

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 August 2023

DOCKET NUMBER: AR20230001262

APPLICANT REQUESTS: removal of his name from the titling block of a Military Police Report (MPR) dated, 11 June 2010, hereafter referred to as the contested MPR.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149, Application for Correction of Military Record
- two (2) self-authored statements, 27 August 2022, and 8 December 2022
- letter from United States Marine Corps (USMC) colonel (COL) to the applicant's parents, undated
- reference letter, 16 September 2000
- Memorandum for Record (MFR), Subject: Verification of Personnel Security Investigation, 10 June 2006
- Orders 057-016, 26 February 2009
- thirteen (13) certificates of training, certificates of completion, and/or certification courses –
 - 31 October 2006, Computer Users Security Course
 - 4 June 2009, Standard Army Maintenance System (Enhanced)
 - 20 August 2009, Army Traffic Safety Program
 - 3 September 2009, Building Managers Training Orientation
 - 22 September 2009, Environmental Management System General Awareness Training
 - 25 September 2009, Environmental Compliance Officer's Course (certificate and certification)
 - 23 October 2009, Personally Identifiable Information (PII) Course
 - 23 October 2009, Logistics Training Team Course
 - 11 December 2009, Unit Movement Officer Deployment Planning Course
 - 15 January 2010, The Master Driver Course
 - 10 February 2010, Online Range Certification and Practice Exam
 - 26 February 2010, Driver Training
- eight (8) certificates of award, achievement, service, and/or award orders-

- Army Achievement Medal Certificate, 30 June 2010
 - Certificate of Achievement, 10 February 2011
 - Army Achievement Medal, 15 August 2011
 - Army Commendation Medal Certificate, 30 September 2011
 - Certificate of Wartime Service, Afghanistan, 4 October 2011
 - Orders 073-003, Army Good Conduct Medal (4th Award), 13 March 2011
 - Certificate for award of the Purple Heart (15 December 2008, Afghanistan) and amendment orders, 30 November 2020
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- MFR, character reference, 17 February 2010
 - DA Form 4833 (Commander's Report of Disciplinary or Administrative Action, 9 June 2010
 - DA Form 3975 (Military Police Report (MPR), 11 June 2010
 - Memorandum, Verification of Security Clearance, 4 August 2011
 - a copy of his identification card, issued on 27 November 2020
 - five (5) letters Department of the Army, Criminal Investigation Division (CID), U.S. Army Crime Records Center (USACRC), Quantico, VA –
 - 23 September 2021
 - 18 October 2021
 - 2 November 2021
 - 19 April 2022
 - 23 June 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, in September 2021 he discovered that he was the subject of a MPR which charged him with communicating a threat and that there was a protective order in place. He contends that the MPR is false, and he provides the following history/background.
 - a. He served in the USMC prior to enlisting in the Regular Army (RA). The redacted MPR is lacking detail and names. Although the MPR indicates sworn statements were given, they were not provided. The Constitution gives him the right to see all the evidence against him.

b. His baby was delivered stillborn while he was deployed to Afghanistan. He decided to stay in Afghanistan and not go to be with his girlfriend. Later he found out that she never forgave him for this decision. At the time he felt his unit needed him more.

a. During a rocket attack he sustained a traumatic brain injury (TBI) and upon his return stateside he spent a considerable amount of time getting treatment and preparing for his next assignment. He married his girlfriend prior to being reassigned to Korea. He later found out that his wife was sleeping with his longtime friend, and he asked her for a divorce. He contends his wife got upset after seeing a photograph of him at a Thanksgiving Party standing next to a female Warrant Officer that was dressed in civilian clothes. His wife became convinced he was having an affair with the woman, and she called his commander and threatened him. His wife's father threatened to shoot and kill him and at that point he told his wife he was going to press charges. His wife started calling everyone to include a social worker. The social worker sided with his wife. He contends that he called his wife and recorded their telephone calls. He gave those recordings to the Military Police (MP), but this was not mentioned in the MPR.

c. The MPR states that he was apprehended; however, he drove himself to the Provost Marshal Office and spoke with an Asian female investigator. He never gave a sworn statement because he was not the one making threatening statements, and his fingerprints were not taken. He contends that no protective order was issued for this incident, and he ceased contact with his spouse.

d. The commander's decision in this matter came on 11 August 2010 (DA Form 4833); however, he was not in Korea. According to procedure, a legal hold should be put in place, then a determination made on whether the individual can retain their security clearance. None of this was done and he contends he was allowed to go to school, received an end of tour award for his tour of duty in Korea, was recommended for Warrant Officer, considered for promotion, and received good performance counselings.

e. During this time, he was not communicating with his spouse, but she was continuing to call everyone in his chain of command. He asked his commander to keep his departure from Korea quiet for at least 30 days for his safety and to allow him to visit with his older children. After completing a 30-day leave period, he was assigned to Fort Carson, Colorado. After about a week or two, his spouse located him at his new duty station, and she began to call his commander nonstop leaving threatening messages. He believes that if there were a protective order in place, why did she keep calling and why did the commander try to get him to talk to her? He was just waiting for the divorce to be final. He was scheduled for another deployment and when his spouse found out she went to the Sheriffs Office in Ohio and put a restraining order on him to prevent him from leaving. Again, he had not been in communication with her. He further contends a

noncommissioned officer in his chain of command instructed his wife to take this action. The applicant states he was sent to the Judge Advocate General Office in Fort Leonard Wood, Missouri to finalize his divorce and to get the restraining order removed.

f. He deployed to Afghanistan and during that deployment, in 2011, his divorce was finalized. He began to experience severe post-traumatic stress (PTSD) and TBI symptoms while deployed which caused him to be returned early and undergo a Medical Evaluation Board. As a result of his physical disability processing, he was retired due to disability in 2012.

g. Applicant states the MPR lacks integrity and is inaccurate. The MPR did not come to his attention until years after he retired during a Federal Bureau of Investigation (FBI) background check. He believes a review of his statements and documents will show that if he was in any kind of trouble, it was not ever presented to him. He even received another Army Good Conduct Medal which shows the events listed in the MPR did not happen.

3. The applicant's record shows that after having prior enlisted service in the USMC, and Army National Guard, he enlisted in the RA on 21 August 2007.

4. The applicant was retired due to temporary disability on 21 October 2012. He completed 5 years, 2 months, and 1 day of net active service for the period.

5. On 12 May 2023, the CID provided the board the following MPRs related to the applicant. The charges listed on these MPRs were all evaluated and determined to be founded.

a. MPR I, 1 September 2009, for the offense of simple assault, Camp Humphreys, Korea. The narrative portion of this report states, in effect, the applicant hit an unknown individual in the face with a closed hand. He was transported to the PMO and administered a sobriety test that determined he was intoxicated. He stated he was on medication for TBI and had been drinking prior to getting into the verbal altercation; however, he was acting in self-defense when the individual was struck. The MPR states the applicant was not read his legal rights due to his level of intoxication.

b. MPR II (contested MPR), 11 June 2010, for the offense of communicating a threat by telephone, Camp Humphreys, Korea. The narrative portion of this report states, in effect, Social Work Services (SWS) informed a MP investigator about an incident that the applicant's spouse filed with them. The spouse indicated the applicant was threatening her by telephone. The SWS office provided three recorded conversations wherein the applicant was being threatening by telephone. The recordings were reviewed, and the applicant was escorted to the PMO. After being

given his legal rights, the applicant waived rendering a written sworn statement admitting to the offense.

c. MPR III, 10 December 2011, for assault with a dangerous weapon, Fort Carson, Colorado. The narrative portion of this report states, in effect, the applicant was involved in a verbal altercation that turned physical when he struck his spouse in the face with a closed fist. The applicant left the scene and was later apprehended and transported to the Fort Carson Police Station. Due to his level of intoxication, he was not advised of his rights. After his release the applicant admitted himself to the Aspen Point Mental Health Facility. Upon further investigation, it was revealed that the applicant's spouse drew a knife and threatened his life. Based on the statement of witnesses and the ambulance team, the charges against him were dropped and charges were brought against his spouse for assault with a dangerous weapon.

d. MPR IV, 28 February 2013, for the offense of domestic disturbance, Fort Leonard Wood, Missouri. The narrative states, in effect, that the applicant was involved in a verbal altercation over family issues, which did not turn physical. The applicant's unit was contacted and responded to the scene. The applicant was advised of the 72 hour no contact order and then removed from the quarters by his unit.

6. The applicant provides:

a. The contested MPR, 11 June 2010, for the offense of communicating a threat by telephone, while assigned to Korea.

b. A DA Form 4833, which shows the applicant was charged with communicating a threat by telephone on 1 October 2009. The commander rendered his decision on 11 August 2010 by putting a protective order in place.

c. A CID memorandum, 23 September 2021, wherein the applicant was notified that a check of the criminal history data with the FBI National Crime Information Center (NCIC) reflected that he was listed as a subject the contested MPR for communications incidents. The disposition on file states the military protective order was put in place; therefore, retention of this criminal history data in NCIC did not conform to Department of Defense policy. Therefore, the NCIC entry was deleted with the FBI.

d. A CID memorandum, 18 October 2021, denying the applicant's request to amend his record within the files of the CID.

e. A CID memorandum, 2 November 2021, notified the applicant that his request had been assigned a case number and that a review of their files indicated the applicant had made a similar request filed which was assigned a different case number. The CID provided the applicant a copy of their response to that inquiry.

f. A CID memorandum, 19 April 2022, denying his request to have the contested MPR amended to remove his name from the title block, from within the files of the CID.

g. Numerous documents in support of his request which include character references attesting to his professionalism and outstanding service, deployment orders, awards for service, Purple Heart, verification of security eligibility and investigation, and numerous certificates of training.

7. Public Law 116-283, 1 January 2021, Section 545, states that the name, personally identifying information, and other information of a covered person shall be corrected in, or expunged or otherwise removed from, a report, item or entry, or record described in in the following circumstances:

a. Probable cause did not or does not exist to believe that the offense for which the person's name was placed or reported, or is maintained, in such report, item or entry, or record occurred, or insufficient evidence existed or exists to determine whether such offense occurred.

b. Probable cause did not or does not exist to believe that the person committed the offense for which the person's name was so placed or reported, or is so maintained, or insufficient evidence existed or exists to determine whether the person committed such offense.

8. The Manual of Court Court-Martial, 2019, Grounds for Apprehension, states that a person subject to UCMJ or trial thereunder may be apprehended for an offense triable by court-martial upon probable cause to apprehend. Probable cause to apprehend exist when there are reasonable grounds to believe that an offense has been or is being committed and the person to be apprehended committed or is committing it.

9. Regulatory guidance states the ABCMR will decide cases on the evidence of record. It is not an investigative body.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief is not warranted. The Board considered regulatory guidance including Department of Defense Instruction 5505.07. The Board determined a preponderance of the evidence does not show an error or injustice occurred when the applicant was titled because probable cause did and does exist to support the titling and/or that the applicant committed the offense.

2. Prior to closing the case, after further review of supporting documentation, the Board concurred with an administrative correction to show the 11 June 2010 Military Police Report for Communicating a Threat as 00595-2010-MPC138.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board found support for its determination that relief is not warranted based on the fact that applicant was advised of and waived his rights to an attorney and provided a written sworn statement admitting to the listed offense. The alleged offense is Communicating a Threat by Telephone, in violation of Art. 134, UCMJ. The evaluation found in Block 3 of the MP report is 'Founded'. According to the report, Social Work Services provided a CD to MPI that had three (3) recorded conversations on it. MPI reviewed the CD and applicant was escorted to the USAG-Humphreys Provost Marshal Office (PMO) where he then admitted the crime after waiving his rights. The record reflects that the Compact Disc was contemporaneously reviewed by Social Services, was provided to and reviewed by USAG-Humphreys SJA and MPI before titling applicant. Based on the preponderance of evidence available for review, the Board determined the evidence presented was not sufficient to warrant a recommendation for relief.

2. The Board determined the evidence presented is sufficient to warrant a recommendation that all Department of the Army records of the individual concerned be corrected to show the contested Military Police Report (MPR) dated 11 June 2010 as 00595-2010-MPC138.

[REDACTED]

[REDACTED]

[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Public Law 116-283, dated 1 January 2021, Section 545 addresses the removal of personally identifying and other information of certain persons from investigative reports, the Department of Defense Central Index of Investigations, and other records and databases. It states:

a. Policy and Process Required: The Secretary of Defense shall establish and maintain a policy and process through which any covered person may request that the person's name, personally identifying information, and other information pertaining to the person shall, in accordance with subsection (c), be corrected in, or expunged or otherwise removed from, the following:

(1) A law enforcement or criminal investigative report of the Department of Defense or any component of the Department.

(2) An index item or entry in the Department of Defense Central Index of Investigations (DCII).

(3) Any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

b. Covered Persons: For purposes of this section, a covered person is any person whose name was placed or reported, or is maintained revised

(1) in the subject or title block of a law enforcement or criminal investigative report of the Department of Defense (or any component of the Department);

(2) as an item or entry in the Department of Defense Central Index of Investigations; or

(3) in any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

c. Elements: The policy and process required by subsection (a) shall include the following elements:

(1) Basis for Correction or Expungement: That the name, personally identifying information, and other information of a covered person shall be corrected in, or expunged or otherwise removed from, a report, item or entry, or record described in paragraphs (1) through (3) of subsection (a) in the following circumstances:

a) Probable cause did not or does not exist to believe that the offense for which the person's name was placed or reported, or is maintained, in such report, item or entry, or record occurred, or insufficient evidence existed or exists to determine whether such offense occurred.

b) Probable cause did not or does not exist to believe that the person committed the offense for which the person's name was so placed or reported, or is so maintained, or insufficient evidence existed or exists to determine whether the person committed such offense.

c) Such other circumstances, or on such other bases, as the Secretary may specify in establishing the policy and process, which circumstances and bases may not be inconsistent with the circumstances and bases provided by subparagraphs a) and b).

(2) Consideration: While not dispositive as to the existence of a circumstance or basis set forth in paragraph (1), the following shall be considered in the determination whether such circumstance or basis applies to a covered person for purposes of this section:

a) The extent or lack of corroborating evidence against the covered person concerned with respect to the offense at issue.

b) Whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense at issue.

c) The type, nature, and outcome of any action described in subparagraph b) against the covered person.

3. The Manual of Court Court-Martial, 2019, Grounds for Apprehension, states that a person subject to UCMJ or trial thereunder may be apprehended for an offense triable by court-martial upon probable cause to apprehend. Probable cause to apprehend exist when there are reasonable grounds to believe that an offense has been or is being committed and the person to be apprehended committed or is committing it.

4. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application.

b. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//