

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240003066

APPLICANT REQUESTS: removal of the DA Form 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report (NCOER) (Staff Sergeant (SSG) – First Sergeant (1SG)/Master Sergeant (MSG))) covering the period 7 November 2021 through 25 January 2023 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)
- Timeline, covering the period 29 September 2022 to 21 April 2023
- DA Form 2166-9-2, covering the period 25 September 2020 through 6 November 2021
- DA Form 4856 (Developmental Counseling Form), 18 October 2022
- Email (Commander's Inquiry), 20 April 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 30 April 2023.
- U.S. Army Operational Test Command, Airborne and Special Operations Test Directorate, Memorandum ((Applicant) Reporting and Performance), 3 January 2024
- Headquarters and Headquarters Company, Allied Forces South (AF South) Battalion, Memorandum (Character and Performance Memorandum for (Applicant)), 5 January 2024
- Applicant's Memorandum (Evaluation Report Appeal (Applicant)), 10 January 2024

FACTS:

1. The applicant states his NCOER covering the period 7 November 2021 through 25 January 2023 needs to be removed from his AMHRR due to several errors within the NCOER. His Command wanted to utilize investigations (not in evidence) he was under in order to give him a sub-standard NCOER, which is against Army regulations.

2. The applicant provides:

a. His NCOER covering the period 25 September 2020 through 5 November 2021, shows he received “Met Standard” or “Exceeded Standard” ratings, ranked in the top 20 percent (%) of his peers, and was recommended for promotion to Sergeant First Class.

b. DA Form 4856 (Developmental Counseling Form), 18 October 2022, shows his battalion commander notified him of his suspension as the Operations Sergeant pending the results of an investigation into allegation of inappropriate actions and comments (not in evidence).

c. Email (Commander’s Inquiry), 20 April 2023, shows the applicant submitted an official request for a commander’s inquiry to the Commander, U.S. Army XVIII Airborne Corps.

d. A timeline, covering the period 29 September 2022 to 21 April 2023, shows the dates in which the applicant was flagged and informed of two ongoing investigations (not in evidence.)

e. U.S. Army Operational Test Command, Airborne and Special Operations Test Directorate, Memorandum ((Applicant) Reporting and Performance), 3 January 2024, show in a letter by his company level commander, which states the applicant was assigned to the Headquarters and Headquarters Detachment, 503rd Military Police Battalion, from 18 October 2022 to 25 January 2023. The applicant was an asset to the unit during his tenure and the strengths he observed included attention to detail, passion for service, and a strong work ethic.

f. Headquarters and Headquarters Company, Allied Forces South (AF South) Battalion, Memorandum (Character and Performance Memorandum for (Applicant)), 5 January 2024, the applicant’s first line supervisor states he served with the applicant from 22 October 2021 through 30 April 2022. The applicant served as the operations NCO and was responsible for the health, welfare, morale, and training of three Soldiers and NCOs. The applicant consistently displayed strong character and ensured the fair and equal treatment of all personnel within the detachment. The applicant was an extremely competent and dependable NCO and was relied upon to accomplish tasks.

g. Applicant’s Memorandum (Evaluation Report Appeal (Applicant)), 10 January 2024, shows the applicant appealed his NCOER, for the period covering 7 November 2021 through 25 January 2023, under the provisions of Army Regulation 623-3 (Evaluation Reporting System), chapter 4. He states the appeal is based on his command using an ongoing investigation to justify erroneous comments within the NCOER. The NCOER contains deficiencies in dates, contradicting comments, and does not reflect the appropriate performance of the rated NCO.

2. The applicant’s record shows:

a. He enlisted in the Regular Army on 22 April 2003.

b. Department of the Army Orders 0003048012.01, 16 October 2023, ordered him to conduct a permanent change of station to 42rd Military Police Brigade, Military Police Law Enforcement Detachment, Fort Liberty, NC, with a report date of 9 November 2022.

c. The contested NCOER, for the period 7 November 2021 through 25 January 2023, shows his rater as Captain [REDACTED] Detachment Commander, and his senior rater as Lieutenant Colonel [REDACTED] Battalion Commander. His principal duty title is shown as Operations NCO. The NCOER shows in:

(1) Part II (Authentication):

- blocks a3 (Rater's Signature) and b3 (Senior Rater's Signature) – the rater and senior rater authenticated the form with their digital signatures on 15 November 2023
- block d1 (Counseling Dates) – an initial counseling date of 10 November 2021 and three later counseling date on 15 February 2022, 16 June 2022, and 15 September 2022
- block d2 (Rated NCO's Signature) – the applicant did not sign the form

(2) Part IVc (Character), the rater placed an "X" in the "Met Standard" block and entered the following bullet comments:

- "supported the Army's Sexual Harassment/Assault Response and Prevention/ Equal Opportunity programs and policies; enforced the fair treatment of all Soldier's and Department of the Army civilians"
- "displayed a general level of care and concern for the Soldiers and their families"

(3) Part IVd (Presence), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comments:

- "demonstrated leader engagement; influenced training by ensuring the Commander's intent was met"
- "exemplified substandard resiliency and motivation required by leaders and NCO corps"
- "exhibited lack of military bearing on numerous occasions; lacked professionalism with Soldiers on and off duty"

(4) Part IVe (Intellect), the rater placed an "X" in the "Exceeded Standard" block and entered the following bullet comments:

- “tracked the execution of 120 battalion task orders and one detachment leadership exchange; ensured mission accomplishment”
- “executed duties as a level II master resilience training instructor; supported five master resilience training level I certifications across the installation”
- “assisted with current operation for the 42d Military Police Detachment; resulted in zero error and mission success despite a high operational tempo”

(5) Part IVf (Leads), the rater placed an "X" in the "Met Standard" block and entered the following bullet comments:

- “served as the Detachment Sergeant in the incumbent’s absence for 10 days; resulted in no issues occurring during his tenure”
- “ensured training plans were aligned with the commanders intent; evaluated training and documented lessons learned”
- “earned the trust of his superiors by completing most tasks in an expeditious and complex manner”

(6) Part IVg (Develops), the rater placed an "X" in the "Did Not Meet Standard" block and entered the following bullet comments:

- “assisted in synchronizing section training plans; sustained readiness and improved weapons qualification by 20%”
- “maintained and monitored a nested battel rhythm; ensured complex synchronization across all sections within the detachment”
- “did not meet medical readiness standards; decreased preparedness and overall medical readiness for the detachment”

(7) Part IVh (Achieves), the rater placed an "X" in the "Exceeded Standard" block and entered the following bullet comments:

- “maintained 100% accountability of all assigned equipment valued in excess of \$2,000,000 without loss or damage”
- “performed duties as a Defense Travel System Administrator; managed 76 Defense Travel System accounts with 190 processed travel claims and zero delinquencies”
- “performed duties as a Range Safety Officer for eight small-arms ranges; resulted in 110 Soldiers qualifying with zero safety incidents”

(8) Part IVi (Rater Overall Performance) (“I currently rate 12 Army NCOs in this Grade”), his rater entered the following bullet comments:

- “performed unsatisfactorily as an Operations NCO; displayed a lack of professionalism while interacting with Soldiers and demonstrated disregard toward overall unit readiness”
- “displayed a lack of genuine concern for Soldiers in the detachment; fostered an environment that generated a lack of trust in his leadership abilities”

(9) Part V (Senior Rater Overall Potential) (Select One Box Representing Rated NCO's Overall Performance Compared to Others in the Same Grade Whom You Have Rated in Your Career. “I currently rate 7 NCOs in This Grade”, the rater placed an “X” in the “Not Qualified” block and entered the following bullet comment: “Rated NCO unavailable for signature, Applicant is ranked Number 7 of 7 SSGs that I senior rate. He has the potential to serve in positions of similar responsibility. Place him in positions that will continue to groom him to be a successful leader. Promote to sergeant first class and send to Master Leader’s Course when available”.

d. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he retired from active duty on 30 April 2023 in the rank/ grade of SSG/E-6. He completed 20 years and 9 days of active service. He was awarded and/or authorized the following awards:

- Joint Service Commendation Medal
- Army Commendation Medal (7th Award)
- Army Achievement Medal (6th Award)
- Army Good Conduct Medal (6th Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Afghanistan Campaign Medal with two campaign stars
- Humanitarian Service Medal
- Military Outstanding Volunteer Service Medal (2nd Award)
- North Atlantic Treaty Organization Medal
- Driver and Mechanic Badge with driver-wheeled vehicles clasp

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the lack of evidence showing the contested NCOER was processed improperly, as well as a lack of evidence showing the applicant was not afforded an opportunity to appeal the document, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the contested NCOER.

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.

5/4/2025

X

CHAIRPERSON

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

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. Army Regulation 600-8-104 (Army Military Human Resource Records Management), in effect at the time, prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. 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. 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.

2. Army Regulation 623-3 (Evaluation Reporting System), 14 June 2019, 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 Soldiers' 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 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 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.

d. Paragraph 4-7f (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 Headquarters, Department of the Army, Evaluation Appeals Branch; National Guard Bureau Appeals Section; or the appropriate State Adjutant General (Army National Guard).

e. Paragraph 4-11 (Burden of Proof and Type of Evidence) states 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.

f. 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.

g. 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.

h. 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 investigation may provide support for an appeal request.

i. 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.

//NOTHING FOLLOWS//