

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230010813

APPLICANT REQUESTS:

- removal of Military Police Report (MPR), 21 September 2007, from his records
- in effect, expungement of his name from all U.S. Army Criminal Investigation Command (CID) and U.S. Army Crime Records Center files and databases

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Self-authored Letter, undated
- DA Form 3975 (MPR), 21 September 2007
- two DA Forms 3975-1 (MPR – Additional Offenses), 21 September 2007
- three DA Forms 3975-4 (MPR – Additional Persons Related to Report), 21 September 2007
- two DA Forms 3975-5 (MPR – Additional Property), 21 September 2007
- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 21 September 2007
- Chemical, Biological, Radiological, and Nuclear Specialist Course Diploma, 29 October 2007
- Army Commendation Medal (ARCOM) Certificate, 12 February 2010
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 1 November 2010
- Honorable Discharge Certificate, 1 November 2010
- Driver's License, 21 June 2017
- Associate in Science Degree Certificate, 21 May 2021
- Privacy Act Request to Change Record, 10 April 2023
- CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 20 April 2023
- CID Letter, 25 April 2023

FACTS:

1. The applicant states:

a. While assigned to Fort Leonard Wood, MO, for advanced individual training, he was arrested on 22 September 2007 when he reported for duty. After being detained in a small interrogation room for approximately 45 minutes, a blonde female interviewed him. She did not identify herself; he assumed she was assigned to the military police or CID. She wrote some notes in a folder and repeatedly asked if he knew why he was there, which he denied. She then stated, "Well, we are not accusing you, we are just suspecting you of theft of personal property and larceny of private funds" and "Well, you can talk to me, or you can talk to a lawyer." He requested an attorney and was dismissed shortly thereafter.

b. When he returned to the orderly room, his commander asked, "What was that all about?" He answered that he had no idea, and he still does not know what it was about. He was allowed to continue training in military occupational specialty 74D (Chemical Operations Specialist) through gradation and was never questioned about the incident again.

c. After graduation he was assigned to Fort Drum, NY, in December 2007. He deployed in support of Operation Iraqi Freedom from April 2009 until April 2010 and he was honorably discharged in November 2010.

d. Sometime after his separation he learned of the erroneous arrest record (MPR, 21 September 2007) for theft and larceny. These reports should be removed from his records because they are a blatant false report of a theft/larceny of which he had no knowledge. He submitted a "Privacy Act to Change Record" on 10 April 2023, requesting vacation of the false report and erroneous arrest and deletion from his records.

e. He received a formal CID notification via email on 25 April 2023, stating his request had been denied, but he had the right to appeal. The denial letter included about a dozen formal documents related to the incident, which he had never seen.

f. After reviewing the documents, he found the following issues:

(1) He was assigned to the prior-service barracks, Building 799C, where the theft occurred but spent little time there. He was either in a formation, attending classes, or in view of other Soldiers. He often stayed off base, did not sleep in the barracks, and only returned the following morning, going straight to formation.

(2) None of the Soldiers he served with in Building 799C reported or knew of a theft. His classmates seemed surprised when he told them of his detainment and interrogation. He was the only person questioned, which he asserts was because there was never a theft reported and the CID report and arrest records were falsified. If the Soldiers were aware of a theft, they would have provided formal documentation, such as a counseling statement, sworn statement or affidavit, which he asserts do not exist.

(3) According to the DA Form 3975-4, the additional persons involved appear to be a civilian and a family member, which would not have been allowed in the training barracks. Thus, it was impossible for a civilian and a family member to have made a sworn statement about an incident in the barracks. Also, it would be unlikely that a civilian or family member could identify him as a suspect since he would have been unknown to them. Only the Soldiers living in Building 799C could have been witnesses.

(4) According to the DA Form 3975:

(a) The theft took place between 7:30 and 7:31 a.m. on 19 September 2007 when it would be unlikely for him to be in the barracks. If he were in the barracks, other Soldiers would have been around him in the cramped quarters.

(b) He questions how he was identified if an unknown person removed an Automated Teller Machine (ATM) debit/credit card.

(c) He questions how the investigation was able to conclude the unauthorized withdrawal occurred from the unspecified Army Air Force Exchange Service (AAFES) location. AAFES locations are only found on military bases. Page 5 of this report seems to contradict itself by alleging the theft and larceny occurred at two or three different locations at the same time: Building 799c (barracks), Building 490 (post exchange), and Building 1605 (gas station).

(d) He did not have a valid driver's license or a vehicle to make a gas purchase. He could not have been at the barracks and several different AAFES locations when he was likely on the way to or already in the classroom. Other Soldiers he served with could verify he was in class. He was never at an AAFES during the time of the reported incidents. He questions how someone could use a debit or credit card without a personal identification number.

(e) According to the DA Form 4833, he received company-grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), yet his records do not show he ever received such punishment. He was allowed to move to his next duty station without any formal adverse actions or punishments. The DA Form 4833 states no actions were taken against him.

2. Following prior enlisted service from 6 August 1998 through 22 April 2004, he again enlisted in the Regular Army in the rank/grade of private/E-1 on 13 July 2007. He was serving in the rank/grade of private/E-1 when he became the subject of an MPR for three violations of Article 121 (Larceny of Private Property) of the UCMJ.

3. He provided the following documentation:

a. The DD Form 3975, 21 September 2007, names the applicant as the subject/suspect for the offenses of larceny of private property on Wednesday, 19 September 2007, beginning at 0730 and ending at 0731 (the time the ATM card was stolen). The report notes the complaint was made in person by another Soldier in the rank of specialist who also completed a DD Form 2701 (Initial Information for Victims and Witnesses of Crime). Subsequently, the applicant was apprehended and questioned on 22 September 2007.

(1) The narrative states:

No report on actions taken. Batch closure per OPMG [Office of the Provost Marshal General] policy.

Details: At 0900 HRS [hours], 21 September 2007 [Redacted] notified this station of the above offense. Investigation revealed between the above times and on the above date, persons unknown removed one ATM debit/credit card serial number unknown from [Redacted's] wallet, which was unsecured and unattended on his bunk in the barracks. Further investigation revealed that [Redacted's] bank informed him that his ATM card was utilized for fuel in the amount of \$38.58. The card was then used to remove \$490.50 from another unspecified AAFES location. Total amount taken \$529.08.

Add Details: At 1010 HRS [hours], 09 October 2007, Contact was made with CP [Captain] [Redacted] OSJA [Office of the Staff Judge Advocate], who was fully briefed on all aspects of this investigation. CPT [Redacted] opined sufficient evidence exists to title the applicant with larceny of private property and larceny of private funds. This is a final report.

(2) The following enclosures were attached (not available for review):

- [Redacted] Report (DA [Form] 3975) [1]
- [Redacted] Sworn Statement (DA Form] 2823) [1]
- [Redacted] Information Sheet (FLW [Fort Leonard Wood Form] 568) [1]
- [Redacted] Information Sheet (FLW [Fort Leonard Wood Form] 568) [1]
- [Redacted] Investigation Activity Summary (DA [Form] 7569 [Investigator Activity Summary]) [1]

- S1 [Subject 1] [Applicant]: Fingerprint Card [2]
- S1 [Subject 1] [Applicant]: Information Sheet (FLW [Fort Leonard Wood Form] 568) [1]
- S1 [Subject 1] [Applicant]: Receipt for Prisoner (DD Form 629/2708 [1]
- S1 [Subject 1] [Applicant]: Rights Waiver (DA [Form] 3881) [1]
- V [Victim] [Redacted] Information Sheet (FLW [Fort Leonard Wood Form] 568) [1]
- V [Victim] [Redacted] Sworn Statement (DA [Form] 2823) [1]

b. The two DA Forms 3975-1, 21 September 2007, show additional offenses related to the incident as larceny of private funds – less than \$500 – at Building 490 and Building 1605.

c. The three DA Forms 3975-4, 21 September 2007, identified witness number 2 as a civilian, but does not show where the witness noticed the activity. Witness number 3 was a family member who was an employee at the post exchange. Witness number 4 was a military police officer completing the report.

d. The two DA Forms 3975-5, 21 September 2007, identified additional property related to the incident as private funds unsecured and stolen.

e. The DA Form 4833 with a referral date of 21 September 2007 and a suspense date of 19 December 2007 lists the applicant as the offender for the offenses of larceny of private property in the amount of \$500 and over and two counts of larceny of private funds in the amount of less than \$500. The report shows the commander's decision date as 6 March 2012 and that the applicant received company-grade nonjudicial punishment; no sanctions were suspended. The Commander's Remarks show "No Report on Actions Taken. Batch Closure per OPMG [Office of the Provost Marshal General] Policy. Migrated Date [DA Form] 4833 – No Action Taken Reason: [no entry]."

f. His diploma shows he completed the Chemical, Biological, Radiological, and Nuclear Specialist Course on 29 October 2007.

g. He was awarded the ARCOM on 2 April 2010 for meritorious service in Iraq from 3 April 2009 through 2 April 2010.

h. His DD Form 214 and Honorable Discharge Certificate show he was honorably discharged from active duty in the rank/grade of specialist/E-4 on 1 November 2010. He completed 3 years, 3 months, and 19 days of net active service during this period, including 1 year of foreign service in Iraq. He was awarded or authorized the:

- ARCOM
- Army Achievement Medal (2nd Award)

- Joint Meritorious Unit Award
- U.S. Army/U.S. Air Force Presidential Unit Citation
- U.S. Navy/U.S. Marine Corps Presidential Unit Citation
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with one campaign star
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- North Atlantic Treaty Organization Medal

i. His driver's license was issued 21 June 2017.

j. He was awarded an Associate of Science Degree on 21 May 2021.

k. The Privacy Act Request to Change Record to CID, 10 April 2023, shows he requested removal of the arrest record and the MPR from his records.

l. The CID memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 20 April 2023, notified him that his request to amend his record by removing the MPR, 21 September 2007, was denied. The memorandum noted there was probable cause to believe he committed the offenses for which he was titled. He was mailed the CID denial letter on 25 April 2023 and instructed to appeal to the Army Board for Correction of Military Records if he disagreed with this denial.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered

a. The evidence shows on 21 September 2007, someone notified Military Police of an incident. An investigation revealed persons unknown removed one ATM debit/credit card from an individual's wallet, which was unsecured and unattended on his bunk in the barracks. Further investigation revealed that individual's bank informed him that his ATM card was utilized for fuel in the amount of \$38.58. The card was then used to remove \$490.50 from another unspecific AAFES location.

a. The Board first considered whether probable cause did or did not exist (when titled) to believe the offense occurred or the person committed the offense. Investigators and the Staff Advocate General opined that probable cause existed to believe the applicant committed the offenses of larceny of private property and larceny of private funds. Additionally, a legal review of the applicant's case also confirmed that probable

cause existed to believe the applicant violated the offense for which he was titled. Therefore, the Board found no error or injustice in the titling action. The Board considered his argument but was not persuaded as it is not supported by any evidence.

b. The Board also considered whether probable cause does or does not (now) exist to believe the offense occurred or the person committed the offense. The CID Report provides clear corroborating evidence of what transpired on that date. However, the Board noted some discrepancies that support the removal of the titling action:

(1) There were no charges preferred against the applicant and none of the charged offenses was substantiated.

(2) Although the report shows the commander's decision date as 6 March 2012 and that the applicant received company-grade nonjudicial punishment (NJP); there is no record of such NJP.

(3) The Board did not believe it is just or equitable to continue to title a Soldier for offenses that were neither substantiated nor proven.

Based on the foregoing, the Board determined relief is warranted in that probable cause no longer exists to believe the offense occurred or the person committed the offense.

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 removal of Military Police Report (MPR), 21 September 2007, from his records and expungement of his name from all U.S. Army Criminal Investigation Command (CID) and U.S. Army Crime Records Center files and databases.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the Army Military Human Resource Record. Paragraph 3-6 provides that once a document is properly filed in the Army Military Human Resource Record, the document will not be removed from the record unless directed by the ABCMR or other authorized agency. The Required Documents List states DA Forms 2627 (Record of Proceedings under Article 15, UCMJ) for Soldiers in the rank/grade of specialist/E-4 or corporal/E-4 and below (prior to punishment) will be filed locally in unit nonjudicial punishment or unit personnel files. Such locally filed originals will be destroyed at the end of 2 years.

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:

- the extent or lack of corroborating evidence against the covered person with respect to the offense;
- whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and
- 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//