

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20230003842

APPLICANT REQUESTS:

- in effect, removal of his name from the titling block of a U.S. Army Military Police (MP) Law Enforcement Report (LER)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement with 11 enclosures
- U.S. Army CID letter with associated legal review
- Two email correspondences

FACTS:

1. The applicant states he is asking to have his name removed from an MP LER titling block because evidence later showed the allegations against him were unfounded. The applicant points out that the general officer memorandum of reprimand (GOMOR) he received, as a result of the MP LER, no longer exists.

a. The applicant explains, "The basis of the original GOMOR stemmed from events occurring on the evening of 27 Jan(uary) 2020 at the on-post residence at JBLM (Joint Base Lewis McChord) that I shared with my (now ex) wife and children as we were in the midst of a marriage plagued by infidelity. While the exact details of the proceeding divorce are not needed, the basis for my filing was dishonesty, violence, and anger issues on her part."

(1) "That evening, during a discussion about her infidelity and lack of cleanliness, she became increasingly angry and belligerent to the point that I decided to pack a bag and find another place to stay that night to give time for clearer heads to prevail as I was trained to do. While in the garage loading my bag, my ex-wife followed me out to my vehicle."

(2) "Once outside in the garage she began berating me and accusing me of stealing her tablet; the same tablet that she uses to communicate with the individual she was having her affair with. While I continued to assert my innocence in her accusations, she decided to sit in the passenger's seat of my vehicle. Before she could close the door, I grabbed her around both her ankles to not allow her feet to get inside the vehicle by trying to place them outside the vehicle and convince her to get out of my car; the same way a parent would do to if a child was playing in the vehicle. However, she decided to lean back and grab my steering wheel and began honking the horn. So I let her go and told her that I will just drop her off at one of the entrance gates by telling the MPs (military police) that I have an unwanted passenger who refuses to leave my vehicle."

(3) "Once I began to back out, she tried to grab my cell phone from between my legs to hold it hostage in return for her 'stolen' tablet. When I refused to allow her to take it, she struck me in my mouth with her fist. From there, as our argument continued, I realized this situation was starting to get out of hand. In fact, when the situation escalated, I called the military police because there was a danger to my children and myself. While it's easy to second guess and say that I could have done better to prevent things from escalating to the point where I had to call the Military Police on the night of the incident (27 Jan 20), one thing I do know is that my life and the life of my children were in danger because things were getting out of control. I recognized the situation and attempted to deescalate it by requesting assistance. As the father of 3 kids, consisting of 2 girls and 1 boy, my top responsibility is to take care of those whom I'm responsible for and to set a good example for them."

(4) "Once the Military Police arrived, my ex-wife's attitude and demeanor changed. In fact, the events she told the MP's were later contradicted by court filings during our divorce proceeding. After the events occurred, MP Detective A\_\_\_ went even further to say that I not only slammed the car door on her foot, but that I pulled her from the vehicle which neither my ex-wife's nor my statement validates as we were the only witnesses to the altercation. These two actions were the basis of the founded police report that led to the issuance of a locally filed GOMOR against me. Detective A\_\_\_ noted in his report that there were no visible marks on her person other than a 1/4 inch scratch on her knuckle which she received after punching me in the mouth. As a fair-skinned individual, the chances that there would not have been any noticeable marks along her feet, ankles, and arms in the shape of my hands, fists, and/or car door (from where I allegedly slammed her with) would have been HIGHLY unlikely had there been some type of violent struggle. Also, as someone who outweighed her by over 100 lbs. of muscle, it would not have taken much for me to remove her if I had, in fact, desired to do so."

b. The applicant continues by stating that his former spouse's dishonesty was one of the primary reasons for filing a civilian protection order and a divorce.

(1) Subsequent to his filing, his former spouse tried to obtain her own order, in which she claimed the applicant had "pounded her feet repeatedly with my fist, with no mention of me slamming the door onto her foot as she did in her original statement to the MPs...Her account of what happened during that evening would change dramatically depending on who she was speaking with."

(2) Three months later, during their divorce proceedings, the applicant's former spouse once again changed her story, claiming the applicant, "not only punched her feet AND slammed the door on her, but that she was 'honking the horn like crazy screaming call 911'...Her motives from the very beginning were to get me out of the way long enough for her pack up our house and kids, and move to Arizona to live with her ex-husband whom she had been having an affair with for over four months prior to the night of the incident. She needed a way to ensure that I would not be in a position to fight for custody of our children along with financing her new life with her ex-husband."

c. The applicant argues, in effect, that he was not afforded the right to challenge the MP LER because his command never charged him with assault; instead, the command issued a locally filed GOMOR, and, on his departure from JBLM, the GOMOR was destroyed.

(1) "When the contents of the report related to the assault were reviewed by a county family court judge when presented as evidence during the divorce hearings, he found the evidence lacking and my ex-wife's testimony non-credible as her story constantly changed as to what transpired. This means that the Judge determined that the evidence provided by the Detective not only failed to meet probable cause but it failed to meet the lowest burden of evidence for an Agency Preponderance of the Evidence."

(2) "Based on the Detective's failure to establish any evidence that a crime had occurred, I was awarded full custody of our two minor children." According to State law where the applicant divorced, a parent cannot be awarded custody if there has been a history of domestic violence. The applicant further points out that his former spouse had a history of violence, and a federal prosecutor charged her with committing an assault against their 14-year-old daughter.

d. The applicant adds, "During this 6-month rating period, my rater and senior rater (both female Colonels with over 53 years of demonstrated leadership experience between the two) deemed my account of the events to be honest and truthful and my Officer Evaluation Report (OER) was written as a standard Change of Record and not a Referred OER in which I was rated Highly Qualified." Additionally, on his departure, his command awarded him a Meritorious Service Medal and the Army selected him to attend graduate school. "I believe that had I been afforded a legal (non-administrative) avenue to challenge the police report via courts-martial or at least an Article 32 hearing,

I would have been found innocent of the charges and accusations or they would have been dismissed. However, as this case was disposed via administrative action, the full protections of due process afforded when formally charged were not required as my 'conviction' was simply based on the flawed evidence that I committed the act. This was due to the low evidentiary requirements of the preponderance of the evidence for an administrative action, which only requires a feeling that there is at least a 51 percent chance that I may have committed the assault IAW (in accordance with) Army Regulations."

e. "As the Local GOMOR has since been dismissed, the resulting report from the Detective resulted in the Army's CID titling me."

(1) "As stated earlier the accounts and sworn statements provided by me and my ex-wife clearly do not establish that I pulled her from the car. The only witnesses to the events do not establish that an act occurred and no other evidence is present or supports that assertion then it is not possible for the Detective to insert evidence that is not supported by the facts."

(2) "However, because Detective A\_\_ created facts to support his conclusion, Army CID Titled the action creating an adverse summary report before my promotion board last year that stated the following:"

(a) "A law enforcement report revealed [applicant] committed the offense of assault and domestic violence while engaging in a verbal dispute with the officer's spouse. The officer pulled the spouse from the passenger seat of their vehicle by grabbing the spouse about the arms and legs."

(b) "Further investigation determined the spouse committed the offense of assault while engaging in a verbal dispute with the officer that resulted in the spouse punching the officer in the lip with a closed fist. A Judge Advocate opined probable cause existed to believe [applicant] and the officer's spouse committed the offenses of Assault and Domestic Violence."

f. "Unfortunately, these incorrect statements provided by the Detective have resulted in me being passed over for promotion during my Primary Zone look and likely during my Above the Zone look. While technically an officer can be scored high enough by the board to be added to the promotion list, it is a well-known fact amongst the ranks that this is highly unlikely to occur. For my potential for further advancement to essentially be brought down to a 0 percent probability because of an accusation that was never proven, but merely by the opinion of someone who only has to feel that I committed the crime without actual proof, is the true definition of unjust."

2. The applicant provides documents showing the restraining order he obtained; his former spouse's protection order; his former spouse's version of events on 27 January 2020, submitted during the divorce proceedings; the applicant's evidence of his former spouse's adultery; and the charges against his former spouse for assault against their daughter. Additionally, he submits an order affirming a court granted him custody of their children and the following documents:

a. Final CID LER dated in March 2020, which shows the applicant and his now former spouse titled for domestic violence and assault, occurring on 27 January 2020.

(1) The report summary states, "Investigation determined [applicant] committed the offense of assault and domestic violence; while engaged in a verbal dispute with [former spouse] pulled her from the passenger seat of their vehicle by grabbing her about the arms and legs. Further investigation determined [former spouse] committed the offense of assault while engaged in a verbal dispute with [applicant] punched him in the lip with a closed fist."

(2) The report continues, "On 25 Feb 20, DET A\_\_ coordinated this investigation with CPT (Captain) T\_\_ J. B\_\_, Military Justice Advisory, JBLM, who opined probable cause existed to believe [applicant] committed the offenses of assault and domestic violence."

b. Memorandum dated 28 February 2020, which is addressed to the applicant's higher headquarters from the applicant's brigade commander. In the memorandum, the brigade commander requested disposition authority for the allegations against the applicant, stating, "While [applicant] was unable to completely remove himself from the situation before the dispute became physical, [applicant] gathered his composure and took the correct action. This is an error from which he can recover, rather than an error that demands punitive or a more adverse administrative action. In light of these circumstances, I request disposition authority to issue a Brigade Letter of Concern."

c. U.S. Army CID letter dated 29 June 2023, in which CID denied the applicant's request to remove his name from the titling block of an MP LER.

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

a. On 28 August 2012, after completing over six years of Regular Army and Virginia Army National Guard enlisted service, the applicant executed his oath of office as a Regular Army commissioned officer, branched Medical Service Corps. Following the completion of his basic officer leader course, orders assigned him to Fort Hood, TX (now renamed Fort Cavazos), and he arrived at his new unit in November 2012.

b. Effective 2 September 2016, the Army promoted the applicant to CPT/O-3. On 30 November 2016, orders reassigned the applicant to a medical brigade at JBLM. The applicant's service record is void of any documentation reflecting allegations of assault and domestic violence.

c. On or about 21 April 2020, the applicant's rating chain rendered an officer evaluation report for the rating period 20191011 through 20200421; the applicant's principal duty title was listed as detachment commander.

(1) The applicant's rater (Colonel (COL) A\_\_ C\_\_) reflected his overall duty performance as "Proficient" and remarked that the applicant performance was "absolutely stellar"; she ranked him in the top 5 percent of the company grade officers she had rated over her 21-year career. None of the rater's comments discussed the allegations of assault and domestic violence.

(2) The senior rater (COL L\_\_ M. E\_\_) rated the applicant as "Highly Qualified," and she placed the applicant in the top 10 percent of all company grade officers with whom she had worked during her 28 years of service. The senior rater also did not mention the assault and domestic violence allegations.

d. On or about 1 August 2023, orders reassigned the applicant to Shaw Air Force Base, SC, where he currently serves.

4. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

#### BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully 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 Department of Defense Instruction 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), the applicant's petition, and military records, 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 the Criminal Investigation Division (CID). The Board found probable cause does not exist to show the applicant committed the offense of assault and domestic violence.

2. The Board thoroughly considered the January 2020 Law Enforcement Report, brigade commander's request to have the disposition handled at the brigade level citing

"[t]his is an error from which he can recover, rath than an error that demands punitive or a more adverse administrative action," the subsequent custody granted to the applicant, the CID February 2023 legal review finding probable cause existed to believe the applicant violated the offenses for which he was titled, and his continued excellence in service following the incident. The Board also considered the outcome of the CID LER, presumably a locally filed brigade-level reprimand and concluded that although the CID LER suggests that probable cause existed at the time of titling, it no longer exists.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 that the evidence presented was 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 the applicant's name from titling in all law enforcement records/systems.

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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:

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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//