

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230004063

APPLICANT REQUESTS: removal of the derogatory comments shown in his DA Form 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) Staff Sergeant-First Sergeant (1SG)/Master Sergeant (MSG)) covering the period 8 October 2017 through 21 September 2018.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Applicant's Memorandum for Army Review Boards Agency (Evaluation Report Appeal, (Applicant), 8 October 2017 through 21 September 2018), 30 March 2023
- DA Form 2166-9-1A (NCOER Support Form)
- DA Form 2166-9-2 covering the period 8 October 2017 through 21 September 2018
- Applicant's Memorandum for Commander, U.S. Army Human Resources Command (Matters for Consideration by the Quality Management Program (QMP) Board, (Applicant)), 19 November 2019, with 18 Character Support Letters/Memoranda for the QMP Board

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states his NCOER covering the period 8 October 2017 through 21 September 2018 contains unsubstantiated derogatory comments in Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies (Rater)), block c (Character), and the senior rater designated in the established in the rating scheme was replaced. He did not previously appeal his evaluation based on advice from senior NCOs, legal representatives, and his experiences.

a. A recent encounter with Lieutenant Colonel (LTC) S____ M____ triggered a severe relapse of his post-traumatic stress disorder related to his evaluation. His command did not force him into a situation once they were made aware of his previous experience with LTC M____. The situation led to inpatient therapy and his decision to finally appeal the unsubstantiated derogatory comments in his evaluation.

b. His appeal is based on both administrative and substantive error. His evaluation contains unsubstantiated derogatory comments, such as the comments in Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies (Rater), block c (Character), that he "Did Not Meet Standard" along with the bullet comment "disobeyed direct orders of Senior NCOs and field grade officers; pursued personal gain at expense of subordinate and exposed his Soldier to undue risk." There was never an investigation or Uniform Code of Military Justice (UCMJ) action to support the claim.

c. Additionally, his established senior rater was LTC M____ who had completed his previous two NCOERs. The senior rater was replaced by LTC J____ K____ when the NCOER was submitted, even though LTC M____ was available.

d. He filled four full-time positions at the start of this rating period as a Cardiovascular Catheterization Laboratory NCO in Charge (NCOIC) (military occupational specialty (MOS) 68N30), Cardiology Supply NCO (MOS 68N30), Cardiovascular NCO performing patient care/on-call heart alert (Segment Elevation Myocardial Infarction Team), and Hematology and Oncology NCOIC (MOS 68W20). No other Soldier in the company had half of his workload. After 4 months he could no longer handle the strain of working from around 0630 until between 2000 and 2300 every weekday and performing on-call duty was causing him physical and mental health issues.

e. He used his chain of command's open door policy due to the unprofessional and untenable load of working in two clinics. He was reporting to two different supervisors in each clinic, Sergeant First Class (SFC) J____ T____ and LTC S____ M____ in Cardiology and SFC M____ and Major M____ in Hematology and Oncology. They constantly interfered with him performing duties in the other clinic despite an agreement to respect the split time. The company commander and 1SG were sympathetic to the situation until they spoke to his Deputy NCOIC.

f. MSG P____ P____, the Deputy Chief Clinical Services NCOIC, repeatedly asked for assistance from the NCOs in each of his sections. The more that he asked and was ignored, the higher he went using the open door policy. He received increasing levels of harassment and ostracism from his chain of command, but the worst came from his rater, SFC T____. He was reprimanded for providing courtesy copies of email messages to higher-ranking supervisors, requesting assistance after they failed to

follow through in assisting him. He kept both of his NCO supervisors informed of everything he did and all of his meetings with his chain of command.

g. The replacement NCOIC for Hematology and Oncology, Sergeant (SGT) B____, arrived in March 2018 and he began training them on the position duties. The Department of Medicine Officer in Charge (OIC), LTC C____ M____, gave him verbal permission in May 2018 to transfer the hand receipt and key control. LTC M____ was moving up to be the Deputy Chief Clinical Services OIC. The Deputy Chief Clinical Services NCOIC, MSG P____ P____, had been blocking the transfer of responsibilities to the new NCOIC and releasing him of full time to cardiology despite LTC M____ telling him that it was her direction.

h. LTC M____ said she would talk to MSG P____ again, that her decision was for him to return to the cardiology clinic as soon as possible. He then submitted all the transfer paperwork in accordance Madigan Army Medical Center policies and transferred it to the new NCOIC. MSG P____ was left unaware by the NCOs and officers and discovered it on 12 July when he told SGT B____ that he intended to move her to another position. MSG P____ conducted an illegal interview in accordance with Article 31, UCMJ, on 13 July 2018 with him, SGT B____, and SFC M____. After this meeting, he asked SFC M____ why he did not defend him as he was aware of the transfer and approval from LTC M____. SFC M____'s response was that he misunderstood him when he told him.

i. MSG P____ pulled him out of Equal Opportunity Leader training the morning of 16 July 2018 and conducted another interrogation with all the NCOs in his chain of command up to 1SG M____ and Captain M____. MSG P____ accused him of circumventing the chain of command and disobeying orders. Captain M____ stated she thought they could use specific UCMJ action at the end. He was told to wait in his office and around 1700, SFC T____ threatened him with field-grade nonjudicial punishment under Article 15, UCMJ, if he refused to sign a DA Form 4856 (Developmental Counseling Form) with a false narrative. He was flagged the same day and only notified through Go Army Ed. Two weeks later the flag was removed.

j. He has received varying levels of this same type of harassment and ostracism throughout his career. The situations sound absurd and impossible when he talks about it to others. He was recently diagnosed with autism spectrum disorder and the diagnosis allowed him to understand why this kept happening. This single year of torment under the supervision of MSG P____ and SFC T____ was the worst experience of his entire life and left him with post-traumatic stress disorder worse than combat in Iraq. The Qualitative Management Board process that followed in 2019 forced him to relive the experience. One of the worst moments during this ordeal was when his wife looked at him and said, "Please don't kill yourself." He would never do that, but he realized they had broken his spirit and depleted his resilience.

3. His NCOER covering the period 8 October 2017 through 21 September 2018 (12 months) addressed his duty performance as the Hematology/Oncology NCOIC. His rater is shown as SFC J____ D. T____, Cardiology Service NCOIC and his senior rater is shown as LTC J____ S. K____, Cardiology Service OIC. His rater and senior rater digitally signed the NCOER on 1 November 2018. An attachment shows he read but did not respond to the NCOER on 16 July 2018. He signed the NCOER the same day.

a. The reason for submission is shown as "Change of Rater."

b. Part IV Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies (Rater), block c (Character), shows his rater rated his performance as "DID NOT MEET STANDARD" and entered the following bullet comments:

- disobeyed direct orders of Senior NCOs and field grade officers; pursued personal gain at expense of subordinate and exposed his Soldier to undue risk.
- adhered to the values of the Army Sharp [Sexual Harassment/Assault Response and Prevention], EO [Equal Opportunity], and EEO [Equal Employment Opportunity] programs

c. He was rated as "MET STANDARD" or "EXCEEDED STANDARD" in all remaining blocks.

d. His senior rater rated his overall potential as "QUALIFIED."

4. His DA Form 2166-9-1A covering this period shows his rater as SFC J____ D. T____, Cardiology Service NCOIC, and his senior rater as LTC S____ R. M____, Cardiovascular Catheterization Laboratory OIC.

5. His memorandum for the Commander, U.S. Army Human Resources Command (Matters for Consideration by the QMP Board, (Applicant)), noted his consideration by the QMP Board was initiated solely on the basis of the NCOER covering the period 8 October 2017 through 21 September 2018 and informed the Board that he was in the process of appealing that NCOER for substantive errors. He described his responsibilities during the evaluation period and the challenges he encountered.

6. He provided 18 letters/memoranda for the QMP Board attesting to his skills, work ethic, and competence.

7. He is currently serving at the Landstuhl Regional Medical Center. He was promoted to the rank/grade of SFC/E-7 effective 1 May 2023.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, his military records, and regulatory guidance. The applicant is contesting the NCOER received for the period ending 21 September 2018. Although, the applicant states that there was never an investigation or UCMJ to support it, the Board agreed that did not negate that the applicant exceeded his authority through his actions. After due consideration of the request, the Board found insufficient evidence of a strong and compelling nature that the NCOER was incorrect and agreed that the burden of proof had not been met and a recommendation for relief was not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned and removal of the contested statement from the applicant's DA Form 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) for the period 8 October 2017 through 21 September 2018 is not warranted.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 623-3 (Evaluation Reporting System), 14 June 2019, prescribes the policies and tasks for the Army's Evaluation Reporting System.

a. Paragraph 2-5 (Rules for Designating a Rater) stated the rater will be the immediate supervisor of the rated Soldier responsible for directing and assessing the rated Soldiers' performance. The rater will normally be senior to the rated Soldier in grade or date of rank. The rater will be the supervisory of the rated NCO for a minimum period of 90 calendar days.

b. Paragraph 2-7 (Rules for Designating a Senior Rater) stated a senior rater will be an officer or NCO of the U.S. Armed Forces, U.S. Coast Guard, or a Department of Defense Civilian. The senior rater will be the immediate supervisor of the rater. To render a written NCOER, the senior rater must have been designated as the rated NCO's senior rater for a minimum period of 60 calendar days.

c. Paragraph 3-37 (Modifications to Previously Submitted Evaluation Reports) stated an evaluation report accepted by Headquarters, Department of the Army (HQDA), and included in the official record of a rated Soldier is presumed to:

(1) be administratively correct,

(2) have been prepared by the properly designated rating officials who meet the minimum time and grade qualifications, and

(3) represent the considered opinions and objective judgment of the rating officials at the time of preparation.

d. Paragraph 4-7f stated an appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. The determination regarding adequacy of evidence may be made by the HQDA Evaluation Appeals Branch, National Guard Bureau Appeals Section, or the appropriate State Adjutant General (Army National Guard).

e. Paragraph 4-11 (Burden of Proof and Type of Evidence) stated the burden of proof in the appeal process rests with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

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

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

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

g. For a claim of administrative error, appropriate evidence may include:

(1) the published rating scheme used by the organization during the period of the evaluation report being appealed;

(2) assignment, travel, or temporary duty orders;

(3) DA Form 705 (Army Physical Fitness Test Scorecard), DA Form 5500 (Body Fat Content Worksheet (Male)), and DA Form 5501 (Body Fat Content Worksheet (Female));

(4) leave records;

(5) organization manning documents;

(6) hospital admission, diagnosis, and discharge sheets;

(7) statements of military personnel officers or other persons with knowledge of the situation pertaining to the evaluation report in question;

(8) the results of a Commander's or Commandant's Inquiry, IG, and/or EO investigation; and

(9) other relevant documents.

(10) Editable documents must be marked certified true copies. This applies to documents submitted as evidence in support of either an administrative or substantive claim.

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

i. Paragraph 4-12 (Appeals Based on Substantive Inaccuracy) stated a decision to appeal an evaluation report will not be made lightly. Before deciding whether or not to appeal, the prospective appellant will analyze the case dispassionately. The prospective appellant will note that:

(1) pleas for relief citing past or subsequent performance or assumed future value to the Army are rarely successful and

(2) limited support is provided by statements from people who observed the appellant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances), letters of commendation or appreciation for specific but unrelated instances of outstanding performance, or citations for awards, inclusive of the same period.

j. Once the decision has been made to appeal an evaluation report, the appellant will state succinctly what is being appealed and the basis for the appeal. For example, the appellant will state:

(1) whether the entire evaluation report is contested or only a specific Part or comment and

(2) the basis for the belief that the rating officials were not objective or had an erroneous perception of the performance. A personality conflict between the appellant and a rating official does not constitute grounds for a favorable appeal; it must be shown conclusively that the conflict resulted in an inaccurate or unjust evaluation.

k. Most appellants will never be completely satisfied with the evidence obtained. A point is reached, however, when the appellant will decide whether to submit with the available evidence or to forgo the appeal entirely. The following factors are to be considered:

(1) The evidence must support the allegation. The appellant needs to remember that the case will be reviewed by impartial board members who will be influenced only by the available evidence. Their decision will be based on their best judgment of the evidence provided.

(2) Correcting minor administrative errors or deleting one official's rating does not invalidate the evaluation report.

//NOTHING FOLLOWS//