

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009685

APPLICANT REQUESTS: through counsel:

- expungement of his and his wife's names from all U.S. Army Criminal Investigation Command (CID) records
- removal of their deoxyribonucleic acid (DNA) samples and fingerprint cards from CID, U.S. Army Criminal Investigation Laboratory, Combined DNA Index System, and Defense Incident-Based Reporting System records

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)
- Counsel's Brief in Support of Application for Correction of Records, undated, with Exhibits –
 - Exhibit 1 – Schofield Barracks Police Station Memorandum (Law Enforcement Report (LER) – Final), 6 November 2019
 - Exhibit 2 – Schofield Barracks Police Station Memorandum (LER – 2nd Corrected Final), 23 February 2021
 - Exhibit 3 – CID Letter, 26 August 2022
 - Exhibit 4 – CID Letter, 4 October 2022
 - Exhibit 5 – U.S. Army Health Clinic – Schofield Barracks Family Advocacy Program Memorandum (Report for Record: Alleged Report of Domestic Violence Regarding: (Applicant)), 30 October 2019
 - Exhibit 6 – 3d Battalion, 7th Field Artillery Regiment, 25th Infantry Division, Memorandum for Record (Notice for Travel), 2 January 2020
 - Exhibit 7 – Medical Record Extracts
 - Exhibit 8 – Privacy Act Request from Spouse, 29 April 2022

FACTS:

1. The applicant defers to counsel.
2. Counsel states:

a. The applicant, an active duty Soldier, and the "co-applicant," his spouse, were titled after an incident on 25 October 2019. The CID records state the applicant and his spouse were involved in a verbal dispute over the television that turned physical when his spouse struck the applicant on the left side of the face, and he responded by striking her with an open hand.

b. The applicant was taken into custody and later released to his unit. Both parties were uninjured and denied medical treatment. The MPs determined there was credible information to title both the applicant and his spouse for the offenses. According to CID records, the applicant's spouse admitted to MPs that the altercation occurred, she was processed, and she was released from custody. A corrected version of these CID records changed minor administrative errors on 23 February 2021.

c. Despite being titled for violations of Article 128b (Domestic Violence) of the Uniform Code of Military Justice (UCMJ) and abuse of a household member, they were not charged with any criminal offense. Both the applicant and his spouse applied to CID to remove the titling information from their records in 2022; both requests were denied. The CID records are incomplete because they lack easily discoverable exculpatory evidence that would have exonerated the applicant and his spouse and prevented them from being titled.

3. The applicant was serving in the Regular Army in the rank of sergeant when he and his spouse became the subjects of a 2019 CID LER for violations of Article 128b (Domestic Violence) of the UCMJ and abuse of a household member.

4. Excerpts of the applicant's medical records show he was diagnosed with an adjustment disorder with mixed anxiety and depressed mood in August 2019.

5. The U.S. Army Health Clinic – Schofield Barracks Family Advocacy Program memorandum (Report for Record: Alleged Report of Domestic Violence Regarding: (Applicant)), 30 October 2019, cited the alleged spousal abuse. The memorandum noted both parties completed appointments and both reported there was no physical altercation between them. The applicant reported walking into the laundry room and bumping into something while putting on his shoes and later called the MP's to report he might have hit his wife. The applicant's spouse denied that any physical contact was made. Additionally, the family had no previous history of abuse allegations. The licensed clinical social worker and clinical supervisor recommended keeping the information as a report for record and expungement after 1 year if there were no further reports pertaining to the applicant.

6. The Schofield Barracks Police Station memorandum (LER – Final), 6 November 2019, names the applicant as the subject/suspect for the offenses of domestic violence

on 24-25 October 2019, and the applicant's spouse as the subject/suspect for abuse of a household member. The report summary states:

a. On 25 October 2019 at 0937, the applicant notified the Schofield Barracks MP Station of a domestic violence and abuse of a household member incident that occurred at 1900 on 24 October 2019 at their housing unit.

b. The applicant stated he and his spouse were involved in a verbal dispute over the television, which turned physical when his spouse struck him on the left side of his face with an open right hand. The applicant then responded by striking his spouse with an open hand. Contact was also made with the applicant who corroborated his spouse's account of the incident. Both parties did not complain of any pain or injuries and declined medical treatment. (Redacted) in conjunction with the MP Desk Sergeant determined there was credible information to title both the applicant and his spouse with the above offenses based on (Redacted's) written sworn statement. The applicant was apprehended and transported to the Schofield Barracks Police Station where he was advised of his legal rights, which he invoked. The applicant's spouse was apprehended and transported to the Schofield Barracks Police Station where she was advised of her legal rights, which she waived, verbally admitting to the above offense. The applicant's spouse was further processed and released on her own recognizance on a DD Form 2708 (Receipt for Pre-Trial/Post-Trial Prisoner or Detained Person). The applicant was further processed and released to his unit representative (First Sergeant Redacted) on a DD Form 2708. A mandatory 72-hour separation period was initiated. (Redacted) opinion for the charges listed above after (Redacted), 3d Brigade Combat Team Brigade Judge Advocate, was emailed with all the attachments on 29 October 2019.

7. The 3d Battalion, 7th Field Artillery Regiment, 25th Infantry Division, memorandum for record from the Commander (Notice for Travel), 2 January 2020, notified Customs and Border Protection and law enforcement that the applicant and his spouse were not charged or convicted of any crimes in October 2019. Insufficient evidence, supporting proof, and the applicant's plea of innocence led to closure of the investigations. The commander stated the applicant was not involved in any physical contact with his spouse. The applicant provided proof of hospital discharge paperwork, backing his statement in regard to hallucinations under great stress, leaving the police report inaccurate. All investigations into the applicant and his family were closed.

8. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 16 October 2020, shows a PEB found the applicant physically unfit and recommended a disability rating of 50 percent and permanent disability retirement. The PEB found the disability was not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. His

disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104, or Title 10, U.S. Code, section 10216.

9. Directorate of Human Resources, Headquarters, U.S. Army Garrison – Hawaii, Orders 297-0023, 23 October 2020, retired him by reason of permanent disability and placed him on the Retired List in the grade of sergeant effective 22 January 2021.

10. The Schofield Barracks Police Station memorandum (LER – 2nd Corrected Final), 23 February 2021, names the applicant as the subject/suspect for the offenses of domestic violence on 24-25 October 2019 and his spouse as the subject/suspect for abuse of a household member. The report summary states:

a. On 25 October 2019 at 0937, the applicant notified the Schofield Barracks MP Station of a domestic violence and abuse of a household member incident that occurred at 1900 on 24 October 2019 at their housing unit.

b. The applicant stated he and his spouse were involved in a verbal dispute over the television, which turned physical when his spouse struck him on the left side of his face with an open right hand. The applicant then responded by striking his spouse with an open hand. Contact was also made with the applicant who corroborated his spouse's account of the incident. Both parties did not complain of any pain or injuries and declined medical treatment. (Redacted) in conjunction with the MP Desk Sergeant determined there was credible information to title both the applicant and his spouse with the above offenses based on (Redacted's) written sworn statement. The applicant was apprehended and transported to the Schofield Barracks Police Station where he was advised of his legal rights, which he invoked. The applicant's spouse was apprehended and transported to the Schofield Barracks Police Station where she was advised of her legal rights, which she waived, verbally admitting to the above offense. The applicant's spouse was further processed and released on her own recognizance on a DD Form 2708. The applicant was further processed and released to his unit representative (First Sergeant Redacted) on a DD Form 2708. A mandatory 72-hour separation period was initiated. Pending opinion for the charges listed above after (Redacted), 3d Brigade Combat Team Brigade Judge Advocate, was emailed with all the attachments on 29 October 2019.

11. On 29 April 2022, the applicant's spouse prepared a statement (Privacy Act Request to Change Record: Separate Sheet of Paper (Spouse)), wherein she stated:

I am requesting to have my file expunged/destroyed regarding October 24, 2019 (day of incident) and October 25, 2019 (day of report). The reason for this request is because my statement I made was incorrectly written on the police report by the Military Police. In the report, it proves my husband and myself did not complain about any pain or injuries, in addition medical treatment was

declined. I clearly stated to the military police officer/investigator that [Applicant] (my husband) did not touch me. Also, I did not touch him while he was having his hallucinations. Before being released I asked the military police officers if I was considered a prisoner and why the DD 2708 form stated I was being charged with assault. The officer then stated its just paper to sign and leave. The officer continued to pressure me to sign the form until I signed. The officer was unprofessional, and I felt greatly discriminated [against] as an Asian woman. Captain J_____ from the Family Advocacy program annotated my statements correctly through the process and how I felt discriminated [against] by the military police. I have tried to get help to change my report. I called the Military police unit many times in Schofield Barracks, saw an attorney[,] however, I was misguided until now.

12. The CID letter, 26 August 2022, notified the applicant's spouse that her request to correct information from the files of the CID/U.S. Army Crime Records Center was denied. She was instructed that if she disagreed with this denial, she may appeal to the Army Board for Correction of Military Records.

13. The CID letter, 4 October 2022, notified the applicant that his request to correct information from the files of the CID/U.S. Army Crime Records Center was denied. He was instructed that if he disagreed with this denial, he may appeal to the Army Board for Correction of Military Records.

14. The applicant retired on 20 January 2021 by reason of physical disability. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 years, 2 months, and 16 days of net active service during this period.

BOARD DISCUSSION:

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. Counsel's contentions, the applicant's military records, and regulatory guidance were carefully considered. The applicant and his spouse were involved in a verbal dispute which turned physical when his spouse struck him on the left side of his face with an open right hand. The applicant then responded by striking his spouse with an open hand. Contact was also made with the applicant who corroborated his spouse's account of the incident. Both parties did not complain of any pain or injuries and declined medical treatment. CID/SJA determined there was credible information to title both the applicant and his spouse with the above offenses. The applicant's commander later notified Customs and Border Protection and law enforcement that the applicant and his spouse were not charged or convicted of any crimes in October 2019, that there was insufficient evidence, supporting proof, and that the applicant's plea of innocence led to closure of the investigations. The commander stated the applicant was not involved in any

physical contact with his spouse. Although the Board noted that according to the applicant's commander the applicant was not charged with a criminal offense, the fact remains that the incident did in fact happen and physical contact was in fact present. As such, CID was not in error in titling the applicant for this incident. Additionally, the spouse admitted to the incident and stated that she was neither injured nor sought medical attention. The spouse essentially confirmed the physical contact between the two. The Board found the titling action is not 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.

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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. 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.

2. DOD Instruction 5505.11 (Fingerprint Reporting Requirements), 31 October 2019, establishes policy, assigns responsibilities, and prescribes procedures for defense criminal investigative organizations (DCIOs) and other DOD LEAs to submit fingerprints and report disposition data to the Criminal Justice Information Services Division of the Federal Bureau of Investigation criminal history database.

a. CID and other DOD LEAs will collect fingerprints and criminal history record information upon determination of probable cause and will electronically submit to the Criminal Justice Information Services Division of the Federal Bureau of Investigation for all service members who are investigated for all offenses punishable by imprisonment listed in the punitive articles of Title 10, U.S. Code, chapter 47, also known and referred to in this issuance as the UCMJ, or elsewhere in the U.S. Code. Fingerprints and criminal history record information will be collected and submitted using either a Federal

Document 249 (Arrest and Institution Fingerprint Card) or its electronic equivalent. When required, a Privacy Act statement will be provided to each individual whose personal data is collected, in accordance with Title 5, U.S. Code, section 5529, and DOD Instruction 5400.11-R.

b. CID and other DOD LEAs will comply with Title 28, Code of Federal Regulations, Part 20.32(b), concerning offenses excluded from fingerprint collection. These exclusions include non-serious offenses such as drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run).

3. DODI 5505.14 (DNA Collection and Submission Requirements for Law Enforcement), 5 April 2022, establishes policy, assigns responsibilities, and prescribes procedures for DNA sample collection and submission requirements for the purpose of inclusion in the Combined DNA Index System.

a. CID and other DOD LEAs, DOD correctional facilities, the Coast Guard Investigative Service, and commanders will collect and submit DNA samples from service members and civilians when their fingerprints are collected pursuant to DOD Instruction 5505.11.

b. CID and other DOD LEAs, and DOD correctional facilities will develop expungement procedures and provide instructions concerning expungement rights and procedures to all persons from whom DNA samples are collected as outlined in section 4.

c. CID and other DOD LEAs, DOD correctional facilities, and commands will submit DNA samples to the U.S. Army Criminal Investigation Laboratory (USACIL) at the time of collection. CID and other DOD LEAs will take DNA samples from civilians whom they detain or hold and who remain within their control when it is determined there is probable cause to believe the civilian has committed an offense that results in the collection of fingerprints.

d. Former or retired service members from whom samples were taken but who were not convicted of any offense by a general or special court-martial, or can provide a certified copy of a final court order documenting the charge has been dismissed or resulted in an acquittal, may request in writing that their DNA records be expunged in accordance with the procedures in this section. Former or retired service members will submit requests for expungement to the Clerk of Court of the Military Department's Court of Criminal Appeals.

(1) Requests will include:

(a) All reasonably available proof showing that none of the offenses giving rise to the collection of DNA resulted in a conviction at a general or special court-martial (including a final court order establishing that such a conviction was overturned, or establishing action by the convening authority that has the effect of a full acquittal). A court order is not final if time remains for an appeal or application for discretionary review with respect to the order.

(b) The former or retired service member's name, social security number, current address and contact information, date of alleged offense, and contact information of the unit that the former service member belonged to when the sample was taken.

(2) Requests that do not provide adequate information to identify the alleged offense or to confirm that the alleged offense did not result in a conviction will be returned by "return receipt requested" with an explanation of the deficiency.

e. The Clerk of Court of the appropriate Military Department's Court of Criminal Appeals will search their records for any conviction pertaining to the former or retired service member and determine whether the former or retired service member is entitled to expungement. The Clerk of Court of the Military Department's Court of Criminal Appeals will send appropriate requests for expungement by former or retired service members to USACIL.

f. USACIL will review all requests for expungement that it receives to ensure they contain all the required information. Incomplete requests will be returned to the submitter. Only such requests that are deemed meritorious, USACIL will expunge the DNA records, destroy the submitted sample, notify the individual of its actions, and maintain documentation of that notice.

g. Civilians whose samples are taken and forwarded pursuant to Paragraph 1.2.c., but who are not convicted of any offense, or provide a certified final court order documenting the conviction has been overturned, may request in writing that their DNA sample be expunged.

4. DOD Manual 7730.47, Volume 1, 7 December 2010, Subject: Defense Incident-Based Reporting System (DIBRS): Data Segments and Elements References, implements the policy in DoD Instruction (DoDI) 7730.47 (Reference (c)) and to assign responsibilities and prescribe procedures for managing the DIBRS.

a. Continues to require maintenance of a central database on incidents of domestic violence involving members of the Military Services pursuant to section 1562 of title 10, U.S.C. (Reference (i)) and DoDI 6400.01 (Reference (j)). (b) A central repository of criminal incident data to enhance DoD effectiveness in responding to executive,

legislative, and ad hoc requests for statistical information relating to criminal and other high-interest incidents.

b. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)), operates and maintains the DIBRS, to include providing computer support, software development, quality control, inquiry capability, and administrative support and maintains the DIBRS database.

c. Secretaries of the Military Departments designate specific reporting responsibilities for their respective Service members who are assigned to the Combatant Commands and report cases concerning their respective Service members that are handled by a Combatant Command.

d. The areas with reporting responsibility include Law Enforcement and Criminal Investigations. Criminal Investigations include investigations conducted by the Air Force Office of Special Investigations, the Naval Criminal Investigative Service, the Army Criminal Investigation Command, the Defense Criminal Investigative Service, or other criminal investigative organizations within the Department of Defense.

e. Database on Domestic Violence. the Department of Defense is required to establish a central database of information on incidents of domestic violence involving members of the Military Services. The Military Departments must maintain and report annually any information received on: (1) Each domestic violence incident reported to a commander, a law enforcement authority of the Military Services, or a family advocacy program of the Department of Defense. (2) The number of those incidents that involve evidence determined sufficient for supporting disciplinary action and, for each such incident, a description of the allegations and the action taken by command authorities in the incident. (3) The number of those incidents that involve evidence determined insufficient for supporting disciplinary action and, for each such case, a description of the allegation.

f. Criminal Investigations. Two areas involved in the DIBRS that fall within the criminal investigations area of responsibility are NIBRS and the reporting requirements of Reference (n). If the investigation is initiated by or referred to a criminal investigative organization and that organization assumes the lead investigative role, it also assumes DIBRS reporting responsibility. The investigative organization must coordinate with referring agencies to ensure the NIBRS reporting responsibility is clearly understood. The functional responsible official shall implement procedures to establish a functional consolidating activity and forward monthly DoD Component-wide data to DMDC. A DIBRS incident report shall be considered cleared for purposes of NIBRS reporting upon apprehension, arrest, or an equivalent stage in the investigative process.

g. Command Actions: Investigative agencies shall normally refer cases involving military offenders to the responsible commander for appropriate action. In these cases, a DIBRS entry for the incident should be initiated by the law enforcement activity with the lead investigative responsibility. The commander may refer the case to staff agencies, dispose of the case pursuant to administrative or non-judicial authority, or refer the case to court-martial or to an appropriate convening authority for ultimate disposition. Once the action is complete, the commander taking final action on the case shall report the final disposition action to the functional consolidating activity. If the case is forwarded to another convening authority for action, the commander assuming jurisdiction over the case shall be responsible for forwarding appropriate DIBRS identifying information.

h. Each domestic violence incident reported to a commander, a law enforcement authority of the Military Services, or a family advocacy program of the Department of Defense shall be reported. Reporting requirements include the number of those incidents that involve evidence determined sufficient for supporting disciplinary action and, for each such incident.

i. Individual written requests for correction of DIBRS records may be addressed to the address in paragraph 2.e. (Defense Manpower Data Center, Office of the Assistant Secretary of Defense (P&R) Project Officer, DIBRS File DoD Center Monterey Bay 400 Gigling Road Seaside, CA 93955-6771) of this enclosure for action and response. DMDC shall be responsible for providing all responses both interim and final as appropriate to individuals requesting corrections.

5. Army Regulation 195-1 (Army Criminal Investigation Program) and Army Regulation 195-2 (Criminal Investigation Activities) establish policies on criminal investigation activities, including the utilization, control, and investigative responsibilities of all personnel assigned to the U.S. Army Criminal Investigation Command elements. Also delineate responsibility and authority between Military Police and the U.S. Army Criminal Investigation Command. The U.S. Army Criminal Investigation Laboratory (USACIL) in Forrest Park, GA provides timely, world-wide, cutting-edge forensic science casework and crime scene support. It serves as Department of Defense's (DoD) program manager for the Combined DNA Index System and provides educational subject matter experts to support the DoD, Military Criminal Investigative Organizations, Federal departments and organizations, and the Forensic Science Community in criminal investigations.

//NOTHING FOLLOWS//