

IN THE CASE OF: ██████████

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008998

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

- DA Form 3975 (Military Police Report (MPR)), 8 June 1991
- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 13 September 1991

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 Statement, undated
- DA Form 3975, 8 June 1991
- DA Form 4833, 13 September 1991
- DD Form 214 (Certificate of Release or Discharge from Active Duty) effective 31 January 2017
- Sexual Harassment/Assault Response and Prevention (SHARP) Foundation Course Certificate of Training, 26 July 2021
- Sexual Assault Response Coordinator/Victim Advocate Career Course Certificate, 5 May 2022
- DA Form 1059 (Service School Academic Evaluation Report) covering the period 28 March 2022 to 6 May 2022
- CID Memorandum (Legal Review of Request for Amendment of Record), 4 April 2023
- CID Letter, 5 April 2023
- six Character References, 6 April 2023 to 4 May 2023
- two DD Forms 2906 (Civilian Performance Plan, Progress Review, and Appraisal) covering the periods 2022 and 2023

FACTS:

1. The applicant states:

a. While stationed at Fort Gordon, GA, for advanced individual training, he engaged in an altercation with other Soldiers who were harassing him and calling him names. He was charged with and found guilty of aggravated assault. As a result, he received nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ). His punishment consisted of 14 days of extra duty and 14 days of restriction. After he graduated from advanced individual training, he went on serve in Korea, Germany, Georgia, Kentucky, Washington, and Missouri.

b. Today he is retired from the Army after serving on active duty for 26 years. He is currently a Department of the Army Civilian Victim Advocate for the [REDACTED]. He loves his job and being a valued member of the installation's SHARP Program.

c. With the previous charge of aggravated assault still filed in the CID database, he is unable to apply for other SHARP positions. He would like his records expunged so he can continue serving as a sexual assault victim advocate.

2. The applicant enlisted in the Regular Army on 10 January 1991 and subsequently reenlisted on 26 September 1997, 1 January 2009, and 18 April 2003.
3. The DA Form 3975, 8 June 1991, shows he was titled as the subject for the offense of aggravated assault involving a club or bludgeon (Article 128, UCMJ).
4. The DA Form 4833, 13 September 1991, lists his offense as aggravated assault involving a club or bludgeon (Article 128, UCMJ) and misconduct – other than drunk and disorderly (Article 134, UCMJ) on 7 June 1991. He received nonjudicial punishment consisting of forfeiture of \$154.00 pay for 1 month, 14 days of extra duty, and 14 days of restriction.
5. His military records do not contain copies of the DA Form 3975 and DA Form 4833.
6. On 31 January 2017, he retired in the rank/grade of sergeant first class/E-7. His DD Form 214 shows he completed 26 years and 21 days of total active service.
7. His SHARP Foundation Course Certificate of Training, 26 July 2021, shows he completed the SHARP Foundation Course (80 hours) from 19 July 2021 to 30 July 2021.
8. His Sexual Assault Response Coordinator/Victim Advocate Career Course Certificate, undated, shows he successfully completed the career course from 28 March 2022 to 5 May 2022.

9. His DA Form 1059 covering the period 28 March 2022 to 6 May 2022 shows he "Achieved Course Standards" while attending the Sexual Assault Response Coordinator/Victim Advocate Career Course at [REDACTED];
10. His DD Forms 2906 covering the periods 2022 and 2023 show he received all "5 – Outstanding" performance evaluations while employed as a SHARP victim advocate.
11. He provided six character references from individuals who previously worked with him, 6 April 2023 to 4 May 2023, stating he is a charismatic professional who always upholds the Army Values, including as a Department of the Army civilian. His expertise allows for leaders and SHARP personnel at the battalion and company levels to continually come to him for guidance and direction. He takes time out of his busy schedule to help anyone, whether it be a Soldier in need or a fellow SHARP representative. His passion for taking care of others is bolstered by his active communication to the leaders within his organization, as well as the young subjects and victims with whom he works daily. The minor infraction on his record from decades ago does not define his character or commitment to perform his duties.
12. The CID memorandum from the attorney/advisor (Legal Review of Request for Amendment of Record), 4 April 2023, found there was probable cause to believe the applicant committed the offenses for which he was titled. He determined there was probable cause to believe the applicant committed the offenses for which he was titled. The attorney/advisor states, in part:
- [Applicant] was titled with violation of Article 128, Aggravated Assault Consummated by a Battery and Article 134, Disorderly Conduct, Uniform Code of Military Justice when he struck another Soldier in the back with a wooden handle and then engaged in a fight with the same Soldier. Based on my review of the MPR, I find there was probable cause to believe [applicant] violated the offenses listed in the MPR.
- Consistent with the direction received from the Secretary of the Army, since probable cause existed to believe [Applicant] committed the offenses listed in the MPR, his record should not be amended to remove his name from the title block and any corresponding entry into the Defense Central Index of Investigations (DCII) should remain.
13. The CID letter to the applicant from the Freedom of Information Act/Privacy Act Division Chief, 5 April 2023, denied his request to expunge his records from the CID files after reviewing the MPR, 8 June 1991, in accordance with Public Law 116-283 (National Defense Authorization Act for Fiscal Year 2021, section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigative Reports, the DCII, and Other Records and Databases)).

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted.
2. The Board found that probable cause existed to title the applicant as the subject of an investigation into allegations of violations of Article 128 and Article 134, Uniform Code of Military Justice. The Board further found that probable cause continues to exist related to these allegations. Based on a preponderance of the evidence, the Board determined the CID records related to these offenses are not in error or unjust.

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.

6/27/2024

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. 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 Army Board for Correction of Military Records (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 Defense Central Index of Investigations (DCII).

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

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

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

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

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

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

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion of their information in the DOD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

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

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

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

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

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

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

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

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

//NOTHING FOLLOWS//