

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20230012869

APPLICANT REQUESTS: in effect, remove titling and remove her name from the subject block on DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 9 February 2023

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Attorney
- Appeal Enclosure 1 - DA Form 4833 (Commander's Report of Disciplinary or Administrative Action)
- Appeal Enclosure 2 - Letter from Attorney with Enclosures
- Appeal Enclosure 3 - Letter from Criminal Investigation Division (CID) with Legal Review
- Appeal Enclosure 4 - Excerpt from Army Regulation 195-2 (Criminal Investigation Activities)
- Appeal Enclosure 5 - Excerpt from Manual for Courts-Martial

FACTS:

1. The applicant states in January 2019, she was falsely accused of alleged abusive sexual contact by a fellow female Soldier in her unit. While she was properly found not guilty of this alleged offense at an Article 15, Uniform Code of Military Justice (UCMJ) hearing, her name is currently listed in the titling block and subject line of the DA Form 4833 related to her case which has continued to affect her military and professional career in the medical field. While the investigation and her case with CID concluded in 2019, her command did not closeout the DA Form 4833 until February 2023. She defers to her attorney.

2. Letter from her attorney, 24 July 2023, states, in pertinent part:

a. On 8 May 2023, the applicant requested that CID remove her name from the subject block of a DA Form 4833. On 12 July 2023, her request was denied.

b. Paragraph 4-4b of Army Regulation 195-2 (Criminal Investigation Activities) states, "requests to delete a person's name from the subject box will be granted if it is determined that credible information did not exist to believe that the individual committed the offense for which titled as a subject, at the time the investigation was initiated."

c. In May 2023, the attorney reviewed a complete copy of the CID investigation related to the applicant's alleged conduct from January 2019. A review of the records disclosed that she was "titled" for the offense of abusive sexual contact under Article 120, UCMJ on or about 20 January 2019.

d. In the applicant's case she was at her residence with her husband and their roommate on the night of the alleged offense. According to the applicant, her husband, and their roommate, that evening the alleged victim, who later made the Article 120 UCMJ allegations against the applicant, invited herself over to the residence to speak to the applicant about a private matter. That evening, the alleged victim spoke with the applicant for a few minutes in a "movie room" adjacent to the living room where her husband and their roommate were watching television, at the time. After spending only a few minutes at the residence, the alleged victim left and then later reported that the applicant improperly touched her in an unwanted sexual manner. However, no other witness, who was at the residence that evening, corroborates any portion of the alleged victim's claims, and no other witness reported or characterized the applicant's interactions with the alleged victim as either sexual or improper, in any way.

e. The offense of abusive sexual contact under Article 120, UCMJ contains the following elements:

- That the accused committed sexual contact upon another person; and
- That the accused did so without the consent of the other person.

"Sexual contact" means "touching or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any other person, with the intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person."

f. The applicant's alleged conduct, on its face and as corroborated by two other witnesses aside from her, does not meet the elements of Article 120, UCMJ, because she never touched the alleged victim in an unwanted sexual manner. The alleged victim claims the applicant touched her inappropriately, but the three other individuals and eyewitnesses, at the home that evening, each deny the applicant ever touching the alleged victim in such a manner. Therefore, in the attorney's legal opinion, she should never have been "titled" for the offense of abusive sexual contact under Article 120, UCMJ.

g. For the reasons above and based on the evidence provided in this appeal, the applicant requests her name be removed from the subject block of the DA Form 4833, dated 9 February 2023.

3. The applicant provides the following documents:

a. Letter from her attorney, which states, in pertinent part:

(1) The applicable Army Regulation at issue related to her request is Army Regulation 195-2. Paragraph 4-4b of this regulation which states, in part, "requests to amend or unfound offenses in U.S. Army Criminal Investigation Command Law Enforcement Reports (LER) will be granted only if the individual submits new, relevant, and material facts that are determined to warrant revision of the report. The burden of proof to substantiate the request rests with the individual. Requests to delete a person's name from the subject block will be granted if it is determined that credible information did not exist to believe that the individual committed the offense for which titled as a subject, at the time the investigation was initiated. "

(2) As noted in the investigation documents, CID interviewed and received a sworn statement from Specialist (SPC) C-, the alleged victim, and Mr. U-, the applicant's husband. CID also conducted a telephonic interview with Mr. R- G-, the U-'s roommate, but CID never sought to have him complete a sworn statement. Additionally, under the advice of counsel, at the time, the applicant invoked her legal rights and did not provide a sworn statement, during the CID investigation.

(3) Furthermore, in regards to the evidence collected, during the CID investigation, Mr. U- and Mr. G- disclosed the following relevant information: Both Mr. U- and Mr. G- stated they were inside the U-'s residence on the large leather sectional sofa only a few feet away from where SPC C- and the applicant sat together in the "game room" on the night SPC C- later alleged the applicant committed abusive sexual contact against her.

(4) Both Mr. U- and Mr. G- provided information that neither one of them heard or saw anything "out of the ordinary" between SPC C- and the applicant that night and "both seemed friendly" with one another.

(4) Both Mr. U- and Mr. G- stated that SPC C- abruptly came over to the U-'s residence to discuss an alleged "urgent" matter with the applicant, which SPC C- described as "I cant' tell you. I have to show you...".

(5) Both Mr. U- and Mr. G- confirmed they saw SPC C- and the applicant sitting on opposite ends of the couch in the "game room" located just a few feet away from where Mr. U- and Mr. G- were in the living room.

(6) The applicant's husband stated he went into the "game room" to see the applicant and SPC C- on at least two occasions, during the approximately 10 minutes that SPC C- visited their residence that evening.

(7) While the attorney understands that CID reviews a request to remove a titling decision with information available to the investigating Special Agent(s), at the time of the investigation, the attorney has collected several additional sworn statements from the applicant, her husband, and Mr. G- that together represent "new, relevant, and material facts" for consideration as part of the applicant's titling removal request in accordance with Paragraph 4-4b of Army Regulation 195-2.

(8) Simply put, the applicant should never have been "titled" for the offense of abusive sexual contact under Article 120, UCMJ. Aside from perhaps the bare allegations from SPC C-, little, if any, evidence or "credible information" existed, at the time in 2019 for CID to title the applicant with this offense. More importantly, even if CID had some "credible information" to potentially title her in 2019, the "new, relevant, and material facts" and evidence provided with this request, as contained in the sworn statements from the applicant, her husband, and Mr. G-, warrant the revision of the report and titling decision related to her case.

b. DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 9 February 2023 shows in pertinent part, the applicant's name listed under "offender information"; the offense abusive sexual contact, Article 120, UCMJ; and the date 20 January 2019. The commander's decision date was 21 November 2019. The action taken was nonjudicial punishment (Field Grade Article 15). She pled not guilty and was found not guilty of abusive sexual contact. The commander's remarks were found not guilty, during an Article 15 hearing. No further action taken. The name and signature of the commanding officer or reporting officer were redacted and the form was signed on 9 February 2023. The DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) and a redacted copy of the LER are available for the Board's review.

c. DA Form 2823 (Sworn Statement) from the applicant, 13 April 2023, states, in pertinent part:

(1) She is writing the statement in her defense based on the false allegations that were made against her by SPC C- C- on 24 January 2019. She offers this additional information in her defense as further justification that she should never have been "titled" by Army CID for the alleged offense of abusive sexual contact.

(2) While this investigation has been closed and adjudicated in her favor for well over three years, she initially invoked her rights under the advice of counsel and did not initially provide a statement to CID, during the time she was under investigation. She

elected not to speak to CID under the advice of her lawyer not because of any potential guilt or wrongdoing on her part.

(3) When she met SPC C- C- in January 2018, they were both assigned to the same unit as rear detachment. They bonded initially as they were both new to the unit and SPC C- took the applicant as a mentor. From the beginning of their service together, the applicant did what she could to help SPC C-, when she needed the applicant. For the most part, this consisted of the applicant providing advice to SPC C- regarding personal and professional matters. The applicant would also sometimes give SPC C- a ride to formations, the gym, work, or any errands SPC C- needed around that time, as she did not have a vehicle.

(4) During the first few months that the applicant knew SPC C- in 2018, SPC C- had expressed some issues she was having with a few of the male Soldiers at Fort Campbell who were making her "feel uncomfortable" or "hitting on her" so the applicant helped her through those situations. In fact, the applicant tried to do what she could for SPC C- as a friend in the unit and she did not prejudge SPC C- for anything that she was telling her regarding her issues, as it was none of the applicant's business unless SPC C- had asked for the applicant's help.

(5) Once SPC C-'s unit redeployed around April or May 2018, they were no longer in the same unit. At that time, SPC C- and the applicant still worked in the same building so the applicant would see her often and she would continue to seek the applicant's advice. During this time, SPC C- mostly sought the applicant's advice about her detachment sergeant who SPC C- complained a lot about. She hated her new unit and everyone was mean to her there. SPC C- would also routinely tell the applicant that she felt "singled out" by the detachment sergeant. However, having known the detachment sergeant and working with her, the applicant was very confused why SPC C- made such allegations against the detachment sergeant. Regardless, the applicant still listened to the things SPC C- would tell her regarding the detachment sergeant and she would give SPC C- advice and even provided her with the contact information for the hospital equal opportunity representative. The applicant does not know if any complaint was ever filed by SPC C-, at the time, because she and the applicant began to have less and less contact. After the applicant moved to a different building, she did not see SPC C- as much but when she did, SPC C- continually stated she wished for nothing more than to be transferred out of her unit.

(6) On 20 January 2019, the day in question, the applicant was at her home all day with her husband and Mr. R- G-. Throughout the night, she cleaned the house and drank some wine, but not to excess and she was not intoxicated when SPC C- later began to text message her before SPC C- went to their house that night. SPC C- stated she wanted to talk to the applicant that involved the applicant's husband and she had to show them. The applicant showed the text messages to her husband and Mr. G- They

thought it was odd and something might be wrong, so she encouraged SPC C- to go to their house.

(7) When SPC C- got to the house, Mr. G- answered the door and then SPC C- joined the applicant in the game room. The game room is adjacent to the living room, where the applicant's husband and Mr. G- were watching a football game. SPC C- hugged the applicant and then sat down next to her on the couch. The applicant remembers asking SPC C- what her text messages meant and she needed to speak with the applicant and her husband in person. SPC C- said that nothing was wrong, that she was doing better, and that she was happy. At that time, SPC C- then took out her tablet and was asking about the Wi-Fi password. The applicant was just sitting on the couch eating her dinner, while SPC C- was looking at something on her tablet. Roughly ten minutes after SPC C- arrived that night she told the applicant she was leaving but never said why she was leaving so abruptly.

(8) The applicant never approached or touched SPC C- in a sexual or improper manner. She also never insinuated any sexual relations or contact between them nor did she ever touch SPC C-'s body in any way that would suggest or imply sexual gratification. She did not try to kiss SPC C- and she has never acted in any way towards SPC C- other than as a friend and a mentor. SPC C- was someone who she had helped and looked out for in the past, which is another reason why the false allegations that SPC C- made against her were so hurtful. Furthermore, when SPC C- was at their house that night, she never went into any other room besides the game room; and she was only at their home for roughly 10 to 20 minutes. At the time SPC C- left, the applicant had just assumed she left because she could tell the applicant wanted to go to sleep and that she was not paying attention to what SPC C- was showing her on her tablet.

(9) The applicant's husband returned to the game room roughly ten minutes after SPC C- had arrived. The applicant was sitting on the couch in the same spot. He asked where SPC C- went. She told him she did not know and was ready for bed. When she went to bed, she texted SPC C- to ask if she made it home alright and to tell her the applicant was sorry for not paying more attention to what she was showing her on her tablet. The applicant felt like a bad friend. The applicant was in no way apologizing for any other reason. When she did not hear back from SPC C-, she got a little worried and even tried calling her but the call went to voicemail.

(10) The applicant and her husband drove to Maryland the next morning and remained there for the next four or five days. She still had not heard back from SPC C-, so she again apologized to SPC C- because she thought she had offended her. On the last day they were in Maryland, the applicant received a messages and phone calls from her unit asking her when she would be back in town. She told her leader when she would be back and asked if everything was all right. She was told they would discuss it

when she returned. She was told to report to her unit as soon as she returned. Once she arrived at Fort Campbell, she reported to her unit. She was met by her leadership and there was a military protection order and an allegation of sexual assault had been made against her by SPC C-. She could not believe SPC C-, who was a friend of hers, could falsely accuse her of something so serious.

(11) During the duration of the investigation, the applicant was flagged for ten very difficult months. She missed several opportunities for promotion to sergeant and she could not pursue the bachelor's program for health sciences because she had an adverse flag. She spent all of those months waiting for the false allegation and nightmare to come to an end, having no idea whatsoever about the claim SPC C- made against her until she received SPC C-'s statement as part of the Article 15 packet for her case. When she read the allegations against her, she could not believe what she was reading and it literally made her sick to see SPC C-'s false statement.

(12) In the documents that were released to her, through her attorney, there was an overwhelming lack of evidence to justify "titling" her for the alleged offense of abusive sexual contact that now reflects on her background check that she receives. SPC C- claimed she called a staff sergeant (SSG) that night, while in the bathroom directly adjacent to the game room and living room. However, SPC C- never went into the bathroom. In reality SPC C- lied about going into the bathroom that night, a fact which can be proven by both witnesses present including her husband and Mr. G-.

(13) In regards to the SSG SPC C- supposedly called, she was dating him, at the time she made her false allegations. In fact, at least three noncommissioned officers (NCO) in the unit knew about SPC C-'s relationship with the SSG. Each of these NCOs knew of the relationship between SPC C- and the SSG and each knew how adamant she was to receive and "expedited transfer" to Fort Sam Houston where the SSG was stationed.

(14) Furthermore, when you look at the SSG's statement he claimed that SPC C- called him on the 9th of December regarding the allegations. However, based on the statement, the SSG said SPC C- called him almost a month and a half prior to the allegations. The SSG was not at their house that night and he has no idea what occurred and what did not occur that evening. Additionally, Mr. G- did not hear anything or see anything that SPC C- had claimed occurred. Mr. G- never saw SPC C- go towards the bathroom. SPC C- even went as far as to claim the applicant was yelling at her and attempted to stop her from leaving. The events claimed by SPC C- did not occur. Her allegations are a complete and utter lie. There was never any credible evidence in this case, and the only alleged evidence against the applicant were the statements of SPC C- and her boyfriend, the SSG. The applicant wholeheartedly believes that SPC C- used her allegations against the applicant to her advantage to get

her out of an undesirable situation at Fort Campbell and then to get transferred closer to where her boyfriend resided in Texas.

(15) During the investigation in 2019, and the following years since, the applicant has suffered immensely. She has developed the inability to trust others or form meaningful relationships, and her marriage has suffered due to her increased depression and anxiety caused from this situation. Her career and education in healthcare have been delayed due to the criminal allegation or "titling" on her record for a crime she did not commit. Personally, she wishes she would have been more aggressive in her legal representation, during her investigation, but she did not think she needed to because she did nothing wrong and has never committed any criminal offense. Nevertheless, she is hopeful the additional information she has provided will assist in getting the "titling" decision removed, because she is innocent. Her only desire, at this time, is to be cleared of this crime she did not commit and to move on with her life and whatever may be left of her Army career following SPC C-s false allegations. She includes pictures of the layout of her house for the Board's review.

d. DA Form 2823 from Mr. R- C. G-, 25 March 2023, states in effect:

(1) He was at the applicant's house on the night of the allegations. After being there a few hours, the applicant received a text from a female friend of hers who he later learned was SPC C- C-. SPC C- stated she had a personal issue and needed someone to talk with. After some time, SPC C- went to the house. He and the applicant's husband were on the couch in the living room while the applicant and SPC C- were in the game room.

(2) He recalls the applicant's husband going to the game room to ask if the girls needed anything a few times that night. The last time the applicant's husband went to check on the girls, he noticed SPC C- had left. Mr. G- did not know she had left and did not hear the door open, when she left. It seemed very odd to him that the dogs did not alert to her leaving. The room the applicant and SPC C- were in was only a few feet from the living room. That's all he remembers about SPC C-.

(3) Sometime later the applicant and her husband told him what SPC C- accused the applicant of. He was completely shocked by the allegations because the applicant is a super sweet person and not in any way pushy on people. He was in the house the whole time and at no point did he ever hear any kind of commotion. If anything had happened in the game room, the dogs would have alerted them that something was going on. SPC C- was only in the house for a few minutes, during which time neither he nor the applicant's husband noticed or witnessed anything out of the ordinary.

e. DA Form 2823, from the applicant's husband, Mr. N- J. U-, 4 April 2023, states in effect:

(1) On 20 January 2019, he and the applicant invited Mr. G- to their house to watch football. The applicant received a text from SPC C- about needing to show him and the applicant something. The applicant was concerned something was wrong with SPC C- and said she could come to the house. The applicant prepared the game room, which was adjacent to the living room.

(2) SPC C- arrived shortly after. Mr. G- answered the door and SPC C- was surprised to see him, and walked quickly into the game room. Mr. G- returned to the living room. Mr. U- gave the applicant her dinner and went to the bathroom. After about 10 to 15 minutes, he noticed SPC C- was gone. He asked Mr. G- if SPC C- had left, but Mr. G- had not heard anything. He asked the applicant if SPC C- had left.

(3) After the allegations, he and the applicant found out SPC C- was bragging about her permanent change of station to be closer to her boyfriend, a SSG in the Army who ironically was one of the witnesses that the Army interviewed regarding SPC C-'s allegations even though the SSG was not at the house. They also found out that SPC C- was venting to the same Soldiers that she was being moved to Fort Bliss and not to Fort Sam Houston, where her boyfriend was stationed.

(4) SPC C-'s statement of what happened that night was so completely outrageous and fabricated that they were shocked and blindsided by the Army's investigation and allegations the applicant faced. SPC C-'s story did not add up, her witnesses' timelines did not sync, and her description of the applicant and claims of what the applicant allegedly did are absolutely false.

f. Letter from CID, 12 July 2023, along with a legal review of the case, states in pertinent part, after a review of the LER was completed in accordance with Public Law 116-283 section 545, it has been concluded that the amendment request is denied. The entire letter is available for the Board's review.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the Regular Army and entered active duty on 12 February 2013.

b. Order Number 147-014, 26 May 2020, promoted her to the rank of sergeant effective 1 June 2020.

c. Orders 006707143.00, 1 December 2023, promoted her to the rank of SSG effective 1 November 2023.

5. She remains in the Regular Army through immediate reenlistments.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents and the evidence found within the applicant's military records, the Board found that relief was warranted. The Board considered regulatory guidance including Department of Defense Instruction 5505.07. The Board determined a preponderance of the evidence shows an error or injustice occurred when the applicant was titled because probable cause does not exist to support the titling.

2. The applicant enlisted in the Regular Army on 12 February 2013 and served honorably. On 20 January 2019, a sexual assault investigation was initiated, and the Law Enforcement Report (LER) indicated probable cause existed to believe the applicant committed the offense of abusive sexual contact. However, subsequent proceedings and documentation do not support a sustained finding of guilt.

3. The Board notes that:

- The applicant was promoted to sergeant (SGT) on 1 June 2020 and later to staff sergeant (SSG) on 1 November 2023, indicating continued trust and performance
- A command review of the incident concluded with a finding of "Not Guilty" during an Article 15 hearing, and no further action was taken
- The Commander's endorsement supported the applicant's statement and clearly recorded the outcome as favorable to the applicant
- On 18 May 2023, the U.S. Army Criminal Investigation Division (CID) denied further adverse action, indicating no new or compelling evidence had emerged to support the original titling

4. The Board finds the applicant's personal statement credible and consistent with the outcome of the Article 15 hearing and subsequent administrative determinations. Given the absence of judicial or adverse administrative findings, and considering the sustained performance and promotions, the Board concludes that the initial titling resulted in an injustice.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XX :XX :XX GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was 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 the applicant's name from titling in all law enforcement records/systems.

X //signed//

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:

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. 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, establish 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//