

TAKE-1

OER APPEALS

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



Forward

Evaluation Report Appeals

In the total Army, more than 100,000 evaluation reports are written on officers and warrant officers each year. Historically, the vast majority of those who render evaluation reports discharge this important responsibility with due care and consideration in accurately recording the performance and potential of their subordinates. In preparing this large number of evaluation reports on an annual basis, there are normally some rating officials who have not written evaluation reports as accurately and objectively as intended in the governing regulations. The purpose of this document is to provide information intended to assist the soldier in preparation of an evaluation report appeal in conjunction with Chapter 6, AR 623-105. It should serve as a ready reference and procedures involved in gathering evidence to support an appeal.

OER APPEALS

1. Q. WHAT SHOULD I APPEAL?

A: If you receive an evaluation report which you firmly believe is an inaccurate or unjust evaluation of your performance and potential, or one that contains administrative errors, that report may be a candidate for an appeal. Likewise, a report that was not rendered in accordance with the Army Regulation in effect at the time of preparation may be considered for appeal.

If you are simply dissatisfied with receiving a good report (for example with nothing but favorable comments) because you believe it should be better, you should be aware that it is difficult to successfully challenge the judgment of your rating officials with clear and convincing evidence that you deserve better. Even if successful, the remedy applied would probably be to remove the portions proven inaccurate or unjust, rather than raising the scores or block placements.

In deciding what to appeal, you must consider early on whether you can gather useful evidence in support of an appeal. Your self-authored statement alone does not suffice as evidence of an inaccurate, unjust or administratively flawed evaluation report. Remember, the report as accepted by DA is presumed to be correct until you prove that it is not.

2. Q. WHEN SHOULD I APPEAL?

A: The first step in the Army Redress System is the commander's inquiry. The primary purpose of the commander's inquiry is 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 is to obtain command involvement in clarifying errors or injustices after the ER or NCOER is accepted at HQDA. However, in these after-the-fact cases, it is not intended to be a substitute for the appeals process, which is the primary means of addressing errors and injustices after they have become a matter of permanent record. The inquiry must be completed ***no later than 120 days after the signature date*** of the senior rater (OER) or reviewer (NCOER) or authenticating officer (AER).

Additional information concerning the commander's inquiry is contained in Section II, Chapter 6, AR 623-3, a copy of which is located at the end of this Take-1.

The second step is submission of an ER appeal. You should begin preparation of an appeal as soon as possible after receiving an evaluation report with which you have good reason to strongly disagree. Some appellants find reluctance on the part of would-be supporters still serving under the same rating chain to provide statements; this should be taken into consideration. Waiting too long, however, adds to the difficulty of locating those who might offer support or in gathering records that might serve as evidence.

Appeals on reports prepared on the OER, NCOER or AER must be submitted within ***three years*** of the completion date. This restriction will only be waived under exceptional circumstances. Administrative appeals will continue to be considered regardless of the period of the report. However, the likelihood of

successfully appealing a report diminishes, as a rule, with the passage of time. Prompt submission is, therefore, recommended. If you are requesting a waiver, you will need to add a paragraph to your cover memorandum requesting a waiver and a brief explanation on why you waited beyond the time limit to submit an appeal. The Special Review Board will approve or disapprove your request for waiver.

3. Q. WHAT ARE MY CHANCES OF SUCESSFULLY APPEALING AN EVALUATION REPORT?

A: Your success in appealing a report will depend largely on your effort to present clear and convincing evidence that the evaluation is inaccurate or unjust. The best evidence is obtained from third parties who were in a position to observe your performance from the same perspective as your rating officials.

Statistics are not published on the approval/disapproval rate of evaluation report appeals. Statistics do not reflect a true picture of the effectiveness of the program. Some appeals are received at HQDA that only meet the minimum requirements of the regulation for acceptance and processing while many others are well documented and reflect the efforts of the individual who is appealing a report. To portray a picture of the appeal approval rate by using statistics that are comprised of the cases containing minimal evidence and the cases containing quality evidence would only present a distorted picture on the effectiveness of the appeal program.

Because each evaluation report is unique, each appeal is unique. It is important to remember that the evaluation redress system is designed to correct error or injustice, not weakness. Evaluations that reflect duty performance not on a level with previous or subsequent reports are not presumed to be in error. The bottom line is that the success of your appeal depends mainly on you!

4. Q. HOW DO I PREPARE AN APPEAL?

A: Having decided what and when to appeal, you should begin laying the groundwork by a thorough review of the appropriate Army regulation in effect at the time the challenged report was prepared. Using your copy of the challenged report, you should note any instances where provisions of the governing regulation were not followed. You may want to seek assistance from your local Personnel Service Center (PSC) or Staff Judge Advocate in accomplishing this task. While minor inconsistencies or irregularities in the preparation of an evaluation report are not usually the sole basis for removal, they do add to the overall consideration of the merits of an appeal. Some serious irregularities, such as improper rating officials, may, in and of themselves, warrant full or partial relief.

Once you locate the specific documents and individuals who can support your appeal be sure to request the specific changes you believe are justified by the evidence you provide. Your request may be a combination of changes or the total removal of the report. Remember that you must document your request with sufficient evidence to warrant corrective action.

Appropriate appeal correspondence formats can be found in the regulation and it is recommended that the cover letter be typed, military memorandum on letterhead or white bond paper. In whatever form your appeal is presented, all enclosures should be tabbed and listed for easy reference, and they should be cited in the written appeal as evidence to support each contention you are making.

5. Q. HOW DO I SUBMIT AN APPEAL?

A: Upon receipt of supporting statements and documentary evidence, and before finalizing the appeal, you may wish to have the entire package reviewed by a disinterested third party in whom you have trust and confidence. This third party review will help remove emotionalism and poor logic from your appeal. The appeal should not be submitted until you are satisfied that you have presented a logical, well-constructed case, as fully documented as possible.

Submit the finalized original appeal, plus one complete copy directly to the address listed in the regulation for your component. Verify that all necessary information (i.e., signature, date, mailing address, telephone number, and priority) has been included before forwarding the appeal. All supporting statements must be originals and all documents provided must be original or certified true copies. Certification of documents may be done by your local Staff Judge Advocate or PSC. The copy of the evaluation report does not have to be a certified copy since the official copy is on file in your Officer Military Personnel File (OMPF). If you are aware of the current phone numbers of the rating officials on the contested report, please include them in your appeal correspondence.

6. Q. HOW ARE APPEALS PROCESSED?

ANSWER: The Appeals and Corrections Branch of the respective Active, Reserve or National Guard component will review the case upon receipt and either notify you by letter that the appeal has been accepted or that the case is being returned for lack of usable evidence. Administrative appeals will be resolved by the appropriate Appeals and Corrections Branch for your component. Substantive appeals will be further forwarded for final review and decision by the DCSPER Special Review Board (SRB). Upon final determination of the case, the appropriate agency will notify you of the outcome.

The time necessary to process an appeal varies with the type and complexity of the appeal, the volume of appeals being processed at the time your appeal is accepted, and the extent of deliberation required to make an appropriate decision. Some Priority 3 cases will take six months or longer to adjudicate while the Priority 2 and 1 cases will take less time. Processing priorities are explained in the Army regulation. The fact that you are scheduled to be considered by a DA promotion board will not cause your appeal to be expedited or change your priority.

In order to ensure full and just consideration of an evaluation report appeal, the primary members of the rating chain are normally contacted by the SRB for their comments, if necessary. Sometimes this acts to the advantage of an appellant, sometimes not. Because the rating chain was entrusted with the

responsibility for rating a subordinate, the information they provide cannot be disregarded. On the other hand, it does not automatically outweigh credible evidence provided by an appellant that refutes the evaluation. HQDA must carefully evaluate and weigh all evidence provided, or available, to arrive at a fair, impartial and just determination. After approving an appeal where the individual was previously non-selected by a DA selection board for promotion, the Special Review Board will also take into consideration whether promotion reconsideration is warranted. The appellant will be informed of this decision when notified of the SRB decision. The outcome of the re-look board will be provided to the appellant by the Promotions Branch.

In all cases, whether the appeal is approved or denied, totally or in part, documentation is placed on the Official Military Personnel File (OMPF). The performance portion of the OMPF is amended to include either (1) a memorandum for record which documents the amendment or explains non-rated time or (2) the HQDA letter which notifies the appellant that his or her appeal has been denied. When the appeal is denied, either totally or in part, a complete copy of the appeal correspondence is placed in the Restricted data (R fiche).

If the appeal is denied, an appellant may seek new, additional evidence and submit a new appeal or may request relief from the next agency in the Army's redress system, the Army Board for Correction of Military Records (ABCMR). Operation of the ABCMR is governed by AR 15-185. If your case was decided by the OSRB, a case summary of the board's consideration is available under the Privacy Act (PA).

7. Q. IS THERE A SUMMARY CHECKLIST FOR THE APPELLANT?

A: Yes.

1. Appellant's Letter: Typed, military memorandum on letterhead or white bond paper. Identify in the first paragraph name, rank, branch, SSN, period of report and priority of the appeal. Include a DSN or commercial phone number and correct mailing address. Home address may be used. Use this memorandum to transmit the appeal. Concisely explain the nature of your disagreement and what corrective action is requested. If a detailed explanation of the circumstances of a report is required, add a statement as an enclosure to the appeal. It is important to remember that the OSRB will not contact you, but will more than likely contact the rating officials for their side of the story. Therefore, it is important that you provide the OSRB with as much information as possible in your own statement to assist the OSRB in their adjudication. List and identify all enclosures. Sign and date the memorandum.

2. Evidence: Appeals based on technical (administrative) error must be proven by original or certified true copies of appropriate documents, e.g., orders, leave and earning statements, appropriate medical documents verifying height/weight, APFT results (DA Form 705), DA Form 2-1. Claims of inaccurate or unjust evaluations must be supported by originals of statements from

knowledgeable observers during the report period. These statements should be signed, dated on letterhead or white bond paper and should be specific in content. Additional statements from rating officials are acceptable, but will not be the sole basis of the appeal. Documents such as ARTEP, AGI, command inspection results, etc., may be useful in supporting a substantive appeal.

3. Copies: Original and one duplicate copy. Original packet must include originals of all statements and certified true copies of all other documents, with the exception of the OER copy.

4. Dispatch: Before mailing, review to be sure all enclosures are included, all signatures and dates are on all documents and address and phone numbers are included. Use the correct HQDA office symbol listed in the regulation and enclose the paperwork in a secure mailing envelope or heavy wrapping, as required. Please refrain from using fancy binders or covers. These only make the appeal harder to handle and take up unnecessary storage space.

5. Follow-up: You will be notified in writing by the Appeals and Corrections Branch that your appeal was received. Notify HQDA promptly if address or priority changes. Appellants will be notified promptly, in writing, of the decision once it is finalized. Upon final decision, if not totally approved, appellants have further recourse. Appellants may request a copy of the OSRB case summary, then submit a second appeal strengthened by additional evidence. Information on requesting a copy of the case summary is contained in the first part of this brochure. As an alternative to reconsideration by the OSRB, appellants may apply to the Army Board for Correction of Military Records (ABCMR) under the provisions of AR 15-185.