



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge
Advocate

Headquarters, Fort Carson

Keeping You Informed On Personal Legal Affairs



EVALUATION REPORTS AND APPEALS

Consider these questions and answers to help you determine your rights under the Army Evaluation Reporting System.

Q: WHAT IS THE ARMY EVALUATION REPORTING SYSTEM?

A: The Army Evaluation Reporting System is a career management tool the Army uses to record performance and potential information about officers and noncommissioned officers. The information is reported to the Department of the Army (DA) in officer, noncommissioned officer, or academic evaluations. These evaluations are statements 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. 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.

Q: WHAT ARE THE APPLICABLE ARMY REGULATIONS (ARs)?

A: Officer evaluations (OERs) are governed by AR 623-105. Noncommissioned officer evaluations (NCOERs) are governed by AR 623-205. Academic evaluations (AERs) are governed by AR 623-1.

a. Officer, noncommissioned officer, and academic evaluations are completed using different forms.

1. OERs - DA Form 67-9
2. NCOERs - DA Form 2166-8
3. AERs - DA Form 1059.

b. The inquiry and appeals processes are almost identical for all three. The individual ARs and a legal assistance attorney should be consulted for more precise information.

Q: WHAT IS A RATING CHAIN?

A: 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 first-line supervisor. The rater has primary responsibility for making sure the rated officer/noncommissioned 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. 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.

Q: WHAT IS THE PURPOSE OF A COMMANDER'S INQUIRY?

A: Rated officers or 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. 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 regulation, and the conduct of the rated officer and the rating officials. The purpose of the 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. Soldiers who believe that the circumstances surrounding their evaluation warrant an inquiry should request one expeditiously, before the evaluation has been forwarded to HQDA.

Q: WHAT IS THE APPEALS PROCESS?

A: 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. 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. Under the new OER regulation, officers have 3 years to appeal evaluations completed using the new regulation. The 5-year suspense applies to OERs completed under the previous regulation.

Q: I HAVE CONCERNS ABOUT AN EVALUATION REPORT I RECEIVED; WHAT SHOULD I DO?

A: Contact the Fort Carson Legal Assistance Division to schedule an attorney consultation. Requests for commander's inquiries and/or evaluation report appeals may enable you to correct your evaluation report.