

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20230010893

APPLICANT REQUESTS: in effect:

- Removal of his name and personal information from the titling block of a U.S. Army Criminal Investigation Division (CID) Report of Investigation (ROI) and the Defense Central Index of Investigations (DCII)
- Removal of his fingerprints from the Federal Bureau of Investigation (FBI) criminal history database
- Expungement of his DNA (Deoxyribonucleic Acid) from the Combined DNA Index System (CODIS)

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

- DD Form 149 (Application for Correction of Military Record)
- General Officer Memorandum of Reprimand (GOMOR)
- GOMOR rebuttal
- Request for Change to CID ROI
- CID ROI, with DA Form 4388 (Commander's Report of Disciplinary or Administrative Action)
- CID letter

FACTS:

1. The applicant states, based on a review of the CID file he was provided, there is no legal opine stating he committed a crime punishable under the Uniform Code of Military Justice (UCMJ). CID subsequently closed his case, and his command issued him a locally filed GOMOR, citing poor judgment; the GOMOR did not, however, allege any criminal misconduct. The applicant has since moved to a new duty position, and the GOMOR did not follow him.

2. The applicant provides the following:

a. CID ROI, dated 24 February 2023, which titles the applicant for the alleged larceny of government property (Article 121, UCMJ) and wrongful disposition or sale of government property (Article 108, UCMJ). The report summary states:

(1) On 1 November 2022, CID special agents (SA) at Fort Eustis, VA, discovered the applicant had posted military equipment for sale on Facebook Marketplace; specifically, the military equipment included body armor (Enhanced Small Arms Protective Insert (ESAPI) and Kevlar Nape Pad); two helmet covers; and a bracket for night vision goggles.

(2) On 14 November 2022, CID SA conducted a "buy/walk operation" in which an SA purchased an ESAPI plate from the applicant. On 6 December 2022, CID advised the applicant of his rights and, after waiving his rights, the applicant stated he had never stolen or wrongfully taken any military equipment. He explained that he attended "swap meets" while stationed in Hawaii and had bought the military equipment there for later resale. The applicant added that he never sold any military equipment the Army issued him.

b. GOMOR, dated 26 January 2023, issued by Major General (MG) J__ D. K__, Commanding General, U.S. Army Center for Initial Military Training and Fort Eustis. The GOMOR stated that, on 14 November 2022, the applicant sold a CID SA military equipment listed on the applicant's Facebook Marketplace. "As a Commissioned Officer, you are charged with the responsibility of setting the example for Subordinates to emulate. Clearly, your actions fell below the standards expected of a Commissioned Officer in the United States Army." The GOMOR did not state the applicant's actions violated the UCMJ.

c. On 3 February 2023, the applicant filed a rebuttal. He explained that, after moving his family to Fort Eustis from Hawaii, he found he needed to downsize and offload unneeded items. Due to the age of the military equipment he had obtained in Hawaii, he believed the items were military surplus; he was unaware that he was not supposed to dispose of such items via an online marketplace.

d. On 22 February 2023, the applicant's command completed a DA Form 4833, which showed that, for the offense of wrongful disposition or sale of government property, the command had issued the applicant a GOMOR. The command took no action on the allegation pertaining to larceny of government property. The command added that a GOMOR had been temporarily placed in the applicant's local unit file and would be removed upon his reassignment.

e. On 11 April 2023, the applicant requested CID to revise its ROI, stating the CID report had not included a legal opinion showing he had committed an offense punishable under the UCMJ. On 6 June 2023, CID advised the applicant via letter that it had partially granted the applicant's request; it made corrections to the ROI to show a legal review was conducted, and the CID had updated its databases. The letter additionally stated:

(1) "Please be advised, the Department of Defense (DOD) Instruction (DODI) 5505.11 (Fingerprinting Reporting Requirements) establishes policies and procedures for reporting criminal history data to the Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC), Identification Division of the FBI, for all military service members and civilians investigated by DOD criminal investigative organizations for commission of certain offenses. Those subjects who have resultant judicial, non-judicial military proceedings, or where a servicing Staff Judge Advocate or legal advisor found probable cause existed to believe the subject has committed the offense in which they were titled, will remain in NCIC. Reporting information to the NCIC depends on the offense committed and the final result of the report."

(2) "A check of NCIC reflects that you are listed as the subject in the above referenced ROI. We have updated your NCIC entry with the FBI to remove the offense of Larceny of Military Property. Consistent with Department of Defense (DOD) Instruction 5505.11, retention of this criminal history data in the NCIC does conform to DOD policy. Your name will remain in the NCIC."

3. A review of the applicant's service record shows the following:

a. On 1 June 2002, after graduating from a college and completing Reserve Officers' Training Corps requirements, the applicant executed his oath of office as a Regular Army commissioned officer, branched Signal Corps. The applicant continued his service with assignments in the continental United States and overseas, to include deployments to Afghanistan and Iraq.

b. On 1 March 2019, the applicant arrived for duty in Hawaii. Effective 1 April 2019, the Army promoted the applicant to lieutenant colonel (LTC)/O-5. On 17 July 2022, the applicant completed his tour in Hawaii, and orders reassigned him to Fort Eustis. The applicant provides documentary evidence showing his command issued him a locally filed GOMOR, in January 2023.

c. In May 2023, permanent change of station orders transferred the applicant back to Hawaii; he is currently serving on active duty.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's request and contentions, his military record, CID records/ROI, the Commander's DA Form 4833 report of actions, the locally filed GOMOR he was issued and the CID Legal Review and final Supplemental report of investigation. The Board found that CID reported that there was probable cause to

believe the elements were met for the offense(s) Wrongful Disposition of Government Property. The Board did not find sufficient evidence to determine otherwise. Based on a preponderance of evidence, the Board found no error in the revised CID report and determined that the applicant's name and personal information in the titling block of a U.S. Army Criminal Investigation Division (CID) Report of Investigation (ROI) and the Defense Central Index of Investigations (DCII), his fingerprints from the Federal Bureau of Investigation (FBI) criminal history database and his DNA (Deoxyribonucleic Acid) from the Combined DNA Index System (CODIS) were not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX:	XX:	XX:	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.

X //SIGNED//

CHAIRPERSON

Signed by:

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 Instruction (DODI) 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), currently in effect, 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. 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. DODI 5505.11 (Fingerprinting Reporting Requirements), currently in effect, states:

a. Paragraph 1.2 (Policy). DOD law enforcement agencies will collect fingerprints upon determination of probable cause and will electronically submit the fingerprints to the Federal Bureau of Investigation for all service members investigated for offenses punishable under the Uniform Code of Military Justice (UCMJ).

b. Paragraph 2.2 (DOD Component Heads). DOD Component heads will issue procedures to implement and comply with this issuance, including expungement guidance, and direct commanders and directors to promptly notify DOD LEA when they become aware of an investigation against a service member for an offense punishable by imprisonment. Additionally, commanders will inform DOD LEA of the disposition of

an investigation against a service member which has been resolved by administrative, nonjudicial punishment, or judicial action.

c. Paragraph 3.2 (Disposition). Adverse findings resulting from a summary court-martial, non-judicial proceedings pursuant to Article 15 of the UCMJ, administrative action, or discharge do not constitute criminal proceedings. The disposition must be submitted to the FBI using the following language:

- Summary Court-Martial: "Subject found guilty by summary court-martial, which does not constitute a criminal conviction"
- Article 15 of the UCMJ: "Non-judicial disciplinary action, which does not constitute a criminal conviction"
- Administrative Action: "Administrative paperwork" or "administrative discharge"

3. DODI 5505.14 (DNA (Deoxyribonucleic Acid) Collection and Submission requirements for Law Enforcement), currently in effect, 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 (CODIS).

a. Paragraph 1.2 (Policy). Defense Criminal Investigative Organizations (DCIOs), other DOD LEAs, DOD correctional facilities, the Coast Guard Investigative Service (CGIS), and commanders will collect and submit DNA samples from service members when their fingerprints have been collected pursuant to DODI 5505.11.

b. Paragraph 4.1 (Requests for Expungement). Current Service members from whom samples were collected and processed may request in writing that their DNA records be expunged if they are not convicted of any offense by general or special court-martial. This includes action generally inconsistent with such a conviction, such as non-judicial punishment, administrative separation, or referral to a summary court-martial.

4. Manual for Courts-Martial, in effect at the time, showed that violations of Article 108 (Selling or Otherwise Disposing of Military Property valued at \$1,000 or less) had maximum punishments of a bad conduct discharge, 1-year's confinement, and total forfeitures.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//