

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20230014073

APPLICANT REQUESTS:

- expunction of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER), 1 April 2022, and all associated documents from the CID, Defense Central Index of Investigations (DCII), and other federal databases
- a personal appearance 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)
- Self-authored Letter, 5 September 2023
- Self-authored Letter, 1 September 2023 (addressing sexual assault and false official statements allegations and subsequent dismissal)
- Self-authored Letter, 1 September 2023 (denial of expungement – (Applicant))
- Self-authored Letter, 1 September 2023 (appeal against the denial of expungement – (Applicant))
- U.S. Army Legal Services Agency, Headquarters and Headquarters Battalion, Eighth Army, Memorandum (Interview of First Sergeant (1SG) K____, dated 2 March 2021), 5 March 2021
- U.S. Army Legal Services Agency, Headquarters and Headquarters Battalion, Eighth Army, Memorandum (Telephonic Interview of Specialist (SPC) A____, dated 4 March 2021), 16 March 2021
- Headquarters, 2d Infantry Division/Republic of Korea-United States Combined Division, Memorandum for Record (Interview of Sergeant (SGT) D____ M. S____, dated 5 March 2021), 16 March 2021
- Applicant's Declaration, 18 May 2021
- Transcripts, exported 10 January 2022 (3 pages) (presumed to be from the investigation that led to court-martial proceedings)
- Headquarters, 2d Infantry Division, Memorandum (Dismissal of Referred Charges – United States v. (Applicant)), 16 February 2022
- Statement of Trial Results, 16 February 2022, with Statement of Trial Results Findings Worksheet
- U.S. Court-Martial Judgment of the Court, 24 February 2022

- Counsel's Memorandum (Federal Bureau of Investigation (FBI) Background Record Explanation), 9 December 2022
- CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 8 June 2023
- CID Letter, 17 August 2023

FACTS:

1. The applicant states he requests expungement of the CID LER, 1 April 2022, from the CID database and all other federal criminal databases. He notes the following areas of concern:

a. Misrepresentation of Statements to Law Enforcement. The legal review states: "When law enforcement questioned [Applicant] at a later time, he admitted he had sexual intercourse with the female Soldier but stated it was consensual." He must emphasize that this characterization is incorrect. Outside their initial interaction, there is no recorded evidence of subsequent engagement with law enforcement or any declaration beyond the comprehensive statement presented in the MRE [Military Rule of Evidence] 412 Motion."

b. Alleged Victim's Questionable Credibility. The memorandum, 2 March 2021, revealed that during an interview with Captain (CPT) E____ R. I____, 1SG K____ stated in subsection H that Private First Class (PFC) M____ previously made a false rape allegation, which resulted in her estrangement from her parents. This documented claim substantially challenges PFC M____'s credibility. Making decisions about his record based on allegations from an individual with such a questionable history is unjust and poses a severe threat to his reputation.

c. Discrepancies Leading to Charge Dismissal. The foremost reason for the prosecutors' request for dismissal was the contradictory accounts provided by witnesses regarding the alleged victim's statements about his actions. When confronted, the alleged victim's account varied, further showcasing these inconsistencies. Coupled with concerns about her credibility, these factors underscore the lack of reliable evidence, amplifying his plea for expungement.

d. Lack of Probable Cause. Given the glaring discrepancies in witness accounts and the prosecution's decision to dismiss the charges due to insufficient probable cause, it's essential to recognize the weight of such decisions. The prosecution's acknowledgment of a lack of grounding for the charges serves as a clear signal that the consequences of an unsubstantiated claim should no longer affect him.

e. Relevance of the Department of Defense (DOD) Instruction 5505.07 (Titling and Indexing in Criminal Investigations). Regarding DOD Instruction 5505.07 on titling and indexing:

(1) Probable Cause and Insufficiency of Evidence. Section 3.2a specifies grounds for correction or expungement when probable cause is absent or when evidence is inadequate. In his situation, probable cause is void, as illustrated by witness inconsistencies and the dismissal by the prosecutor. The evidence presented was insufficient to confirm the alleged offense, as evidenced by inconsistent witness accounts and the alleged victim's questionable credibility.

(2) Consideration of Corroborating Evidence, Adverse Actions, and Their Outcomes. Per Section 3.2b, there is a glaring lack of corroborating evidence against him. No adverse actions were taken against him. The charges were dropped and he faced no repercussions, and left the U.S. Army with an honorable discharge.

(3) Absence of Clear DOD Implementation Guidance. DOD has not yet provided guidance in accordance with Public Law 116-283. Given this gap, he urges a more individualized approach, one that considers the specifics of each case instead of a broad application of "probable cause." Considering the points outlined, there is an evident oversight in evaluating his record. The blend of misrepresentation, the alleged victim's questionable credibility, witness discrepancies, lack of probable cause, and the guidelines from DOD Instruction 5505.07 have unjustly tarnished his standing. Correcting this oversight by expunging the record is both justifiable and a necessary step toward justice.

2. He additionally addresses the following issues:

a. Addressing Sexual Assault and False Official Statements Allegations and Subsequent Dismissal.

(1) In June 2020, he met a female Soldier through a mutual friend who was performing staff duty at the time. They agreed to meet later that evening for drinks in his room. Later that evening their conversation became more intimate and led to a consensual sexual encounter between them.

(2) The following day, an allegation was made against him, claiming that he had forced the Soldier into performing oral and vaginal sex. He was questioned by CID agents and he initially denied any sexual contact, due to his incomplete recollection of the events due to alcohol consumption. However, he knew his character and was certain that he would never force anyone into performing a sexual act. He admittedly told the CID agent and offered to provide his deoxyribonucleic acid (DNA) material to prove his innocence. As his memory returned a few days later, he started remembering

even the finest details. He wished to inform CID of the consensual nature of their encounter and everything he knew, but his lawyer advised against it. Around October 2020, he was officially charged with sexual assault and making a false official statement.

(3) The alleged victim provided different and inconsistent versions of her story to supervisors, investigators, and prosecutors, ultimately leading to the prosecution's decision to record conversations with her, which was stated to be a significant deviation from their policy. On the eve of the trial, his defense team interviewed three witnesses who were the alleged victim's supervisors and her husband, and discovered she had been dishonest about court dates, medical appointments, and other trial proceedings to avoid work. Due to the lack of probable cause, the case against him was dismissed. He was allowed to reenlist in the Army, but he chose to leave and received an honorable discharge.

b. Denial of Expungement. He was accused of a crime that was dismissed and most people have their records expunged. He is requesting the same outcome. He was falsely accused and his case was dismissed for lack of probable cause.

c. Appeal Against the Denial of Expungement. He notes a lack of consistency in the utilization of law and secretarial authority in CID's denial of his record expungement. The charges against him were dismissed for lack of probable cause.

3. He enlisted in the U.S. Army Reserve under the Delayed Entry/Enlistment Program on 7 November 2016 for a period of 8 years with an obligation to enlist in the Regular Army for a period of 4 years on or about 9 January 2017.

4. He enlisted in the Regular Army on 11 January 2017 in pay grade E-1. He was promoted to the rank/grade of specialist/E-4 effective 1 August 2018.

5. The redacted CID LER, 1 October 2020, shows the Camp Humphreys CID Office, Korea, U.S. Armed Forces Pacific, was notified by (Redacted) that (Redacted) was sexually assaulted by the applicant on 28 June 2020.

a. The investigation revealed the applicant denied he sexually assaulted (Redacted) and stated he never touched her at all that night. The applicant agreed to undergo a polygraph examination to verify the truthfulness of his statement.

b. A witness stated the applicant approached him and stated: "hypothetically if two people are having consensual sex and one changes their mind, is that still considered sexual assault."

c. The applicant was afforded the opportunity to undergo a polygraph examination; however, he invoked his right and requested an attorney.

d. The Defense Forensic Science Center's examination revealed (Redacted) DNA was detected on the applicant's penis.

e. The investigation noted the following statutes/offenses under the Uniform Code of Military Justice (UCMJ) were considered with this report:

- Article 120 (Sexual Assault)
- Article 107 (False Official Statement)

f. (Redacted) opined probable cause exists to believe the applicant committed the offenses of sexual assault and making a false official statement. No additional investigative efforts are required. There is sufficient evidence to provide to command for consideration of action.

6. The applicant's declaration, 18 May 2021, states he is accused in a court-martial referred on 19 March 2021. On Saturday, 27 June 2020, he met A.V. for the first time. He texted A.V., asking what she wanted to talk about and drink. She came to his room and they started drinking. They started talking about tattoos and she pulled her sweater down and showed the tattoos on her chest, which was her husband's hand and a picture of a dog with glasses. She noted her husband was a cadet in Colorado and it had been a while since they saw each other and have not been intimate. He asked if they had an open relationship and she said, "kind of." She mentioned that her husband is bisexual and talked about their sexual interactions. Based on their sexually charged conversations, he believed she was interested in a sexual encounter and at no point did he feel she expressed any discomfort with anything they were doing (see attachment for details).

7. The U.S. Army Legal Services Agency, Headquarters and Headquarters Battalion, Eighth Army, memorandum (Interview of 1SG K____, dated 2 March 2021), 5 March 2021, notes CPT E____ R. I____, Special Victim Litigator, and SSG E____ L. P____-P____, Special Victim Prosecutor Noncommissioned Officer, interviewed 1SG K____ about the incident on 2 March 2021. He was called directly by SPC A____. He was upset that proper Sexual Harassment/Assault Response and Prevention Program protocols had not been followed and called the 2d Infantry Division Sexual Assault Response Coordinator. He does remember his conversation with SPC A____ regarding the assault. He referred them to talk to two other Soldiers.

8. The U.S. Army Legal Services Agency, Headquarters and Headquarters Battalion, Eighth Army, memorandum for record (Telephonic Interview of SPC A____, dated 4 March 2021), 16 March 2021, notes CPT E____ R. I____, Special Victim Litigator,

and SSG E____ L. P____-P____, Special Victim Prosecutor Noncommissioned Officer, telephonically interviewed SPC A____ about the incident on 4 March 2021. He recalled that the applicant would throw a lot of parties. He was working on staff duty on the date of the incident and noted the applicant and PFC M____ were hanging out and drinking. Later in the night he received a text from the applicant telling him that PFC M____ was drunk. He felt as if PFC M____ were just dumped on him. At the elevator she started saying "he raped me" or words to that effect, multiple times. However, he considers her to be untruthful.

9. The Headquarters, 2d Infantry Division/Republic of Korea-United States Combined Division, memorandum (Interview of SGT D____ M. S____, dated 5 March 2021), 16 March 2021, notes CPT C____ D. J____, Special Victim Prosecutor, and SPC D____ C. B____, Litigation Paralegal, interviewed SGT S____ on 4 March 2021 about the incident.

10. The applicant provided transcripts that were exported on 10 January 2022 (37 pages) (presumed to be from the investigation that led to the court-martial proceedings) that discuss the incident in question (see transcripts for details).

11. The Headquarters, 2d Infantry Division, memorandum (Dismissal of Referred Charges – United States v. (Applicant)), 16 February 2022, shows the commanding general directed the trial counsel to withdraw and dismiss the charges and their specifications against the applicant referred on 23 March 2021. It further notes pursuant to Rule for Courts-Martial 401(c)(1), the charges and specifications are withdrawn and dismissed without prejudice effective this date.

12. The Statement of Trial Results shows in:

- a. Administrative Section, block 1 (Name of Accused), the applicant's name;
- b. Administrative Section, block 3 (Pay Grade), his pay grade as "E-4";
- c. Administrative Section, block 7 (Court-Martial Forum), "general court-martial";
- d. Findings (Attach Findings Worksheet) Section, "See attached findings worksheet";
- e. Remarks Section, block 25 (Remarks), "On 16 February 2022, the Charges and Specifications were withdrawn and dismissed by the convening authority, prior to trial"; and
- f. Remarks Section, block 26 (Name of Judge), the name, rank, and signature of the military judge who signed the form on 16 February 2022.

13. The Statement of Trial Results Findings Worksheet shows in:

- a. Administrative Section, block 1 (Name of Accused), the applicant's name;
- b. Administrative Section, block 3 (Pay Grade), his grade as "E-4";
- c. Administrative Section, block 7 (Court-Martial Forum), "general court-martial";
- d. Findings (Attach to Statement of Trial Results):

(1) Charge I, Article 107, UCMJ, specification: "In that [Applicant], U.S. Army, did, at or near Camp Humphreys, Republic of Korea, on or about 28 June 2020, with intent to deceive, make to Special Agent A.B., an official statement, to wit: "I did not have sex with her and never sexually touched her," or words to that effect, which statement was totally false, and was then known by the said [Applicant], to be so false." He entered a plea of "not guilty" and the charge was "withdrawn by convening authority";

(2) Charge II, Article 120, UCMJ, specification 1: "In that [Applicant], U.S. Army, did, at or near Camp Humphreys, Republic of Korea, on or about 27 June 2020, commit a sexual act upon Private First Class D.C.M., by penetrating Private First Class D.C.M.'s mouth with his penis, without the consent of Private First Class D.C.M." He entered a plea of "not guilty" and the specification was "withdrawn by convening authority"; and

(3) Charge II, Article 120, UCMJ, specification 2: "In that [Applicant], U.S. Army, did, at or near Camp Humphreys, Republic of Korea, on or about 27 June 2020, commit a sexual act upon Private First Class D.C.M., by penetrating Private First Class D.C.M.'s vulva with his penis, without the consent of Private First Class D.C.M." He entered a plea of "not guilty" and the specification was "withdrawn by convening authority."

14. The U.S. Court-Martial Judgment of the Court, 24 February 2022, contains the following entries:

The Statement of Trial Results in this case, dated 16 February 2022, is incorporated by reference in, and attached to, this Entry of Judgment. The court-martial terminated after arraignment and before findings.

Any post-trial action by the convening authority: None.

Any ruling, order or other determination of the military judge that affects a plea, a finding, or the sentence: All rights, privileges, and property of which the accused may have been deprived by virtue of these proceedings will be restored.

The court document was signed by the military judge and the judgment was entered on 24 February 2022.

15. The DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 30 March 2022, lists the applicant as the subject.

a. The Referral Information lists the offenses of Article 120, UCMJ, and Article 107, UCMJ, on 28 June 2020. On 30 March 2022, the commander:

(1) placed a checkmark in the "No" box by "Sexual Harassment" for the offense of "Sexual Assault" and a checkmark in the "No" box by "Action Taken." In the "Reason" block, he enter the statement: "Charges Dismissed by Courts-Martial Convening Authority"; and

(2) placed a checkmark in the "No" box by "Sexual Harassment" for the offense of "False Official Statement" and a checkmark in the "No" box by "Action Taken." In the "Reason" block, he enter the statement: "Charges Dismissed by Courts-Martial Convening Authority."

b. No action was taken.

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

- Case History: 00169-2020-CID138-XXXXXX
- Pursuant to Rule for Courts-Martial 401(c)(1) and 604, the charges and specifications are withdrawn and dismissed on 16 February 2022.

d. The Commanding Officer or Reporting Officer section shows a checkmark was placed in the "Yes" box by "Was a DNA sample collected from the offender?" The commander's name, grade, and signature were redacted with a signature date of 30 March 2022.

16. The CID LER – Serious Incident Report (Category 3)/1st Final Supplemental), 1 April 2022, contains the same information as stated in the CID LER, 1 October 2020, and includes the following:

a. This office received the Armed Forces Medical Examiner System Toxicology Examination Report, which revealed (Redacted) blood test (Redacted).

b. The Defense Forensic Science Center Digital Evidence Report revealed three files from the closed-circuit television footage of Building 6706, U.S. Army Garrison-Humphreys, were recovered. A review of the files revealed a male and female walking

in the hallway, while the female is holding on to the male and appears to have trouble walking. The female appears to also be crying, while being escorted by two males.

c. On 26 May 2021, the applicant's defense attorney provided a declaration statement wherein the applicant stated the sexual acts between him and (Redacted) were consensual. The applicant stated (Redacted) never expressed discomfort with anything they were talking about or doing during the night of this incident.

d. Coordination was made with (Redacted) who stated no change in the previously provided opinion was required based on the facts of this investigation.

17. His Army Military Human Resource Record (AMHRR) does not contain the DA Form 4833 or either of the CID LERs.

18. His AMHRR does not contain the Statement of Trial Results, Statement of Trial Results Findings Worksheet, U.S. Court-Martial Judgment of the Court Statement of Trial, or any other allied documents related to an investigation or proceedings related to a court-martial.

19. The DA Form 7852 (Individual Ready Reserve Statement of Understanding), 25 February 2022, shows he understood he was being transferred to the U.S. Army Reserve Individual Ready Reserve to fulfill his remaining statutory military service obligation.

20. He was honorably released from active duty by reason of completion of required active service on 31 March 2022 and transferred to the U.S. Army Reserve Control Group (Annual Training). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 years, 2 months, and 20 days of active service this period.

21. Counsel's memorandum for all reviewing authorities (FBI Background Record Explanation), 9 December 2022, states:

a. During the investigation process, CID is required by DOD Instruction 5505.11 (Fingerprint Card and Final Disposition Report Submission Requirements) to obtain fingerprints from anyone they investigate and send those fingerprints to the National Crime Information Center (NCIC). The list of offenses required to be reported is extensive and contains nearly all possible Articles of the UCMJ that a service member could be charged with. The requirement to take fingerprints applies to every person who is investigated for any offense whatsoever, regardless of whether they are actually arrested or charged.

b. In the military system, it is rare that someone is "arrested" by being detained by law enforcement. However, NCIC does not have a method of distinguishing between someone arrested by civilian law enforcement and "booked" accordingly, and a service member who is simply investigated by the service branch's investigatory body.

c. In the applicant's case, he was not arrested. He was investigated for an allegation of sexual assault, which he consistently denied. Charges were brought against him for the first time at Camp Humphreys, Korea, on 23 October 2020. Those charges were withdrawn and dismissed on 23 March 2021. Charges were then brought against him at Joint Base Lewis-McChord, WA, the same day. Motions hearings were held on 19 May 2021, 15 June 2021, 24-29 August 2021, and 29-30 November 2021.

d. A fifth motions hearing was scheduled for 17 February 2022. Through the discovery and motions process, it was revealed that the person alleging the offense was a habitual liar, going so far as to invent a person who did not exist to try to support her claim against the applicant. She made claims about actions he took, but security footage revealed the claims were entirely false. Even upon viewing the security footage, the complainant continued to assert that what she was saying was true and the video footage was not. Immediately prior to the motions hearing in November, the Government turned over a substantial amount of evidence that the complainant had been using her claimed victim status to receive medical treatment for a litany of false claims. The defense interviewed three witnesses who were her supervisors and discovered she had been lying about things, such as court dates, medical appointments, and other trial proceedings to avoid going to work. She had worked approximately 5 days a month for nearly 8 months.

e. The complainant had also told vastly different stories on a variety of occasions. She told different stories to her supervisors, investigators, and prosecutors. She told at least four different versions of the story to the prosecution. These were not small inconsistencies. The stories became so hugely different that the prosecution determined they needed to record the conversations – a significant break from policy – to explain to their leadership why the charges should be dismissed.

f. It became apparent to all parties that the complainant was lying from the start. As a result, the prosecution requested dismissal of the charges for lack of probable cause.

22. The CID memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 8 June 2023, states that based on the review of the LER and amendment packet, the attorney/advisor found there is probable cause to believe the applicant committed the offenses for which he was titled.

a. Public Law 116-283, section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigative Reports, the Department of Defense

(DOD) DCII, and Other Records and Databases), required the Secretary of Defense to establish and maintain a policy and process for a person to request their DOD law enforcement record be amended, corrected, expunged, or otherwise removed when it is determined probable cause did not or does not exist to believe that 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.

b. The applicant was titled for violation of Article 120 (Sexual Assault) and Article 107 (False Official Statement) when he forced a female Soldier to perform oral sex on him and had sexual intercourse with her without her consent and against her will. When questioned by law enforcement, the applicant lied and stated he did not have sexual intercourse with the female Soldier. When law enforcement questioned the applicant at a later, he admitted he had sexual intercourse with the female Soldier but stated it was consensual. Based on his review of the LER and amendment request, he agreed with the trial counsel that there was probable cause to believe the applicant committed the offenses for which he was titled.

c. 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.

23. The CID letter, 17 August 2023, responded to the applicant's request for expungement of his arrest record and fingerprints from the FBI's criminal database, as well as the destruction of any and all DNA logs associated with his case within the files of CID, and states, in part:

a. After a review of the LER was completed in accordance with Public Law 116-283, section 545, CID concluded that his amendment request is denied.

b. In relation to the redacted legal review, the names of law enforcement personnel, as well as names, social security numbers, and other personal items of information pertaining to third parties are withheld pursuant to Freedom of Information Act exemptions which protect the personal privacy of other individuals mentioned in the report. Moreover, disclosing the withheld information would harm an interest protected by these exemptions.

c. These withholdings also comply with the Privacy Act because the responsive records are maintained in a system of records that is exempt from the access provisions of the Privacy Act.

d. This partial denial is made on behalf of the CID Director, the initial denial authority for CID records under the Freedom of Information Act.

e. The applicant has the right to appeal to the Office of the Army General Counsel, the Army's appellate authority. If he decides to appeal at this time, his appeal must be submitted within 90 days of the date of this letter. In the applicant's appeal, he must state the basis for his disagreement with the partial denial and should state the justification for its release. The applicant's appeal is made through this Division and should be addressed to the Chief, Department of the Army Criminal Investigation Division, Freedom of Information Act/Privacy Act Division, 27130 Telegraph Road, Quantico, VA 22134, for forwarding to the Office of the Army General Counsel. Please note the appeal should address information denied in this response and cannot be used to make a new request for additional or new information.

f. The applicant may appeal the denial of his amendment by submitting a request to the Army Review Boards Agency, Army Board for Correction of Military Records (ABCMR), 251 18th Street South, Suite 385, Arlington, VA 22202-3531.

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 not 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 did not occur when the applicant was titled because probable cause existed and still exists to support the titling.

a. The evidence shows on 28 June 2020, law enforcement were notified of an incident concerning the applicant for the offenses of sexual assault and false official statement as violations under the Uniform Code of Military Justice (UCMJ).

b. 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. The law enforcement report contains an opinion that shows probable cause existed to believe the applicant committed the offenses of sexual assault and false official statement.

c. The Board next considered whether probable cause still exists to believe the offense occurred or the person committed the offense. The Board noted the applicant's contention of the alleged victim's questionable credibility having previously made a false allegation.

d. The Board considered the totality of the evidence, including the applicant's statement and determined the evidence does not support the applicant's account of the

events, including his initial report of not having sexual intercourse with the victim and then later stating it was consensual.

e. Based on the preponderance of evidence available for review, the Board determined the evidence presented was not sufficient to warrant a recommendation for relief.

2. Since the court-martial charges were withdrawn and are not filed in the applicant's AMHRR, copies of the U.S. Court-Martial Judgment of the Court; Statement of Trial Results; Statement of Trial Results Findings Worksheet; and Headquarters, 2d Infantry Division, memorandum (Dismissal of Referred Charges – United States v. (Applicant)), 16 February 2022; provided by the applicant will not be filed in the applicant's AMHRR with the contents of this record of proceedings once finalized, as well as all allied documents provided to the Board regarding the court-martial process.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

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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.

REFERENCE:

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. 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//