

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 October 2024

DOCKET NUMBER: AR20240000360

APPLICANT REQUESTS:

- amendment of the derogatory comments in her DA Form 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) (Sergeant)) covering the period 24 July 2015 to 9 August 2016
- alternatively, deletion of the derogatory comments from her DA Form 2166-9-1 covering the period 24 July 2015 to 9 August 2016
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum for Record (MFR)
- DA Form 2166-9-1 covering the period 24 July 2015 to 9 August 2016
- Army Regulation 11-6 (Army Foreign Language Program)

FACTS:

1. The applicant states, in effect:

a. She has a military occupational specialty (MOS) as a 35P (Cryptologic Linguist). Each year, linguists have to take the Defense Language Proficiency Test (DLPT) in their Control Language to ensure they are maintaining proficiency. At the time of the evaluation, she was a Persian-Farsi linguist and had failed the DLPT with a score of 2/1+. This was her initial DLPT failure within that 12-month period. Following the initial failure, she was put in remedial language training. This Non-Commissioned Officer Evaluation Report (NCOER) was completed while she was in the remediation and retrain period. She had not had the opportunity to retest. However, her rater and senior rater mentioned the initial DLPT failure and, because of the failure, said she "Did Not Meet Standard" in the "Intellect" block, and "Not Qualified" on the overall NCOER.

b. Her rater and senior rater should not have commented on the NCOER about her initial DLPT failure in accordance with (IAW) Army Regulation (AR) 11-6. This comment

was the only negative comment in regard to her performance and character. AR 11-6 states "Raters will not make comment on the linguist's evaluation report when they initially fail to achieve proficiency on their annual DLPT." This statement can be found in Chapter 1, subsection 21, letter f. in AR 11-6 from February 2016, and Chapter 1, subsection 20, letter f of the most recent AR 11-6.

c. She has obtained a signed MFR from her senior rater at the time stating that she should not have rated [applicant] as "Not Qualified." [Applicant] was unable to obtain an MFR from her rater, although she attempted several times. The rater initially said she would write an MFR but was then unresponsive.

2. The applicant provides an MFR, subject: Referred NCOER for [applicant], with thru date 9 August 2016, 24 March 2022, issued by Sergeant First Class B____, which shows:

a. "I was [applicant's] Senior Rater for her NCOER rating period of 24 July 2015 to 9 August 2016. During the rating period, [applicant] scored 2/1+ on her DPLT, and per regulation, she was enrolled in remedial language training. Her remedial language training was ongoing during her through date; therefore, she was unable to retake her DLPT prior to her through date."

b. "At the time of [applicant's] NCOER, she was not military occupational specialty (MOS) proficient (DPLT 2/2) as a linguist. At the time, there were no extenuating circumstances to extend her NCOER to allow for her retest to be within the rating period. [Applicant's] rater, Staff Sergeant A____ rated [applicant] as "Did Not Meet Standard" for the intellect block. My overall Senior Rater evaluation of "Not Qualified" was due to not being MOS proficient."

c. "When writing and reviewing [applicant's] NCOER, I referenced AR 623-3 (Evaluation Reporting System) and DA Pamphlet 623-3 (Evaluating Reporting System) for guidance. I do not recall referencing AR 11-6 (Army Foreign Language Program) for guidance. If I had been aware that AR 11-6 stated, "Raters will not make a comment on the linguist's evaluation report when they initially fail to achieve proficiency on their annual DLPT; and commanders will wait until the linguist has completed remediation retraining and retesting," I would have extended [applicant's] rating period and rated her as Qualified."

d. "I stand by my comments made in the Senior Rater block. [Applicant] displayed great potential when motivated and supervised, but I have no doubt that since I was her Senior Rater in 2016, [applicant] has become a great NCO and leader. I recommend her for any future positions or assignments."

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

a. DD Form 4/1 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she reenlisted in the U.S. Army on 8 December 2017, and is currently on active duty.

b. DA Form 2166-9-1 (NCOER) for the period of 24 July 2015 through 9 August 2016 shows she was rated in:

(1) Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies) - Intellect; did not meet standard: failed to meet Army standards by scoring a 2/1+ on her DLPT after language refresher course; not MOS qualified.

(2) Part V – Senior Rater Overall Potential:

- a. “Not Qualified”
- b. Comments: “[Applicant] ranks 4 out of 5 Sergeants that I Senior Rate. She displays great potential when motivated and supervised. Continue to groom her for increased levels of leadership and mentor her for MOS proficiency. Promote [applicant] with peers and send to Advanced Leaders Course when eligible.

4. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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 review of the applicant's petition, available military records, the Board determined based on regulatory guidance, there is sufficient evidence to support the applicant's contentions for deletion of the derogatory comments from her DA Form 2166-9-1 covering the period 24 July 2015 to 9 August 2016.

2. The Board noted, in accordance with regulatory guidance raters will not make comment on the linguist's evaluation report when they initially fail to achieve proficiency on their annual Defense Language Proficiency Test (DLPT). The Board noted the applicant continues to excel while serving on active duty. The Board agreed, based on this, the applicant's record warrants correction with the removal of the derogatory

comments from her DA Form 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) (Sergeant)) covering the period 24 July 2015 to 9 August 2016. Therefore, the Board granted relief.

3.. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

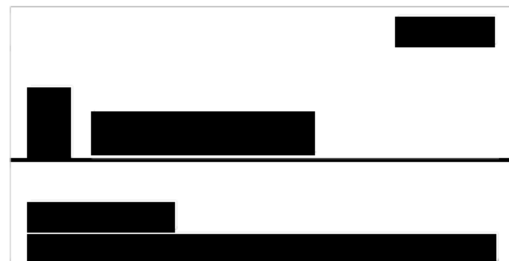
BOARD VOTE:

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 the derogatory comments ""Did Not Meet Standard" in the "Intellect" block, and "Not Qualified" on the overall NCOER" from her DA Form 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) (Sergeant)) covering the period 24 July 2015 to 9 August 2016.



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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 623-3, 14 June 2019, prescribed 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 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.

b. Paragraph 4-7 (Policies) states:

(1) An evaluation report submitted and accepted for inclusion in the rated Soldier's Army Military Human Resource Record (AMHRR) is presumed to:

- be administratively correct
- have been prepared by the proper rating officials
- represent the considered opinion and objective judgment of the rating officials at the time of preparation

(2) The rated Soldier or other interested parties who know the circumstances of a rating may appeal any evaluation report they believe is incorrect, inaccurate, or in violation of the intent of the regulation.

(3) 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 will be made by U.S. Army Human Resources Command, Evaluation Appeals Branch.

(4) Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are substantive in nature and will be adjudicated by the Army Special Review Board.

c. Paragraph 4-11 (Burden of Proof and Type of Evidence) states to justify deletion or amendment of an evaluation report, the applicant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action was warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the applicant.

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

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

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

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

(4) leave records;

(5) organization manning documents;

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

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

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

(9) other relevant documents.

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

e. 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.

f. 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.

g. 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.

h. 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.

3. 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.

4. Army Regulation 11-6 (Army Foreign Language Program), currently in effect, shows in Chapter 2, paragraph 2-20 f, ensure that raters address language proficiency requirements for language dependent MOSs and for any officer, warrant officer, Soldier, or DA Civilian serving in a position that requires an SQI "L". Evaluation report comments are mandatory for a significant improvement in a linguist's language capability or a failure to sustain the minimum level of language proficiency. Raters will not make a comment on the linguist's evaluation report when they initially fail to achieve proficiency on their annual DLPT or OPI test. The CDRs will wait until the linguist has completed remediation retraining and retesting. If the linguist fails the post-remediation DLPT or OPI test, then the rater must address proficiency on the linguist's evaluation report.

//NOTHING FOLLOWS//