

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230010441

APPLICANT REQUESTS: in effect, expungement of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER) – Serious Incident Report – Final, 11 May 2020, from the Department of Defense (DOD) Central Index of Investigations (DCII), CID databases, and other records.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of the Title 10, U.S. Code, Section 1552)
- Memorandum for Record (Statement of Reasons Regarding Security Clearance), 1 December 2022
- Victim's Memorandum for Crime Records Division, (Retraction Statement of Case Number [REDACTED]), 28 March 2023, with Notary Acknowledgement

FACTS:

1. The application states military records pertaining to him contain a false allegation of sexual misconduct. The allegation has been proven to be inaccurate and his related records need to be corrected.

2. He enlisted in the U.S. Army Reserve (USAR) under the Delayed Entry/Enlistment Program for a period of 8 years on 10 April 2014 with an obligation to enlist in the Regular Army by 4 August 2014 for a period of 4 years and 21 weeks. On 4 August 2014, he was discharged from the Delayed Entry/Enlistment Program and enlisted in the Regular Army. He was promoted to the rank/grade of sergeant/E-5 effective 31 July 2018.

3. The redacted CID LER – Serious Incident Report – Final, 11 May 2020, shows the Baumholder CID Office was notified of an incident regarding the applicant on 3 January 2020 wherein he was accused of sexual assault and abusive sexual contact.

- a. The report of summary states:

[Redacted], this office, was notified by [Redacted] that [Redacted] reported [Redacted] touched her buttocks without consent.

[Redacted] was interviewed and stated [Applicant] entered her barracks room on 25 December 2019, and performed an unlawful sexual act upon [Redacted] without her consent. [Redacted] stated she was in shock and was unable to move. [Redacted] stated she told [Applicant] "no" and he continued anyway. [Redacted] stated on 31 Dec[ember] [20]19, [Applicant] approached [Redacted] in the stairwell of Building 8405, SBGE [Sustainment Brigade-Germany] and touched her buttocks without her consent. [Redacted] stated on 3 Jan[uary] [20]20, [Applicant] entered her room where he touched her buttocks and breast without her consent, and attempted to place his hand down her pants.

[Applicant] invoked his right to legal counsel.

b. Legal Coordination. On 23 April 2020, Trial Counsel, opined probable cause existed to believe the applicant committed the offenses of sexual assault and abusive sexual contact. No additional investigative efforts were required. There was sufficient evidence to provide to command for consideration of action.

c. The applicant was listed as the subject for the following offenses under Article 120 (Rape and Sexual Assault Generally), Uniform Code of Military Justice (UCMJ):

- Sexual Assault
- Abusive Sexual Contact

4. The DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), referred 11 May 2020, lists the applicant as the subject.

a. The Referral Information lists three offenses of Article 120, UCMJ: (1) Sexual Assault on 25 December 2019, (2) Abusive Sexual Contact on 31 December 2019, and (3) Abusive Sexual Contact on 3 January 2020. On 2 September 2020, the commander placed an "X" in the "No" boxes by "Sexual Harassment" for each offense and an "X" in the "Yes" box by "Action Taken."

b. The Action Taken section shows the commander placed a checkmark in the box by "Administrative."

c. The Administrative Actions section shows a written reprimand was placed in his Official Military Personnel File on 2 September 2020.

d. The Suspended Sanctions section shows an "X" was placed in the "No" box by "Were Any Sanctions Suspended."

e. The Commander's Remarks section contains the following entries:

- Case History:
- [REDACTED]
- SM [service member] received a GOMOR [general officer memorandum of reprimand], filed in AMHRR [Army Military Human Resource Record], signed by [Redacted], dtd. [dated] 2 Sep[tember] 2020

f. The Commanding Officer or Reporting Officer section shows a checkmark was placed in the "Yes" box by "Was a DNA [deoxyribonucleic acid] sample collected from the offender?" The commander's name, grade, and signature were redacted with a signature date of 13 October 2020.

5. His Army Military Human Resource Record does not contain the CID LER, GOMOR, or any other derogatory documents.

6. Installation Management Command – Europe, Baumholder Transition Center, Germany, Orders 268-0001, 24 September 2020, reassigned him to the U.S. Army Transition Point and released him from active duty on 30 January 2021. He was reassigned to the USAR Control Group (Reinforcement) to complete his Reserve service obligation ending 9 April 2022.

7. He was honorably released from active duty in the rank/grade of sergeant/E-5 on 30 January 2021 and transferred to the USAR Control Group (Reinforcement) by reason of non-retention on active duty. He completed 6 years, 5 months, and 27 days of net active service during this period.

8. U.S. Army Human Resources Command Orders C-02-101920, 22 February 2021, voluntarily reassigned him from the USAR (Reinforcement) to the 375th Quartermaster Company – Field Feeding Company, Wilson, NC, effective 21 February 2021, with an expiration term of service (ETS) date of 9 April 2022.

9. He reenlisted in the USAR on 29 January 2022 for a period of 2 years in pay grade of E-5 with an ETS date of 29 January 2024.

10. His memorandum for record (Statement of Reasons Regarding Security Clearance), 1 December 2022, provided supplemental information in support of his requested security clearance. He explained the 3 January 2020 incident and the following investigation in which he was accused of sexual assault and abusive sexual contact. He noted the female involved recanted her story and no longer wanted to

participate in the investigation. He was never found guilty but was given a GOMOR. He understands the seriousness of the matter, but he was never found guilty of a crime.

11. The memorandum for Crime Records Division from the alleged victim (Retraction Statement of Case Number [REDACTED]), 28 March 2023, signed in the presence of a notary public on 29 March 2023, states:

On January 3, 2020, I accused [Applicant] of the following: Sexual Assault and Abusive Sexual Contact.

The purpose of the memorandum is provide further justification on the allegations I placed against [Applicant]. I met [Applicant] approximately on November 15, 2019. Shortly after our initial interaction we engaged in a consensual sexual relationship. This relationship was briefed [sic] due to me discovering that he had a girlfriend at the time. After being aware of this information, I confided in my friend/NCO [noncommissioned officer] (SGT [Sergeant] [REDACTED]). I was then informed that she also had animosity towards him because they also had a consensual sexual relationship that also didn't last long prior [to] our engagement. During this conversation she told me how she believed that [Applicant] manipulates junior enlisted, so she proposed an idea to expose him for have [sic] relations with junior enlisted to give him what she felt he deserved. I asked her if she felt he should get in trouble why don't she expose him herself [and] she stated she is an NCO and if [she] was to say anything it would just be hearsay because she didn't have proof but if I helped her, he would be caught red handed so me being new to the military and not know[ing] exactly where she was going with this, I just followed her lead thinking she had my best interest at heart. So, SGT [REDACTED] and I fabricated text messages and a Snapchat account to make it look like [Applicant] and I were having inappropriate conversations.

My initial thought was she was planned [sic] for him to get in trouble for fraternization, but then I was informed that I'll also be punished so that's when SGT [REDACTED] suggested that I make a report with SHARP [Sexual Harassment/Assault Response and Prevention Program] to avoid that. So, I did. It never dawned on me that she was using me for her own personal vendetta.

During the investigation I knew it was wrong and I felt remorseful for doing it so I discussed [it] with my lawyer and the investigators that I would no longer like to participate in the investigation. I was hoping that would stop the investigation, but it didn't. I told my lawyer that the entire story was fabricated, but my lawyer told me if I recanted my statement, it would make me look like a liar and I didn't want that as I was a new soldier and had plans about making the military a career. It pains me to hear that 3 years later [Applicant] is still affected by this and I am

here to say the allegations I reported about [Applicant] were fabricated and falsified.

12. The CID letter from the Chief, Freedom of Information Act/Privacy Act Division, 5 July 2023, responded to his request of 4 April 2023 to amend his records. The Chief informed him the enclosed legal review pertaining to his LER was attached and was responsive to his request.

a. His amendment request was denied after a review of the LER was completed in accordance with Public Law 116-283 (William M. (Mac) Thornberry 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).

b. The enclosed CID memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 10 April 2023, states that based on the review of the LER and amendment packet, the attorney/advisor found there was probable cause to believe the applicant committed the offenses for which he was titled. It further states:

(1) Public Law 116-283, section 545, required the Secretary of Defense to establish and maintain a policy and process for a person to request amendment, correction, expungement, or otherwise removal of their DOD LER when it is determined that probable cause did not or does not exist to believe the individual committed the alleged criminal offense(s). To date, DOD has not published implementation guidance; however, in November 2022, the Secretary of the Army directed CID to adopt the probable cause standard for review of amendment requests, as prescribed in section 545 of Public Law 116-283.

(2) The applicant was titled for violation of Article 120 (Sexual Assault) and Article 120 (Abusive Sexual Contact), when he performed a sexual act on a junior female Soldier without her consent and he touched her buttocks and breasts without her consent. Based on his review of the LER, he concurred with the trial counsel that there was probable cause to believe the applicant committed the offenses for which he was titled.

(3) Consistent with the direction received from the Secretary of the Army, since probable cause existed to believe the applicant committed the offenses listed in the LER, his record should not be amended to remove his name from the title block and any corresponding entry in the DCII should remain.

13. He reenlisted in the USAR on 25 January 2024 for a period of 3 years in pay grade E-5 with an ETS of 25 January 2027.

14. The Army Review Boards Agency Case Management Division letter, 28 February 2024, provided him with a copy of the CID LER and offered him the opportunity to submit comments.

15. He responded by electronic mail on 11 March 2024 and attached the following in response:

a. a memorandum from one of his previous officers while assigned to another unit (Character Reference for (Applicant)), 5 June 2020, attesting to his professionalism, training, and ethical standards;

b. the 28 March 2023 memorandum from the alleged victim with notary public acknowledgment, described above; and

c. his memorandum for record (Statement of Reasons Regarding the Correction of Military Records), 29 February 2024, noting the same information contained in his memorandum for record (Statement of Reasons Regarding Security Clearance), 1 December 2022.

#### 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 warranted.

2. The Board found the statement provided by the alleged victim on 28 March 2023 sufficient to establish that probable cause no longer exists to believe the applicant committed the offenses for which he was titled. Based on a preponderance of the evidence, the Board determined the applicant's name should be removed as the subject of the investigation into allegations of sexual assault and abusive sexual contact.

#### BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

■	■	■	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 removing his name as the subject of the investigation into allegations of sexual assault and abusive sexual contact.

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:

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//