

IN THE CASE OF [REDACTED]

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230003469

APPLICANT AND HIS COUNSEL REQUEST:

- Amendment of any and all law enforcement reports (LER), including LER [REDACTED] and LER- 2ND Corrected Final [REDACTED], by showing the offense of assault consummated by a battery is unfounded and by removing his name from the title block of the LERs
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Supplemental Statement
- Supporting Documents (Tabs A-J)

FACTS:

1. The applicant requests removal of the titling from his record, LER [REDACTED] and LER- 2ND Corrected [REDACTED]. The U.S. Army Criminal Investigation Center (USACIC)/Crime Records Center (CRC) partially removed titling which resulted in LER- 2ND Corrected Final [REDACTED]. Applicant defers to counsel in the supplemental statement which states:

a. Critically, the Secretary of the Army ORDERED the applicant be granted full relief, specifically, "Under the authority of Title 10, United States Code, section 1552, the recommendation of the Army Board for Correction of Military Records is approved. All Department of the Army records of the individual concerned shall be corrected as shown under Board Determination/Recommendation in the Record of Proceedings in the subject case enclosed." For reasons that are entirely unclear, included in the packet of documents with the BCMR decision and ORDER for relief from the Secretary of the Army was a letter dated 13 September 2022 from USACID indicating that it had

"reopened" the investigation and "obtained a legal opine to title [the applicant] with Assault Consummated by a Battery."

b. CID provided the "new" LER only after it was requested by counsel which contains the following statement: "On 1 September 2022, the Directorate of Emergency Services (DES), Office of the Provost Marshal, USAG Vicenza, Italy denied the Army Board for Corrections of Military Records (ABCMR) request to remove your name from the title block of the (LER) [REDACTED]. This indicates a direct refusal of USACID and the DES, Office of the Provost Marshal, to abide by the order of the Secretary of the Army to correct the applicant's record. The applicant submits a new titling removal request to address the "re-titling." As such, the applicant requests his identity be restored as follows:

(1) That the offense of assault consummated by a battery be unfounded and noted as unfounded offenses because no probable cause exists to believe [the applicant] committed this offense.

(2) That the DCII and NCIC databases be corrected to reflect that [the applicant] is not titled for the above-listed offense or any other offenses related to the subject LER.

(3) Any other relief deemed appropriate.

3. The applicant provides the original titling removal request and additional documents in support of the new request as USACIC only partially granted the ABCMR's first decision from Docket Number AR202000001110, dated 8 April 2021.

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

a. Having had prior enlisted service in the [REDACTED] Army National Guard ([REDACTED] ARNG), he enlisted in the Regular Army on 11 August 2011.

b. On 20 December 2011, he was honorably released from active duty. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 months and 10 days of active service. He was assigned separation code KGM and the narrative reason for separation listed as "Accept Commission or Warrant in the Army."

c. He was appointed as a commissioned officer in the Regular Army on 21 December 2011.

d. The applicant remains on active duty to date and the service record was void of any documentation regarding derogatory information.

5. On 15 August 2023, the Criminal Investigation Division provided LER [REDACTED] and a memorandum in response to the request for release of information.

a. The memorandum, dated 1 September 2022, indicated during an administrative review it was determined that the credible information standard was not met when determination to title [the applicant] for the offenses of Child Neglect and Endangerment and Conduct Unbecoming an Officer as there was no corroborating evidence that would lead a trained investigator to believe the offenses occurred as reported. As such, both offenses were unfounded, and the subject changed to None in the report.

b. There was evidence to support the report of Assault Consummated by a Battery as reported by [his spouse]. She gave parental consent for the interview of her daughter, who was interviewed by the investigator using a structured child interview protocol. During that interview, the daughter reported witnessing the applicant and his spouse slap each other on the body on more than one occasion.

c. The credible information standard is defined in DA PAM 190-45 as, "information disclosed to or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to indicate that criminal activity has occurred and would cause a reasonable investigator under similar circumstances to pursue further the facts of the case to determine whether a criminal act occurred or may have occurred."

d. On 08 June 22, the Department of the Army Board for Correction of Military Records requested an amendment of Record under Title 10, United States Code, section 1552 and approved to remove the applicant from the title block. The board determined the original legal opine results were insufficient and did not provide enough evidence to substantiate founded offenses. No additional investigative efforts were required and there was not sufficient evidence to provide to the command for consideration of action.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the actions taken in response to the Board’s decision in AR20200001110 did not fully implement the relief granted by the Board. The Board determined that, while probable cause may have existed to investigate the applicant, the probable cause no longer exists, and his name should be removed from the title block of the associated LER.



BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing his name from the title block of the amended LER related to the offense of assault allegedly committed in 2017 and 2018.

4/1/2024

CHAIRPERSON


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

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Department of Defense (DOD) Instruction 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), 8 August 2023, establishes policy, assigns responsibilities, and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DOD law enforcement activity (LEA) reports and indexing them in the Defense Central Index of Investigations (DCII).

a. Pursuant to Public Law 106-398, section 552, and Public Law 116-283, section 545, codified as a note in Title 10, U.S. Code, section 1552, establishes procedures for DOD personnel through which:

(1) covered persons titled in DOD LEA reports or indexed in the DCII may request a review of the titling or indexing decision; and

(2) covered persons titled in DOD LEA reports or indexed in the DCII may request their information be corrected in, expunged, or otherwise removed from DOD LEA reports, DCII, and related records systems, databases, or repositories maintained by, or on behalf of, DOD LEAs.

b. DOD LEAs will title subjects of criminal investigations in DOD LEA reports and index them in the DCII as soon as there is credible information that they committed a criminal offense. When there is an investigative operations security concern, indexing the subject in the DCII may be delayed until the conclusion of the investigation.

c. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Judicial or adverse administrative actions will not be taken based solely on the existence of a DOD LEA titling or indexing record.

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DOD

LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion of their information in the DOD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DOD LEA report, DCII, and any other record maintained in connection with the DOD LEA report when:

(a) probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed 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 covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense; and

(c) such other circumstances as the DoD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs 3.2.a.(1) and (2).

(2) In accordance with Public Law 116-283, section 545, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DOD LEA head or designated expungement official will also consider:

(a) the extent or lack of corroborating evidence against the covered person with respect to the offense;

(b) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and

(c) the type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

//NOTHING FOLLOWS//