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### **EVALUATION APPEALS**

If you have received an evaluation (OER, NCOER, or AER) that you believe is incorrect or unjust, you have two options: (1) Request a Commander's Inquiry, or; (2) Appeal the evaluation. Army Regulation (AR) 623-3, Chapter 4, Evaluation Report Redress Program, outlines the procedures for commander's inquiries and for appealing Officer Evaluation Report (OERs), Noncommissioned Officer Evaluation Reports (NCOERs), and Academic Evaluation Reports (AERs).

#### **What is a Commander's Inquiry?**

A commander's inquiry is a written request to look into alleged errors, injustices, and illegalities in your evaluation. The primary purpose 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. It is also designed to obtain command involvement in clarifying errors or injustices after the evaluation is accepted at HQDA. However, it is not meant as 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 commander conducting the inquiry can not pressure or force rating officials to change their evaluations and may not evaluate the rated individual, either as a substitute for, or in addition to, the designated rating officials' evaluations. Errors, injustices, and illegalities may include such matters as improperly designated, unqualified, or disqualified rating officials, inaccurate or untrue statements, and lack of objectivity or fairness by rating officials.

If the inquiry reveals problems with the evaluation, the inquiry is required to be forwarded to HQDA not later than 120 days after the signature date of the senior rater (OER) or reviewer (NCOER) or authenticating official (AER). However, if the commander finds no fault with the evaluation, then the results of the inquiry are filed locally only (not in the OMPF) and a copy is provided to the rated Soldier. There is no



requirement to send the results of the inquiry to HQDA when no issues are found through the inquiry.

If you decide to request a commander's inquiry, then it should be initiated before your appeal. The evaluation appeal should be completed last because the commander's inquiry may be used as evidence to support your appeal. If you elect not to pursue a commander's inquiry, then you may immediately start an appeal.

### **What is an Appeal?**

The rated Soldier can appeal any report that is believed to be incorrect, inaccurate, or in violation of the intent of the regulation. Appeals come in two types; administrative and substantive (or both). Your evaluation is presumed to be correct once it has been put into your OMPF. If you decide to appeal, you have the burden to produce clear and convincing evidence of the alleged error or injustice; the government does not have to defend the evaluation. Clear and convincing evidence must be of a strong and compelling nature, not just the *possibility* that the evaluation is incorrect.

Administrative appeals are appeals of those parts of your evaluation that are either correct or incorrect, and not an opinion of your performance. For example, if your THRU date is incorrect, an appeal of the issue would be administrative, not substantive. Administrative appeals are generally appealed with other documentation showing the inaccuracy. For example, if you are appealing the THRU date on your evaluation, you could appeal with another evaluation showing that the THRU date on this evaluation is incorrect.

If you are simply dissatisfied with receiving your evaluation because you believe it should have been 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. Also, as explained below, you will need evidence to 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.

A substantive appeal is an appeal of the opinion of your performance. For example, an appeal of a bullet point would be a substantive appeal. For claims of substantive error,



such as inaccurate comments of the way you performed, evidence must include statements from third parties, rating officials or other documents from official sources. Third parties are persons who have knowledge of your performance during the rating period. Statements have more weight if they are from persons who served in positions affording them opportunity to observe, firsthand, your performance as well as interactions with rating officials. Such statements should include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the report was rendered.

Once you have decided to appeal, you should clearly state what you are appealing and the basis for the appeal. Your appeal should state: (1) whether the entire report is contested or only a specific part or comment, (2) the basis for your belief that the rating officials were not objective or had an erroneous perception of your 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. Remember, the case will be reviewed by a board of impartial officers and/or noncommissioned officers who will be influenced only by the evidence you provide in your appeal.

### **How much time do I have to appeal?**

It is important to the Army and to you that an erroneous report be corrected as soon as possible. As time passes, people forget and documents and key personnel are less available. The preparation of a successful appeal becomes more difficult as time passes. Substantive appeals must be submitted within three years of the evaluation's THRU date. Failure to submit an appeal within this time may be excused only if you provide exceptional justification to warrant this exception.

If you plan to appeal, before you come to the Legal Assistance Office make a list of those individuals who were in a good position to have observed your performance during the period of the challenged report and who might provide you a statement of support. More specifically, identify and list those who served in positions that would allow them to challenge or refute specific shortcomings or incidents for which you were faulted on the challenged report. Concentrate on identifying those who also would have been knowledgeable of your working relationship with your rating officials. Also, make a list of any records or reports that might serve to refute portions of the challenged evaluation. Published rating schemes for instance, are often used to contest correctness of evaluating officials.