

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230008505

APPLICANT REQUESTS: This case comes before the Army Board for Correction of Military Records (ABCMR) on a remand from the United States District Court for the Eastern District of Virginia. The Court directs the ABCMR to reconsider the applicant's request, through counsel, for:

- removal of the General Officer Memorandum of Reprimand (GOMOR), dated 23 July 2020 from his Army Military Human Resource Record (AMHRR)
- amendment of U.S. Army Criminal Investigation Command Law Enforcement Report (LER) xxxxx-2019-CID437-xxxxxx-xxx to remove his name from the titling block

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Statement and Supplemental Statement
- United States District Court for the Eastern District of Virginia Remand Order
- Memorandum, subject: GOMOR, 23 July 2020 with allied documents and rebuttal
- Memorandum, subject: Request for Removal of GOMOR of [Applicant], 21 June 2021
- Letter from the Army Review Boards Agency, Department of the Army Suitability Evaluation Board (DASEB), 6 October 2021
- DA Form 2823 (Sworn Statement) from First Lieutenant (1LT) KB, 10 August 2020
- Memorandum, subject: Declination Statement from Captain (CPT) LB, 22 July 2020
- Statement of Trial Results, 29 July 2020
- Personal Statement from the Applicant to the Board of Inquiry
- Findings and Recommendations Excerpt from the Board of Inquiry
- Memorandum, subject: Legal Review – Board of Inquiry, [Applicant], 24 May 2020
- LER xxxxx-2019-CID438-xxxxxx-xxx, 31 July 2020, with exhibits
- Letter from the U.S. Army Criminal Investigation Division, 15 October 2021 (Denial), with allied documents

FACTS:

1. The applicant, through counsel, states:

a. This Board's prior decisions in ABCMR Docket Number AR20210016978 and AR20210007120 were appealed to the United States Federal Court for the Eastern District of Virginia. The federal lawsuit resulted in an ordered remand to the ABCMR.

b. The applicant requests the GOMOR, dated 23 July 2020 be removed from his record and that his name be removed from the titling block of the ROI and LER.

c. The applicant previously applied to the DASEB and was denied relief in Docket Number AR20210011577.

d. The applicant previously requested his name be removed from the RIO and LER and was denied on 15 October 2021.

e. A board of inquiry unsubstantiated the facts supporting the GOMOR. The DASEB refused to acknowledge those findings and misapplied the law.

f. There is no reasonable belief that the conduct occurred when the board of inquiry convened and properly and unanimously unsubstantiated the misconduct. Any belief that the conduct occurred is an unreasonable belief and does not meet the standard of preponderance of the evidence as is required for a GOMOR or other adverse administrative action.

g. Due process was violated where the accuser was promised that administrative action would be taken against the applicant prior to consideration of the applicant's response to the GOMOR.

h. The government expert performed a Sexual Assault Medical Forensic Examination on CPT LB on 31 August 2019 and based on his expertise could not rule out consensual hickeys as the cause of the marks on her neck.

i. Regarding the titling action, the law changed on 1 October 2021. The U.S. Army Criminal Investigation Division (CID) has categorically ignored the change in the law. Under the new and current law, if at any time, no probable cause exists to believe an offense was committed, the report must be amended and the subject untitled.

2. The applicant previously served as an enlisted member of the Army National Guard before being appointed as a Second Lieutenant (2LT) on 13 May 2018 in the Regular Army.

3. He was assigned to Headquarters and Headquarters Company, 35th Air Defense Artillery Brigade, Camp Carroll, Korea on 25 February 2019 as an Ordinance Officer.

4. The LER, dated 31 July 2020, reflects:

a. The applicant as the subject of the following offenses on or between 30 August 2019 and 31 August 2019, Camp Carroll, South Korea:

- assault by strangulation (Article 128, Uniform Code of Military Justice (UCMJ))
- rape (Article 120, UCMJ)

b. The victim, CPT LB, reported she was sexually assaulted by the applicant.

c. The investigation includes a photographic packet of text messages between the applicant and CPT LB, which show, in pertinent part, an ongoing conversation; including comments from the applicant, which include:

- "I guess answer the door and you'll find out"
- "Never said I play fair, ima tease u a lot"
- "Let's hope ur up in 30"
- "Why u bruise so easy"
- "And where lol"
- "I didn't think I was doing all that..."
- "I thought I spent most of my time kissing somewhere else"
- "I guess some makeup"

d. For the purposes of fingerprint card submission (Department of Defense Instruction (DODI) 5505.11), CODIS sample submission (DODI 5505.14), and DIBRS Indexing (DODI 7730.47), the trial counsel opined there is probable cause to believe the applicant committed the offenses of rape and assault by strangulation.

5. On 22 July 2020, CPT LB submitted a memorandum, through counsel, indicating she was exercising her right to not participate in a court-martial against the applicant in accordance with DODI 6495.02. CPT LB would like the case to be sent to a board of inquiry for an administrative separation.

6. On 23 July 2020, the applicant was issued a GOMOR as an administrative reprimand imposed under the provisions of Army Regulation (AR) 600-37 (Unfavorable Information) for sexually assaulting and strangling CPT LB on or about 31 August 2019 at Camp Carroll, Republic of Korea by penetrating her vulva with his penis without her consent and strangling her in violation of Article 120 and 128, UCMJ.

7. On 29 July 2020, a statement of trial results was completed by the military judge, which shows, in pertinent part, the charges against the applicant concerning Article 120, UCMJ and Article 128, UCMJ were dismissed.

8. On 10 August 2020, 1LT KB provided a sworn statement. He states he lived in close proximity to CPT LB and observed her and the applicant on the morning of 31 August 2019. Additionally, he states he observed CPT LB's face and neck and did not see any bruises or markings on her neck.

9. On 14 August 2020, the applicant responded to the GOMOR.

a. He states:

(1) He did not sexually assault and strangle CPT LB and her allegations were completely false. He looked forward to proving his innocence at court-martial, however, she voluntarily declined to participate in the case and the charges were dismissed.

(2) He grew up with his parents and siblings near Boston, MA and described himself as a momma's boy and having a great relationship with his sister. He adds that he had dreams of becoming a professional basketball player but enlisted in the Army National Guard instead and attended college at Norwich University.

(3) He arrived at Camp Carroll after attending Basic Officer Leaders Course at Fort Lee, VA in early 2019. He intended to apply to the Ranger regiment and had secured endorsements to do so but was halted with the allegations.

(4) He joined the Army with plans to make it to retirement. He trusted the character letters he included will also show the type of officer he is and would continue to be. He feared the GOMOR would be used to justify his untimely separation from the Army despite the complete lack of evidence against him and he would lose the career he loved based on false allegations.

b. He provides:

(1) A statement by counsel, which states, the applicant did not sexually assault CPT LB and he did not strangle her. The evidence in the case is very clear and it was a consensual encounter all along as evidenced by the sexually charged text messages from her and the applicant leading up to their sexual encounter. CPT LB did not immediately report and continued to privately interact with the applicant she claimed violently raped her. The marks on her neck were due to hickeys during consensual sex.

- lack of due process was afforded to the applicant as the applicant never received his day in court and did not present his case before a jury of his peers
- evidence was not included, i.e., the drug chemistry report, the latent print report, the sworn statement from 1LT KR
- CPT LB made her allegations public through Facebook indicating she received a phone call from a senior officer apologizing on behalf of the Army for getting it wrong and mishandling the investigation
- CPT LB hired an attorney and corresponded with his office indicating that the applicant would be more likely to receive some type of ramifications if she declined to participate
- CPT LB claimed the applicant administered her a date rape drug, which was entirely refuted by the forensic analysis
- CPT LB inconsistently discussed her allegations with close friends
- CPT LB has reasons to falsely allege sexual assault – including saving her reputation, saving her command, and saving her pride

(2) Text messages between the applicant and CPT LB, which show their conversation history. In pertinent part, they show:

(i) 28 August 2019:

CPT LB: “Are you trying to ask me out? Or just trying to be cute
 Applicant: Maybe a little of both, can’t do anything till you guys get out the field tho
 CPT LB: Maybe? Darlin, I’m on the brink of 30. I don’t have time for cute!
 Applicant: On the brink huh? what do u have time for then?
 CPT LB: When you get there we’ll talk about it

(ii) 29 August 2019:

CPT LB: If you want to come over then just say so
 Applicant: Ohhh I will
 CPT LB: Bet! You couldn’t even get my number
 Applicant: Oh please that’s cuz I have you mine first
 CPT LB: After I messaged you ... first

(iii) 30 August 2019:

CPT LB: Better come over empty handed!
 Applicant: Better ? Or better not? Lol
 CPT LB: better not.
 CPT LB: Ugh. I need to go home.

Applicant: May have used up all rations for the month... but I'll come up with something

Applicant: Plus u have enough whisky to supply a small village for a week

CPT LB: That's collectors edition!

Applicant: Collectors edition ? Whatchu mean

CPT LB: Just because I have enough whiskey doesn't mean I'm sharing my stock

CPT LB: You're getting close to midnight Cinderella

Applicant: Damn missing me already?

CPT LB: F---

CPT LB: You

Applicant: I'll take that as a yes

Applicant: U already tuned up?

CPT LB: Mmhmmm

Applicant: Light weight ...

CPT LB: Easy now

CPT LB: I can play this game too

Applicant: Oh yeah ? Real question is how good at it are you ?

CPT LB: Well, with my experience.. I'd say about 5 years better than you

(iv) Unknown date:

CPT LB: Can I trust you though?

Applicant: I mean yes, but With what?

CPT LB: I could potentially get "hemmed" up for anything

Applicant: If there's one thing I've learned, is how to keep my business mine. Specially on a base this small

CPT LB: I hope so

Applicant: Absolutely. An I'd assume the same goes for you

CPT LB: It does

Applicant: Perfect , just got to Waegwan

CPT LB: Welcome back

CPT LB: Catch anything while you were out ?

Applicant: No ma'am, I was a good boy, I'll see u in like 12

CPT LB: I'll start the time

(3) The drug chemistry report results, which show no controlled substances were identified.

(4) CPT LB's Facebook post detailing her sexual assault experience. She outlines the Fiscal Year 2019 statistics on the report of sexual assault involving service members as victims or subjects.

(i) Exactly one year ago this month she was the victim of a sexual assault by another service member. Three months into her time as a battery commander, she was violently raped. Her rapist strangled her repeatedly until she was unconscious and the[n] proceeded to rape her while she was in and out of consciousness. She woke up to the hand prints on her neck the next morning.

(ii) The months that followed were the most traumatic moments she has ever experienced. She suffered panic attacks and manic depression.

(iii) She used her right as a survivor to request an expedited transfer to another duty station. Behind closed doors a senior ranking officer in her chain of command said to her that if it were not for the rape, she would not be given a second chance and that the conversation would have gone very differently.

(iv) She was sharing her story because it needs to be known. She has lived through the unrestricted sexual assault process. Her entire life was torn upside down.

(5) Letter from CPT LB's attorney to the applicant's counsel responding to the cease and desist letter showing CPT LB was essentially talked into not participating.

(6) Eleven character statements, which show, in pertinent part, the applicant is a dedicated, hard-worker, and valuable member of the team; he is capable and motivated, has a good moral compass, and he is a model officer.

(7) Seven photographs of him in uniform throughout his career.

10. On 21 August 2020, the applicant's immediate commander recommendation to the commanding general on the filing determination for the applicant's GOMOR that he withdraw and destroy the reprimand.

a. The brigade commander recommended the reprimand be permanently filed in the applicant's AMHRR.

b. On 23 September 2020, after carefully considering the reprimand, circumstances, and matters submitted by the applicant, the commanding general ordered the GOMOR be permanently in the applicant's AMHRR.

11. On 8 March 2021, an administrative board of inquiry was conducted to determine if the applicant should be retained in or separated from the Army.

12. The applicant provided a personal statement to the board of inquiry members and asked them to consider his upbringing, his attendance at a military college, the entirety

of his military career and his aspirations to serve in the Ranger regiment before making their recommendations.

13. The Board of Inquiry found:

a. The allegation that on or about 31 August 2019, the applicant strangled and sexually assaulted CPT LB by penetrating her vulva with his penis without her consent was not supported by a preponderance of the evidence and did not warrant elimination.

b. The allegation that the applicant received a GOMOR, dated 23 July 2020 was filed in his AMHRR on 23 September 2020, which is derogatory information, adverse information filed in the AMHRR in accordance with AR 600-37 was supported by a preponderance of the evidence and does warrant elimination.

c. The Board of Inquiry made the following specific finding of fact to support their conclusion: the applicant received a GOMOR from the commanding general for sexually assaulting and strangling CPT LB and it was filed permanently in his AMHRR.

d. Additional findings, if any: Recommended investigation into why CID never completed an investigation on the alleged incident; recommended the applicant petition the Army Review Boards Agency on filing of GOMOR.

e. The Board of Inquiry recommended the applicant be separated from the U.S. Army with a general (under honorable conditions) characterization of service.

14. On 24 May 2021, a legal review was completed concerning the board of inquiry indicating there was a legal objection to the board of inquiry and to the officer elimination proceedings initiated against the applicant.

a. The Board of Inquiry found the allegation that the applicant received a GOMOR that was filed in his AMHRR was supported by a preponderance of the evidence and warranted elimination. However, based on the Board of Inquiry's finding on the allegation of sexual assault, it is clear the board of inquiry recommended elimination simply because the GOMOR was filed in the applicant's AMHRR. Without more, this finding is legally insufficient.

b. The Board of Inquiry found the allegation that the applicant strangled, and sexually assaulted CPT LB was not supported by a preponderance of the evidence and did not warrant separation.

c. The existence of a GOMOR in the applicant's AMHRR, when the board of inquiry found the underlying misconduct to not be supported by a preponderance of the evidence, is insufficient on its own, to warrant elimination. Not only were there no

deficiencies presented, there was no evidence presented establishing a pattern, when reviewed in conjunction with the applicant's overall record, that required elimination.

d. Without the applicant's AMHRR and evidence of other known deficiencies, elimination based on nothing more than a GOMOR filed in the applicant's AMHRR is legally insufficient.

e. This legal error is a substantial error under AR 15-6, paragraph 3-20c(1), since it had a material adverse effect on the applicant's substantial rights. Because of this error, this board of inquiry is legally insufficient.

15. On 25 June 2021, the applicant submitted a request to CID to amend the LER to accurately reflect the outcome of his case. He indicated in his correspondence he was simultaneously petitioning the DASEB to have his GOMOR removed from his AMHRR. He provided the board of inquiry findings and recommendations.

16. After careful consideration, on 26 April 2021, his request to amend LER xxxxx-2019-CID438-xxxxxx-xx was denied.

17. On 14 July 2021, CID provided a further response to the applicant concerning his request to amend the LER. At the time the LER was completed, the legal standard for titling and indexing an individual as the subject of a criminal investigation was established by DODI 5505.7, paragraph 6-1, which provides:

a. Organizations engaged in the conduct of criminal investigations shall place the names and identifying information pertaining to subjects of criminal investigations in title blocks of investigative reports. All names of individual subjects of criminal investigation by DOD organizations shall be listed in the Defense Clearance and Investigations Index (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.

b. Credible information is information disclosed or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained investigator to presume that the fact or facts in question are true. Titling an individual or entity is an operational rather than a legal decision. The acts of titling and indexing are administrative procedures and shall not connote any degree of guilt or innocence. The listing of a subject's name and other identifying information in the DCII indicates only that a report of investigation concerning that person or entity has been created. Judicial or adverse administrative actions shall not be taken against individuals or entities based solely on that fact that they have been titled or indexed due to a criminal investigation.

c. 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.

18. On 21 July 2021, the applicant applied to the ABCMR to alter the CID report of investigation to accurately reflect the outcome of his case.

a. He provided his request and subsequent denial to CID to alter the CID report of investigation to accurately reflect the outcome of his case and his officer elimination board of inquiry summary of proceedings.

b. On 20 May 2022, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the records of the individual concerned.

19. The applicant applied to the DASEB requesting removal of the GOMOR, dated 23 July 2020 from his AMHRR.

a. He provided in support of his request:

- declination statement by CPT LB
- GOMOR
- GOMOR rebuttal
- GOMOR filing determination
- Board of Inquiry findings

b. On 28 September 2021, the DASEB determined the evidence presented does not clearly and convincingly establish that the document under consideration is untrue or unjust. Therefore, by majority vote, the DASEB determined the overall merits of the case did not warrant the requested relief.

c. On 6 October 2021, the DASEB notified the applicant that after careful consideration of the facts and evidence in his case, the DASEB determined there was insufficient evidence to justify removal of the unfavorable information from the AMHRR.

20. On 15 October 2021, CID provided a further response to the applicant in response to his request to correct information from the files of CID.

a. An individual with the investigative operations section states:

(1) A review was conducted of the LER to determine if the credible information standard was correctly applied when the applicant was indexed as a subject for the offenses of rape and assault.

(2) The applicant was indexed for the aforementioned offenses on 18 October 2019 when an initial report was dispatched following a CID supervisor's determination that the credible information standard had been met with regards to a sexual assault investigation. This determination was made based on what the supervisor determined to be a credible complaint during the early stages of the investigation to believe the offenses of rape and assault were committed by the applicant, when he performed sexual acts on the victim against her will and strangled her until unconsciousness during the act. There were several witnesses that corroborated the victim's testimony, photographic evidence of the victim's injuries, and digital evidence between the applicant and the victim.

(3) Based on a review, the applicant was properly indexed as a subject utilizing the credible information standard; therefore, the request to be removed should be denied. It was also his belief that the cited offenses have the appropriate investigative findings (founded) based upon the legal opinion received and therefore should not be altered.

b. A supervisory special agent completed a review of the amendment request and associated documents concerning the LER, wherein the applicant was listed as a subject for the offenses of rape and strangulation and determined there was credible evidence to list the applicant for the two offenses. Further, he concurred with the probable cause opinion rendered by the trial counsel.

c. A member of the polygraph division reviewed the applicant's request and determined the applicant should be retained in the subject block of the LER for all the listed offenses. Credible information did exist at the time of the initial LER to warrant him being titled as a subject in the investigation. There was not an error in mistaken identity or error in application of the credible information standard at the time of the initial LER to support an amendment to this portion of the report.

d. An attorney advisor with CID reviewed the applicant's request for amendment of the LER and found no basis for amending the LER. There is credible information to support the titling decision.

(1) In accordance with DODI 5505.7 (Titling and Indexing Subjects of Criminal Investigations in the Department of Defense), a person is titled as a subject in the LER when there is credible information to believe that person may have committed the crime. He found this standard had been met.

(2) The applicant was titled for violations of Article 120, UCMJ and Article 128b, UCMJ when he strangled and raped a female officer while she was intoxicated. Based on his review of the LER, he found that credible evidence did exist to title him for the offenses and the LER contains sufficient evidence to support the titling decision. In addition, he concurred there was probable cause to believe the applicant violated Articles 120 and 128b, UCMJ.

(3) In accordance with DOD 5505.7 and AR 195-2 (Criminal Investigations Activities), once a subject is titled, requests to amend or unfound offenses in LER will only be granted if it is determined that credible information did not exist to believe that the individual committed the offenses for which titled as subject at the time the investigation was initiated, or the wrong person's name was entered as a result of mistaken identity. Neither of these two reasons exists. Credible information exists to believe that the applicant committed the offenses he was titled for and the wrong person's name was not entered into the title block as a result of mistaken identity.

21. On 17 November 2021, the applicant applied to the ABCMR.

a. In his application, he requests:

- removal of the GOMOR, dated 23 July 2020 from this AMHRR
- removal of his name from the title block of the U.S. Army CID LER, dated 18 October 2019

b. In his application, he provides:

- a statement and supplemental statement by counsel detailing the timeline of events, procedural background, exhaustion remedies, summary of issues, legal standards, and a discussion
- GOMOR and allied documents
- GOMOR rebuttal with character reference letters
- service photographs
- request to DASEB and DASEB determination
- sworn statement of 1LT KR
- declination statement by CPT LB
- no contact order for applicant

c. The Board found relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows an investigation was completed by CID that titled him as the subject for assault by strangulation and rape. He was reprimanded for alleged strangulation and assault. The Board determined the overall merits of the case are insufficient as a basis for correction of records of the individual concerned.

22. On 18 January 2022, the Department of the Army Ad Hoc Review Board reviewed the probationary officer elimination case on the applicant. The Deputy Assistant Secretary of the Army (Review Boards) determined the applicant would be involuntarily eliminated from the U.S. Army with a General (Under Honorable Conditions) characterization of service. This elimination is based on derogatory information (AR 600-8-24, paragraph 4-2c).

23. On 14 February 2022, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 5 months, and 7 days of active service. It also shows in:

- item 24 (Character of Service): Under Honorable Conditions (General)
- item 25 (Separation Authority): AR 600-8-24 (Officer Transfers and Discharges)
- item 26 (Separation Code): JNC
- item 28 (Narrative Reason for Separation): Unacceptable Conduct

BOARD DISCUSSION:

After reviewing the application, all supporting historical documents, and the evidence found within the military record, the Board unanimously found relief was warranted for the remanded petitions. The Board carefully considered the applicant's contentions, applicable regulatory guidance, and extensively reviewed the pertinent areas of the military record to specifically include all relevant and supporting documents underlying the basis of the AMHRR-filed General Officer Memorandum of Reprimand (GOMOR), 23 July 2020 and Law Enforcement Report (LER) 00058-2019-CID438-019676, 31 July 2020 as titled in the Defense Central Investigation Index (DCII).

a. The Board found substantial underlying incongruities and procedural inequities, which independently and cumulatively fail to meet legal standards of review resulting in the grievous injustice and harm complained of. Specifically, the Board deliberated on the convening authority's decision to withdraw UCMJ charges in lieu of a venue with a lesser legal threshold, which acted to inject unnecessary misgivings for a politically driven result instead of protecting the sanctity of the criminal investigative process and the military justice system.

b. Additionally, the Board deliberated on the lack of relevant evidence that founded CID's 'probable cause' label and uniformly held the underwhelming 'product' of gathered flirtatious text messages between consenting adults; neutral lab results; defense-supporting testimonial statements; and one-sided libelous social media statements neither individually nor collectively raise the bar to anything more than at most 'reasonable suspicion', which equates the applicant to nothing more than a person of interest.

c. In acknowledgment of the BOI (board of inquiry) result, the surreptitious events that preceded it, and the permanent impact of the erroneous titling action, the Board determined to grant the applicant’s request in total and order the GOMOR’s permanent removal from both performance and restricted portions of the applicant’s AMHRR file, as well as dismiss the CID titling action in its entirety.

BOARD VOTE:

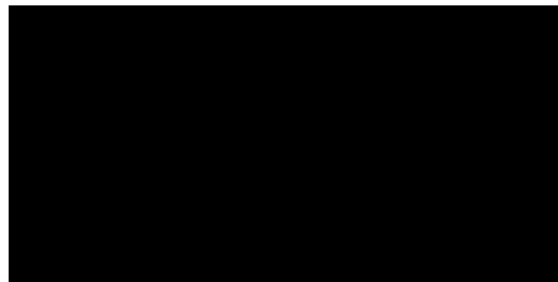
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■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

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:

- a. removal of the General Officer Memorandum of Reprimand (GOMOR), dated 23 July 2020 from his Army Military Human Resource Record (AMHRR), and
- b. amendment of U.S. Army Criminal Investigation Command Law Enforcement Report (LER) xxxxx-2019-CID437-xxxxxx-xxx by removing his name from all U.S. Army Criminal Investigation Command and U.S. Army Crime Records Center files and databases.



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. 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.

2. Department of Defense (DOD) Instruction 5505.07 (Titling and Indexing Subjects of Criminal Investigations in the DOD), 28 February 2018, establishes policy, assigns responsibilities, and provides procedures for a uniform standard for titling and indexing subjects of criminal investigations by the DOD.

a. Paragraph 1.2a states DOD components authorized to conduct criminal investigations, as outlined in DOD Instruction 5505.16 (Investigations by DOD Components), 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. Indexing in the Defense Central Investigations Index (DCII) may be delayed until the conclusion of the investigation due to operational security.

b. Paragraph 1.2b states victims and incidentals associated with criminal investigations can be titled and indexed.

c. Paragraph 1.2c states titling and indexing are administrative procedures and will not imply any degree of guilt or innocence.

d. Paragraph 1.2d states 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 there is mistaken identity, or it is later determined no credible information existed at the time of titling and indexing.

e. Paragraph 1.2e states if a subject's information requires expungement from or correction in the DCII, DOD components will remove the information as soon as possible.

f. Paragraph 1.2f states judicial or adverse administrative actions will not be taken based solely on the existence of a titling or indexing record in a criminal investigation.

g. Paragraph 3.1 states 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.

h. Paragraph 3.2 states a subject who believes he/she was incorrectly indexed, as outlined in paragraph 1.2.d., may appeal to the DOD component head to obtain a review of the decision.

i. Paragraph 3.3 states when reviewing the appropriateness of a titling or indexing decision, the reviewing official will only consider the investigative information at the time of the decision to determine if the decision was made in accordance with paragraph 1.2.a.

j. Paragraph 3.4 states DOD components that conduct criminal investigations will make appropriate corrections or expungements to criminal investigative reports or the DCII as soon as possible.

3. 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.

4. Army Regulation (AR) 190-45 (Law Enforcement Reporting) establishes policies and procedures for offense and serious-incident reporting within the Army; for reporting to the DOD and the Department of Justice, as appropriate; and for participating in the FBI NCIC, Department of Justice's Criminal Justice Information System, National Law Enforcement Telecommunications System, and State criminal justice systems.

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 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 4-3a states an incident will not be reported as a founded offense unless adequately substantiated by a police investigation. A person or entity will be reported as the subject of an offense in the LER when credible information exists that

the person or entity has committed a criminal offense. The decision to title a person is an operational, rather than a legal, determination. The act of titling and indexing does not, in and of itself, connote any degree of guilt or innocence; rather, it ensures that information in a Report of Investigation (ROI) can be retrieved at some future time for law enforcement and security purposes. Judicial or adverse administrative actions will not be based solely on the listing of an individual or legal entity as a subject in the LER.

c. Paragraph 4-3d states that when investigative activity identifies a subject, all facts of the case must be considered. When a person, corporation, or other legal entity is entered in the "subject" block of the LER, their identity is recorded in Department of the Army automated systems and the DCII. Once entered into the DCII, the record can only be removed in cases of mistaken identity or if an error was made in applying the credible information standard at the time of listing the entity as a subject of the report. It is emphasized that the credible information error must occur at the time of listing the entity as the subject of the LER rather than subsequent investigation determining that the LER is unfounded. This policy is consistent with DOD reporting requirements. The Director, CRC, enters individuals from the LER into the DCII.

d. Paragraph 4-7 (DA Form 4833) states the DA Form 4833 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.

5. AR 600-37 (Unfavorable Information), sets forth the policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; ensures that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and ensured that the best interests of both the Army and the Soldier are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. Chapter 3 (Unfavorable Information in Official Personnel Files) states an administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, any by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. Paragraph 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) states nonpunitive administrative letters of reprimand, admonition, or censure in official personnel files, such as a memorandum of reprimand, may be filed in a Soldier's AMHRR only upon the order of a general officer-level

authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the AMHRR, the recipient's submissions are to be attached. Once filed in the AMHRR, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) states once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR.

6. AR 600-8-104 (Army Military Human Resource Records Management), 7 April 2014, prescribes policies governing the Army Military Human Resource Records Management (AMHRR) Program. The AMHRR includes, but is not limited to, the Official Military Personnel File, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) states letters/memoranda of reprimand for sex-related offenses are filed in the performance folder.

7. AR 600-8-24 (Officer Transfers and Discharges), prescribes policies governing the separation of active duty officers.

a. Paragraph 4-2(c) (Derogatory Information) states "standing alone, one of the conditions may or may not support elimination, however, this derogatory information combined with other known deficiencies form a pattern that, when reviewed in conjunction with the officer's overall record, requires elimination.

b. Subparagraph 4-2(c)(5) states, "Adverse information filed in the AMHRR in accordance with AR 600-37."

//NOTHING FOLLOWS//