

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230014232

APPLICANT REQUESTS:

- in effect, replacement of her DA Form 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) (Sergeant (SGT)) covering the period 1 March 2019 through 30 April 2020 with the proposed NCOER covering the period 1 March 2019 through 31 May 2020
- correction of her NCOER to show her rater and senior rater as Staff Sergeant (Promotable) (SSGP) [REDACTED]
- correction of her NCOER to show the supplementary reviewer as a member of her current chain of command

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)
- NCOER Covering the Period 1 March 2019 through 30 April 2020
- Email Correspondence from Former Rater, 3 October 2023, with the Proposed NCOER Covering the Period 1 March 2019 through 31 May 2020
- Memorandum for Army Board for Correction of Military Records (ABCMR) (Evaluation Report Appeal/Evaluation (Applicant), 1 March 2019 through 31 May 2020), 3 October 2023

FACTS:

1. The applicant states the contested NCOER contains substantive inaccuracies. Specifically, bullet comments in Part IVf (Leads) were incorrectly duplicated in Part IVg (Develops). This request is beyond the 3-year limitation due to her and her rater's deployments. Her senior rater recently retired making this correction more difficult. The substance of the evaluation exemplifies her ability early in her career to lead and influence peers and subordinates to accomplish the mission and this error should not overwhelm the thoughts of her past performance.

2. She enlisted in Regular Army on 21 March 2016. She was promoted to the rank/grade of SGT/E-5 effective 1 March 2019.

3. Her NCOER covering the period 1 March 2019 through 30 April 2020 (12 months) shows the reason for submission as "Extended Annual" with a nonrated code of Q (Lack of Rater Qualification). Her rater is shown as SSGP [REDACTED] Platoon Sergeant; her senior rater is shown as Captain [REDACTED] Company Commander; and no supplementary reviewer is recorded. The NCOER shows in:

a. Part IVd (Presence), her rater marked "MET STANDARD" and entered the following bullet comments:

- supported 28 named combat operations; provided ground force commanders across Afghanistan with over 1,300 hours of intelligence collection
- consistently scored above 270 on the APFT [Army Physical Fitness Test]; set the standard for her Soldiers and peers to emulate with regard to physical fitness
- demonstrated the ability to take charge and accomplish challenging tasks; selected for promotion to Staff Sergeant in the secondary zone

b. Part IVe (Intellect), her rater marked "MET STANDARD" and entered the following bullet comments:

- served as the only Geospatial FI [flight instructor] for TF [Task Force] ODIN; provided training and certification over six Soldiers enabling flight operations
- oversaw quality checks and publication of over 150 Imagery-Derived Products[;] provided critical, accurate and timely intelligence to ground force commanders
- completed 12 semester hours towards a Bachelor[']s Degree in Business [A]dministration with a minor in [F]inance; maintained 3.8 GPA [grade point average]

c. Part IVf (Leads), her rater marked "MET STANDARD" and entered the following bullet comments:

- led A-ISR [Army-Intelligence, Surveillance, and Reconnaissance] platform transition from government own contractor operator to government own[ed] government operated; ensured Soldiers receive proper training
- served as Orderly Room NCOIC [NCO in charge] for 205 Soldiers; processed over 150 actions, administered 10 ACFTs [Army Combat Fitness Tests], mentored and trained two orderly room clerks

- facilitated weekly training and exercises for all ASOs [Aerial Sensor Operators]; ensured every operator was technically proficient in troubleshooting primary mission equipment

d. Part IVg (Develops), her rater marked "MET STANDARD" and entered duplicate bullet comments from Part IVf (Leads);

e. Part IVh (Achieves), her rater marked "MET STANDARD" and entered the following bullet comments:

- served as S6 [Communications and Information Systems] account manager; enabled 22 Soldiers and contractors to operate on four different aircraft systems without any loss of mission time
- participated in four base defense exercises, posturing her team as increased threat from Taliban and insurgent forces targeted Bagram Airfield
- coordinated with Battalion S-3 [Operations] to ensure 100% of all battalion, brigade and installation support tasking requirements are met

f. Part IVi (Rater – Overall Performance), her rater entered the following bullet comments:

- superior performer in every respect, a strong leader; her willingness to take charge ensures the chain of command has someone they can count on
- trustworthy leader that [sic] can be depended on to exercise disciplined initiative in the best interest of her Soldiers and the organization; highly motivated, multifaceted Soldier constantly focused on improving herself, her Soldiers and the unit

g. Part V (Senior Rater – Overall Potential), her senior rater marked "HIGHLY QUALIFIED" and entered the following comments: "[Applicant] ranks in the top 15% of Sergeants that [sic] I have worked with in my 19 years of service. She demonstrates strong leadership potential and technical knowledge. Continue to place [Applicant] in challenging positions to increase her roles and responsibilities. Send to ALC [Advanced Leader Course] and promote now."

4. Email correspondence from her former rater shows she was forwarded the proposed NCOER on 3 October 2023 and asked for her thoughts.

5. The proposed unsigned NCOER covering the period 1 March 2019 through 31 May 2020 (12 months) shows the reason for submission as "Extended Annual" with two nonrated codes of "S" (School) and "Q" (Lack of Rater Qualification). Her rater is shown as SSG [REDACTED] Platoon Sergeant; her senior rater is shown as

Captain [REDACTED] Company Commander; and no supplementary reviewer is recorded. The NCOER shows in:

a. Part IVd (Presence), her rater marked "MET STANDARD" and entered the same bullet comments previously reported;

b. Part IVe (Intellect), her rater marked "MET STANDARD" and entered the following bullet comments:

- possessed acute mental agility, served as the only Geospatial FI [flight instructor] for TF [Task Force] ODIN; provided training and certification over six Soldiers enabling flight operations
- oversaw quality checks and publication of over 150 Imagery-Derived Products provided critical, accurate and timely intelligence to ground force commanders
- completed 12 semester hours towards a Bachelor[']s Degree in Business [A]dministration with a minor in [F]inance; maintained 3.80 GPA [grade point average]

c. Part IVf (Leads), her rater marked "MET STANDARD" and entered the same bullet comments previously reported;

d. Part IVg (Develops), her rater marked "MET STANDARD" and entered the following bullet comments:

- selected over 30 of her peers to attend Readiness Level Progression on two of the Enhanced Medium Altitude Reconnaissance Surveillance System Platforms
- developed detailed training plan and ASO [Aerial Sensor Operator] progression program enabling her team and successors to train and demonstrate proficiency for every task
- collaborated with Chief Standardization Instructor to develop Readiness Level Progression Standard Operating Procedure and Program

e. Part IVh (Achieves), her rater marked "MET STANDARD" and entered the same bullet comments previously reported;

f. Part IVi (Rater – Overall Performance), her rater entered the same bullet comments previously reported;

g. Part V (Senior Rater – Overall Potential), her senior rater marked "HIGHLY QUALIFIED" and entered the following comments: "SM [Service member] is ranked in the top ___% of Sergeants that [sic] I have worked with in my career. Already performs at

the level of Staff Sergeant; SM has demonstrated strong leadership potential and technical knowledge; continue to place [Applicant] in challenging positions to increase her roles and responsibilities. Send to ALC [Advanced Leader Course] and promote now."

6. Her memorandum for ABCMR (Evaluation Report Appeal/Evaluation (Applicant), 1 March 2019 through 31 May 2020), 3 October 2023, reiterates her comments above.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon thorough review of the applicant's petition and supporting military records, the Board found sufficient evidence to justify the replacement of her DA Form 2166-9-1 (NCOER) for the period 1 March 2019 through 30 April 2020 with the proposed NCOER covering the extended period of 1 March 2019 through 31 May 2020.

2. The Board concluded that the revised evaluation more accurately reflects the applicant's service and complies with Army Regulation 623-3. Additionally, the Board determined the original NCOER contained duplicative evaluation entries and incorrect non-rated codes. However, the Board determined based on regulatory guidance which states a rater may act as both the rater and senior rater when the rater is a general officer or a civilian employee with Senior Executive Service rank and precedence, based on this, the applicant's contentions for correction to update the rater and senior rater to Staff Sergeant (Promotable) (SSGP) [REDACTED] and designate the supplementary reviewer as a member of the applicant's current chain of command is without merit. Based on these findings, the Board granted partial relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
█	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show replacement of the applicant's DA Form 2166-9-1 (NCOER) for the period 1 March 2019 through 30 April 2020 with the proposed NCOER covering the extended period of 1 March 2019 through 31 May 2020.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to correction of her NCOER to show her rater and senior rater as Staff Sergeant (Promotable) (SSGP) [REDACTED] and correction of her NCOER to show the supplementary reviewer as a member of her current chain of command.

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:

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

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

b. Paragraph 2-7 (Rules for Designating a Senior Rater) states a senior rater will be an officer or NCO of the U.S. Armed Forces, U.S. Coast Guard, or a Department of Defense Civilian. The senior rater will be the immediate supervisor of the rater. To senior rate NCOs in the ranks of SGT or promotable sergeant (SGTP), military senior

raters will be at least the rank of sergeant first class or above. An exception exists which allows for SSGPs serving in an authorized position for the next grade to senior rate. To render a written NCOER, the senior rater must have been designated as the rated NCO's senior rater for a minimum period of 60 calendar days.

c. Paragraph 2-20 (Supervisor as Both Rater and Senior Rater) states a rater may act as both the rater and senior rater when the rater is a general officer or a civilian employee with Senior Executive Service rank and precedence. A promotable colonel working in a brigadier general position may also serve as both the rater and senior rater.

d. Paragraph 3-37 (Modifications to Previously Submitted Evaluation Reports) states an evaluation report accepted by Headquarters, Department of the Army, 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.

e. Paragraph 4-7 (Evaluation Appeals – Policies) states 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 Department of the Army Evaluation Appeals Branch, National Guard Bureau Appeals Section, or the appropriate State Adjutant General (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, 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.

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.

//NOTHING FOLLOWS//