



## FORT SILL LEGAL ASSISTANCE NCOER/OER/AER APPEALS



*That “bad” NCOER got you down? That less than stellar OER keeping you up at night? That AER just doesn’t seem right? Well, thankfully, AR 623-3 and DA Pam 623-3 govern all evaluation reports. Everything you need to determine if that evaluation report was done correctly is covered in the regulations.*

AR 623-3 and AR 15-185 outline the three possible methods of redress for a perceived possible “illegal” or “incorrect” NCOER, OER, or AER. The Army’s redress program is based upon principles structured to prevent and/or provide a remedy for alleged injustices or regulatory violations, as well as to correct them once they have occurred. OERs, NCOERs, and AERs may have administrative errors or may not accurately record the individual’s potential or the manner in which he or she performed his or her duties. If the requirements were not correctly followed, the rated Soldier may request a Commander’s Inquiry or appeal the evaluation. Additionally, the rated Soldier may file an ABCMR appeal if the deadline for substantive appeals has passed. When deciding whether or not to submit an evaluation report appeal, the rated Soldier should refer to DA Pam 623-3, which clarifies the policies outlined in chapter 4 of AR 623-3.

It is imperative that erroneous reports be corrected as soon as possible. As time passes, preparation of a successful appeal becomes more difficult, as does the likelihood for success of the appeal. Substantive appeals must be submitted within three years of the evaluation thru date. Failure to submit an appeal within this time will require the appellant to submit his or her appeal to the Army Board for Correction of Military Records (ABCMR). Administrative appeals will be considered regardless of the period of the report and a decision will be made based on the regulation in effect at the time the report was rendered. However, prompt submission is strongly recommended.

### **Option 1: Commander’s/Commandant’s Inquiry**

A Commander’s Inquiry requires Commanders to look into alleged errors, injustices, or illegalities in evaluation reports, which may be brought to the Commander’s attention by the rated individual or anyone authorized access to the report. A Commander’s inquiry is a written request, submitted to the Commander one level higher than the Soldier’s rating chain, to investigate the subject evaluation report. The primary purpose of the Commander’s Inquiry is to provide a greater degree of command involvement in preventing obvious injustices to the rated individual and correcting errors before they become a matter of permanent record. A secondary purpose of the Commander’s Inquiry is to obtain command involvement in clarifying errors or injustices after the evaluation report is accepted at Headquarters, Department of the Army (HQDA).

However, in these after-the-fact cases, the Commander's Inquiry 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.

A Commander's Inquiry will not be used to note differences of opinion among the rating chain; however, the Commander may determine through the inquiry that the report has serious irregularities or errors, such as improperly designated or unqualified rating officials; inaccurate or untrue statements; or a lack of objectivity or fairness by rating officials. The results of a Commander's Inquiry may be used in support of an appeal.

## **Option 2: Evaluation Report Appeal**

The rated Soldier or other interested parties, as listed in AR 623-3 section 4-7, may appeal any report that is believed to be incorrect, inaccurate, or in violation of the intent of the regulation. An evaluation report accepted for inclusion in a Soldier's OMPF is presumed to be administratively correct. Appeals supported by statements from rating officials claiming administrative oversight or typographical errors will normally be returned without action unless accompanied by additional substantiating evidence such as the published rating chain, orders, leave records, hospitalization records, human resource documents, or the results of a Commander's Inquiry.

The appellant has the burden of proof to produce evidence that establishes, clearly and convincingly, that (1) the presumption of regularity should not be applied to the report under consideration and (2) action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy.

An appeal may be based on either administrative or substantive error, or both. For claims of administrative error, appropriate evidence may include the published rating chain, orders, leave records, human resource documents, etc. Appeals based solely on administrative error will be adjudicated by various agencies depending on the appellant's military status. Administrative errors include deviation from the established rating chain, insufficient period of observation by the rating officials, errors in the report period, and errors in the height/weight. Bear in mind that the rated Soldier's signature verifies administrative data on the report and also verifies that he or she has seen a completed evaluation report. Correction of minor administrative errors seldom serves as a basis to invalidate an evaluation report. Removal of a report for administrative reasons will be allowed only when retention of the report would clearly result in an injustice to the Soldier. Appeals based solely on the lack of full compliance with performance counseling requirements will rarely invalidate an evaluation report unless accompanied by additional evidence of inaccuracy or injustice.

Appeals alleging bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are substantive and will be adjudicated by the Army Special Review Board (ASRB). After resolution of the appeal, the reviewing agency amends the Soldier's official records, if appropriate. If the Soldier has been nonselected for promotion, the ASRB will also determine if promotion reconsideration is warranted as a result of the change to the evaluation report.

For claims of substantive error, evidence must include statements from third parties, rating officials or other documents from official sources. Third parties are persons other than the Soldier or rating officials who have knowledge of the rated Soldier's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions affording them good opportunity to observe, firsthand, the rated Soldier's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practical, such statements should include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the report was rendered. Remember, the results of a Commander's Inquiry may provide support for an appeal request.

Appeals are sent directly to the agency that decides the appeal. All regular Army appeals are sent to: U.S. Army Human Resources Command (AHRC-PDV-EA), Evaluation Appeals, 1600 Spearhead Division Avenue, Department 470, Fort Knox, KY 40122-5407. The rated Soldier must send the original appeal and supporting documentation, along with one duplicate copy of the appeal and supporting documentation. Upon receipt of the appeal, the Board will contact you and acknowledge receipt. The time required to process an appeal varies greatly depending on the complexity of the issues involved, the priority of the appeal, and by date of receipt. The Board will notify the appellant directly of any decision regarding appeal.

AR 623-3 provides sample appeal formats and lists the appropriate agency addresses for submitting the appeal. If you feel your NCOER, OER, or AER, was done in violation of the regulation, or if you just have questions, feel free to contact a Legal Assistance attorney for further assistance.

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If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Sill Legal Assistance Office is located on the 4<sup>th</sup> floor of Building 4700, Hartell Hall (Welcome Center) on Mow-Way Road.