

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230002187

APPLICANT REQUESTS: through counsel, all Law Enforcement Reports (LERs) and any residual and/or affiliated titling actions be amended as follows:

- all referenced offenses be noted as unfounded
- correct the Defense Central Index of Investigations (DCII) and the National Crime Information Center (NCIC) databases to remove the titling action

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief, with attachments:
 - Tab A: Charge Sheet
 - Tab B: Spouse's Statement
 - Tab C: Withdrawal and Dismissal Charges
 - Tab D: Security Clearance Recommendation
 - Tab E: Cancellation of MPO
 - Tab F: Final Judgment and Decree of Divorce
 - Tabs G thru L: Six (6) DA Forms 4833
 - Tab M: H.R. 6395-227
 - Tabs N thru P: Excerpts of Article 128, 128b, 92, UCMJ
 - Tab Q: Motion to Dismiss
 - Tab R and S: Excerpts of Article 131b and 87a, UCMJ
 - Tab T: Evidence Against A.C.
 - Tab U: Petition and Order of Expunction
 - Tab V: Domestic Violence Protective Order Against A.C.
 - Tab W: Domestic Violence Charges Against A.C.
 - Tab X: AR 15-6 Investigation
 - Tab Y: Tiling Removal Request
 - Tab Z: Denial of Titling Removal Request

FACTS:

1. The applicant, through counsel, states:

a. On or about 11 September 2019, a charge of assault in violation of Article 128, Uniform Code of Military Justice (UCMJ) was preferred against the applicant. On 30 October 2019, two additional charges, resisting apprehension in violation of Article 87a, UCMJ and willful disobedience of a superior commissioned officer in violation of Article 90, UCMJ were preferred against him. These charges were referred on 20 November 2019. In a sworn and notarized document dated 25 June 2019, the applicant's then-spouse admitted that she had sustained her injuries as a result of slipping and falling in her own vomit and then used the situation to gain leverage against her husband by making a false complaint to the military police (MP) and command. Her admission entirely eviscerate the basis for the Article 128 allegation made against the applicant.

b. In a memorandum, dated 4 August 2020, the commanding general directed that the charges be withdrawn and dismissed to allow for alternate disposition. In a memorandum dated 26 April 2021, the applicant received the security manager's recommendation that his Top Secret security clearance be reinstated. On 26 April 2021, the Military Protective Order (MPO) that had previously been in effect was canceled.

c. On 3 June 2021, a final judgment and decree of divorce was issued.

d. Responsive documents from a FOIA requested submitted on behalf of the applicant returned the materials. Apparently, there were other titling actions that both preceded and followed the titling action that relates to the court-martial charges referenced above. In addition to the FOIA materials, we have also submitted H.R. 6395-227, excerpts of Articles 128, 128b, and 92 of the UCMJ. Motion to Dismiss, excerpts of Article 131b, 87a, UCMJ, evidence against A.C., Petition and Order of Expunction, Domestic Violence Protective Order Against A.C., Domestic Violence Charges Against A.C., and a copy of an AR 15-6 Investigation.

e. The applicant submitted a tiling removal request to the Criminal Investigation Division (CID) on/about 3 October 2022. (The enclosures that accompanied the request were omitted to avoid unnecessary duplication in this filing). Unsurprisingly, CID, using an outdated standard, denied his request in a memorandum dated 12 December 2022. CID's denial of his titling removal request constitutes exhaustion of other administrative remedies in this case.

f. The standards for titling an individual with a crime in the military has recently changed to be more restrictive of when subjects of investigations should be titled. At the time of your titling action, the old standard of "credible information" was the standard to

determine whether a titling action was appropriate. That standard has since been increased to a higher standard of "probable cause.'

g. The New Standard: H.R. 6395-227 (National Defense Authorization Act, FY 2021), provides the following: (See H.R. 6395-227, Sec. 545(c))

(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 or not such offense occurred.

(B) Probable cause did not or does not exist to believe that the person actually 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 or not the person actually 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) CONSIDERATIONS. 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.

h. There are additional reasons that the claims lack credibility and cannot serve as the basis for titling the applicant for any of the above-referenced offenses. The applicant and his ex-wife have an extremely tumultuous history. In 2019, the applicant received

orders to move from Fort Bragg to Fort Benning and A.C. refused to legally separate and allow him to move to Georgia on his own. A.C. was charged with assault in state court. Moreover, the command investigated the applicant for alleged domestic violence and violation of a civilian protective order and the AR 15 -6 investigation into those allegations concluded that he was falsely accused of those offenses by his wife, A.C. This evidence shows, conclusively that A.C.'s has no credibility whatsoever and was, in fact, the perpetuator of violence in the relationship. She weaponized complaints against the applicant on multiple occasions, demonstrating her vindictiveness. All of the offenses for which the applicant was titled are predicated on believing A.C.'s claims. Given that she is a known liar and her claims have been disproven on multiple occasions, there is no probable cause to believe the applicant committed any of the offenses for which he is titled.

i. Finally, under the standard for removal requests (H.R. 6395-227 (National Defense Authorization Act, FY 2021)), it is proper to consider "[w]hether adverse administrative, disciplinary, judicial or other such action was initiated against the covered person for the offense at 13 issue." In this case, the convening authority directed that the court martial charges be withdrawn and dismissed and there is evidence that the other non-court martial offenses for which he was titled never had any action taken. We request that you consider this fact as additional evidence that probable did not and does not exist to believe that the applicant committed any of the above-referenced offenses.

3. The applicant, through counsel, provides:

a. Tab A: Charge Sheet, dated 30 October 2019, reflects the applicant was charged with violation of the UCMJ, Articles 87a and 90.

b. Tab B: Former Spouse statement, dated 25 June 2019, contains the chain of events that led to her fall and her willingness, out of spite and anger, to cause a dramatic scene that would lead to the military police being called to the home.

c. Tab C: Memorandum for Record, dated 4 August 2020, Subject: Withdrawal and Dismissal of Referred charges, signed by the Commanding General, which states the charges referred against the applicant were withdrawn, effective immediately to allow for the misconduct to be resolved by alternate disposition through an officer elimination pursuant to the applicant's request for Resignation in Lieu of Elimination.

d. Tab D: Security Clearance Recommendation, dated 26 April 2021, reflects the security officer recommended the applicant's Top Secret clearance be reinstated.

e. Tab E: The MPO that was previously in effect was cancelled on 26 April 2021.

- f. Tab F: Final Judgment and Decree of Divorce
- g. Tabs G thru L: Six (6) DA Forms 4833, which reflect there were other titling actions that both preceded and followed the titling action that relates to the court-martial charges.
- h. Tab M: H.R. 6395-227, Sec 545, 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.
- i. Tabs N thru P: Excerpts of Articles 128, 128b, 92, UCMJ
- j. Tab Q: Motion to Dismiss all charges against the applicant with prejudice. In the alternative, it requests the suppression of all evidence gathered during or obtained as a result of the 27 November 2019 interrogation.
- k. Tabs R and S: Excerpt of Articles 131b and 87a, UCMJ
- l. Tab T: Evidence Against A.C. includes a statement written by the applicant and excerpts of the applicant's health record.
- m. Tab U: Petition and Order of Expunction submitted to the State of North Carolina Cumberland County by the applicant on 23 July 2018.
- n. Tab V: Domestic Violence Protective Order Against A.C., dated 27 June 2018.
- o. Tab W: Domestic Violence Charges Against A.C., issued by the State of North Carolina, District Court 3A on 25 June 2018.
- p. Tab X: AR 15-6 Investigation
- q. Tab Y: Tiling Removal Request addressed to the Commanding General, U.S. Army Criminal Investigation Command, U.S. Army Crime Records Center, dated 3 October 2022, submitted by Danial Conway & Associates on the applicant's behalf.
- r. Tab Z: Denial of Titling Removal Request, dated 12 December 2022, states "the request for removal of titling action and any and all Law Enforcement Reports (LERs) and any residual and/or affiliated titling actions associated with your Social Security number be amended within the files of the Department of the Army Criminal Investigation Division (DACID) and supplements our response of October 18, 2022. Your request was received on October 11, 2022. The information you provided does not constitute as new or relevant information needed to amend the reports; therefore, your amendment request is denied."

4. A review of the applicant's service record shows:

a. On 3 August 2012, he took the Oath of Office as a Reserve Commissioned Officer.

b. His record contains a Law Enforcement Report (LER), dated 11 July 2018, which shows the applicant was the subject of an investigation for the offense of assault on a female on 13 June 2018 against his spouse. The report shows the applicant slapped her in the face with an open hand numerous times, punched her with a closed fist numerous times, and threw her on the floor.

c. His record contains a LER, which shows the applicant was the subject of an investigation for domestic violence and assault consummated by battery of his spouse on 17 June 2019. The report shows the two were involved in a verbal altercation which turned physical when the applicant grabbed her cellphone and struck her once in the right eye with a closed fist. His spouse stated she blacked out and began vomiting.

d. His record contains a LER, dated 25 September 2019, which shows the applicant was the subject of an investigation for obstructing justice and resisting apprehension on 6 September 2019. The report shows the applicant ignored all verbal commands and attempted to wrestle away from patrols preventing the handcuffs from being applied.

e. On 30 October 2019, charges were preferred on the applicant for violations of the UCMJ. Specifically, the applicant violated:

- Article 87a by resisting being apprehended on 6 September 2019
- Article 90 by violating a no contact order with his spouse on 7 September 2019

f. On 24 July 2020, the applicant submitted a resignation in lieu of elimination proceedings. He waived consideration of his case by a board of inquiry contingent upon receiving a characterization of service no less than under honorable conditions (General).

g. On 4 August 2020, the separation authority approved the applicant's request for resignation. The applicant would be separated from the Army in lieu of elimination with a general, under honorable conditions discharge.

h. On 28 April 2021, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 8 months, and 9 days of active service. It also shows he was discharged under the provisions of Army Regulation 600-8-24 (Officer Eliminations) with an under honorable conditions (General) characterization of service.

5. AR 190-45 (Law Enforcement Reporting) prescribes policies, procedures, and responsibilities on the preparation, reporting, use, retention, and disposition of Department of the Army (DA) forms and documents, listed in sections III and IV of appendix A, related to law enforcement (LE) activities. It implements Federal reporting requirements on serious incidents, crimes, and misdemeanor crimes. It also assigns the geographic areas of responsibility to a specific installation Provost Marshal Office (PMO) or Directorate of Emergency Services (DES).

6. Department of Defense Instruction (DoDI) 5505.07 (Titling and Indexing Subjects of Criminal Investigations in the Department of Defense) prescribes procedures to create a uniform process that allows people named in criminal investigative reports or indexed in the Defense Central Index of Investigations (DCII) a chance to obtain a review of such actions, as required by Reference (c).

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully, through counsel, considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and military records, the Board considered the facts and circumstances surrounding the applicant's allegations. The Board determined the applicant, and his counsel did not provide evidence that clearly exonerates him or shows that there was a clear injustice. The Criminal Investigation Division (CID) Reports show at the time, there was credible information regarding the applicant's involvement in the alleged offenses.
2. The Board noted the standard to determine whether a titling action was appropriate has changed under the National Defense Authorization Act, Fiscal Year 2021, section 545, to a higher increased standard of "probable cause." Based on this, the Board found there was insufficient evidence to support the applicant was improperly titled and should be removed from the law enforcement reports (LER) and expunction of his name and personally identifiable information from the Defense Central Investigation Index (DCII), CID databases, and all other federal agency criminal databases and amendment of the LER to reflect that probable cause did not exist to submit criminal history data to the Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC) under Department of Defense (DOD). Based on the facts and circumstances provided, the Board denied relief.
3. Titling or indexing on CID reports does not denote any degree of guilt or innocence. If there is a reason to investigate, the subject of the investigation should be titled. This is a very low standard of proof, requiring only the merest scintilla of evidence far below the burdens of proof normally borne by the government in criminal cases (beyond a reasonable doubt), in adverse administrative decisions (preponderance of evidence), and in searches (probable cause).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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, United States 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 Army Board for Correction of Military Records (ABCMR) determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 190-45 (Law Enforcement Reporting) prescribes policies, procedures, and responsibilities on the preparation, reporting, use, retention, and disposition of Department of the Army (DA) forms and documents, listed in sections III and IV of appendix A, related to law enforcement (LE) activities.

a. Paragraph 3-6b (2) states, requests to amend MP documents that are older than 5 years will be coordinated through the Director, United States Army Crime Records Center (USACRC). The installation PM or DES will provide the Director, USACRC a copy of an individual's request to amend a MP record on file at the USACRC. If the Director, USACRC receives an amendment request, the correspondence with any documentation on file at the USACRC will be sent to the originating installation PMO or DES. The installation PM or DES will review the request and either approve the request or forward it to the Director, USACRC for denial. A copy of the installation PM or DES's decision must be sent to the Director, USACRC to be filed in the USACRC record.

b. Paragraph 4-7a states, the DA Form 4833 is used with the Law Enforcement Report (LER) to (1) Record actions taken against identified offenders and, (2) report the disposition of offenses investigated by civilian LE agencies.

3. Department of Defense Instruction (DoDI) 5505.07 (Titling and Indexing Subjects of Criminal Investigations in the Department of Defense) states, titling is the term used to describe the process that occurs when the name and identifying information of a person is placed the title of block of an investigative report. It occurs when an investigation determines that credible information exists that the subject committed a criminal offense. Paragraph 4 states, DoD policy states:

a. Titling is an administrative procedure and the fact that an individual is titled does not connote any degree of guilt or innocence. Adverse administrative actions shall not be taken against individuals or entities based solely on the fact that they have been titled due to a criminal investigation.

b. Two exceptions which would allow an individual to later have their name removed from the title block of a Criminal Investigation Department (CID) Report of Investigation (ROI) are (1) mistaken identity and (2) when it is later determined that a

mistake was made at the time of titling and indexing, and no credible information indicating that the subject committed a crime existed.

//NOTHING FOLLOWS//