

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 November 2023

DOCKET NUMBER: AR20230005651

APPLICANT REQUESTS: correction of information by removal of his name from the title block of the U.S. Army Criminal Investigation Command (CID), Report of Investigation (ROI) - Final (C), 27 September 2001.

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

- DD Form 149 (Application for Correction of Military Record)
- ROI - Final (C), 27 September 2001
- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 17 January 2002
- Enlisted Records Brief (ERB), 9 August 2007
- Physical Disability Information Report, 15 August 2007
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 9 November 2007
- Character support letters (4), three undated and one from 10 December 2021
- CID, denial letter 16 March 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:

a. The ROI from 2001 is showing up during background checks and is being treated as a conviction, thus costing him multiple employment opportunities. He never received a field grade Article 15 nor was he subjected to a court-martial. He believes this ROI negatively impacted the rest of his military career and cost him opportunities for advancement.

b. He made the necessary corrections in his life and knows that he was responsible for putting himself in that position 22 years ago. This ROI is the only negative thing that

happened during his military career. He was punished by his unit in 2001 while on deployment to Saudi Arabia when he received a summarized Article 15. Since leaving the military he has worked hard to become a teacher and football coach. These professions will allow him to continue serving and giving back to the country. It has always been his desire to work in a profession that allows him to make a positive impact on the youth. He believes that he can help students and athletes.

c. Please allow him to continue making a positive impact in the classroom and on the football field. He is requesting the removal of his name from the title block of the ROI to clear his background. He made a mistake 22 years ago and learned from that mistake. He humbly asks for the removal of his name so he may heed his calling in education.

d. He was not aware he could appeal to the Board to correct this injustice. He has been working since his discharge to find a career that would allow him to make a positive impact on the young people. He has always wanted to be a teacher and a football coach. He put in the long hours in the classroom and on the football field to become a better man and to find where he can continue to serve. Teaching and coaching is his calling and the removal of his name from the title block of the ROI will enable him to achieve a lifelong goal and allow him to continue making a positive impact in the lives of young men and women that he would teach and coach. Some of whom may not have a positive male figure in their lives. He accepts the challenge and hopes for the help he needs to achieve his goal.

3. On 20 June 2000, the applicant enlisted in the Regular Army. Upon completion of his initial entry training, he was assigned to Germany and arrived on 18 December 2000.

4. While serving in the Regular Army in the rank of private first class, he became the subject of a 2001 CID ROI for violating Article 134 (Indecent Assault) of the Uniform Code of Military Justice (UCMJ). The investigation noted the applicant was accused of committing an indecent assault on or about 21 June 2001, and there was probable cause to believe he committed the offense upon Mrs. [REDACTED] when he grabbed her breasts with his hands.

5. The DA Form 4833, 17 January 2002, shows the applicant's name, and lists the offense of indecent assault, 21 June 2001. Item 12 (Action Taken) shows he received field grade non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice. Item 14 (Resultant Sentences, Punishments, or Administrative Action) shows the applicant was reduced from grade of E-3 to E1, he received 45 days of extra duty and 45 days of restriction. Item 10a (Commander's Remarks) states "Reduction in rank suspended for 60 days."

6. The applicant's ERB shows he was promoted to the rank/grade of specialist (SPC)/E4 on 1 May 2002 and he was deployed to Iraq on 8 March 2003.
 7. On 2 July 2003 he reenlisted for a four-year service obligation, while still serving in Iraq, and he redeployed from Iraq on 8 July 2003.
 8. The applicant supplies a physical disability information report dated 15 August 2007 showing he was being separated on 9 November 2007 for disability retirement.
 9. Orders Number 227-0261 issued by U.S. Army Garrison, Fort Bragg, NC on 15 August 2007 show he was being discharged on 9 November 2007, with 20 percent (%) disability and severance pay in the grade of E-4.
 10. His DD Form 214 confirms he was discharged according to his separation orders. He was credited with completing 7 years, 4 months, and 20 days of net active service.
 11. On 29 October 2015, Orders Number 302-0252 issued by U.S. Army Garrison, Fort Bragg, NC revoked Orders 227-0261 pertaining to the applicant's discharge. Orders Number 302-0253 was issued releasing the applicant from duty because of physical disability and placing him on the Temporary Disability Retired List (TDRL) effective 10 November 2007, with a 60 % disability rating. On the same day he was issued a DD Form 215 (Correction to DD Form 214), showing he was placed on the TDRL.
 12. On 2 November 2015, he was removed from the TDRL and discharged from the service because of permanent physical disability with a 20% disability rating effective 10 May 2008.
10. The applicant provides:
- a. Four support letters attesting to his character as:
 - a football coach with the ability to effectively communicate, motivate, prepare, and instill a sense of pride and responsibility with his players
 - he is careful, considerate, passionate, efficient, and dedicated to the well-being of others; he made a difference in countless students and players' lives as a mentor and a role model; demonstrates leadership qualities and always leads by example
 - giving of his time, effort, and resources above and beyond coaching football; has the ability to communicate and inspire young men in a demanding but respectful manner; helped led to the 2017 Valley Championship
 - hardworking, resourceful, likes to work to be successful, a natural leader, humble, and willing to go the extra mile to get the job done

b. A denial letter from the U.S. Army Criminal Investigation Division (USACID), on 16 March 2022, showing his requests to correct information from the files of the USACID received March 8, 2022, did not constitute new or relevant information needed to amend the report. Therefore, his amendment request was denied.

11. On 10 July 2023, the Army Review Boards Agency Case Management Division provided the applicant with a copy of his CID records for review and an opportunity to submit comments. He did not respond.

BOARD DISCUSSION:

1. After reviewing the application, supporting documents, evidence found within the applicant's military records, and regulatory guidance including Department of Defense Instruction 5505.07, the Board found that relief was not warranted.

2. The Board determined a preponderance of the evidence shows probable cause existed and still exists that the applicant committed the offense in question. In reaching this conclusion, the Board noted the ROI includes a finding of probable cause and the applicant received non-judicial punishment in the form of a field grade Article 15. He was punished with a reduction in grade, restrictions, and extra duty. The applicant provided evidence to the Board that he has made positive impacts in his civilian endeavors but did not provide evidence that probable cause no longer exists.

3. Since probable cause existed and still exists, the applicant was properly titled, and an error or injustice did not occur when CID denied his request to remove his name from the report. The Board determined the evidence presented was not sufficient to warrant a recommendation for relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

1/9/2024
X [REDACTED]
CHAIRPERSON [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. Army Regulation 190-45 (Law Enforcement Reporting) prescribes policies, procedures, and responsibilities for the preparation, reporting, use, retention, and disposition of Department of the Army forms and documents related to law enforcement activities. It implements federal reporting requirements on serious incidents, crimes, and misdemeanor crimes.

a. Paragraph 3-6a (Amendment of Records) states an amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete. Amendment procedures are not intended to permit challenging an event that actually occurred. Requests to amend reports will be granted only if the individual submits new, relevant, and material facts that are determined to warrant their inclusion in or revision of the police report. Requests to delete a person's name from the title block will be granted only if it is determined that there is no probable cause to believe the individual committed the offense for which he or she is listed as a subject. It is emphasized that the decision to list a person's name in the title block of a police report is an investigative determination that is independent of whether subsequent judicial, nonjudicial, or administrative action is taken against the individual.

b. Paragraph 4-7 (DA Form 4833) states this form is used with the LER to record actions taken against identified offenders and to report the disposition of offenses investigated by civilian law enforcement agencies.

3. Army Regulation 195-2 (Criminal Investigation Activities) establishes policies for criminal investigation activities, including the utilization, control, and investigative responsibilities of all personnel assigned to CID elements.

a. Paragraph 4-4b (Amendment of CID Reports) provides that:

(1) Requests to amend or unfound offenses in CID reports of investigation will be granted only if the individual submits new, relevant, and material facts that are determined to warrant revision of the report.

(2) The burden of proof to substantiate the request rests with the individual.

(3) Requests to delete a person's name from the title block will be granted if it is determined that probable cause did not exist to believe the individual committed the offense for which titled as a subject at the time the investigation was initiated, or the wrong person's name has been entered as a result of mistaken identity.

(4) The decision to list a person's name in the title block of a CID report of investigation is an investigative determination that is independent of judicial, nonjudicial, or administrative action taken against the individual or the results of such action.

(5) The decision to make any changes in the report rests within the sole discretion of the Commanding General, CID. The decision will constitute final action on behalf of the Secretary of the Army with respect to requests for amendment under this regulation.

b. The Glossary defines creditable information 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. (This standard has since been changed to "probable cause" in the United States Code.)

4. DOD Instruction 5505.7 (Titling and Indexing of Subjects of Criminal Investigations in the DOD), 8 August 2023, establishes policy, assigns responsibilities, and provides procedures for a uniform standard for titling and indexing subjects of criminal investigations by DOD.

a. DOD Components authorized to conduct criminal investigations will title and

index subjects of criminal investigations as soon as the investigation determines there is credible information that the subject committed a criminal offense. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if the subject is found not guilty of the offense under investigation, unless expungement is granted.

b. If a subject's information requires expungement from or correction in the DCII, DOD Components will remove the information as soon as possible. Judicial or adverse administrative actions will not be taken based solely on the existence of a titling or indexing record in a criminal investigation.

c. A subject is titled in a criminal investigative report to ensure accuracy and efficiency of the report. A subject's information is indexed in the DCII to ensure this information is retrievable for law enforcement or security purposes in the future. A subject who believes they were incorrectly indexed may appeal to the DOD Component head to obtain a review of the decision. DOD Components that conduct criminal investigations will make appropriate corrections or expungements to criminal investigative reports or the DCII as soon as possible.

d. When reviewing a titling and indexing review request, the expungement official will consider the investigation information and direct the information be corrected, expunged, or otherwise removed when:

(1) 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;

(2) 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; or

(3) such other circumstances as the expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs (1) and (2).

index subjects of criminal investigations as soon as the investigation determines there is credible information (now probable cause) that the subject committed a criminal offense. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Once the subject of a criminal investigation is indexed in the Defense Central Index of Investigations (DCII), the information will remain in the DCII, even if the subject is found not guilty of the offense under investigation, unless there is mistaken identity, or it is later determined no credible information existed at the time of titling and indexing.

b. If a subject's information requires expungement from or correction in the DCII, DOD Components will remove the information as soon as possible. Judicial or adverse administrative actions will not be taken based solely on the existence of a titling or indexing record in a criminal investigation.

c. A subject is titled in a criminal investigative report to ensure accuracy and efficiency of the report. A subject's information is indexed in the DCII to ensure this information is retrievable for law enforcement or security purposes in the future. A subject who believes they were incorrectly indexed may appeal to the DOD Component head to obtain a review of the decision. DOD Components that conduct criminal investigations will make appropriate corrections or expungements to criminal investigative reports or the DCII as soon as possible.

d. When reviewing a titling and indexing review request, the expungement official will consider the investigation information and direct the information be corrected, expunged, or otherwise removed when:

(1) 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;

(2) 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; or

(3) such other circumstances as the expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs (1) and (2).

e. In accordance with Section 545 of Public Law 116-283, 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:

(1) The extent or lack of corroborating evidence against the covered person with respect to the offense.

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

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

5. DOD Instruction 5505.11 (Fingerprint Card and Final Disposition Report Submission Requirements), 21 July 2014, 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 Federal Bureau of Investigation for inclusion in the National Crime Information Center 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 Federal Bureau of Investigation, 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.

//NOTHING FOLLOWS//