

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20230013643

APPLICANT REQUESTS:

- in effect, removal of his name from the title block of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Reports (LER), 15 June 2017 and 19 November 2020
- a personal appearance hearing before the Board

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)
- five Sworn Statements, 12 June 2017
- five Sworn Statements, 13 June 2017
- CID Form 94 (Agent's Investigative Report), 15 June 2017
- Hohenfels CID Office Memorandum (LER – Initial Final), 15 June 2017, with a redacted version of the same report
- two DA Forms 4833 (Commander's Report of Disciplinary or Administrative Action), 5 September 2017 and 20 August 2020
- CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 14 August 2023
- CID Letter, 7 September 2023

FACTS:

1. The applicant states he was wrongfully titled for abusive sexual contact and cruelty and maltreatment of subordinates.
 - a. He was only prosecuted for the second offense because of an assumption that the first offense happened without any evidence. He did not talk to CID at Joint Base Lewis-McChord (JBLM) due to his sexual orientation.
 - b. When he turned himself in to CID in Germany, he was forced to stay in an interrogation room for over 7 hours and repeatedly told the same story. He only changed his story after a CID special agent (SA) told him, "If your stories match up your

battalion commander might go easy on you." He has a history of adjustment disorder and he will do anything to get away from the situation if feeling trapped. He told his battalion commander the same story and was punished for making a false official statement.

- c. He was married to a woman at the time, but bisexual, yet that is no one's business. The SA insinuated that he was a form of "not straight."
- d. He and everyone else were interrogated by their platoon sergeant before being investigated by CID. He was found "guilty" of the second offense only because of the first offense. It wasn't until he told his chain of command of his intent to raise the issue to division level that he was granted an opportunity to visit the division commander.
- e. Rumors were being spread about him, pushing a narrative that "LGBTQ individuals are predators." He did not talk to CID about the incident because he doesn't trust that law enforcement officials actually care about the truth; they are only looking for convictions.
- f. After having his second Article 15 conviction overturned, he was moved to another unit within his same brigade. He suffered retaliation from his chain of command and was not allowed to move off base, even though JBLM was over 95-percent occupied in barracks living quarters. He was promotable and had already finished the advanced leader course when the injustice happened. He was told he had to "prove I was adult enough to live off base," even though he met all the criteria by the division and brigade barracks management standard.

2. The 10 sworn statements taken by the Hohenfels CID Office on 12-13 June 2017 provide firsthand witness accounts of the events that occurred on 10-11 June 2017. The CID Form 94, 15 June 2017, details the witness statements, including the key statements below:

- a. At 1258 on 12 June 2017, [REDACTED] interviewed Specialist (SPC) [REDACTED] 527th Military Police (MP) Company. SPC [REDACTED] stated that while he was using the bathroom at a house party, the applicant walked in and stated, "your balls are bigger than mine." He was uncomfortable and left the bathroom and went downstairs to join the rest of the party. While downstairs, the applicant came up to him and patted him on the buttocks. This occurred several times throughout the night. SPC [REDACTED] video recorded interview was copied to a digital video disc.
- b. At 1730 on 12 June 2017, [REDACTED] interviewed SPC [REDACTED] 527th MP Company. SPC [REDACTED] stated he had been at SPC [REDACTED] house for a cookout with several other members of his unit and their girlfriends. After eating, the group had gone to the basement of the residence and started drinking alcoholic

beverages. He did not know who had invited the applicant to the group, but the applicant had shown up right before they started drinking. He was later told by SPC [REDACTED] 527th MP Company, that SPC [REDACTED] had stated the applicant had touched him, but believed it had to do with their level of intoxication. He approached them and separated SPC [REDACTED] from the group, and after talking with him, gave him guidance to call his supervisor, Staff Sergeant (SSG) [REDACTED] and get a ride to leave the party. About 5 minutes after SPC [REDACTED] left, the applicant did as well. SPC [REDACTED] provided a hand-drawn sketch of the basement room where everyone had been drinking and stated he did not see the applicant touch SPC [REDACTED] at any point in the evening.

c. At 1730 on 12 June 2017, [REDACTED] interviewed SPC [REDACTED] 527th MP Company. SPC [REDACTED] stated that while at a house party at SPC [REDACTED] house, the applicant showed up. Due to recent events within the company, he decided it was time to leave the party. As he was leaving the party, SPC [REDACTED] told him the applicant had been touching him. He did not get SPC [REDACTED] to elaborate on what "touching" meant. As he was getting into his car, SPC [REDACTED] told him the applicant had grabbed SPC [REDACTED] genitals and buttocks.

d. At 1731 on 12 June 2017, [REDACTED] interviewed SPC [REDACTED] 527th MP Company. SPC [REDACTED] stated SPC [REDACTED] informed him and other Soldiers within his residence that he was sexually assaulted by the applicant. He did not believe the applicant sexually assaulted anyone, as the applicant is not the type of person who would do something like that.

e. At 1734 on 12 June 2017, [REDACTED] interviewed SSG [REDACTED] 527th MP Company. SSG [REDACTED] stated SPC [REDACTED] informed him that he was sexually assaulted by the applicant. The information provided by SPC [REDACTED] was confirmed after speaking to Soldiers who were present at the party.

f. At 1300 on 13 June 2017, [REDACTED] conducted a search of the applicant incident to apprehension for weapons and destructible evidence in accordance with Manual for Courts Martial Rule 314, which revealed no weapons or items of evidence. [REDACTED] observed the applicant place his personal belongings in a wall locker and secure it while maintaining the key. The applicant was seated in the interview room and advised that the room was being video recorded and he was not free to leave at this time.

g. At 1343 on 13 June 2017, [REDACTED] advised the applicant of his legal rights, which he waived and provided a sworn statement. The applicant admitted that while at a party at SPC [REDACTED] house, he walked into a bathroom while SPC [REDACTED] was already there and told SPC [REDACTED] to "put his balls away." The applicant stated he smacked SPC [REDACTED] buttocks and invited SPC [REDACTED] to go outside.

3. He was serving in the Regular Army in the rank/grade of sergeant (SGT)/E-5 when he became the subject of a 2017 CID LER for violating Article 120 (Abusive Sexual Contact) and Article 93 (Cruelty and Maltreatment of Subordinates) of the Uniform Code of Military Justice (UCMJ). The investigation noted the applicant was accused of touching SPC [REDACTED] in a sexual manner on or about 10-11 June 2017. The summary noted:

a. (Redacted) was interviewed and stated the applicant patted his buttocks on several occasions at a party. (Redacted) also stated the applicant made comments to him several times, which coupled with the unwanted touching caused him to fear for his safety and believe he may be further assaulted. The applicant was advised of his rights and admitted to touching (Redacted) on the buttocks. The applicant further stated he harassed (Redacted) due to the fact that he felt it was funny, and he was trying to make (Redacted) upset due to rumors surrounding his sexual orientation.

b. On 15 June 2017, Captain [REDACTED] Office of the Staff Judge Advocate, Hohenfels Training Area, opined probable cause existed to believe the applicant committed the offense of abusive sexual contact and cruelty and maltreatment of subordinates. Captain [REDACTED] stated no additional investigative efforts were required and there was sufficient evidence to provide to command for consideration of action.

4. The DA Form 4833, 21 November 2017, lists the applicant as the offender for the offenses of abusive sexual contact and cruelty and maltreatment of subordinates. The report shows the commander's decision date as 5 September 2015 and block 4 (Action Taken) shows the applicant received field-grade nonjudicial punishment under the provisions of Article 15 of the UCMJ. Block 10a (Commander's Remarks) states: "SM [Service member] received a[n] FG [field-grade] Art 15 [Article 15] for Fraternization/Failure to obey order or regulation (violation of Article 92 UCMJ) and Assault (violation of Article 128 UCMJ). Punishment imposed included: Reduction to the Grade of E4, Forfeiture of 1/2 pay per month for two months, Extra Duty for 45 days, and Restriction for 45 days suspended for six months." The offenses of abusive sexual contact and cruelty and maltreatment of subordinates were dismissed (criminally).

5. His records do not contain a corresponding DA Form 2627 (Record of Proceedings under Article 15, UCMJ).

6. He was again promoted to the rank/grade of SGT/E-5 effective 1 November 2018.

7. He was serving in the rank/grade of SGT/E-5 when he became the subject of a 2019 CID LER (Law Enforcement Report – 1st Final Supplemental), 19 November 2020, for violating Article 120 (Abusive Sexual Contact), and Article 93 (Cruelty and Maltreatment of Subordinates) of the UCMJ. The investigation noted the applicant was accused of

making sexual gestures and touching SPC (Redacted) in a sexual manner without his consent on or about 30 November 2019.

a. The summary noted:

(1) SA (Redacted) was notified by Mrs. (Redacted), Victim Advocate, 1st Battalion, 2d Stryker Brigade Combat Team, JBLM, that SPC (Redacted) reported the applicant touched him in a sexual manner without his consent.

(2) SPC (Redacted) was interviewed and stated that while in his barracks room, the applicant made sexual gestures and touched him in a sexual manner without his consent.

(3) The applicant was advised of his rights, which he invoked and requested legal counsel.

(4) Witness interviews corroborated SPC (Redacted)'s statement that he disclosed the unwanted sexual contact to them in the hours following the incident. Analysis of digital evidence further confirmed SPC (Redacted) disclosed the unwanted sexual contact directly following the incident.

b. On 7 May 2020, (Redacted), General Crimes Trial Counsel, JBLM, opined probable cause existed to believe the applicant committed the offense of abusive sexual contact. (Redacted) further opined probable cause did not exist to believe the applicant committed the offense of cruelty and maltreatment for failure to substantiate all the required elements. No further investigative activity was required. There was sufficient evidence to provide to the commander for consideration of action.

8. The DA Form 4833, lists the applicant as the offender for the offenses of abusive sexual contact. The report shows the commander's decision date as 20 August 2020 and block 4 (Action Taken) shows he received field-grade nonjudicial punishment under the provisions of Article 15 of the UCMJ. Block 10a (Commander's Remarks) states: "On 20 Aug[ust] 2020, SM [service member] was found guilty of Abusive Sexual Contact during a[n] FG ART 15 [field-grade Article 15]. SM received reduction in rank from E-5 to E-4; Forfeiture of pay \$505 for two months; 45 days of extra duty and 45 days of restriction. Updated on 28 August 2023 to take the offense of cruelty and maltreatment off."

9. His records do not contain a corresponding DA Form 2627.

10. The Fort Lewis CID Office memorandum (Law Enforcement Report – 1st Final Supplemental), 19 November 2020, shows the Military Justice Advisor, Office of the Staff Judge Advocate, JBLM, requested reopening the investigation after learning the

applicant provided an alibi witness for the offense to his Brigade Commander, 1st Battalion, 2d Stryker Brigade Combat Team, JBLM, during an open-door policy meeting. (Redacted) requested that this office reapproach the applicant, obtain the identity of the alibi witness, and conduct an interview.

a. The summary noted:

- (1) The applicant was re-advised of his rights, which he invoked and requested legal counsel.
- (2) Efforts to identify the alibi witness met with negative results.

b. On 16 November 2020, the Senior Special Victim's Prosecutor, I Corps, Office of the Staff Judge Advocate, JBLM, opined "probable cause existed to believe the applicant committed the offense of abusive sexual contact. No further investigative activity was required. There was sufficient evidence to provide to the commander for consideration of action."

11. The CID memorandum from the attorney/advisor (Legal Review of Request for Amendment of Record – (Applicant)), 14 August 2023, states that based on the review of the LERs and amendment packet, there is probable cause to believe the applicant committed the offenses for which he was titled, with the exception of Article 93 (Cruelty and Maltreatment of Subordinates), UCMJ.

12. The CID Western memorandum (Report of Investigation (ROI) – 2nd Final Supplemental), 28 August 2023, was generated to document the removal of the applicant from the title block for the offense of cruelty and maltreatment per the amendment request received and approved by CID.

13. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged from active duty in the rank/grade of SGT/E-5 on 31 August 2023. He completed 9 years, 7 months, and 28 days of net active service during this period, including 4 years, 4 months, and 1 day of foreign service. He was awarded or authorized the:

- Army Commendation Medal (2nd Award)
- Army Achievement Medal (4th Award)
- Army Good Conduct Medal (3rd Award)
- U.S. Coast Guard Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Korea Defense Service Medal

- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Driver and Mechanic Badge (Mechanic)

14. The CID letter from the Chief, Freedom of Information Act/Privacy Act Division, 7 September 2023, informed the applicant that his amendment request was partially granted. The CID ROI had been updated removing him from the title block for cruelty and maltreatment of subordinates; however, he would remain titled for abusive sexual contact.

15. On 20 February 2024, the Army Review Boards Agency Case Management Division provided the applicant with a copy of the CID LER via email to allow him the opportunity to submit comments within 15 days. The applicant did not respond.

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 not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found that probable cause did exist and continues to exist to believe the applicant committed the offense of abusive sexual contact for Law Enforcement Reports [REDACTED] and [REDACTED]. Based on a preponderance of the evidence, the Board determined the applicant's name should remain as the subject of both CID LERs in question

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

[REDACTED] [REDACTED] [REDACTED] 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.

4/1/2025

XCHAIRPERSON


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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
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. 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//