

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230003546

APPLICANT REQUESTS RECONSIDERATION OF: removal of the titling of Law Enforcement Reports (LERs)

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters/Alpha Company, 442nd Signal Battalion memorandum
- Email correspondence from U.S. Army Human Resources Command Promotions
- U.S. Army Human Resources Command memorandum, Subject: Promotion Review Board Results
- Headquarters, U.S. Army Reserve Command memorandum
- U.S. Army Human Resources Command memorandum, Subject: Command Review Board Notification

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170001921 on 27 February 2020.
2. The applicant states, in effect, he has been through multiple boards and Army legal Show Cause Boards and have shown in civil court that his ex-wife tried to use his military career to leverage custody of his daughter in both military court and civilian court. Also showed defamation in civil court pertaining to custody and military career [sic]. All cases, he has won but Army Criminal Investigation Division (CID) and Army Military Police hold up his career every time with records from the past. He is constantly flagged for things like Command Select for Brigade Command, permanent change of station (PCS)/expiration of term of service (ETS).
3. The applicant provides
 - a. Headquarters/Alpha Company, 442nd Signal Battalion memorandum, dated 4 October 2013, Subject: Derogatory/Adverse Action Report Update, reflects the following:

(1) The District Attorney declined to prosecute and referred the case to the Criminal Investigation Detachment (CID). CID conducted a follow up investigation and submitted the results to the Judge Advocate General (JAG) office in Fort Gordon. JAG notified this command that the case would not be going forward.

(2) The applicant's FLAG has been removed IA WAR 600-8-2 and is pending reassignment from his Branch Manager. The no contact order previously issued between the applicant and his wife has also been lifted at the request of Mrs. S.H., the applicant's wife. A Letter of Concern was issued by the Brigade Commander to be held in the Soldier's local file.

b. Email correspondence from U.S. Army Human Resources Command Promotions, dated 21 December 2016, which informs the applicant that the Secretary of the Army has decided to retain him on his promotion list; however, the orders section cannot cut any orders without the Signed scroll from the Secretary of Defense's office, which they do not have.

c. U.S. Army Human Resources Command memorandum dated 24 January 2017, Subject: Promotion Review Board Results, states his records were referred to a Department of the Army Promotion Review Board (PRB) for reconsideration of his promotion status. The Secretary of the Army decided to RETAIN him on the promotion list.

d. Headquarters, U.S. Army Reserve Command memorandum, dated 24 June 2020, Subject: Administrative Board, which states, "on 10 September 2019, 335th SC(T) convened a board of inquiry against the applicant in accordance with AR 135-175, para. 2-130, acts of child/spouse maltreatment or abuse and/or other acts of Family violence. Specifically, he was the subject of a CID report concerning sexual assault allegations made by his former wife. The board found by a preponderance of the evidence that the applicant was the subject of a CID report, but did not find that he committed conduct unbecoming an officer. As such, the board recommended that he be retained in the Army Reserve.

e. U.S. Army Human Resources Command memorandum, dated 3 January 2023, Subject: Command Review Board Notification, states the following:

(1) The Calendar Year 2023 (CY23) United States Army Reserve (USAR), Lieutenant Colonel (LTC), Troop Program Unit (TPU), Command Board, which convened on 12 July 2022, selected you for command; however, you are being referred to a Command Review Board (CRB) as a result of the post-board screening process. While you will remain on the command list and slate during this process,

you will not assume command before a favorable final adjudication by the CRB. This process and matters warranting your reconsideration are outlined below.

(2) The Deputy Chief of Staff, G-1, has approved a post-board screening process of all colonel and lieutenant colonel level command selectees, and project/product managers. All Criminal Investigation Division (CID), Department of the Army Inspector General (DAIG), and the restricted portion of the Army Military Human Resources Record (AMHRR) are screened to isolate any case in which the selectee is/was the subject of substantive derogatory information.

(3) You received a CID Report of Investigation-Final (C)/SSI-0126-2013-CID043-36798- 6E1A4/5C2B/5D6A/9T2 dated 6 September 2013, that resulted in a locally filed written counseling, and an MP Report # 00449-2013-MPC043 dated 22 May 2013, which were referred to a General Officer Review Board (GORB) (Enclosure 3).

(4) Your records will be referred to a CRB which will recommend to the Chief, Army Reserve, one or more of the following:

- That you be retained on the command selection list
- That your name be removed from the command selection list
- That you show cause for retention on the reserve active status list

(5) You will have 14 days upon receipt of this notification to submit a rebuttal, comments, information, and letters of endorsement on your behalf attesting as to why you should be retained on the command select list. Extension to the 14 days will be considered only for extreme hardship and must be submitted in writing in standard memorandum format. Submit your request to: usarmy.knox.hrc.mbx.tagdopsa@mail.mil, ATTN: Command Review Board.

4. In accordance with AR 135-175 and AR 15-6, para. 2-8 as applicable, I am bound by the results of the board. Accordingly, I approve the board's recommendation and retain MAJ Hooker in the Army Reserve.

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

- a. On 20 May 2004, the applicant took the Oath of Office as a second lieutenant (2LT), Regular Army, Field Artillery branch.
- b. Headquarters, U.S. Army Cyber Center of Excellence orders 139-0907, dated 19 May 2014, reflects the applicant was reassigned to the U.S. Army transition point and released from active duty on 1 October 2014. He was further assigned to U.S. Army Reserve Control Group.

c. U.S. Army Human Resources Command memorandum, dated 24 January 2017, Subject: Promotion Review Board Results, states his records were referred to a Department of the Army Promotion Review Board (PRB) for reconsideration of his promotion status. The Secretary of the Army decided to RETAIN him on the promotion list.

d. As of this writing, the applicant is currently assigned to the 335th Signal Command East Point, Georgia.

6. U.S. Army Criminal Investigation Division memorandum, dated 9 August 2023, Subject: Request for Sanitized Reports of Investigations (ROIs) and Military Police Reports, included a copy of the enclosed Law Enforcement Reports (LERs) 00126-2013-CID043-036798-5C and 00449-2013-MPC043-6E, responsive to your request are considered a discretionary release and should only be released in accordance with 5 U.S.C. § 552(d)(2000).

7. In response to the advisory opinion, the applicant provided a 5-page rebuttal statement. Specific details regarding the incident that led to the ROIs and LERs has been redacted in order to protect sensitive and personal identifiable information (PII). The applicant states the following:

a. I respectfully request that the U.S. Army Crime Records Center (CRC) un-title me from all charges and remove my name as the subject of all law enforcement reports (LERs), particularly dated 6 September 2013 and 22 May 2013. Following major revisions to the military criminal titling process as directed by the 2021 National Defense Authorization Act (NDAA), I renew my request under the NDAA's new standards, as discussed below.

b. First and foremost, I respectfully but categorically deny all allegations of criminal acts made against me by my ex-wife, S.R.S. (formerly S.H.). After our marriage, I unfortunately became aware of her past mental health issues and resulting problems that grew to haunt our marriage. These issues contributed to her decision to make false allegations against me, which include allegations of assault, rape, and spousal abuse. After a thorough and diligent law enforcement investigation by both military and civilian authorities, no charges have ever been brought against me on these false allegations. Furthermore, my military chain of command has come to understand this situation and continuously chosen not to take adverse action against me. These outcomes are based on the fact that no evidence exists to support her allegations that any of the alleged events ever occurred.

c. Military courts and civilian courts alike have consistently held that baseless allegations lacking even a scintilla of corroboration fail to establish probable cause that an individual has committed an offense. What is clear from the trial counsel's decision

is that she determined there was no corroborating evidence (not insufficient, but none) to support the allegations against me. Coincidentally, the civilian law enforcement investigation came to the same conclusion, but instead arrived at a proper probable cause determination. As a matter of fundamental fairness, uncorroborated allegations cannot independently support a probable cause determination; otherwise, anyone could allege any individual committed any number of crimes, thus thrusting that person into the criminal justice system unnecessarily.

d. The 2021 NDAA specifically now allows certain information that was not previously considered to be taken into account during such a request. The 2021 NDAA states that the CRC **shall** consider (1) the extent or lack of corroborating evidence against the covered person concerned with respect to the offense at issue, (2) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense at issue, and (3) the type, nature, and outcome of any action taken against the covered person. The major change in language comes by way of the second consideration listed above: whether adverse action was taken against the Soldier in question. Before the 2021 NDAA, the guidelines stated that “expungement of a subject’s name from a record because a commander took no action, or the prosecutor elected not to prosecute will not be approved.” In simple terms, if a Soldier was titled on an investigative report, but charges were never filed, that Soldier would still have no basis to have his record cleared, even though the Soldier was never charged with any crime.

e. The new language of the 2021 NDAA changes this. The CRC can now consider whether any action was brought against the Soldier, as well as the outcome of that action. The CRC is now able to consider the fact that no action was taken against the Soldier, no charges were filed, and the Soldier never received any form of punishment. If prosecutors and commanders decide that neither charges nor punishments are necessary, then the Soldier should not have to carry around the weight of a titling, which is potentially career-ending, especially when the Soldier received no adverse action. Titling in a CID report is an operational decision, not a legal or judicial one. The primary purpose for titling an individual as the subject of a criminal report of investigation is to ensure that information contained in the report can be retrieved at some future point in time for law enforcement and security purposes. This is strictly an administrative function. The probable cause standard for titling someone as a subject in a CID report was eliminated in 1992. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. See U.S. Department of Defense, Instruction 5505.07, Titling and Indexing in Criminal Investigations (28 FEB 2018), para. 6.5(c). In addition, the instruction cautions “Judicial or adverse administrative actions will not be taken against individuals or entities based solely on the fact that they have been titled or indexed due to a criminal investigation.”⁶ The 2021 NDAA also requires CRC to consider whether adverse administrative, disciplinary, judicial, or other such action was initiated against me for the offense at

issue, and the type, nature, and outcome of any action taken. As stated above, and in the various investigations, my military chain of command declined to initiate adverse action against me for these false allegations. See Commander's DA Form 268, dated 19 DEC 2019 (Enclosure 3, 5). Despite an officer elimination action being initiated against me by a higher headquarters, the board of officers definitively determined I did not sexually assault my ex-wife. This decision was even ratified numerous times by the Secretary of the Army when he ordered I be retained for continued service and retained on promotion boards. The civilian law enforcement agencies involved made it very clear that there existed no probable cause and no adverse action would be taken. Even the Army trial counsels agreed that no prosecution should occur. Throughout this ordeal, no adverse administrative, disciplinary, judicial, or other such action has even been taken against me that has resulted in any negative outcome. The only adverse side effect of my ex-wife's false allegations has been this unfair titling of my name associated with this unfounded investigation.

f. For the foregoing reasons, I respectfully request CRC un-title me from all charges and remove my name as the subject of all law enforcement reports (LERs), particularly 2013-CID043-036798-6E. I also attached enclosures to show my continued U.S. Army service and allegiance to the United States of America in good character and faith. These documents also show how I was a good husband and father, including the personal letters of my former spouse which contradict her false allegations. In addition, I have been selected for Command as a Lieutenant Colonel, as of 3 January 2023, but due to the titling actions have greatly hindered my career and progression.

8. Army Regulation (AR) 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's Army Military Human Resource Record (AMHRR).

9. 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).

10. 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).

BOARD DISCUSSION:

After reviewing the application, all supporting documents and the evidence found within the applicant's military records, the Board found that relief was warranted. The Board considered regulatory guidance including Department of Defense Instruction 5505.07. The Board determined a preponderance of the evidence shows an error or injustice occurred when the applicant was titled because probable cause did not nor does not exist to support the titling.

Furthermore, the Board determined a preponderance of the evidence shows an error or injustice occurred when the applicant's request to be untitled was denied by CID. The Board found that probable cause did not nor does not exist to show the applicant committed any of the assault, rape and/or spousal abuse allegations made against him. The Board determined, at the time of the incident, probable cause did not exist prior to CID obtaining all the facts, to include the applicant's ex-spouse dishonest and inconsistent accounting of events. Further, the Board found sufficient evidence supports applicant's assertions since all subsequent negative actions (e.g., Show Cause Hearing finding of retention and promotion) were likewise overcome.

Based on the preponderance of evidence available for review, the Board determined the evidence presented was sufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
<input type="checkbox"/>	:	:	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 from his Army Military Human Resource Record (AMHRR) the titling of Law Enforcement Reports (LERs)



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. 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.

2. DOD Instruction 5505.11 (Fingerprint Card and Final Disposition Report Submission Requirements) establishes policy, assigns responsibilities, and prescribes procedures for defense criminal investigative organizations and other DOD law enforcement organizations to report offender criminal history data to the Criminal Justice Information Services Division of the FBI for inclusion in the NCIC criminal history database. It is DOD policy that the defense criminal investigative organizations and other DOD law enforcement organizations submit the offender criminal history data for all members of the military service investigated for offenses, to include wrongful use of a controlled substance, to the Criminal Justice Information Services Division of the FBI, as prescribed in this instruction and based on a probable cause standard determined in conjunction with the servicing staff judge advocate or other legal advisor.

3. Public Law 116-283 (known and cited as the National Defense Authorization Act, Fiscal Year 2021, section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigation Reports, the DCII, and Other Records and Databases)), states not later than 1 October 2021, the Secretary of Defense shall establish and maintain a policy and process through which any covered person may request that the person's name, PII, and other information pertaining to the person shall, be corrected in, or expunged or otherwise removed from a law enforcement or criminal investigative report of the DCII, an index item or entry in the DCII, and any other record maintained in connection with a report of the DCII, in any system of records, records database, record center, or repository maintained by or on behalf of the Department.

a. Basis for Correction or Expungement. The name, PII, and other information of a covered person shall be corrected in, or expunged or otherwise removed from, a report, item or entry, or record of the DCII, in the following circumstances:

(1) probable cause did not or does not exist to believe 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;

(2) probable cause did not or does not exist to believe 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; and

(3) 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 (1) and (2).

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

(1) the extent or lack of corroborating evidence against the covered person concerned with respect to the offense at issue;

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

(3) the type, nature, and outcome of any action described in subparagraph (2) against the covered person.

//NOTHING FOLLOWS//