

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230006509

APPLICANT REQUESTS: correction of his records to:

- Reflect only the conviction by Summary Court-Martial for false official statement and adultery
- In effect, remove his name and identifying information from the titling block of a U.S. Army Criminal Investigation Division (CID) Law Enforcement Report (LER); the Defense Clearance and Investigations Index (DCII); and any other reports arising from allegations of aggravated sexual assault

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Attorney
- Enclosure 1 - DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enclosure 2 - Power of Attorney
- Enclosure 3 - Applicant Statement
- Enclosure 4 - DD Form 2329 (Record of Trial by Summary Court-Martial)
- Enclosure 5 - DA Form 4833 (Commander's Report of Disciplinary or Administrative Action)
- Enclosure 6 - Federal Bureau of Investigation (FBI) Fingerprint Search Results
- Enclosure 7 - Army Criminal Investigation Division (CID) Records
- Enclosure 8 - Military Records
- Enclosure 9 - CID Letter
- Enclosure 10 - DD Form 149 (Page 1 of the supporting documents)

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, in effect, his application is regarding derogatory information and inappropriate titling. He defers to his counsel.

3. The applicant's counsel states, on behalf of the applicant:

a. The applicant believes he was wrongly titled or indexed in the DCII and therefore submits this appeal to obtain a review of the decision. He believes that at the time of titling, no credible information existed to indicate he committed a crime for which he is titled. He sought to correct the error in his record through the Army CID; however, his request was inexplicitly denied. This is his first attempt at petitioning the Board. He exhausted all previous administrative remedies available to him, and his current conviction record is an error and injustice. There is a preponderance of evidence that an error or injustice has occurred in this case. Thus, he should have his requested relief granted by this Board.

b. Counsel provides arguments as to why the Board should consider the applicant's case, despite the expiration of the 3-year statutory time limit.

c. The applicant enlisted in the Army in 1997 and spent 21 years with the Army. He retired in 2017 with an honorable discharge and received numerous individual and unit awards that include two Meritorious Service Medals. During his service, he deployed to Afghanistan from January 2003 to April 2003 and November 2008 to November 2009 and Iraq from January 2004 to May 2004 and November 2005 to November 2006.

d. On 9 May 2013, a preliminary proceeding was held for the applicant. He entered a plea of [guilty] to violation of Article 134 in that he committed adultery, and guilty to a violation of Article 107 in that he gave a false official statement. The charge of aggravated sexual assault was dropped on that day as well. Upon pleading guilty to the two charges he was sentenced to 45 days of restriction. He was found guilty of only Article 107 making a false official statement. His punishment was restriction for 45 days and the case was not moved forward to a Court-Martial. The CID report is heavily redacted preventing any further analysis of the investigation; however, they do see he did not receive a guilty verdict for any charge other than a false official statement.

e. During the time of the investigation, the applicant also received an Army Achievement Medal for the period of 1 August 2011 to 5 November 2013. Further, during this same time period, he was recommended to be promoted with his peers due to his performance. In the evaluation report immediately following the accusations against him, he was recommended to be assigned as a platoon sergeant, and it was noted that he had the potential to be an outstanding leader now and in the future. He was also marked and noted for supporting the Sexual Harassment/Assault Response and Prevention program and equal opportunity in both words and deeds.

f. A search of his fingerprints in the FBI database resulted in what appears to be a conviction for aggravated sexual assault of an adult by force and making a false statement. The FBI database falsely reflects he was convicted on 25 July 2012 and charged with aggravated sexual assault of an adult by force and making a false statement. Further, it states, "Summary Court-Martial," and that a Summary Court-Martial is not a criminal proceeding. This not only reflects the false outcome but also is highly confusing. Furthermore, this has caused his issue with losing employment as the report is completely inaccurate.

g. The applicant was accused of sexually assaulting a first lieutenant (1LT) while also being accused of false official statement and adultery. It is clear that the sexual assault claim was completely false as the charges were dismissed. He was guilty of a false official statement and adultery, but not anything related to sexual assault. However, an FBI fingerprint background check, for some reason, states he was convicted of aggravated sexual assault of an adult by force on 25 July 2012. In the same paragraph, it indicates he was guilty of making a false statement. Thus, anyone reviewing the document is led to believe he committed aggravated sexual assault of an adult by force, which is a complete falsehood.

h. The lack of credible evidence to substantiate the allegations against him and a subsequent determination of the same requires his removal from the DCII and the National Criminal Information Center (NCIC) databases. He was wrongfully titled in accordance with Department of Defense Instruction (DoDI) 5505.7 even though there was not sufficient credible evidence to suggest he had committed the crimes for which he was accused. Per the applicable regulations, his name and all other personally identifiable information must be removed from the DCII and NCIC databases, as well as all documentation pertaining to the allegations.

i. DoDI 5505.7 requires organizations conducting criminal investigations with the DoD to place the names and identifying information of subjects of criminal investigations in the title blocks of investigative reports. The names of those individuals must also be entered into the DCII. "Titling and indexing in the DCII shall be done as early in the investigation as it is determined that credible information exists that the subject committed a criminal offense." "The DoD standard that shall be applied when titling and indexing subjects of criminal investigations is a determination that credible information exists indicating that the subject committed a criminal offense."

j. Credible information is defined as "information disclosed or obtained by a criminal investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained criminal investigator to presume that the facts or facts in question are true." Additionally, per Department of Defense Instruction (DoDI) 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), paragraph (4)(b), once the subject of an investigation is indexed, that

individual's name shall remain in DCII unless it is later determined that a mistake was made, at the time of titling and indexing, and no credible information exists which indicates the subject committed the crime for which he was investigated. An individual's name shall be removed from the ROI and the DCII if "it is later determined a mistake was made, at the time the titling and/or indexing occurred in that credible information indicating that the subject committed a crime did not exist." Further, "requests to delete a person's name from the title block will be granted if it is determined that credible information did not exist to believe that the individual committed the offense for which titled as a subject, at the time the investigation was initiated."

k. In the present matter, it is unequivocally clear that no justifiable reason exists to believe the applicant committed the offenses for which he was titled and indexed. Rather, all the evidence suggests he himself was the victim of maliciously false accusations made by a 1LT. He was charged with making a false statement and aggravated sexual assault of an adult by force. However, every document in the record demonstrates the charge of aggravated sexual assault was dismissed by the Army's own records. The investigating officer also recommended the case not go to court-martial, further demonstrating the lack of credible evidence. He received an Article 15 for making a false statement and his punishment was restriction for 45 days. The sworn statement of the applicant states the sexual activity was consensual and his accuser approached him to never speak of the incident again.

l. United States Army Criminal Investigation Command (USACIDC) made a mistake, at the time it decided to title and index the applicant. USACIDC failed to apply its own standard of requiring credible information before titling or indexing. Not all information is credible information. The Merriam-Webster Dictionary defines credible as "offering reasonable grounds for being believed." If an alleged witness implicates someone in a crime, that is not necessarily enough for credible information. It is certainly not credible information without vetting, evaluating, or attempting to corroborate that witness. The applicant was titled and indexed by mistake and without credible information and now USACIDC must correct this mistake.

m. Once it is determined that an individual shall be removed, "investigating organizations shall remove such information as soon as possible, and shall make appropriate corrections to all reports of investigation and the DCII." Therefore, the applicant is requesting not only to be removed from the DCII, but to be removed from every ROI dealing with the alleged aggravated sexual assault. Additionally, he respectfully requests the Board complete action on this request as soon as possible.

n. The impetus behind this request is simple. The DoD's stated policy is somewhat unrealistic. "The acts of titling and indexing are administrative procedures and shall not connote any degree of guilt or innocence." "Judicial or adverse administrative actions shall not be taken against individuals or entities based solely on the fact that they have

been titled or indexed due to a criminal investigation." Theoretically, this is a logical and fair concept. Pragmatically, it could not be any further from real-world implications. Individuals who have been titled and indexed will experience problems acquiring a security clearance or job, which is what happened to the applicant. He faithfully served the U.S. Army and respectfully requests relief, at this time.

o. When each piece of evidence is viewed in conjunction with every other piece of evidence, it is clear that there is no credible evidence to suggest he committed the offense for which he was investigated, the charges were dismissed, and he was subsequently titled. In accordance with DoDI 5505.07(4)(b), his name and all personally identifiable information must be removed from the DCII and NCIC databases, as well as any report or document pertaining to the investigation.

p. During the course of the investigation, it is clear there was absolutely no evidence that could in any way substantiate claims the applicant was guilty of a crime. A review of his file indicates that credible evidence does not exist to support the allegations against him for several reasons, including the lack of any evidence he committed any of the allegations made by the 1LT. The only logical conclusion left, after engaging in a thorough review of the evidence, is that credible evidence does not exist to justify the titling and indexing of him. There is a preponderance of evidence that he did not commit any act of aggravated sexual assault. Thus, it is an error and injustice that he has been titled by Army CID. As such, they respectfully request the Board remove any and all identifying information of him from the DCII and NCIC databases.

4. The applicant provides the following documents:

a. Enclosure 3 - Applicant's sworn statement, 23 December 2021, states:

(1) He is requesting his record be corrected. He was told when his record is reviewed in the federal system, it looks like he committed a felony offense. However, he was never found guilty of a felony or a misdemeanor offense. The only thing he was found guilty of was a false official statement. As a result of his record somehow showing he committed a felony, the applicant has lost three jobs. The jobs he was let go from were [REDACTED] who had a state contract, the city [REDACTED] as a cyber security specialist, and another job as a cyber security specialist. He is currently employed by [REDACTED] as a DoD contractor and is going through the reinvestigation process, where he expects this issue to come up again.

(2) While he was in high school, he was a normal kid with average grades. He also ran for the cross-country team and worked all four years as a landscaper. He looked into the Army and during his senior year, he enrolled in the delayed entry program in April and shipped to boot camp in August 1997. During boot camp, he was a high physical training performer. He graduated boot camp and went to Fort Gordon for

advanced individual training, while receiving the 31U (Signal Support System Specialist) military occupational specialty, which was 18 weeks long.

(3) The first unit he joined was the 130th Engineer Brigade in Germany. He was also assigned to U.S. Army Signal Activity, the Pentagon 40th Engineer Battalion, the 16th Sustainment Brigade, 13th Expeditionary Sustainment Command, and as an instructor at the schoolhouse with C Company, 369th Battalion. During his time in service, he was deployed to Albania, Afghanistan twice, and Iraq twice. Additionally, he has received a number of individual and unit awards such as the Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal, and Presidential Unit Commendation.

(4) The incident that caused him to be charged stemmed from a night when their team went out. They went to an Italian restaurant that is no longer in business. He was married, at the time, and went to the birthday party for one of their Soldiers. Their lieutenant (LT) went out with them. They were both drinking and intoxicated. They left the party and had been making out but went their separate ways that night. The LT dropped him off at his car the next morning. They talked a little bit, hugged and said their goodbyes. There was nothing that seemed awkward from their interaction. Approximately seven months later, he hears that she had accused eight other people of sexually assaulting her, including him.

(5) He was contacted by CID and asked to go down for an interview. The incident is what ultimately led to his divorce because it put a huge strain on his marriage that they ultimately could not overcome.

(6) His case went to a Summary Court-Martial with a single officer listening to his case. The result of the court-martial was he pled guilty to making a false official statement and adultery, and the remaining charges were dismissed.

(7) He was going through so much, at the time, that he does not remember what he said to the investigator. He heard the LT was never charged with violating the Uniform Code of Military Justice (UCMJ) and was ultimately not promoted so she had to separate from the military.

(8) At the time, he did not know he was suffering from post-traumatic stress disorder (PTSD). After retiring he has learned he developed PTSD in service. The court-martial did not negatively affect his career as the case happened in 2012 and he retired in 2017. Further, he never lost his top-secret clearance and the only punishment he received was restriction for 45 days, but he lived off base. He believes his lapse of judgement was from issues he was not treated for until after the fact. The titling makes it look like he committed a sexual assault when that is not the case.

b. Enclosure 4 - Record of Trial by Summary Court-Martial, 9 May 2013 shows he pled guilty to Article 107 of the UCMJ, false official statement and to Article 134 of the UCMJ, adultery. He was charged with and pled not guilty to four specifications of Article 120 of the UCMJ, sexual assault, which were later dismissed. His punishment of restriction for 45 days was approved. The specifications of Article 120 were dismissed with prejudice.

c. Enclosure 6 - FBI Fingerprint Search Results, 5 November 2021 shows "Arrested or Received Aggravated Sexual Assault of Adult by Force/Making a False Statement; Disposition - Convicted. A Summary Court-Martial is not a criminal proceeding."

d. Enclosure 7 - Army CID Records which include the following documents:

(1) A letter from CID, 23 September 2021, which states in effect they were forwarding the USACIDC redacted files on the applicant.

(2) Law enforcement reports, 14 June 2016 and 13 June 2016, which show the offenses were forced sodomy, making a false statement, and two offenses of aggravated sexual assault of adult by force. The investigation established probable cause to believe the applicant committed the offenses of aggravated sexual assault of an adult by force and making a false statement. Both reports are available for the Board's review.

(3) CID Report of Investigation, 20 February 2014, shows the applicant was investigated for making a false statement and aggravated sexual assault of adult by force. The investigation established probable cause to believe the applicant committed the offense of aggravated sexual assault of an adult by force and making a false statement. The entire investigation is available for the Board's review.

(4) The applicant's Rights Warning Procedure/Waiver Certificate and Sworn Statement, 25 July 2012, wherein the applicant discusses the events with the LT. The entire statement is available for the Board's review.

e. Enclosure 8 - The applicant's military records, which include the awards he received and his noncommissioned officer evaluation report, which are available for the Board's review.

f. Enclosure 9 - Letter from CID, 7 June 2022, which states, in pertinent part:

(1) The letter was in response to the applicant's request to remove his name and identifying information from the DCII and all ROIs arising from allegations of aggravated sexual assault.

(2) The information he provided did not constitute as new or relevant information needed to amend the report; therefore, his amendment request was denied.

(3) Once a person is properly titled and indexed in the DCII, that person's name will only be removed in the case of mistaken identity; i.e. the wrong person's name was placed in the report of investigation as a subject or entered into the DCII or if it is later determined a mistake was made at the time the titling and/or indexing occurred in that credible information indicating that the subject committed a crime did not exist. However, the applicant had the right to challenge the investigative findings of the ROI pursuant to Army Regulation 195-2 (Criminal Investigation Activities) paragraph 4-4b, which provides in part: "Requests to amend...CID ROI will be granted only if the individual submits new relevant and material facts that are determined to warrant revision of the report. The burden of proof to substantiate the request rests with the individual. Requests to delete a person's name from the title block will be granted if it is determined that credible information did not exist to believe that the individual committed the offense for which titled as a subject...Within these parameters, the decision to make any changes in the report rests within the sole discretion of the Director, CID."

(4) He could request amendment of the ROI; however, it is emphasized that the conclusion reflected in the investigative summary is an investigative determination that is independent of whether judicial, nonjudicial, or administrative action was taken against the subject, or the results of such action. Information about career goals, exemplary changes in life, and similar justifications are not part of the criteria for new and relevant information and are not considered.

(5) A check of NCIC reflected he was listed as the subject in the ROI for aggravated sexual assault and making a false official statement. CID updated his NCIC entry with the FBI to reflect "Judicial Summary Court-Martial 45 days restriction, case did not move forward to court-martial, hearing ended at Article 32 level." Consistent with the DoDI 5505.11, retention of this criminal history data in the NCIC does not conform to DoD policy. His name would remain in the NCIC.

5. The applicant's service record contains the following documents:

a. DD Form 4 shows he enlisted in the Regular Army and entered active duty on 21 August 1997 and served continuously through subsequent reenlistments.

b. His Enlisted Record Brief shows his rank as sergeant first class, effective 1 July 2012.

c. His DD Form 214 shows he was honorably retired due to length of service, on 31 August 2017. He had service in Afghanistan from 1 January 2003 through

26 April 2003 and 6 November 2008 to 5 November 2009 and service in Iraq from 15 January 2004 through 6 May 2004 and from 17 November 2005 to 6 November 2006. He was awarded or authorized the:

- Afghanistan Campaign Medal with Campaign Star
- Iraq Campaign Medal with four Campaign Stars
- Meritorious Service Medal (2nd Award)
- Army Commendation Medal (7th Award)
- Army Achievement Medal (2nd Award)
- U.S. Navy Unit Commendation
- U.S. Air Force Presidential Unit Citation
- Army Good Conduct Medal (6th Award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Army Service Ribbon
- Overseas Service Ribbon (5th Award)
- Military Outstanding Volunteer Service Medal
- NATO Medal
- Combat Action Badge
- Basic Marksmanship Qualification Badge
- Driver and Mechanic Badge with Driver-Wheeled Vehicle(s) Clasp

d. His service record is void of any documentation pertaining to his summary court-martial documentation and nothing within his official military personnel file shows the CID titled or indexed him.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found partial relief is warranted.
2. A majority of the Board found that, while probable cause did exist to investigate the applicant for the offenses of forced sodomy and aggravated sexual assault of an adult by force, probable cause no longer exists to believe he committed those offenses. A majority of the Board determined the applicant should be removed as the subject of the investigation into those offenses. This relief should not extend to the offense of making a false official statement. The Board considered that probable cause existed and continues to exist to believe that the applicant made a false official statement. He was found guilty of one Specification of a violation of Article 107 at a 9 May 2013

summary court-martial after pleading guilty to making a false official statement to a CID Special Agent. The evidence in the file supports that determination.

3. The Board noted that a record of a summary court-martial was not filed in his service record and determined there is no evidence that would support altering documentation related to his summary court-martial.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing his name as the subject of an investigation for the offenses of forced sodomy and aggravated sexual assault of an adult by force.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

2/26/2025

X

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. 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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR).

a. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity.

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

3. 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. 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, establish 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.

4. Article 20b (Jurisdiction of Summary Courts-Martial Non-Criminal Forum), Uniform Code of Military Justice, states a finding of guilty at a summary court-martial does not constitute a criminal conviction.

//NOTHING FOLLOWS//