Legal Briefs

From the Fort Knox Legal Assistance Office

EVALUATIONS - NCOERs, OERs, and AERs

The Army Evaluation Reporting System:

The evaluation reporting system is a comprehensive career management tool used by the Army to record performance and potential information about officers and noncommissioned officers. The information is reported to the Department of the Army (DA) in the form of official officer, noncommissioned officer, or academic evaluations. Those evaluations stand as a condensed statement of what the rated individual did during a certain period of time and how well he or she did it. Completed evaluations are filed in the rated individual's permanent personnel file, and are considered prior to selection for promotion, command, civilian or military schooling, or retention on active duty. Because of their importance, and because the Army wants reliability in the evaluation process, the reporting system has certain built-in safeguards to ensure completed evaluations are fair, accurate, and objective. Those safeguards include an inquiry process and an appeals process, which allow for correction of flawed or erroneous evaluations.

Applicable Army Regulations (ARs):

All previous regulations have been replaced by: EVALUATION REPORTING SYSTEM - AR 623-3

Officer, noncommissioned officer, and academic evaluations are completed using different forms (OERs - DA Form 67-9; NCOERs - DA Form 2166-8; AERs - DA Form 1059), but the inquiry process and the appeals process are almost identical for all three. This Legal Brief provides general guidance applicable to all three evaluations. The individual ARs should be consulted for more precise information.

The Rating Chain:

The evaluated servicemember is the rated officer/noncommissioned officer. The person responsible for completing the evaluation is the rater. The rater is usually the rated officer's immediate supervisor. He or she has primary responsibility for making sure the rated officer has a full understanding of the duty position in which he or she will be evaluated. The rater usually works in close contact with the rated officer so that he or she has a solid grasp of the rated officer's performance. The senior rater is the rater's supervisor. The senior rater's primary responsibility is to evaluate the rated officer's potential for future Army service. The senior rater will have a broader perspective drawn from a more senior leadership position and can use that perspective to more accurately identify the rated officer's strengths and weaknesses. He or she will also review the rater's comments to ensure the evaluation remains consistent. Together, the rater and the senior rater comprise the rating chain. For noncommissioned officer evaluations, a final check is provided by a reviewer. The reviewer is usually the senior rater's supervisor. The reviewer provides yet another check ensuring the evaluation is fair, accurate and objective. For officer evaluations, the rating chain may have an intermediate rater in between the rater and senior rater. The intermediate rater fills the void in duty situations where the rater and senior rater have little, if any, direct contact. In those circumstances, the intermediate rater provides the additional check that officer evaluations are accurate and objective.

Commander's Inquiry:

Rated officers/noncommissioned officers who believe an evaluation is unfair, unjust, or otherwise inaccurate may request an inquiry from the next higher commander above his or her rating chain. If requested, the inquiry must be completed within 120 days of the thru date on the evaluation. The inquiry is not an appeal, and the inquiring commander is not authorized to direct that an evaluation be changed. The commander will confine his or her inquiry to matters relating to the clarity of the report, the facts contained in the report, the compliance of the report with the applicable AR, and the conduct of the rated officer and the rating officials. The purpose of the commander's inquiry is

to provide a greater degree of command involvement in preventing obvious injustices to the rated officer. In a sense, the inquiring commander provides what is arguably a more objective view of the rating situation. The rating chain is authorized to use the inquiry as deemed appropriate.

Appeals:

Appeals are appropriate if the rated officer/noncommissioned officer firmly believes the evaluation is inaccurate or unjust and that it is not a fair appraisal of his or her performance and potential. Being dissatisfied with the quality of a report or feeling that it should have been better do not create grounds for an appeal. Clear and convincing evidence of error is required, and that can be hard to obtain. Statements from third parties knowledgeable of your performance are needed to substantiate an appeal. Even with those statements, it is very difficult to challenge the judgment of your rating chain. Once filed, evaluations are presumed to be correct administratively and in content (substantively). Overcoming that presumption requires solid reliable information to the contrary.

Timeliness: Administrative errors, including deviation from the established rating chain, insufficient period of observation by the rating chain, errors in the cited report period, and errors in height/weight or physical fitness test information, may be appealed regardless of the time elapsed since completion of the evaluation. Substantive errors, including allegations of prejudice, partiality, etc., must be appealed within 5 years of completion of the evaluation.

NOTE: under the new OER regulation, officers have 3 years to appeal evaluations completed under the new AR. The 5-year suspense applies to OERs completed under the old AR.

What Legal Assistance Can Do:

We can help with the preparation of commander inquiry requests and evaluation appeals. If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771 or visit our website at www.knox.army.mil/center/sja/. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall at the corner of Knox and Third Street.