scholarship monies from the U.S. Government, CDT Corbett does not have a valid debt to the U.S. Government.
- o CDT Corbett is in a valid contract (DD-4/1) with the California Army National Guard.

**SECTION V - RECOMMENDATIONS** (para 3-11, AR 15-6)

In view of the above findings, the *(investigating officer) (board)* recommends:

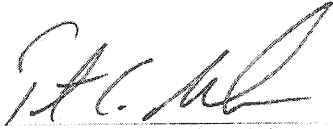
Recommendation: CDT Corbett did fail to receive credit for LDAC and his failure to pass the APFT multiple times does constitute a breach of contract. CDT Corbett should not be retained as an ROTC Cadet, and should be released from his contract. CDT Corbett is a member of the Simultaneous Membership Program (SMP) and does have a valid contract as an E3 in the California Army National Guard. CDT Corbett should be released for service back to the California Army National Guard to fulfill his obligation as an enlisted soldier.

Background: CDT Corbett is a progression Cadet who completed three years of ROTC training and classes prior to LDAC. During the three years of instruction and training, CDT Corbett had extreme difficulty meeting the APFT standards, particularly the push up event. During his time at UCSB, CDT Corbett states he was instructed that leaders only need to pass the APFT, and that only achieving 60 points per event was acceptable to become an Officer in the U.S. Army. Therefore, CDT Corbett only trained to achieve 60 points per event. During his MS III year, he signed up for both martial arts and kettle bell training classes to assist him in improving his physical ability. Both of these classes and his additional PT sessions with the UCSB Battalion did not provide him the adequate ability to meet or exceed the minimum APFT standards.

Through multiple witnesses and his opening and closing statements CDT Corbett stressed that he is a highly dedicated and focused individual, and now willing to dedicate his time to physical training. Releasing him back to the Army National Guard will allow him the ability to continue service to his country and provide him the ability to gain valuable skills while attending Individual and Advanced Military Training. Once CDT Corbett completes this training and is better prepared as a Soldier, he can still apply for either Federal or State Officer Candidate School. This will allow him time to grow and learn as an individual and gain valuable skills required as an Army Leader.

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)



(Recorder)

 LTC, IN

(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure \_\_\_\_\_, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

 LTC, AV