

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20230007856

APPLICANT REQUESTS: Remove the DA Form 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)) for the period ending 11 February 2015 from his Army Military Human Resource Record (AMHRR).

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Completion of Center Commander Course
- DA Form 2166-8 (NCOER)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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, in effect:

a. His final NCOER on record is a relief for cause NCOER that was executed incorrectly. At the time of this NCOER, he held the center commander position and was the replacement for the individual who had retired approximately a year prior to the incident that required the NCOER.

b. His rater, senior rater, and duty description on the NCOER are incorrect. He held the position of center commander from his arrival date. He was sent to this location after completing the center commander course to take over the center.

c. At the time this happened, he asked his commander for help with his post-traumatic stress disorder (PTSD) because, at the point, he was no longer getting sleep at night; his brain would not shut down. He would lay down and his body would rest but his mind would not.

d. He was sent to the Rock Island Arsenal for evaluation. His primary doctor felt comfortable with treatment and prescribed him Xanax, which caused the incident. He does not know why he was given an NCOER with incorrect information, but he was sent to an inpatient treatment facility to stabilize his medication. He was medicated for the next two years.

e. He is now trying to fix what has been done for the purposes of employment. This NCOER does not reflect his last held position or experience.

3. The applicant provides a United States Army Soldier Support Institute Recruiting and Retention School certificate showing he completed the Center Commander Course from 27 May 2014 through 20 June 2014.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 6 March 2006. He remained in the Regular Army through immediate reenlistments.

b. DA Form 2166-8 (NCOER) for the period of 16 June 2013 through 29 April 2014, is for change of rater. He was in the principal duty of recruiter. He was marked as yes for the Army values. He was rated excellence in competence, success in physical fitness and military bearing, excellence in leadership, excellence in training, and success in responsibility and accountability. His senior rater rated him as among the best stating recently promoted to staff sergeant, groom for sergeant first class. His overall performance was rated as one out of five and his overall potential was rated as one out of five.

c. DA Form 2166-8 (NCOER) for the period of 30 April 2014 through 11 February 2015 is a relief for cause NCOER. He was in the principal duty of recruiter. The NCOER shows:

(1) He was marked as yes for the Army values with the exception of a no for respect with the statement violated Army policy being charged with multiple counts of domestic violence.

(2) He was rated success in competence.

(3) He was rated as needs some improvement in physical fitness and military bearing with the comments lacked mental toughness to endure under pressure and lost military bearing in dealing with stress.

(4) He was rated as needs improvement in leadership with the comments displayed behavior which negatively impacted the organization and U.S. Army Recruiting Command and exuded a deficiency in skill and knowledge.

(5) He was rated as success in training.

(6) He was rated as needs some improvement in responsibility and accountability with the comments the rated NCO has been notified of the reason for the relief and violated Army Policy in regards to domestic abuse.

(7) His rater rated his overall potential for promotion and/or service in positions in greater responsibility as marginal. His senior rater did not meet the minimum qualifications to rate him.

d. Memorandum disqualification of the Army Good Conduct Medal, 16 March 2015 shows he was disapproved for award of the Army Good Conduct Medal for his period of active duty from 5 March 2012 to 5 March 2015 due to five counts of misdemeanor battery, disorderly conduct, and domestic abuse charges.

e. DA Form 2166-9-2 (NCOER) for the period of 12 February 2015 through 11 February 2016 is an annual NCOER. His principal duty was recruiter. He met the standard for Army Values. He was rated as met the standard for presence, intellect, leads, develops, and achieves. His senior rater rated him as qualified.

f. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably transferred to U.S. Army Reserve Control Group (Retired) on 26 September 2016. He had completed 10 years, 6 months, and 21 days of net active service. He was retired for disability, temporary (enhanced). He had continuous honorable service from 6 March 2006 through 26 September 2016. He had service in Iraq from 14 January 2009 through 1 November 2009. He was awarded or authorized the:

- Army Commendation Medal (2nd Award)
- Army Achievement Medal (4th Award)
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with Campaign Star (2nd Award)
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Silver Basic Recruiter Badge
- Driver and Mechanic Badge with Driver-Tracked Vehicles Clasp

- Certificate of Achievement
- Drive and Mechanic Badge with Driver-Wheeled Vehicles Clasp

g. Enlisted Record Brief, 28 September 2016, shows from 28 October 2014 through 23 July 2016, his duty title was Center Commander.

h. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 6 August 2021 shows the board found him physically unfit for duty and recommended a rating of 80 percent and that he be permanently be retired for disability. He was evaluated for PTSD, at 70 percent disabling and lumbar spine spondylosis at 20 percent disabling. He concurred with the findings and waived a formal hearing of his case.

i. Order D221-15, published by Headquarters, United States Army Physical Disability Agency, 9 August 2021, permanently retired him with 80 percent disability effective 9 August 2021.

j. His service record is void of information concerning his rating chain and documentation showing he was charged with or found guilty of any offenses.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions and statement, his record of service, his certificate of training, the duty positions on his Enlisted Record Brief, the Relief for Cause NCOER in his record, his transfer to the Retired Reserve and his permanent disability retirement. The Board considered the contested NCOER as well as the preceding and subsequent NCOERs. The Board did not find evidence of the misconduct (noted in the NCOER) anywhere else in the record. The applicant did not provide evidence to show that the negative comments in the NCOER did not represent the true evaluation of the rater and senior rater at the time they were rendered. The Board found that the position on the NCOER did not invalidate the ratings on the evaluation. Based on a preponderance of evidence, the Board determined that the contested NCOER was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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.

X [REDACTED]

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 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), effective 1 April 2014 and in effect at the time, prescribed the policies and tasks for the Army's Evaluation Reporting System.

a. Paragraph 2-12 (The Rater) states the rater will document any substantiated finding an Army or Department of Defense investigation or inquiry, that the rated Soldier committed an act of sexual harassment or sexual assault. Paragraph 2-14 (The Senior Rater) will do the same.

b. Paragraph 3-5 (Army Performance objectives and special interest items) states Army Regulation 60-20 (Army Command Policy) provides policy for when items will be mentioned in a Soldier's evaluation report when substantiated by a completed command or other official investigation to include investigations by civil authorities.

c. Paragraph 3-19 (Unproven derogatory information) states no reference will be made to an incomplete investigation concerning a Soldier. References will be made only to actions or investigations that have been processed to completion, adjudicated, and had final action taken before submitting and evaluation.

d. Paragraph 3-19d states any verified derogatory information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged or awaiting trial. While the fact that a rated Soldier is under investigation or on trial may not be mentioned in an evaluation until the investigation or trial is completed, this does not preclude the rating chain's reference to verified derogatory information. For example, when an interim evaluation report with verified information is made available to a commander, the verified information may be included in the evaluation report. For all evaluation reports, if previously reported information later proves to be incorrect or erroneous, the Soldier will be notified and advised of the right to appeal the evaluation report.

e. 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.

f. Section II (Commander's or Commandant's Inquiry), paragraph 4-3 (Applicability), stated:

(1) Commanders are required to look into alleged errors, injustices, and illegalities in evaluation reports.

(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 NCOER 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.

g. Paragraph 4-5 (Policy) stated:

(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; and

(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). The results of the inquiry will be forwarded to HQDA not later than 120 days after the signature date of the senior rater.

(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. 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. 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. 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 (Procedures for Administrative Investigations and Boards of Officers) 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.

h. Paragraph 4-7f (Policies) 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).

i. Paragraph 4-8 (Timeliness) stated 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 Army Special Review Board 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.

j. 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.

k. 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.

l. 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, Inspector General, 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.

m. 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.

n. Paragraph 4-12 (Appeals Based on Substantive Inaccuracy) states 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.

o. 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.

p. 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.

8. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), 31 March 2014, provided 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.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the Official Military Personnel File, finance-related documents, and non-service-related documents deemed necessary to store by the Army.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or another authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) shows memorandums of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

//NOTHING FOLLOWS//