

Officer and NCO Evaluation Redress Options

by CPT D. Austin Ribelin

It's an unfortunate reality: sometimes we just aren't quite as good as we think we are. However, when it comes to Officer Evaluation Reports (OERs) and Noncommissioned Officer Evaluation Reports (NCOERs), there are protections in place that help make sure your evaluation doesn't say you are worse than you actually are. The difficult question is deciding whether you're right or the evaluation report is right. Once you are certain you are better than your evaluation says, you have two options: a Commander's or Commandant's Inquiry and an Evaluation Appeal. The Evaluation Redress Program addressing these options is found in Army Regulation (AR) 623-3.



The author, pictured here with his wife, Hallie, was promoted to Captain this summer. He serves as a Legal Assistance Attorney at the Kaiserslautern Legal Services Center.

Commander's or Commandant's Inquiry

The Commander's Inquiry applies to evaluations where there are alleged injustices, errors, or illegalities. The 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 evaluation is accepted at HQDA." Keep in mind that while the Commander's Inquiry is available for evaluations that have already become part of a Soldier's OMPF, the appeals process is the primary means to address the errors and injustices once they become a matter of permanent record.

As the rated Soldier, if you determine there are errors, injustices, or illegalities, it is your job to bring the problematic report to the commander's attention. This is usually accomplished through the use of a memorandum discussing the matters that require redress. Your memorandum should be addressed to the commander in the chain of command above the rating official involved in the allegations. Generally, much deference is given to the rating official's statements, so it is extremely important to ensure your request for an inquiry clearly and concisely states the basis of your complaints. The commander will focus his inquiry into serious irregularities or errors; examples of such errors are: 1) Improperly designated or unqualified rating officials; 2) Inaccurate or untrue statements; or 3) Lack of objectivity or fairness by the rating official.

Once the request for a Commander's Inquiry is made, the commander must look into the allegations. If an inquiry results in a finding of no irregularities with the evaluation: (1) the Commander's Inquiry is filed locally, (2) a copy is sent to the rated Soldier, and (3) the evaluation will be filed as is. If the inquiry results in a finding of an irregularity after the evaluation has been filed at HQDA, the findings, conclusions, and recommendations will be sent to HQDA in a format that can be filed in the Soldier's Official Military Personnel File (OMPF). Otherwise, the inquiry is forwarded to the rating chain for review and the opportunity to address the irregularities before the report is sent to HQDA. A finding of serious irregularity or error does not necessarily mean your OER or NCOER goes away, but the commander's findings, recommendations, and supporting documentation will be placed in your OMPF along with the evaluation.

Evaluation Appeals

An evaluation appeal may be filed based on administrative error or on substantive error. Because there is a presumption that all evaluations are accurate, appeals must be supported by clear and convincing evidence establishing the alleged error, or the appeal will not be considered.

Appeals of an administrative error include, but are not limited to, deviation from the established rating chain, insufficient observation period by the rater, report period errors, and height/weight errors. Because most errors of an administrative nature are authenticated by the rated Soldier, be particularly aware of any errors related to height/weight, rating chain, and APFT performance. If an error is realized after authentication by the rated Soldier, the appeal will be accepted only under the most unusual and compelling circumstances. While there is no deadline for filing an appeal based on administrative error, the likelihood of success diminishes significantly with the passage of time. These appeals will be adjudicated by the U.S. Army

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Human Resources Command.

Appeals of a substantive error include bias, prejudice, inaccurate or unjust ratings, or any other matter that is not an administrative error. Generally these claims are made up of unjust evaluations of performance and claims of bias by the rating official. Substantive appeals must be filed within three years of the OER or NCOER "THRU" date. Only under exceptional circumstances will an appeal be reviewed after the deadline. Substantive appeals will be adjudicated by the Deputy Chief of Staff, G-1 Special Review Board.

The review board may approve an appeal in whole or in part, or it may deny the appeal. If the appeal is approved in whole, the evaluation will be removed from your OMPF and you will have unrated time for the period of the evaluation. The review board may also remove portions of the evaluation, such as removing the rater's evaluation but leaving the senior rater's evaluation. Generally, the board will not take action that could worsen your OER or NCOER.

For further information see AR 623-3, paragraph 6-10, for processing priority of appeals, and paragraph 6-11, for burden of proof and evidentiary information. Lastly, if you are having trouble deciding whether to appeal an NCOER or OER, take a look at AR 623-3, paragraph 6-13, and Department of the Army Pamphlet 623-3, Chapter 6.

If you have any concerns about the issues addressed above, make an appointment to see a Legal Assistance Attorney at the Kaiserslautern Legal Services Center by calling DSN 483-8848 or Civilian 0631-411-8848. We can help you determine which avenue of redress is appropriate and help draft evaluation appeals.

"Viktoria" Moving Company Goes Bankrupt

by CPT Yolanda Williams

Viktoria Speditionsgesellschaft GmbH & Co. KG, a German moving company that has served the U.S. military community for many years, has filed for bankruptcy. Don't panic! The U.S. Army Claims Service, Europe, has issued guidance on how to handle claims involving Viktoria.

If your personal property was shipped by Viktoria and you suffered loss or damage, the Kaiserslautern Claims Office can assist you in giving the requisite notice as long as you bring in your DD Form 1840/1840R or other notice document within 75 calendar days of delivery. They will dispatch the notice document for you.

Claimants whose property was delivered by Viktoria will not file their claim directly with Viktoria or the bankruptcy attorney. Instead, they will file and settle their claim with their local military claims office under the provisions of Army Regulation 27-20.

Beginning on September 1, 2011, Gosselin Logistics, another German carrier, began delivering shipments that were originally picked up, but were not delivered, by Viktoria. The procedures for giving notice of damage and filing claims are different for these shipments. The Kaiserslautern Claims Office's claims examiners stand ready to assist claimants in dispatching their DD Form 1840/1840R or other notice document to the appropriate recipients, and in filing their claims directly against Gosselin.

For more information, contact the Kaiserslautern Legal Services Center Claims Office at DSN 483-8414/8862 or Civilian 0631-411-8414/8862, or e-mail your claims questions to legal@eur.army.mil.

