

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230004582

APPLICANT REQUESTS: through counsel:

- removal of the DA Form 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) (Staff Sergeant-First Sergeant/Master Sergeant) covering the period 30 June 2020 through 3 August 2021 from his Army Military Human Resource Record (AMHRR)
- in the alternative, removal of the comments from Part IVe through Part IVg, Part IVi, Part Va, and Part Vb
- as as second alternative, removal of the comments from Part IVe and Part IVg

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)
- Memorandum for Army Board for Correction of Military Records (ABCMR) ((Applicant) NCOER Appeal), 29 March 2023, with 17 enclosures –
 - Enclosure 1 – NCOER covering the period 30 June 2020 through 3 August 2021
 - Enclosure 2 – Memorandum for Commander, 197th Infantry Brigade ((Applicant) Request for a Commander's Inquiry), 3 October 2021
 - Enclosure 3 – Counsel's Email ((Applicant) Request for Commander's Inquiry), 4 October 2021
 - Enclosure 4 –
 - Counsel's Email ((Applicant) Request for Commander's Inquiry), 20 December 2021
 - Spouse's Memorandum for Record (Statement about (Applicant's) Treatment), undated
 - Enclosure 5 –
 - 26 January 2022 Recording (blank)
 - DA Form 1559 (Inspector General (IG) Action Request), 19 August 2021

- Enclosure 6 –
 - 26 January 2022 Meeting Transcript, 3 May 2022
 - Group Text Messages, 23 May through 27 May
- Enclosure 7 –
 - Memorandum for Department of Defense IG Office (Treatment of My Wife by Command and Violation of Army Regulations), 2 February 2022
 - Group Text Messages, 12 July
- Enclosure 8 – IG Email Correspondence (Maneuver Center of Excellence Office of the IG), 6 and 19 April 2022
- Enclosures 9 and 10 – Excerpts of Army Regulation 623-3 (Evaluation Reporting System), 14 June 2019
- Enclosure 11 – Counsel's Letter to the ABCMR, 9 May 2022
- Enclosure 12 – Email Correspondence (Reply: (Applicant) NCOER), 21 October 2021
- Enclosure 13 –
 - Email Correspondence (Reply: (Applicant) Commander's Inquiry), 30 September 2022
 - Email Correspondence (Reply: (Applicant) Commander's Inquiry), 6 October 2022
- Enclosure 14 – Memorandum for Army Special Review Board (ASRB) ((Applicant) NCOER Appeal), 21 October 2022
- Enclosure 15 – ASRB Docket Number AR20220010732, 10 January 2023
- Enclosure 16 – Counsel's Email Correspondence (Reply: (Applicant) Commander's Inquiry), 22 February 2023
- Enclosure 17 – Counsel's letter to the ABCMR, 27 March 2023

FACTS:

1. The applicant states the contested NCOER contains substantive inaccuracy and injustice.

a. As factual background, he notes:

(1) He signed the contested NCOER covering the period 30 June 2020 through 3 August 2021 on 6 August 2021 (see enclosure 1). He submitted a timely request for a Commander's Inquiry on 4 October 2021 (see enclosure 2). He includes proof of

submission to his brigade commander, Colone [REDACTED] (see enclosure 3), and that he was bullied by his peers, as well as retaliated against by his commander (NCOER Supplementary Reviewer) for filing an IG complaint. His commander (NCOER Supplementary Reviewer) also made false accusations against his wife. He requested that the brigade commander investigate the inaccuracies in his NCOER.

(2) Since he has not received a response, his lawyer requested a status update of the Commander's Inquiry on 20 December 2021 (see enclosure 4). Specifically, his lawyer asked "[w]as an inquiry conducted? If so, what was the result?" His lawyer did not receive a response.

(3) The applicant met with COL [REDACTED] and Command Sergeant Major (CSM) [REDACTED] on 26 January 2022. He recorded the meeting (see enclosure 6). He asked COL [REDACTED] for a copy of the inquiry he requested. COL [REDACTED] told him an investigation was conducted and despite there being changes that should have been made, the commander couldn't make the changes because the NCOER was already posted to his official military record. Specifically, the commander said, "I think there were three specific bullets that CSM [REDACTED] identified that were not backed up by counseling statements that were inappropriate and so those definitely need to be changed." He would not give the applicant a copy of the investigation if it was conducted (see meeting transcript as enclosure 5 (blank) and 6).

(4) He submitted an IG complaint on 2 February 2022 (see enclosure 7). He asks the IG to look into the bullying of his wife by his company commander and for help getting a copy of the Commander's Inquiry to which he was entitled in accordance with Army Regulation 623-3.

(5) He received a response from the IG Office on 6 April 2022 (see enclosure 8). The IG Office referred him to the Freedom of Information Act (FOIA) Office to request a copy of the "[Army Regulation] 15-6 [Procedures for Administrative Investigations and Boards of Officers] investigation previously completed."

(6) His lawyer obtained a copy of the commander's inquiry request, on 6 October 2022 (see enclosure 13), conducted on 20 October 2021. The brigade commander stated he "want[ed] to recall the applicant's NCOER because there were 'three specific bullets related to his personal behavior and/or conduct that are not backed by counseling and are merely allegations rather than performance-related observation'" (see enclosure 12). The commander noted "None of these three statements were backed with any counseling. We believe we have a responsibility to the Soldier to rectify his NCOER." He listed the following specific bullets:

- seemed constantly distracted or preoccupied with other things rather than focusing on his task at work

- allowed personal issues to interfere with his job; consistently on his phone dealing with non-work related problems
- fell asleep regularly while at work; cannot be trusted to drive a lead or trail vehicle during Infantry OSUT [One Station Unit Training] foot march

(7) The Brigade S-1 Noncommissioned Officer in Charge responded that she would "send an email to HRC [U.S. Army Human Resources Command] Evaluations Branch to have it returned" (see enclosure 12). This was never done.

(8) He submitted an application to the ASRB on 21 October 2022 (see enclosure 14).

(9) The ASRB denied his application on 10 January 2023. The board cited that while he provided an email stating that certain bullets should be changed within the NCOER, he did not provide an Army Regulation 15-6 report of investigation (ROI), seemingly implying they thought he was withholding the Army Regulation 15-6 ROI that he possessed (see enclosure 15).

(10) His lawyer contacted MAJ [REDACTED] again on 16 February 2023, asking if there were an actual Army Regulation 15-6 investigation conducted with findings and recommendations from an investigating officer. MAJ [REDACTED] responded that the email sent was all that existed and there was no Army Regulation 15-6 ROI (see enclosure 16).

b. As a basis for his appeal, he notes:

(1) Until receiving his NCOER, he thought he performed well during the rated period. None of the bullets cited above are true or based in fact. As described in his Commander's Inquiry request, he was bullied by his peers during the rated period. The bullying and name slandering tarnished his reputation. His peers were friends with his rater and senior rater and colored them against him. As described and corroborated in his Commander's Inquiry request, he was repeatedly called derogatory names.

(2) He filed an IG complaint for the bullying and his Commander sent him to the Behavioral Health Clinic for a fit-for-duty examination instead of taking his allegations seriously. He believes this was to deter him from filing further complaints. Furthermore, as described in his wife's letter (see enclosure 4), as part of the Commander's Inquiry request, his commander, Captain (CPT) [REDACTED] reported that his wife was physically abusing him to the Family Advocacy Program – accusations which were false and CPT [REDACTED] never had a reason to believe. Again, he believes this was done to deter him from filing additional complaints.

(3) He filed a timely request for a Commander's Inquiry as required. However, despite multiple requests, neither he nor his lawyer was provided a copy of the investigation until recently and there is no ROI uploaded to his AMHRR. His brigade commander found fault with his NCOER, yet the investigation was not uploaded to his record.

(4) He believes he has satisfied the burden of proof and the NCOER in question should be removed from his AMHRR. At a minimum, the three bullets cited above should be removed. The fact that the bullets were identified as untrue demonstrates that his rater and senior rater were biased against him. The findings of the Commander's Inquiry substantiate his claims of unfair treatment and bullying. These three comments also influenced the rater's and senior rater's ratings and box checks made in the NCOER.

(5) In conclusion, he is still serving as a drill sergeant and was extended a year because of the excellent job he is doing. If he were a terrible drill sergeant, he would not be still serving in the same position, which further corroborates his contention that the contested NCOER is both untrue and unjust.

2. Counsel states:

a. The applicant submitted a timely request for a Commander's Inquiry in accordance with Army Regulation 623-3, paragraph 4-3a, which noted a Commander's Inquiry was required. An email shows (see enclosure 12) that an inquiry was conducted. He confirmed with the unit's judge advocate that the email was the only record of the inquiry (see enclosure 16).

b. The ASRB implied in their decision that they believed the applicant was not providing an available Army Regulation 15-6 ROI. However, based on a recent confirmation, there was no such Army Regulation 15-6 investigation. Furthermore, since the inquiry found fault with the evaluation, it should have been uploaded to his Official Military Personnel File (OMPF) in accordance with Army Regulation 623-3, paragraph 4-5.

c. The inquiry did not have specific "findings, conclusions, and recommendations" in direct violation of Army Regulation 623-3, paragraph 4-5j. Additionally, the inquiry was not uploaded in his OMPF in direct violation of Army Regulation 623-3. The ASRB highlighted that a complete Army Regulation 15-6 ROI was not provided to the board and used that against the applicant. Of note, Army Regulation 623-3, paragraph 4-4c, specifically states that Army Regulation 15-6 does not have to be used to conduct a Commander's Inquiry.

d. The applicant followed the proper procedures described in Army Regulation 623-3 by timely requesting a Commander's Inquiry. However, his command failed to make proper findings and recommendations and failed to forward the completed inquiry to Headquarters, Department of the Army (HQDA), in violation of Army Regulation 623-3. The command's failures were cited by the ASRB as reasons why his appeal was denied. This injustice, using the command's failures against the applicant, cannot stand.

3. After having prior enlisted service [REDACTED] Army National Guard, he enlisted in the the Regular Army on 6 November 2008.

4. His NCOER covering the period 30 June 2020 through 3 August 2021 shows the reason for submission as "Extended Annual." His rater is shown as Sergeant First Class [REDACTED] his senior rater i shown as First Lieutenant [REDACTED] and his supplementary reviewer is shown as CPT [REDACTED] The NCOER shows in:

a. Part IVf (Intellect), his rater marked "DID NOT MEET STANDARD" and commented:

- unable to make decisions on his own; has to be given clear and concise guidance in order to complete tasks
- seemed constantly distracted or preoccupied with other things rather than focusing on his tasks at work
- allowed personal issues to interfere with his job; consistently on his phone dealing with non-work related problems

b. Part IVf (Leads), his rater marked "DID NOT MEET STANDARD" and commented:

- unable to lead the platoon on his own; has to be supervised to make sure trainees are properly informed and instructed
- failed to maintain uniform and grooming standards; sets a poor example for the trainees to follow
- lacked the initiative to take charge of trainees; had to be told when to teach, train or lead trainees during OSUT

c. Part IVg (Develops), his rater marked "DID NOT MEET STANDARD" and commented:

- corrected constantly by his peers for the same mistakes; unable to improve on his own after his mistakes are identified
- fell asleep, regularly while at work; cannot be trusted to drive a lead or trail vehicle during Infantry OSUT Footmarch [sic]

- hindered the mission by being unreliable; pushed duties and responsibilities indirectly to his peers to complete the objective

d. Part IV (Rater Overall Performance), his rater marked "DID NOT MEET STANDARD";

e. Part V (Senior Rater Overall Potential), his senior rater marked "NOT QUALIFIED" and commented: "[Applicant] is #4 of 4 that I senior rate in this grade. [Applicant] needs more development in his current grade. Do not send to SLC [Senior Leaders Course] and Sustain SM [service member] in current grade and re-assign duties for more development."

5. He requested a Commander's Inquiry through the 197th Infantry Brigade Commander on 3 October 2021. He stated the bullet comments were both untrue and unjust. He was subjected to bullying and harassment by his fellow drill sergeants throughout the rating period. The drill sergeants influenced his rater and senior rater against him. The contested NCOER was related to the bullying and harassment to which he was subjected. Furthermore, while he still can't believe it, CPT [REDACTED] made allegations against his wife in an attempt to prevent them from filing any additional complaints. He specifically requested an investigation into his treatment by his command, which resulted in the contested NCOER.

6. In an undated memorandum, his wife supported his contentions of being bullied, harassed, and mistreated.

7. Counsel sent COL [REDACTED] an email on 4 October 2021, stating the applicant was requesting a Commander's Inquiry regarding his referred NCOER in accordance with Army Regulation 623-3, chapter 4. Counsel recommended that COL [REDACTED] consult with his legal advisor.

8. On 20 October 2021, COL [REDACTED] emailed Sergeant First Class [REDACTED] the Brigade S-1 NCOIC, stating they wanted to recall the applicant's NCOER because there were three specific bullets related to his personal behavior and/or conduct that were not backed by counseling, and were merely allegations rather than performance-related observations. They believed they had a responsibility to the applicant to rectify his NCOER. COL [REDACTED] listed the derogatory bullet comments as listed above.

9. Counsel emailed COL [REDACTED] again on 20 December 2021, stating he was following up on the Commander's Inquiry requested on 3 October 2021. Counsel asked COL [REDACTED] if the inquiry was conducted and, if so, what the result was. Counsel also informed COL [REDACTED] that he would be happy to communicate directly with the unit judge advocate.

10. Counsel provided a copy of an alleged recorded meeting transcript with COL [REDACTED] and CSM [REDACTED] that occurred on 26 January 2022. It is unknown if COL [REDACTED] or CSM [REDACTED] authorized the use of this transcript or verified its authenticity.

11. The IG responded to the applicant's email on 6 April 2022 wherein he stated:

Per our phone conversation, this email is in response to your Inspector General Action Request, dated 16 Mar[ch] [20]22, to the MCoE [Maneuver Center of Excellence] Inspector General Office. Please follow the guidance in both AR [Army Regulation] and DA PAM [Department of the Army Pamphlet] 623-3 for assistance in preparing your NCOER appeal. Also, I've attached the two documents needed to request a copy of the AR [Army Regulation] 15-6 investigation previously completed. We trust this information respond[s] to your concern. Should you need to further contact this office, please refer to case number [REDACTED]

12. MAJ [REDACTED] the Brigade Judge Advocate, responded to counsel's email on 6 October 2022 and stated the command was able to confirm that the former commander of the 197th Infantry Brigade conducted a Commander's Inquiry in response to the applicant's complaint regarding his NCOER. The results of that effort were attached. (Note: a copy of the Commander's Inquiry was not attached or available for the ASRB's review.)

13. On 10 January 2023, the ASRB reviewed his counsel's request to appeal the applicant's NCOER covering the period 30 June 2020 through 3 August 2021. The board determined the evidence presented did not establish clearly and convincingly that the contested report or the requested action was warranted to correct a material error, inaccuracy, or injustice, and denied him relief. The board directed filing the decision memorandum in the applicant's AMHRR beside the contested evaluation report and filing the appeal documentation in the restricted folder of the applicant's AMHRR.

14. A review of the applicant's AMHRR shows the contested NCOER, decision memorandum, and appeal documentation are filed in his performance folder.

15. He is currently serving in the rank/grade of staff sergeant/E-6 and was recently reassigned to Fort Campbell, KY, with a reporting date of 10 March 2024.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, a majority of the Board found relief is warranted.

2. A majority of the Board found the applicant has provided evidence establishing clearly and convincingly that the presumption of regularity should not be applied to the evaluation report in question and action is warranted to correct an injustice. A majority of the Board found the poorly documented Commander's Inquiry essentially deprived the applicant of the evidence he needed to successfully challenge certain statements on the contested NCOER. The evidence clearly shows there were unsubstantiated statement included on the evaluation that have remained in his record. Based on a preponderance of the evidence, a majority of the Board determined the contested NCOER should be removed from his record and be replaced with a statement of non-rated time.

3. The member in the minority found insufficient evidence establishing clearly and convincingly that the presumption of regularity should not be applied to the evaluation report in question. The member in the minority determined relief is 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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing from his AMHRR the NCOER for the period ending 3 August 2021 and replacing the NCOER with a statement of non-rated time.

7/24/2024

X

CHAIRPERSON

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

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 600-37 (Unfavorable Information), 10 April 2018, provided policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR. Paragraph 7-2a(3) (Appeals Involving Document with Regulatory Appeal Authority) stated this regulation does not apply to documents that have their own regulatory appeal authority, such as evaluation reports or records of courts-martial.

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

a. Paragraph 3-37 (Modifications to Previously Submitted Evaluation Reports) stated an evaluation report accepted by 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.

b. Paragraph 4-3 (Commander's or Commandant's Inquiry), states:

(1) Commanders (for OERs and NCOERs) or commandants (for DA Form 1059 or DA Form 1059-2) are required to look into alleged errors, injustices, and illegalities in evaluation reports. This section does not pertain to DA Form 1059-1 evaluation report provided by civilian educational, medical, or industrial institutions because there is no military command structure available. An exception exists for administrative appeal requests for DA Form 1059-1 (see para 4-7).

(2) Upon receipt of a request for a Commander's or Commandant's Inquiry, the commander or commandant receiving the request will verify the status of the OER, NCOER, DA Form 1059, or DA Form 1059-2 in question. If the evaluation has been submitted and received at HQDA for processing, but has not been filed in the Soldier's AMHRR, the commander or commandant will notify the Evaluations Appeals Office via email with a request to have the evaluation placed in an administrative temporary hold status until completion of the inquiry.

c. Paragraph 4-5 (Procedure) states:

(1) A Commander's or Commandant's Inquiry will not be used to document differences of opinion among members of the rating chain about a rated Soldier's performance and potential. The evaluation system establishes rating chains and normally relies on the opinions of the rating officials. Rating officials will evaluate a rated Soldier and their opinions constitute the organization's view of that Soldier. However, the commander may determine through inquiry that the report has serious irregularities or errors. Examples include:

(a) Improperly designated, unqualified, or disqualified rating officials; that is, a rating official not in the published rating chain, a rating official without the minimum required time to render an evaluation report, or a rating official who, through an official investigation, has had a substantiated adverse finding against them that results in their relief or calls into question the rating official's objectivity.

(b) Inaccurate or untrue statements.

(c) Lack of objectivity or fairness by rating officials.

(2) The inquiry will be made by a commander in the chain of command or military school commandant above the designated rating officials involved in the allegations. In headquarters and other military organizations lacking a commander or commandant, the inquiry will be conducted by the next higher official in the rating chain above the designated rating officials involved in the allegations.

(3) To ensure the availability of pertinent data and timely completion of an inquiry conducted after the evaluation in question has been accepted at HQDA for inclusion in the rated Soldier's AMHRR, the inquiry will be conducted by either the commander or commandant at the time the evaluation was rendered who is still in the command position, or by a subsequent commander or commandant in the position. Requests for inquiry will occur no later than 60 days after the signature date of the rated Soldier (or senior rater, if rated Soldier's signature is omitted) for OERs and NCOERs, or reviewing official for DA Form 1059 and DA Form 1059-2. The results of the inquiry

will be forwarded to HQDA not later than 120 days after the signature date of the senior rater (OER and NCOER) or reviewing official (DA Form 1059 and DA Form 1059-2).

(4) The official conducting the inquiry will not pressure or force rating officials to change their evaluations.

(5) The official conducting the inquiry may not evaluate the rated Soldier, either as a substitute for, or in addition to, the designated rating officials' evaluations.

(6) The rating chain or official conducting the inquiry will not use the Commander's or Commandant's Inquiry provisions to forward information derogatory to the rated Soldier. For OERs, NCOERs, DA Form 1059, and DA Form 1059-2 only, if the inquiry reveals matters that might have resulted in a lower evaluation of a rated Soldier, the information will be addressed in the memorandum outlining the results of the inquiry by the commander or commandant responsible for the inquiry in accordance with paragraph 3-39. No changes will be made to an evaluation report to reflect a lower evaluation of a rated Soldier following the results of a Commander's or Commandant's Inquiry.

(7) If, upon completion of the inquiry, the official conducting the inquiry determines the report has serious irregularities or errors or any violation of policy, the official will ensure that all members of the original rating chain are allowed to correct or edit the evaluation as necessary. This will occur with regards to paragraphs 1-10a, 1-11, and 4-5d. The commander's or commandant's memorandum to U.S. Army Human Resources Command will state that all members of the rating chain have been allowed to add or change comments in accordance with the findings and recommendations, and it will list those who did not choose to edit the evaluation.

(8) If the evaluation was previously referred, and after editing the evaluation, it is still referred, the rating chain will refer the final evaluation to the rated Soldier for acknowledgment and the opportunity to submit comments before sending it (and any signed comments) to HQDA.

(9) The results of the inquiry forwarded to HQDA will include the specific findings, conclusions, and recommendations in a memorandum that will be filed with the evaluation report in the rated Soldier's AMHRR for clarification purposes (see figure 4-1). The results will include the commander's or commandant's signature, will stand alone without reference to other documentation, and will be limited to one page. Sufficient evidence and documentation, such as completed Army Regulation 15-6 investigations, reports, and statements, will be attached to justify the conclusions.

(10) If the commander finds no fault with the evaluation, then the Commander's or Commandant's Inquiry is filed locally and a copy given to the rated Soldier. There is no requirement to send the Commander's or Commandant's Inquiry forward to HQDA.

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 4-8 (Timeliness) states substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Failure to submit an appeal within this time would require the appellant to submit his or her appeal to the ABCMR. The ASRB will not accept appeals over 3 years old or appeals from Soldiers who are no longer serving on active duty or as part of the U.S. Army Reserve or Army National Guard.

f. 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.

g. 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.

h. 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 Equal Opportunity 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.

i. 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.

j. 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.

k. 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.

l. 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.

4. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army's Evaluation Reporting System. Paragraph 6-1 (Deciding to Appeal) states an appellant who perceives that an evaluation report is inaccurate in some way has the right to appeal for redress to the appropriate agency. However, before actually preparing an appeal, an objective analysis of the evaluation report in question should be made.

5. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 April 2014 and currently in effect, prescribes the policies and operating tasks for the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the OMPF, finance-related documents, and non-service-related documents deemed necessary to store by the Army. It provides that once properly filed in the OMPF, a document becomes a permanent part of that file. The document will not

be removed from the OMPF or moved to another part of the OMPF unless directed by competent authority.

//NOTHING FOLLOWS//