

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240003428

APPLICANT REQUESTS:

- Amendment of his referred Noncommissioned Officer Evaluation Report (NCOER), rating period 20180504 through 20190503 (hereinafter referred to as the contested report), by changing Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies) as follows:
 - Subparagraph c (Character) – revise to show "Met Standard"; and
 - Remove the contested comment, "Failed to adhere to policies put out during mission to Philippines by bringing local personnel back to his living quarters"
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Five pages extracted from Army Regulation (AR) 623-3 (Evaluation Reporting System)
- DA Form 2166-9-1 (NCOER (SGT (sergeant))
- Five DA Forms 2166-9-2 (NCOER (SSG (staff sergeant) – 1SG (first sergeant)/MSG (master sergeant))
- DA Form 4856 (Developmental Counseling Form) with rebuttal

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he has been a member of the U.S. Army Reserve (USAR) since 2011, and, in 2019, his rating chain unjustly gave him the contested NCOER. He notes, "Evaluations/ NCOERs have a proven definite lasting effect on a Soldier's record, assignments, potential special assignments, and will affect my future in the Army."

a. Citing provisions from AR 623-3, the applicant argues that any derogatory information included on an NCOER must first have been substantiated by a completed command or official investigation. No such investigation ever took place prior to his rater entering the contested comment and indicating the applicant failed to meet character standards.

b. Additionally, on 30 May 2019 (30 days after the end of the contested report's rating period), the applicant received a counseling statement, alleging that, while on an exercise in the Philippines, he had violated Force Protection rules by having a female visit him in his hotel room. "If the severity of the issue were warranting of further action...the counseling could have been used as the basis for an...investigation." Had an investigation been properly done, the applicant's rating chain could have included the results in an addendum to the NCOER, but this never happened.

c. The applicant points out that his rating chain delayed the completion and submission of the contested report; the end date was 3 May 2019, but he and the rating chain did not sign the report until 10 October 2019. The applicant additionally notes that the regulation requires rating chains not to delay reports pending the outcome of an investigation unless the rated Soldier has been removed or suspended from his/her position.

d. The applicant concludes by declaring that he is a good Army leader who is worth supporting for this correction.

e. In support of his requests, the applicant provides the contested report; NCOERs for other rating periods; extracts from AR 623-3; and a copy of the 30 May 2019 DA Form 4856.

(1) In Part II (Background Information), the form shows the applicant's company commander (Major (MAJ) [REDACTED]) conducted the counseling, and the stated purpose was "an event-oriented counseling pertaining to your breaking of one of the Balikatan 2019 force protection rules; specifically, we are not allowed to have unauthorized personnel in our rooms without having first received O-6 (colonel) written approval."

(2) Part III (Summary of Counseling). The commander states he received a text message from SFC [REDACTED] (applicant's roommate during the exercise) at 1948 on 28 March 2019. SFC [REDACTED] advised the commander that the applicant had a local female in their hotel room; SFC [REDACTED] had entered the common area of the hotel suite they shared and discovered the applicant and the female eating pizza.

(a) SFC █ went into his own room and texted the applicant, telling him the female needed to leave immediately; however, the applicant did not respond. SFC █ then called the applicant, but he did not answer. When SFC █ saw the applicant and the female enter the applicant's room, SFC █ contacted the commander.

(b) The commander came to the room and found the situation as described by SFC █ the commander could hear the applicant talking to the female and, because the applicant was about to exit his room, the commander waited for him in the common area. The applicant came out of his room and introduced the female to the commander; the commander politely told the female she needed to leave. The applicant indicated he would escort her to the lobby, but the commander told him to stay.

(c) The commander asked the applicant to explain himself. The applicant responded that he had read the instructions, and he remembered the briefing they had attended, but he had met the female on a dating application (dating app) and did not think he was doing anything wrong, nor did he believe his actions were contrary to the exercise's rules.

(d) The commander told the applicant, "you...received the force protection brief from (a Marine Corps Gunnery Sergeant)...and...you were in the same room as us all when he was giving this brief. (The Gunnery Sergeant) clearly stated that we were not allowed to have unauthorized personnel in our rooms. I told you that this was a serious lapse in judgment and that there would be repercussions."

(e) With the proviso that he was not accusing the female of being a prostitute or that the applicant was involved in human trafficking, the commander added his concerns that human trafficking was very common in the area and the applicant's behavior could easily be misconstrued as participating in such activities, to the discredit of the Army and the U.S. government.

(3) Under "Session Closing," the applicant checked the block reflecting that he disagreed with the counseling, and, on 31 May 2019, he provided his rebuttal.

(a) "I understand the basis for this counseling is...me having a local Philippine in my hotel room, but while in the Philippines, multiple Soldiers had local Philippine personnel in the hotel as well, and I feel I am being singled out." Additionally, "I am being counseled for an action 29 days after this event has already affected my NCOER, which has a thru date of 1 May 2019. Furthermore, the exercise is over and counseling is being conducted 2 months after the incident."

(b) "Upon my arrival to the Philippines, I arrived apart of the first group aside from advanced party to arrive to the Philippines and we received a brief, in which I did contribute safety wise to the brief. To the best of my recollection, I was not briefed and

was aware that the non-DOD personnel were to be at the hotel, plus as stated before I saw plenty of other Soldiers with local Philippine personnel in the hotel. I was, however, briefed no prostitutes to be there in hotel. Nor was I provided a counseling or any document stating said guidelines and rules. However, I am aware after the fact, that the next groups to arrive were given handout information of guidelines and rules, which I obtained a copy of, as I hadn't received one myself initially."

(c) The applicant described how he had downloaded the dating app and met the local Filipino woman. After inviting her to his hotel to share a pizza, they ate the pizza in the hotel room's common area; (the applicant explained that the room consisted of two separate bedrooms within the larger room).

(d) That day, after the commander counseled him, the applicant apologized and said he thought that he had not broken any rules. The next day, the applicant's battalion commander/senior rater (Lieutenant Colonel (LTC) [REDACTED]), along with the company commander (MAJ [REDACTED]), pulled the applicant to the side and asked him what had happened. The applicant explained the circumstances and offered to show them the dating app. The battalion commander commented that what the applicant had said, "matches everything SFC [REDACTED] and MAJ [REDACTED] had told him."

(e) The battalion commander went on to state he believed the woman was not a prostitute and that "this would be handled in-house by counseling." The applicant indicated that, while still at the exercise, he advised his rater and other key personnel of the foregoing circumstances.

3. A review of the applicant's service record shows the following:

a. On 16 August 2011, the applicant enlisted into the USAR. Upon completion of initial entry training and the award of military occupational specialty 91B (Wheeled Vehicle Mechanic), the Army honorably released the applicant to his Troop Program Unit. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 months and 13 days of net active duty service.

b. U.S. Army Human Resources Command Orders, dated 21 October 2013, ordered the applicant to active duty in an Active Guard/Reserve (AGR) status for a 3-year term; the orders listed his reporting date as 28 October 2013. Effective 1 May 2015, Regional Support Command orders promoted him to SGT.

c. On 11 September 2018, the applicant immediately reenlisted for 3 years. On 10 October 2019, the applicant and his rating chain signed the contested annual NCOER for rating period 20180504 through 20190503.

(1) The rater's duty assignment was S-4 (Logistics) NCO-in-Charge (NCOIC); the applicant's senior rater was the battalion commander. The report listed the applicant's principal duty title as Wheeled Vehicle Mechanic.

(2) Part IVc (Performance Evaluation, Professionalism, Attributes, and Competencies – Character) indicates the applicant did not meet the standard. The first comment states, "Failed to adhere to policies put out during mission to Philippines by bringing local personnel back to his living quarters." The remaining two comments in this section are favorable, indicating the applicant showed empathy toward his Soldiers, demonstrated a "can-do" attitude, and fostered a climate of dignity and respect.

(3) Under subparagraphs d (Presence) through h (Achieves), the applicant met standards and the rater's comments are favorable.

(4) The applicant's senior rater rated his potential as "Highly Qualified" and recommended the applicant's promotion and Advanced Leaders Course attendance to occur with his peers. Additionally, the senior rater recommended the applicant's assignment to roles where he could be mentored and prepared for the responsibilities of the next higher rank.

d. Effective 1 January 2020, the applicant's higher headquarters promoted him to SSG/E-6. On 13 December 2021, the applicant immediately reenlisted for 3 years; on 7 December 2024, he extended his enlistment by 6 years. He is currently serving in the AGR.

4. AR 15-185 (ABCMR), currently in effect, states in paragraph 2-11 (ABCMR Hearings) that applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicants petition and military records, the Board determined that the applicant demonstrated by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the Noncommissioned Officer Evaluation Report (NCOER), rating period 20180504 through 20190503 is substantially incorrect and supports amendment. Therefore, the Board determined subparagraph c (Character) should be revised to show "Met Standard"; and the comment "Failed to adhere to policies put out during mission to Philippines by bringing local personnel back

to his living quarters" should be removed from Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies).

2. 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 relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending Part IV (Performance Evaluation, Professionalism, Attributes, and Competence) of the DA Form 2166-9-1 (NCO Evaluation Report (SGT)), for the rating period 4 May 2018 to 3 May 2019 by:

- showing in item c (Character) "Met Standard" vice "Did Not Meet Standard"
- removing the comment "failed to adhere to policies put out during mission to Philippines by bringing local personnel back to his living quarters" from comments

5/12/2025

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation (AR) 623-3 (Evaluation Reporting System), in effect at the time, prescribed policies and procedures for officer and enlisted evaluations.
 - a. Paragraph 2-15 (Review of Evaluation Reports). A documented supplementary review was to be performed by a Uniformed Army Advisor, in the rank of Sergeant Major (SGM)/Command Sergeant Major (CSM), Chief Warrant Officer Three (CW3) through Chief Warrant Officer Five (CW5), or Captain (CPT) and above, designated in the rating chain of the noncommissioned officer (NCO), senior to the senior rater when the following occurred:
 - The senior rater within the rated NCO's rating chain was an NCO in the rank of Sergeant First Class (SFC) through Master Sergeant (MSG)/First Sergeant (1SG)
 - For all "Relief for Cause" evaluation reports when the senior rater was the individual directing the relief
 - For all "Relief for Cause" evaluation reports directed by an individual other than the rating officials
 - b. Paragraph 2-18 (Review of DA Form 2166-9 series (NCOER)).
 - (1) Every NCOER was to receive an undocumented reviewed by the 1SG, SGM, or CSM to ensure accountability of Soldiers' NCOERs and to oversee the performance of junior NCOs. This was in addition to reviews required by designated supplementary reviewer in accordance with paragraph 2-15.
 - (2) The supplementary reviewer was to:
 - Ensure that the proper rater and senior rater completed the report
 - Examine the evaluations to ensure they were clear, consistent, and just in accordance with known facts; special care was to be taken to ensure there are specific bullet comments to support "Did Not Meet Standard" ratings
 - (3) If the supplementary reviewer determined the NCOER was sufficient as prepared and in accordance with the regulation, the supplementary reviewer was to

indicate a "NO" in response to "comments enclosed" within Part II (Authentication), block c4 (Comments Enclosed?).

c. Paragraph 3-5 (Army Performance Objectives and Special Interest Items). Army performance objectives were identified at the highest levels of the Army as areas of special interest regarding officer and NCO leaders Army-wide.

(1) When applicable, rating officials were to include rated Soldier performance related to these special interest items in their overall assessment on the evaluation report. Additionally, AR 600-20 (Army Command Policy) provided policy for when items could be mentioned in a Soldier's evaluation report when substantiated by a completed command or other official investigation (i.e., Commander's or Commandant's Inquiry; an investigation under AR 15-6 (Procedures for Administrative Investigations and Boards of Officer); an equal opportunity (EO) investigation; and/or investigations by official military or civil authorities.

(2) In accordance with applicable Army guidance, rating officials of Soldiers with substantiated issues or incidents regarding Army performance objectives and/or command special interest items during the rating period were to include such information on evaluation reports; special interest items included the following:

- Safety – All NCOs were to have a safety-related objective as a part of their counseling requirements
- Individual and Unit Deployment Readiness – the NCO had to have a full understanding of his/her responsibility to maintain individual and unit deployment readiness
- Support of Behavioral Health Goals – NCOs were to discuss how their actions in handling Soldiers with behavioral health issues impacted the command climate and overall unit performance
- Information Security Program – as outlined in AR 380-5 (Army Information Security Program), rating officials were to consider and evaluated the Soldier's discharge of any security-related responsibilities
- Promoting a climate of dignity and respect and eliminating sexual harassment and sexual assault
- Equal opportunity and Equal Employment Opportunity Programs

d. Paragraph 3-19 (Unproven Derogatory Information).

(1) Any mention of unproven derogatory information in an evaluation report can become an appealable matter if later determined to be unfounded. No reference will be made to an incomplete investigation (formal or informal) concerning a Soldier.

(2) References could only be made to actions or investigations that had been processed to completion, adjudicated, and had final action taken before submission of the report to Headquarters, Department of the Army (HQDA). This restriction was intended to prevent unverified derogatory information from being included in evaluation reports and prevent unjustly prejudicial information from being permanently included in a Soldier's service record.

(3) Any verified derogatory information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged, or awaiting trial. Evaluation reports will not be delayed to await the outcome of a trial or investigation unless the rated Soldier has been removed from his or her position and is in a suspended status.

e. Paragraph 3-25 (Evaluation of Adverse Actions). Adverse actions encompassed a variety of situations that were not in accordance with Army Values, Leadership Requirements Model, and/or good order and discipline, which needed to be addressed appropriately in evaluation reports.

(1) In addition to addressing the special interest items in the counseling and evaluation processes, AR 600-20 allows for the following items to be mentioned in the Soldier's evaluation report when substantiated by a completed command or other official investigation:

- Criminal acts
- Inappropriate or unprofessional personal relationships
- Behavior that is inconsistent or detrimental to good order, conduct, and discipline
- Activities or behaviors otherwise prohibited by AR 600-20

f. Paragraph 3-36 (Modifications to Previously Submitted Evaluation Reports). An evaluation report accepted by HQDA and included in the official record of a rated Soldier is presumed to administratively correct; to have been prepared by the properly designated rating official; and to represent the considered opinions and objective judgments of the rating officials at the time of preparation. For evaluations reports accepted by HQDA, substantive appeals had to be filed within 3 years of the report's "THRU" date.

g. Chapter 4 (Evaluation Report Redress Program).

(1) Section II (Commander's or Commandant's Inquiry). Commanders were required to look into alleged errors, injustices, and/or illegalities within evaluation reports.

(a) The Commander's Inquiry's primary purpose was to provide a greater degree of command involvement in preventing obvious injustices to the rated Soldier and correcting errors before they become a matter of permanent record. A secondary purpose was to obtain command involvement in clarifying errors or injustices after HQDA accepted the report. The provisions of AR 15-6 normally did not apply to Commander's Inquiries.

(b) The commander above the designated rating officials was to conduct the inquiry. While the commander was not to document differences in opinion among members of the rating chain or pressure the rating chain to revise ratings, the inquiry could be used to determine whether serious irregularities or errors had occurred. This included findings that the report contained inaccurate or untrue statements or that the rating chain lacked objectivity or fairness.

(c) To ensure the availability of pertinent data and timely completion of an inquiry conducted after the evaluation in question was accepted at HQDA for inclusion in the rated Soldier's service record, the inquiry had to be conducted by the commander at the time the evaluation was rendered who was still in the command position, or by a subsequent commander in the position. Requests for inquiry were to occur no later than 60 days after the signature date of the rated Soldier and results of the inquiry were to be forwarded to HQDA not later than 120 days after the signature date of the senior rater.

(2) Paragraph 4-7 (Policies). An evaluation report accepted by HQDA and included in the official record of a rated Soldier is presumed to administratively correct; to have been prepared by the properly designated rating official; and to represent the considered opinions and objective judgments of the rating officials at the time of preparation. An appeal had to be supported by substantiated evidence. When submitted within the 3-year time limit, appeals involving alleged bias, prejudice, inaccurate or unjust ratings, or any matter, other than an administrative error, were to be adjudicated by the Army Special Review Board (ASRB).

(3) Paragraph 4-11 (Burden of Proof and Type of Evidence). The appellant Soldier bore the burden of proving an error or injustice, and the evidence provided had to clearly and convincingly establish that the presumption of regularity did not apply and action was warranted.

(a) For a claim of inaccuracy or injustice of a substantive type, evidence was to include statements from third parties, rating officials, or other documents from official sources. Third parties were defined as persons other than the rated NCO or rating officials who had knowledge of the appellant Soldier's performance during the rating period. Statements from rating officials were also acceptable if they related to allegations of factual errors, erroneous perceptions, or claims of bias.

(b) To be acceptable, evidence had to be material and relevant to the appellant Soldier's claim. In addition, no appeal may be filed solely based on the contention that the appellant was never counseled.

3. AR 15-6, currently in effect, prescribes policies and procedures for conducting administrative investigations.

a. Paragraph 1-6 (Types of Procedures). There are three types of fact-finding or evidence-gathering procedures under this regulation: preliminary inquiries, administrative investigations, and boards of officers.

- A preliminary inquiry is used to ascertain the magnitude of a problem, to identify and interview witnesses, to summarize or record witnesses' statements, to determine whether an investigation or board may be necessary
- An administrative investigation involves the appointment of an investigating officer or team of officers to question witnesses, take sworn statements and facilitate in evidence gathering
- Boards of officers involve formal hearings and are often authorized by another regulation or directive

b. Paragraph 4-1 (Preliminary Inquiries – Purpose). A preliminary inquiry is an informal investigation. The purposes include, but are not limited to, ascertaining the magnitude of a problem; identifying and interviewing witnesses and summarizing and recording their statements; and determining whether a more extensive investigation is warranted, and, if warranted, assisting in determining the scope of such investigation. Commanders at any level are authorized to initiate a preliminary inquiry.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//