

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230010928

APPLICANT REQUESTS: removal of the Noncommissioned Officer Evaluation Report (NCOER) for the period of 17 September 2021 through 5 November 2022 from her Army Military Human Resources Record (AMHRR).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Two Memoranda, subject: Evaluation Report Appeal, NCOER Report Period 20210917-20221105, [Applicant], 18 April 2023 and 8 June 2023, with enclosures
- Memorandum, subject: Evaluation Report (20210917-20221105), 6 July 2023

FACTS:

1. The applicant states:

a. The petition for the appeal of her NCOER is pursuant to Army Regulation (AR) 623-3 (Evaluation Reporting System), Chapter 4. She received the provided memorandum from the U.S. Army Human Resources Command (HRC) advising that her appeal was returned without action. Having exhausted all administrative remedies, the petition is appropriate for review by the Board.

b. Her NCOER appeal and enclosures show by clear and convincing evidence that the comments on her NCOER are materially erroneous, inaccurate and/or unjust and that action is warranted to correct the material error, inaccuracy, or injustice.

c. HRC's memorandum stated her appeal was being returned without action because she allegedly did not meet her burden of proof. HRC's decision on this was erroneous and/or unjust.

d. AR 623-3, paragraph 4-9d permits reviewing officials to return an appeal without action only if the appeal lacks sufficient supporting evidence. The applicant provided sufficient supporting evidence. In fact, she provided clear and convincing evidence

directly contradicting her rating chain's comments and/or showing that their opinions were the result of her having made an IG complaint against her commander and first sergeant (1SG) and speaking to equal opportunity (EO). Having provided sufficient evidence, HRC's decision to return her appeal without action and refusal to even submit her appeal for a decision was erroneous and/or unjust.

e. Additionally, HRC, misapplies many of the provisions of AR 623-3 in its memorandum. Examples include:

(1) In paragraph 3, HRC stated, "Therefore, no appeal may be filed solely because the information on a support form or associated counseling document was omitted from an evaluation...." The applicant was not basing her appeal solely on lack of a counseling document. Her appeal was also based on several other issues and contained multiple evidentiary exhibits on those issues.

(2) In paragraph 4, HRC cites the failure to request a commander's inquiry as a reason to return the appeal without action. There is nothing in AR 623-3 that states a request for a commander's inquiry is a prerequisite for appealing an evaluation report.

(3) In paragraph 5, HRC quotes paragraph 4-11d regarding the nature of evidence that should be provided with an appeal, but has no other discussion of how that relates to the applicant's appeal. As stated, her appeal contains the type of substantive evidence paragraph 4-11 requires.

(4) In paragraph 6, HRC states, "The snapshots of text messages are not proof that any comment on your NCOER is untrue." This is incorrect they directly contradict the rater's comments that she did not assist noncommissioned officers (NCO) when in need of her support to care for their personal situations and did not find balance with caring for Soldiers while accomplishing the mission.

(5) In paragraph 7, HRC states that the NCOERs she provided with her appeal are not relevant to the rating period in question. While paragraph 4-12a(1) states, "Pleas for relief citing past or subsequent performance or assumed value are rarely successful," neither that paragraph nor AR 623-3 state that prior NCOERs are completely irrelevant and/or will not be considered. She did not rely solely on previous NCOERs in her appeal. It was one part of a picture. When those NCOERs are considered with the other statements and substantial evidence submitted with her appeal, they provide important evidence that the NCOER is inconsistent with her service and, accordingly, additional evidence that the NCOER is materially erroneous, inaccurate, and/or unjust.

f. The applicant respectfully submits that her career as a whole shows that she has provided productive service to the Army. The NCOERs and statements submitted with

her appeal clearly show she provided strong service to the Army and that her potential for future useful service is high. Given this, permitting this NCOER to remain in her AMHRR would be an injustice because it would effectively end her Army career by negatively impacting, if not blocking, her ability to be promoted and/or be selected for nominative positions. She respectfully submits that removing this NCOER from her AMHRR would remedy such an injustice and allow her to continue providing productive service to the Army she loves.

g. This NCOER is the one negative mark on an otherwise spotless record. The NCOER is the result of manifest error and injustice. For the foregoing reasons, the applicant respectfully petitions for removal of the NCOER in question.

2. The applicant provides:

a. A memorandum to HRC, dated 18 April 2023, which states:

(1) Pursuant to AR 623-3, Chapter 4, the applicant respectfully appealed the 17 September 2021 through 5 November 2022 NCOER and requested it be deleted from her AMHRR. She had no pending personnel actions. The appeal was based on administrative error, substantive error, inaccuracy, and/or injustice.

(2) AR 623-3 paragraph 4-11 states, in pertinent part: 4-11 (Burden of proof and type of evidence), "a. The burden of proof 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 referred to in paragraphs 3-36 and 4-71 will not be applied to the evaluation report under consideration. (2) Action is warranted to correct a material error, inaccuracy, or injustice. b. 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."

(3) The administrative error concerns the counseling dates noted in Part II, Authentication, Block d1. The applicant was not counseled on those dates and they should be removed from the NCOER as a result.

(4) The first substantive error pertains to the information presented in Part IV PERFORMANCE EVALUATION, PROFESSIONALISM, ATTRIBUTES AND COMPETENCIES (Rater), block c, bullet comment "she consistently had problems undermining the company commander; did not assist NCOs when in need of her support and care for their personal situations." The evidence shows that this comment is materially erroneous, inaccurate, and/or unjust.

(5) A collection of copies of text messages outlining how the applicant provided support for the NCOs at the station. This includes numerous messages telling them to leave early, ensuring their welfare when sick and/or support with family members. One example involved an NCO asking to be comped for taking someone to the Military Entrance Processing Station, and the applicant telling him to come in at noon the following day. Another example is a text where a Soldier stated his father had passed, and the applicant ensured his emergency leave was submitted and that he had a Red Cross message in. She helped him obtain an Army Emergency Relief loan to pay for the flight and relayed that information to the command team.

(6) The applicant worked closely with her Soldiers to alleviate personal situations caused by workhour policies set by the company commander. For example, the commander promulgated a 10 May 2022 memorandum establishing a workhour policy that negatively impacted many of the Soldiers assigned to her station. Working cooperatively with her Soldiers, she drafted a collaborative plan that attempted to mitigate the personal issues caused by the workhour policy. She presented this plan to her leadership, who approved it. This evidence shows that was, in fact, assisting and supporting her NCOs but was not undermining the company commander. Instead, she was working affirmatively to support the commander while also supporting her NCOs.

(7) During the rating period she talked to EO about the company commander, company 1SG, and also filed an IG complaint. She was not counseled for allegedly undermining the commander, and in fact, she did not. She merely spoke to EO and IG, as is her right to do. These facts show that the statement on her NCOER about allegedly undermining the commander is erroneous, inaccurate, and/or unjust. Additionally, it constitutes unverified derogatory information in violation of AR 623-3, paragraph 3-20, and also constitutes reprisal for having made EO and IG complaints.

(8) The second substantive error pertains to the information presented in Part IV - PERFORMANCE EVALUATION, PROFESSIONALISM, ATTRIBUTES, AND COMPETENCIES (Rater), Block f, "Leads," mark "DID NOT MEET STANDARD" and bullet comment "struggled to find balance with caring for Soldiers while accomplishing the mission for the first three quarters." The evidence shows that this block mark and comment are materially erroneous, inaccurate, and/or unjust.

(9) She worked closely with both her Soldiers and the commander to find a work-life balance for the Soldiers, while accomplishing the mission and implementing the commander's workhour policy.

(10) Text messages show multiple conversations between the company commander and the applicant where he wanted to give the NCOs a qualified senior rater black and her standing up for the NCOs stating their achievements justify higher

rating blocks for them. This evidence, as well as the evidence already cited clearly show the applicant met the standard and cared for her Soldiers.

(11) The applicant provided NCOERs she prepared as the rater for five NCOs in her station. Each of these NCOERs show that she highlighted the NCOs' positive attributes in great detail as well as rated them all as "EXCEEDED STANDARD" and/or "FAR EXCEEDED STANDARD".

(12) The third substantive error pertains to the information presented in Part IV - PERFORMANCE EVALUATION, PROFESSIONALISM, ATTRIBUTES, AND COMPETENCIES (Rater), Block F, "Leads," bullet comment, "created a hostile work environment that caused division within the station and loss of trust in leadership." The evidence shows that this comment is materially erroneous, inaccurate, and/or unjust. The applicant was not counseled on the alleged creation of a hostile work environment and knows of no evidence supporting this allegation. As such, it constitutes unverified derogatory information in violation of AR 623-3, paragraph 3-20, especially when one considers the evidence already cited wherein she consistently worked with Soldiers to support them and foster a positive work environment. She believes the comment was reprisal for having made EO/IG complaints against her commander and 1SG.

(13) The fourth substantive error pertains to information presented in Part IV - PERFORMANCE EVALUATION, PROFESSIONALISM, ATTRIBUTES, AND COMPETENCIES (Rater), Block F, "Develops," bullet comment, "struggled to develop plans to appropriately track recruiter efforts daily, creating hardships for multiple recruiting efforts." The evidence shows that his commend is materially erroneous, inaccurate, and/or unjust.

(14) Text messages show the applicant discussed, with recruiting NCOs, the plans for the day, what was expected, and what was still needed to accomplish the mission. She also completed quarterly counselings with each NCO and regularly discussed plans for their development as well as the accomplishments of the station's mission.

(15) This comment is also factually inconsistent with the comment in Block h, "Achieves," "she routinely met and exceeded her assigned recruiting objectives," "accomplished 100% of the enlistment mission for 4th quarter; overproduced in 4th quarter with 115% combined enlistments," and "her contributions catapulted the company to receive honors as the #1 Company in the 3rd Recruiting Brigade for Fiscal Year (FY) 22."

(16) The fifth substantive error pertains to the information presented in Part IV - RATER OVERALL PERFORMANCE, Block I, mark "DID NOT MEET STANDARD" and bullet comment, "gave little effort to care for her Soldier's professional development,

their welfare, or personal life." The evidence shows that the block mark and comments are materially erroneous, inaccurate, and/or unjust. Multiple text message were sent to the 1SG about the applicant recommending NCOs for awards and recommending them for schools. Unfortunately, none of these were fulfilled by the command team. This evidence clearly shows the allegation the applicant did not care for Soldiers' professional development, welfare, or personal life is erroneous, inaccurate, and/or unjust.

(17) The sixth substantive error pertains to the information presented in Part IV - RATER OVERALL PERFORMANCE, Block I, bullet comment "required several interventions from the commander and 1SG to fix morale and ethical issues from her leadership." The evidence shows that the comment is materially erroneous, inaccurate, and/or unjust.

(18) The company command caused a hostile work environment and the applicant filed EO and IG complaints because of it. She believes she was a victim of reprisal, as well as targeted.

(19) The company command team believed the applicant was behind a social media platform called "Truth of Army Recruiting" on Instagram and she had been verbally questioned about this several times by the 1SG and commander. She never contributed to this Instagram page or site. She believes this is the "ethical" issue referenced in that comment, but it is nothing more than unverified derogatory information prohibited by AR 623-3, paragraph 3-20.

(20) The evidence shows that the morale issues were caused by the command team's constant changes to the workhour policy and keeping recruiting NCOs until 1900 every day. As discussed, the commander's May 2022 memorandum regarding workhour policy created morale issues. Due to basic allowance for housing being too low in their locality Soldiers were being forced to reside long distances away in order to have a safe and livable environment for them and their families. This, combined with the commander's workhour policy, was negatively impacting the morale and the command climate. In an effort to look out for her Soldiers, the applicant worked with them to prepare the draft collaborative work plan that would, among other matters, permit Soldiers to work in shifts. This would permit them to see their families more often, while still doing the work necessary to accomplish the mission. She presented this to the command team, which agreed to it. However, the commander later prepared another workhour policy summarily doing away with the collaborative plan. These facts show that (a) the applicant was working closed with her Soldiers to prevent and mitigate any morale issues and (b) the cause of any morale issues was the command team's inability to support a plan that had Soldier buy-in and would permit more work-life balance for them, thereby increasing morale.

(21) The seventh substantive error pertains to the information in Part V - SENIOR RATER OVERALL POTENTIAL, Block A, bullet comment, "[The applicant] does not currently exhibit all the traits required of a senior noncommissioned officer..." The evidence shows that comment is materially erroneous, inaccurate, and/or unjust. The following statements contained in the NCOER itself show that the applicant exhibits the traits required of a senior NCO:

(22) Regarding leading the applicant's station, the applicant "routinely met and exceeded...assigned recruiting objectives" and her contributions "catapulted the company to receive honors as the #1 company in the 3rd Recruiting Brigade for FY 22."

(23) She also "mentored and influenced future Soldiers" and "trained 6 Soldiers to compete in the Sergeant Audie Murphy Club selection boards; two of which were inducted into the club."

(24) She "leveraged social media to efficiently target stations market and increase Army awareness by 100% in surrounding areas" and "conducted market analysis to target local festivals with higher target demographics to increase station production."

(25) She is the "most mission-focused NCO in the company; never stopped pushing her team to accomplish the mission."

(26) Also, the evidence shows she consistently worked with the NCOs in her station to care for them and their families, responding at all hours with empathy and a commitment to their personal well-being and professional development. She respectfully submitted that these are traits a senior NCO should exhibit, and that she did exhibit them, during the rating period.

(27) Although not dispositive of this matter, she enclosed copies of her three most recent NCOERs that show the quality of her service as a senior NCO.

(28) The NCOER directly preceding the subject NCOER was for a period during which she served as a station commander. It shows she received "Far Exceeded Standard" marks from her rater in every category and that her rater considered her the number 1 station commander she rated, and the applicant clearly executed the commander's intent and exceeded results. Her senior rater stated the applicant was number 1 of 32 station commanders he senior rated and that the applicant was "an inspirational leader."

(29) The NCOER preceding that NCOER was also for a period during which she served as a station commander. She received "Exceeded Standard" or "Far Exceeded Standard" marks from her rater who ranked her the top staff sergeant (SSG) he rated.

He also stated she achieved "optimal level of performance and accomplishments with lasting results" and "promoted team work amongst...peers and subordinates..." Her senior rater stated she was number 3 of 30 SSGs she senior rated and "mastered the art of recruiting" and "displays unlimited potential."

(30) The NCOER preceding those two NCOERs also shows the applicant received "Exceeded Standard" or "Far Exceeded Standard" marks from her rater, who states she was number 2 of 12 SSGs he rated and that she was a "constant professional who educated and motivated Soldiers in the company; always placed their needs above her own." Her senior rater stated she was an "outstanding NCO" who fell in the top 20 percent of SSGs of the Recruiting Battalion, and that she had "unmatched potential to serve and thrive in any organization."

(31) These NCOERs show that the NCOER in question was inconsistent with her service and, accordingly, additional evidence that the subject NCOER was materially erroneous, untrue, and/or unjust.

(32) The applicant enclosed statements from Major (MAJ) J- A-, SFC O- W- and SSG K- M- with her appeal.

(33) MAJ A- was her company commander and attested to the quality of the applicant's service as station commander, including her selfless service, how she "eagerly assisted the unit with any task required to accomplish the mission," that she "exemplified intestinal fortitude, courage, and character, " and was "an outstanding station commander," with her station ranking 8 of approximately 1,100 stations in FY 21.

(34) SFC W- was her station commander and notes that she "was successful in one of the toughest identified markets in U.S. Army Recruiting Command." She notes the applicant was hand-picked to service as a Future Soldier Leader and "served as a role model to our Future Soldiers and demonstrated....leadership within the community..." She also noted the applicant was appointed as a station commander after SFC W-'s tenure as station commander ended and the applicant raised the station's ranking in the brigade from 3rd to 2nd, receiving two Meritorious Service Medals in less than two years.

(35) SSG M- was a colleague of the applicant's as a recruiter and station commander. He notes the applicant "remained professional and supportive of...coworkers" and she made it a point to care for people around her, "always prepared to provide a hand in any manner possible."

(36) These statements show that the conduct alleged in the subject NCOER was completely out of character, both personally and professionally. They provide additional



important evidence, that, when combined with the matters discussed, show that the subject NCOER is materially erroneous, inaccurate, and/or unjust.

(37) For the foregoing reasons, the applicant respectfully requested the subject NCOER be deleted from her AMHRR.

b. A memorandum to HRC, dated 8 June 2023, wherein she repeats the information from the memorandum, dated 18 April 2023, adding the following information:

(1) AR 623-3, paragraph 4-12a(1) states, "Pleas for relief citing past or subsequent performance or assumed future value to the Army are rarely successful." The applicant agreed wholeheartedly that an appeal based solely on past performance would not meet the clear and convincing burden of proof. She wished to make clear that she was not basing the appeal solely on her previous NCOERs. Rather, she respectfully submitted these NCOERS, along with the other substantial evidence submitted, to provide important evidence that the NCOER in question was inconsistent with her service, and accordingly, additional evidence that the subject NCOER was materially erroneous, untrue, and/or unjust.

(2) Sergeant First Class (SFC) G- had direct evidence of her actions, during the rating period in question and the matters discussed in the appeal. He stated:

Over the course of the last two years, I have been in constant communication with [the applicant] regarding recruiting operations. Throughout the last six months various incidents have been brought to my attention in what I would consider unfair treatment. On one occasion, while on the phone with [the applicant], I heard her give direction to an NCO within her station. This NCO began to argue with her and became irate. After the incident was resolved, [the applicant] got off the phone with me in order to report the behavior to her command. This is not the first time I have heard of this type of behavior within her station, and based on my perception, she was not getting the support from her command needed to create a healthy work environment. It is my understanding that [the applicant's] company leadership were upset because she bypassed them to gain support from a higher echelon. However, she merely reached out to her battalion in order to find the appropriate contact to speak with her brigade EO representative. After the complaints had been filed, she expressed that her company leadership had gotten worse with her in regards to unfair treatment. This created a very toxic environment for her by the company leadership. Based on the perceived toxic environment

her company leadership developed, the NCOER reflects that of a biased and spiteful performance review.

(3) While AR 623-3, paragraph 3-7b(3) and paragraph 3-9(5) state, "The choice of what to enter on the NCOER is ultimately up to the rating officials," that statement does not permit rating officials to state absolutely anything in the NCOER. Rating officials must still comply with the requirements of AR 623-3. For example the regulation does not permit rating officials to mention unproven derogatory information, nor does it permit rating officials to make statements which are materially erroneous, inaccurate, or unjust. The applicant respectfully submitted that substantial evidence provided with the appeal clearly and convincingly showed that the statements discussed were unproven derogatory information, materially erroneous, inaccurate, and/or unjust, requiring the NCOER to be removed.

c. Text messages between the applicant and her Soldiers and chain of command, which are available for the Board's review.

d. Memorandum workhour policy, from the commander, dated 10 May 2022 and the applicant's plan of action, with her Soldiers' signatures, to work within those perimeters. Both are available for the Board's review.

e. Inspector General Action Request, dated 20 May 2022, wherein the applicant stated the command climate survey needed to be initiated based on the level of toxicity from the 1SG and commander. The applicant would formally request to put forth her plan of action provided to the command in a fair and just timeline, without micromanagement or bias. She would like there to be no bias for her being a single parent, when it came to her character. The applicant further states:

(1) She attached the counselling pertaining to her family care plan, and their manipulation of her station to their advantage. The 1SG and commander had expressed to her that she would need to be at company training regardless of a court order that she had that an exchange day fell on company training.

(2) They had also lied to her station regarding things that they themselves had put out and blamed the applicant for not providing the information correctly. They had told the applicant that she was the reason for the command climate issues and toxicity when they had changed work hour policies multiple times, forcing Soldiers to not be able to have personal time, or time with families.

(3) They mandated personal appointments not stop on prospecting and were restricted to Thursday and Friday and in turn stated the directive came from the applicant. They had restricted leave to a quarter out and changed multiple guidance multiple times causing confusion.

(4) They had numerous EO complaints and had expressed to other station commanders how they felt about the applicant being a female and how they were tired of her being a single parent.

(5) She tried to have her station work in shifts multiple times, and the request was denied, even though it would have raised moral and assist with the mental health [of her Soldiers].

(6) They coerced and led her station in questioning resulting in her being counseled for issues they caused and told the applicant her team did not have her back and thought she was toxic.

(7) The applicant and her team created a plan regarding the station and how to move forward, with their signatures showing they, in fact, have her back and support as a leader, contradicting the entire counseling. This was also the only counseling addressing any issues of which were caused by the commander and 1SG.

(8) This command had caused multiple issues to include undue stress due to their micromanagement. The applicant had the support of her entire team. There were further allegations of EO violations as well as risk management that were swept under the rug.

(9) The applicant attached her court order as well as counselings and plan for her team with the signatures of her Soldiers.

(10) The IG's response to her request was not available for the Board's consideration.

f. The applicant's NCOERs, available in their entirety for the Board to review.

h. Updated commander workhour policy, dated 28 October 2022, which is available for the Board's review.

h. Character statements from:

(1) SFC O- K. W-, who has known the applicant for over five years. They met when the author was the applicant's station commander and the applicant was a recruiter. The applicant served as a role model for future Soldiers and demonstrated her leadership within the community and schools assigned. The applicant was appointed station commander in December 2020. The applicant raised the station's rankings from 3rd to 2nd place in the brigade.

(2) From K- F. M- who has known the applicant in different roles for many years. The applicant remained professional and supportive of her coworkers. She made it a point to care for people around her, and she was always prepared to provide a hand in any manner possible. The applicant established herself as a leader. The applicant aided the author in formulating a strategy to help him maintain a healthy work-life balance.

(3) From W- J. G-, who was in constant communication with the applicant regarding recruiting operations. Various incidents had been brought to his attention that he would consider unfair treatment. He recalled an incident with an NCO who began to argue with the applicant. The applicant got off the phone with him to report the incident to her command. Based on the author's perception, the applicant was not getting the support from her command needed to create a healthy work environment. After the applicant filed the EO and IG complaints, she expressed that her company leadership had gotten worse in regards to unfair treatment, which created a toxic environment for her by the company leadership. Based on the perceived toxic environment her company leadership developed, her NCOER reflected that of a biased and spiteful performance review.

i. Memorandum from HRC, dated 6 July 2023, states:

(1) The Evaluation Appeal Officer had reviewed the applicant's appeal request and was returning her request without action. The burden of proof rests with the applicant, the appellant. The applicant had not established clearly and convincingly correcting or removing her NCOER from her AMHRR was warranted.

(2) The evidence the applicant provided did not warrant correction of any perceived errors; nor did it warrant removal of her evaluation from her AMHRR. Part of her evidence (counseling statements) show the comments in her NCOERs were, in fact, true; or at a minimum, the evidence supported the comments in her evaluation. She could include third party statements that supported her claims and allegations.

(3) Reference counseling, in accordance with AR 623-3, paragraph 4-11e, "to be acceptable, evidence will be material and relevant to the appellant's claim. In this regard, note that support forms or academic counseling forms may be used to facilitate writing and evaluation report. However, these are not controlling documents in terms of what is entered on the evaluation report form. Therefore, no appeal may be filed solely because the information on a support form or associated counseling document was omitted from an evaluation, or because the comments of rating officials on the evaluation report are not identical to those in the applicable support form or counseling document. While there will be consistency between a rating official's comments on both forms, there may be factors other than those listed on a support form or counseling document to be considered when evaluating a rated Soldier."

(4) Reference supporting statements, the supporting statement from MAJ J- spoke to the applicant's character, conduct, professionalism, and support in the workplace. It did not, however, refer to the comments in the evaluation or the situation/circumstances leading to those comments. Nothing is written in this statement that supports the applicant's claim/allegations that comments in her NCOER were false. The statement from SFC W- was the only one that did address the situation/events leading to the evaluation. The statement from SSG M- also spoke to the applicant's character, conduct, professionalism, and support in the workplace. However, SSG M-'s statement was considered to be from a subordinate. Therefore, these statements did not provide enough sufficient evidence to negate the ratings or comments on the contested NCOER. If the applicant felt her rating officials' comments were unjust, this would have been a good reason to submit a commander's inquiry.

(5) In accordance with paragraph 4-11d, "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. 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."

(6) The snapshots of text messages are not proof that any comment on the applicant's NCOER was untrue.

(7) It was noted that the applicant's previous and subsequent evaluations were consistent, show outstanding/satisfactory performance. However, Army evaluation reports are independent assessments of how well the applicant met duty requirements and adhered to the professional standards only within the period covered by the report. Therefore, the previous, and subsequent performance was not relevant to the rating period in question.

(8) If the applicant chose to resubmit, it was recommended she get supporting statements from peers, supervisors, senior NCOs, and officers that could validate her contention. Such statements were afforded more weight if they were from persons who served in positions allowing them a good opportunity to observe firsthand the applicant's performance as well as interactions with rating officials.

3. The applicant's service record shows:

a. She enlisted in the Regular Army on 18 August 2010.

b. DA Forms 4856 (Developmental Counseling Form) show the applicant was counseled on:

(1) 25 February 2022 regarding her leadership ability and style. Every week she had a complaint about one of her recruiting NCOs; however, she did not make a plan on how to fix the situations. The counselor believed the applicant's lack of leadership was part of the issue. The counseling statement went on to discuss differences in what the applicant said at different points and her lack of counseling Soldiers who she did not think should be promoted. The applicant had to take ownership of her office, her NCOs, and herself. She also needed to make a family care plan. The applicant disagreed with the counseling and signed the form.

(2) 12 April 2022, the counselor had noticed multiple negative occurrences in the applicant's performance. The counselor indicated her Soldiers had told the applicant they wanted to take leave in a timely manner, but the applicant stated she did not have enough time to adjust for their leave. The recruiters had placed the wrong education code on recruits and stated the applicant had told them to label them in that manner. The applicant was the first line of quality control. A recruiter needed assistance and the applicant stated she would assist them, but failed to continue to assist the recruiter as she specified. She falsely represented that a recruit was ready to ship on two occasions and it resulted in that recruit being a loss on reports. Due to these integrity issues, the command were losing their trust in the applicant's decision making ability to be a leader. The applicant refused to sign the form.

(3) 18 May 2022, to cover the results of a sensing session within the applicant's station. The mental and emotional state in the station showed two recruiters with potential suicide ideations, an additional recruiter with increased behavioral health problems, and the applicant's increase of behavioral health problems. The applicant belittled recruiters in front of other recruiters, future Soldiers, applicants, and families of applicants and future Soldiers. The applicant's child was in the office, which caused a distraction during duty hours. The applicant dropped additional tasks on recruiters during the duty day. Recruiters were not able to handle personal business during the duty day, while the applicant completed personal errands and appointments during time the recruiters said she did not allow them to complete the same tasks. She scheduled events on the weekends and had the recruiters attend them although the applicant did not attend them. Recruiters were unable to secure set times to take leave. Applicants were lost due to the applicant's demeanor. The applicant stated she had not lied or manipulated leave. The mental state was not a result of the station commander but rather a result of the totality of the command climate and guidance. She had never restricted appointments or personal business. There had been two events on a Saturday which occurred when the applicant was on leave out of state. The applicant signed the form.

## c. NCOERs, show the applicant was rated:

(1) From 11 August 2016 through 26 September 2017, as a SSG, she was rated as exceeded standard in presence, intellect, and develops and met standards in leads and achieves. Her overall performance was rated as met standard. Her senior rater rated her as qualified stating, "[The applicant] is an expert Military Police Officer. She is currently third out of three NCOs I senior rate."

(2) From 27 September 2017 through 26 September 2018, as a SSG, her rater rated her as exceeded standard in presence, leads, develops and achieves. Far exceeded standard in intellect. Her overall performance was rated as exceeded standard. Her senior rater rated her as highly qualified stating, "[The applicant] ranks #1 of 3 SSG I senior rate and rates in the top 20% of all SSG I have served with in my career.....promote now."

(3) From 27 September 2018 through 26 September 2019, as a SSG, her rater rated her as far exceeded standard in presence, leads, and achieves. Exceeded standard in intellect and develops. Her overall performance was rated as far exceeded standard. Her senior rater rated her as highly qualified stating, "[The applicant] is an outstanding NCO who fall in the top 20% of SSGs in the battalion...Promote to SFC immediately..."

(4) From 27 September 2019 through 16 October 2020, as a SSG, her rater rated her as far exceeded standard in presence, leads, develops, and achieves. Exceeded standard in intellect. Her overall performance was rated as far exceeded standard. Her senior rater rated her as most qualified stating, "[The applicant] is #3 of 30 SSGs that I senior rate....Promote to SFC ahead of peers."

(4) From 17 October 2020 through 16 September 2021, as a SSG, her rater rated her as far exceeded standard in presence, intellect, leads, develops, and achieves. Her overall performance was rated as far exceeded standard. Her senior rater rated her as most qualified stating, "[The applicant] is #1 of 32 station commanders that I senior rate....Promote to SFC immediately."

(5) From 17 September 2021 through 5 November 2022, (the NCOER in question) as a SFC, her rater rated her as exceeded standard in presence, met standard in intellect, did not meet standard in leads, met standard in develops, and far exceeded standard in achieves. Her overall performance was rated as did not meet standard. Her senior rater rated her as qualified stating, "[The applicant] does not currently exhibit all of the traits required of a senior NCO.....promote once she improves."

(6) From 6 November 2022 through 3 July 2023 as a SFC, her rater rated her as exceeded standard in presence, intellect, leads, and develops and met standard in achieves. Her overall performance was rated as exceeded standard. Her senior rater rated her as highly qualified stating, "[The applicant] is ranked in the top 25% of all SFCs I currently rate....Promote to master sergeant ahead of peers."

d. The applicant's service record is void of the IG and EO complaints or the results of those complaints.

e. The applicant reenlisted for an indefinite term of service on 1 February 2024.

4. By regulation, the performance section is used for filing performance, commendatory, and disciplinary data. Once placed in the OMPF, a document becomes a permanent part of that file. The document will not be removed from or moved to another part of the OMPF unless directed by certain agencies, to include this Board.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicants petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the DA Form 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report (Staff Sergeant (SSG)-First Sergeant (1SG)/Master Sergeant (MSG)) for the rated period 17 September 2021 through 5 November 2022 are substantially incorrect and support removal. Therefore, the Board denied relief.



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.

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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. AR 623-3 (Evaluation Reporting System), in effect at the time, prescribes the policy for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System (ERS). Provides principles of support, standards of service, and policy governing all work required, including Army evaluations policy and guidance regarding redress programs, which include Commander's (CDR's) or Commandant's Inquiries and appeals.

a. Paragraph 2-12, the rater will provide an honest assessment of the rated Soldier's performance and potential (as applicable), using all reasonable means, including personal contact, records and reports, and the information provided by them on the applicable support form or associated counseling documents. Review the applicable support form and counseling documents at the end of the rating period and, as appropriate; provide more information about the job description or performance objectives to other rating officials for use in preparing their portions of the evaluation report. Documentation of counseling is critical, particularly when the rated Soldier is not meeting performance standards.

b. Paragraph 3-20 (Prohibited Comments), Comments that are prohibited will not be included in evaluation reports. a. The use of inappropriate or arbitrary remarks or comments that draw attention to differences relating to race, color, religion, gender, age, sexual orientation, or national origin is prohibited. Subjective evaluation of a rated Soldier will not reflect a rating official's personal bias or prejudice. b. When a record of non-judicial punishment under Article 15, Uniform Code of Military Justice (UCMJ) is filed in the restricted portion of the AMHRR, or locally under AR 27-10, AR 600-8-104, or AR 600-37, rating officials may not comment on the fact that such a rated Soldier received non-judicial punishment. This does not preclude mentioning the rated Soldier's underlying misconduct, which served as the basis for the non-judicial punishment. c. Negative comments about a rated Soldier making protected communications (for example, communications to an Inspector General, member of Congress, a court-martial, or a member of the chain of command designated to receive protected communications will not be made in an evaluation report. Such comments could be perceived as a retaliatory action. d. No remarks about non-rated periods of time, or performance or incidents that occurred before or after the rating period, will be made on an evaluation report except (1) "Relief for Cause" evaluation reports based on information pertaining to a previous reporting period. For example, a rating official may relieve a Soldier found to be involved in some illegal activity during a previous reporting period. Reference to the prior rating period may be warranted to explain the reasons for relief. (2) When the most recent APFT performance or profile data occurred prior to the beginning date of the report, but within 12 months of the "THRU" date. This exception allows the rated Soldier to comply with APFT and body composition standards. (3) When a Soldier assigned to a WTU is assigned under a valid rating chain and receives

an evaluation report with a nonrated code "G". (4) A substantiated EO, EEO, or SHARP complaint as a result of an AR 15–6 investigation. (5) When the most recent completion date for the MSAF is prior to the beginning date of the OER, but within 36 months of the "THRU" date of the OER. This exception is allowed in order to comply with MSAF requirements.

c. Paragraph 4-8 (Timeliness), a. Because evaluation reports are used for personnel management decisions, it is important to the Army and the rated Soldier that an erroneous evaluation report be corrected as soon as possible. As time passes, people forget and documents and key personnel are less available; consequently, preparation of a successful appeal becomes more difficult. b. Substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Failure to submit an appeal within this time will require the appellant to submit his or her appeal to the ABCMR, in accordance with AR 15–185. c. The ASRB will not accept appeals that are over 3 years old or appeals from Soldiers who are no longer on active duty or part of the USAR or ARNG. Retirees and/or those who were separated from service should make applications to the ABCMR.

2. AR 600-8-104 (AMHRR Management) governs the composition of the official military personnel file (OMPF) and states that the performance section is used for filing performance, commendatory, and disciplinary data. Once placed in the OMPF, a document becomes a permanent part of that file. The document will not be removed from or moved to another part of the OMPF unless directed by certain agencies, to include this Board.

//NOTHING FOLLOWS//