

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230007971

APPLICANT REQUESTS: expungement of the following records from U.S. Army Criminal Investigation Command (CID) Files and the Defense Central Index of Investigations (DCII):

- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 6 December 2010
- DA Form 3975 (Military Police Report (MPR)), 17 December 2010

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored Letter, 9 August 2022
- Department of Veterans Affairs Compensation Claim, 12 November 2014
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 11 March 2015
- Letter of Support, 1 July 2022
- CID Letter, 22 July 2022
- Family-Centered Coaching Certificate of Attendance, 28 July 2022
- Nashville Vet Center Letter, 16 August 2022
- two Ashford University Transcripts, 11 November 2016 and 28 June 2023
- Résumé

FACTS:

1. The applicant states she holds herself accountable for the incident that occurred in December 2010. The situation that transpired does not define who she is as a person.

a. She joined the Army to grow, care for her daughter, and make a difference in the best way possible. She choose to become a social worker after her military service because so many people in the community are experiencing challenges or barriers in life and she can provide them with quality services that will create positive change.

b. She attended Ashford University to obtain her Bachelor of Arts degree and completed her Master of Social Work degree in May 2022. She is affiliated with the Nashville CARES organization and Youth Enrichment Services.

c. Her goal is to become a licensed clinical social worker to provide services to youths, veterans, and low-income families. She enjoys her social work responsibilities and it's her honor to give back to the community.

2. She enlisted in the Regular Army on 30 October 2008.

3. The DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 6 December 2010, referred her for the offense of simple assault (Article 128, Uniform Code of Military Justice) on 5 December 2010.

4. The DA Form 3975, 17 December 2010, shows she was titled as the subject for the offense of simple assault. Section VIII (Narrative) states, in part:

On Sunday 5 December 2010 [Applicant] went downstairs to [Redacted] room and proceeded to knocking on his door and window stating she needed to speak with him. [Redacted] ignored her because he had company. After some time had passed [Redacted] exited his room thinking that [Applicant] had gone back to her room. As [Redacted] exited his room with his [Redacted] they were immediately confronted by [Applicant], as [Redacted] walked away [Applicant] followed them and proceeded to pushing [Redacted] in the back of the head to get his attention. When [Redacted] turned around [Applicant] began to swing at [Redacted] scratching his face. As the altercation persisted both [Applicant] and [Redacted] ended up on the ground where [Redacted] mounted [Applicant] to try and restrain her. Both parties were eventually separated by the CQ [charge of quarters] NCO [noncommissioned officer] [Redacted]. Shortly after the Hunter Police arrived and transported both [Redacted] and [Applicant] to the Hunter Police Station where they were evaluated by EMS [Emergency Medical Services].

At the Hunter Police Station EMS arrived to check both [Applicant's] and [Redacted's] injuries. [Redacted] refused transport to the hospital. [Applicant] was transported to Memorial Hospital where she received care and was released a few hours later with bruises and an injured lower lip.

5. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 18 December 2014, shows a PEB convened at Fort Sam Houston, TX, on 2 December 2014 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 60 percent and her placement on the Temporary Disability Retired List.

6. On 11 March 2015, she retired in the rank/grade of private first class/E-3 by reason of temporary disability (enhanced). Her DD Form 214 shows she completed 6 years, 4 months, and 12 days of total active service.
7. Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, Orders 015-0615, 15 January 2015, released her from assignment by reason of temporary physical disability and placed her on the Temporary Disability Retired List in the rank of private first class effective 12 March 2015.
8. U.S. Army Physical Disability Agency Order D074-31, 14 March 2016, removed her from the Temporary Disability Retired List because of permanent physical disability and permanently retired her in her current grade of rank effective 15 March 2016.
9. The DA Form 199, 16 March 2016, shows a PEB convened at Fort Sam Houston, TX, on 3 March 2016 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 60 percent and her placement on the Permanent Disability Retired List.
10. The CID letter, 22 July 2022, notified her that her request to correct information from the CID files was denied and supplemented their previous response of 21 July 2022 (not in evidence). CID determined the information she provided does not constitute as new or relevant information needed to amend the MPR. She had the right to appeal to the Office of the Army General Counsel, the Army's appellate authority. Her appeal must be submitted within 90 days of the date of this letter through the Assistant Director, U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134, for forwarding to the Office of the Army General Counsel.
11. There is no evidence indicating she appealed to the Office of the Army General Counsel.
12. She provided the following documents in support of her request:
  - a. her Department of Veterans Affairs compensation claim, 8 November 2022, showing she has a combined disability rating of 90 percent effective that date;
  - b. the letter of support from retired Master Sergeant D\_\_\_\_ L. S\_\_\_\_, 1 July 2022, stating he has known the applicant since 2009. After her deployment in December 2010, she and another Soldier were involved in an altercation. She was held accountable for her actions. She was charged with simple assault and was given an oral reprimand. Throughout the years he has known her, she has matured tremendously and her growth is proven in her accomplishments;

c. her Family-Centered Coaching Certificate of Attendance, 22 July 2022, showing she completed 12 hours of family-centered coaching training;

d. the letter of support from the Nashville Vet Center, 16 August 2022, showing she is enrolled in Readjustment Counseling Services. She has sought services on a bi-weekly basis since February 2019 and has continually presented herself as a positive member in society by graduating with a master's degree in social work, maintaining employment, being lawful, performing charitable work, and continually sowing kindness toward others in her family and community;

e. her transcripts from Ashford University from 11 November 2016 to 28 June 2023, showing she was awarded a Bachelor of Arts degree on 24 October 2016 and a Master of Social Work degree on 6 May 2022; and

f. her résumé.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant was involved in a physical altercation and law enforcement officials were called to investigate. The investigation determined the applicant committed the offense of simple assault.

2. During deliberation the Board considered whether probable cause existed at the time of titling to believe the offense occurred and the applicant committed the offense. The Board found the Military Police Report included corroborating accounts of what transpired on the day in question. The military police determined the applicant and another individual became involved in a verbal altercation that turned physical when the applicant pushed the other individual in the back of the head with her open hand. As a result of this incident, the command initiated a DA Form 4833 referring her for the offense of simple assault under (Article 128, Uniform Code of Military Justice) and taking administrative action. After considering these factors, the Board determined probable cause existed at the time of titling.

3. The Board also considered whether probable cause still exists to believe the offense occurred and the applicant committed the offense. The Board noted the applicant does not deny she committed the offense. The Board determined that probable cause still exists that the applicant committed the offense of simple assault. Therefore, the Board determined the overall merits of this case are insufficient as a basis for expungement of the records from U.S. Army Criminal Investigation Command (CID) Files and the Defense

Central Index of Investigations (DCII).

4. The Board recognizes the applicant's post service achievements and applauds her accomplishment in earning her bachelor's and master's degree. However, the Board does not find an error or injustice occurred when CID denied an expungement. The Board denies relief to the applicant.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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.

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X Tamara Sorrell

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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:

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

acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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

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

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

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

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

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

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DOD LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion of their

information in the DOD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

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

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

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

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

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

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

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

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

//NOTHING FOLLOWS//