

TAKE-1

# NCOER APPEALS

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



## **NCOER APPEALS**

### **1. Q. WHAT SHOULD I APPEAL?**

A. If you receive an evaluation report which you firmly believe is an inaccurate or unjust evaluation of your performance and potential, or one that contains administrative errors, that report may be a candidate for an appeal. Likewise, a report that was not rendered in accordance with the Army Regulation in effect at the time of preparation may be considered for appeal.

If you are simply dissatisfied with receiving a good report (for example with nothing but favorable comments) because you believe it should be 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.

In deciding what to appeal, you must consider early on whether you can gather useful evidence in support of an 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.

### **2. Q. WHEN SHOULD I APPEAL?**

A. You should begin preparation of an appeal as soon as possible after receipt of an evaluation report with which you have good reason to strongly disagree. Appellants should understand that would-be supporters still serving under the same rating chain may be reluctant to provide statements. Waiting too long, however, adds the difficulty of locating those who might offer support, or in gathering records that might serve as evidence. As a rule, the likelihood of successfully appealing a report diminished with the passage of time. Prompt submission is, therefore, recommended.

### **3. Q. WHAT ARE MY CHANCES OF SUCCESSFULLY APPEALING AN EVALUATION REPORT?**

A. Your success in appealing a report will depend largely on your effort to present clear and convincing evidence that the evaluation is inaccurate or unjust. The best evidence is obtained from third parties who were in a position to observe your performance from the same perspective as your rating officials.

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 good 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 the expectations and demands of your rating officials and your working relationship with them. (Example: Bn CSM in support of rated

Operations Sergeant). 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. Then too, extracts from inspection or investigative reports are sometimes useful to challenge faulting remarks.

With respect to the list of records and reports that might be of assistance to you, write to the S-1 or Adjutant of your former unit and request copies of those documents applicable to you or your jon. If an inspection report was prepared by a higher headquarters, write to that headquarters after obtaining the address at your local installation. In each request, state that it is for official use in conjunction with an evaluation report appeal.

The specific changes you request should be justified by the evidence you provide. Your request may be a combination of changes to the report or total removal of the report. Remember that you must document your request with sufficient evidence to warrant corrective action.

Appropriate appeal correspondence formats can be found in the regulation and it is recommended that the cover letter be typed, military memorandum on letterhead or white bond paper. In whatever form your appeal is presented, all enclosures should be tabbed and listed for easy reference, and they should be cited in the written appeal as evidence to support each contention you are making.

#### **4. Q. HOW DO I SUBMIT AN APPEAL?**

A. Upon receipt of supporting statements and documentary evidence, and before finalizing the appeal, you may wish to have the entire package reviewed by a disinterested third party in whom you have trust and confidence. This third party review will help remove emotionalism and poor logic from your appeal. The appeal should not be submitted until you are satisfied that you have presented a logical, well-constructed case, as fully documented as possible.

Submit the finalized original appeal, plus one complete copy directly to the address listed in the regulation for your component. Verify that all necessary information (i.e., signature, date, mailing address, telephone number, and priority) has been included before forwarding the appeal. All supporting statements must be originals and all documents provided must be original or certified true copies. Certification of documents may be done by your local Staff Judge Advocate or PSC. The copy of the evaluation report does not have to be a certified copy since the official copy is on file in your Officer Military Personnel File (OMPF). If you are aware of the current phone numbers of the rating officials on the contested report, please include them in your appeal correspondence.

#### **5. Q. HOW ARE APPEALS PROCESSED?**

A. The Appeals and Corrections Branch of the respective Active, Reserve or National Guard component will review the case upon receipt and either notify you by letter that the appeal has been accepted or that the case is being returned for lack of usable evidence. Administrative appeals will be resolved by the

appropriate Appeals and Corrections Branch for your component. Substantive appeals will be further forwarded for final review and decision by the DCSPER Special Review Board (SRB). Upon final determination of the case, the appropriate agency will notify you of the outcome.

**6. Q. IS THERE A SUMMARY CHECKLIST FOR THE APPELLANT?**

A. Yes.

1. Appellant's Letter: Typed, military memorandum on letterhead or white bond paper. Identify in the first paragraph name, rank, branch, SSN, period of report and priority of the appeal. Include a DSN or commercial phone number and correct mailing address. Home address may be used. Use this memorandum to transmit the appeal. Concisely explain the nature of your disagreement and what corrective action is requested. If a detailed explanation of the circumstances of a report is required, add a statement as an enclosure to the appeal. It is important to remember that the OSRB will not contact you, but will more than likely contact the rating officials for their side of the story. Therefore, it is important that you provide the OSRB with as much information as possible in your own statement to assist the OSRB in their adjudication. List and identify all enclosures. Sign and date the memorandum.

2. Evidence: Appeals based on technical (administrative) error must be proven by original or certified true copies of appropriate documents, e.g., orders, leave and earning statements, appropriate medical documents verifying height/weight, APFT results (DA Form 705), DA Form 2-1. Claims of inaccurate or unjust evaluations must be supported by originals of statements from knowledgeable observers during the report period. These statements should be signed, dated on letterhead or white bond paper and should be specific in content. Additional statements from rating officials are acceptable, but will not be the sole basis of the appeal. Documents such as ARTEP, AGI, command inspection results, etc., may be useful in supporting a substantive appeal.