

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230014449

APPLICANT REQUESTS:

- removal of his name and all personally identifiable information from the title block of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER), 15 October 2019, and the Defense Central Index of Investigations (DCII)
- 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)
- Memorandum for Army Board for Correction of Military Records (ABCMR) (Request to Amend LER), 2 October 2023
- U.S. Army Health Clinic, Wiesbaden, Memorandum for B____ L. G____ (Family Advocacy Case Review Committee (CRC) Incident Determination), 15 February 2019
- Son's Psychological Evaluation (translated from German language), 17 October 2020
- Memorandum for President of the Promotion Review Board (Rebuttal Matters – (Applicant)), 19 October 2020, with 20 Enclosures (Memoranda)
- Officer Record Brief, 14 March 2023
- Son's Affidavit, 26 July 2023
- CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 7 August 2023
- CID Letter, 8 August 2023

FACTS:

1. The applicant states he was wrongfully titled.

a. On 17 January 2019, his son reported that he lifted him and choked him on 28 July 2012 and 1 October 2017; however, he was away performing temporary duty in Italy when his son made the allegations. Prior to the report, his son was undergoing

extensive therapy and had demonstrated a pattern of verbally abusing his younger brother. He and his wife were extremely concerned for his son's mental health. After his son made the allegations, German authorities hospitalized his son due to his aggression. His son received inpatient treatment for his aggression in a children's psychiatric hospital. Mental health providers on and off post diagnosed his son with oppositional defiance disorder, attention deficit disorder, and social behavior disorder with depressive disorder.

b. CID initiated an investigation around 31 January 2019 as a result of the allegations. Throughout the investigation, neither he nor his wife supplied statements to CID. CID also did not speak with his son's psychiatrist and no one corroborated his son's statements. His son later reported to his Family Advocacy Program (FAP) case worker that he had invented the story because he lost his video game privileges. The FAP resultingly released the case with no action.

c. The CID investigation does not have or consider information about his son's psychiatric hospitalization. CID did not consult his command, even after his leaders submitted documentation showing he was not in the country at the time of the alleged abuse. CID did not fact-check his son's story. CID would have learned that his family did not live in the country where the alleged abuse occurred. There was no probable cause or credible information to corroborate his son's statements.

d. He did not suffer any adverse administrative disciplinary, judicial, or other such action because of the investigation. He was promoted to the rank of chief warrant officer four (CW4) on 2 June 2021 with an effective date of 1 November 2020. His command submitted numerous letters and supported him throughout the brief investigation.

e. His son provided an affidavit after reaching age 18, stating his claims were false and he never touched him. His son's sworn statement is a new and relevant material fact. This sworn statement, the lack of probable cause, and the lack of disciplinary or judicial action demonstrates that correction of the CID LER is warranted.

f. He was informed that there was adverse information in his background while in-processing at Fort Carson, CO. His request to the U.S. Army Crime Records Center for amendment of the CID LER was denied on 8 August 2023. He has exhausted his administrative remedies.

2. Following prior enlisted service in the Regular Army, the applicant was appointed as a Reserve warrant officer effective 7 October 2008. On 7 October 2010, he was promoted to chief warrant officer 2 and commissioned in the Regular Army. He was promoted to chief warrant officer 3 effective 1 November 2015.

3. The Wiesbaden CID Office memorandum (LER – Final/Joint), 15 October 2019, names the applicant and his spouse as the subjects/suspects for the offense of assault upon a child under age 16 on 28 July 2012 through 31 December 2012, 1 May 2017 through 1 September 2017, 1 October 2017 through 31 October 2017, 1 January 2018 through 1 January 2019, and 15 January 2019. The report summary states:

a. Special Agent (Redacted), this office, was notified by Staff Sergeant (Redacted), Military Police Desk Sergeant, Department of Emergency Services, Clay Kaserne, Wiesbaden, Germany, that the applicant's son reported to the Wiesbaden Middle School Guidance Counselor that he was strangled by the applicant to the point of unconsciousness.

b. The applicant's son was interviewed by Mrs. (Redacted), an FAP social worker, wherein he reported he was physically and verbally assaulted by the applicant and his mother several times since 2016. The applicant's son inquired into how to become emancipated from his parents. During a subsequent interview, the applicant's son stated he was not assaulted by his parents. He made up the allegations to get attention and asked the FAP social worker: "How much of this do you really believe?" The FAP social worker related that she is undecided about the change of story and was not able to determine if the applicant's son was told to say this, and added that it was difficult to assess the applicant's son's credibility.

c. Dr. (Redacted), the CID Command Psychologist, reviewed the applicant's son's interview and concluded applicant's son's level of detail suggested true recall vice a very well-rehearsed story.

d. The applicant was advised of his legal rights, which he invoked, and requested not to say anything.

e. The applicant's wife declined to be interviewed or make any statements to CID and declined to have her other children interviewed, claiming she was disappointed by the system before. The applicant's wife provided an interview to Ms. (Redacted) wherein she stated this allegation was a result of her restricting her son's access to social media and video gaming systems as a result of his unsatisfactory school grades.

f. Legal Coordination: This is not a prosecutorial decision. The Trial Counsel, Office of the Staff Judge Advocate, U.S. Army Garrison-Wiesbaden, opined probable cause existed to believe the applicant committed the offense of assault consummated by a battery upon a child under 16 years in violation of Article 128, Uniform Code of Military Justice (UCMJ). Trial Counsel based his opinion on a comprehensive investigation that determined every element of the listed UCMJ offense was met. On 19 September 2019, the Chief, International Law, Office of the Staff Judge Advocate, U.S. Army Garrison-Wiesbaden, based her opinion on the credibility of the specific reported incidents

involving the applicant and his son. No additional investigative efforts are required. The International Law Chief opined there is sufficient evidence to provide to command for consideration of action.

4. The U.S. Army Health Clinic, Wiesbaden, memorandum for B____ L. G____ (Family Advocacy CRC Incident Determination), 15 February 2019, informed the applicant's wife that the CRC met on 14 February 2019 to review an incident of child physical abuse wherein she was identified as the non-sponsor-offender. The CRC determined the incident did not meet criteria for physical abuse and recommended adolescent psychiatric evaluation, parenting classes, and family therapy.

5. The DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 29 October 2019, lists the applicant as the offender for two offenses of assault upon a child under 16 (Article 128). The report shows the commander's decision date as 9 July 2019. Item 10a (Commander's Remarks) states: "Previous chain of command recommended no action be taken because of lack of sufficient evidence. Victim also recanted statement."

6. His son's psychological evaluation (translated from German language), 17 October 2020, lists his son's diagnosis as social behavior disorder with depressive disorder and shows he was hospitalized from 22 through 23 January 2019 (see attachment for details).

7. His memorandum for President of the Promotion Review Board (Rebuttal Matters – (Applicant)), 19 October 2020, requests retention on the CW4 promotion list and addresses the incident and CID titling process. He enclosed 20 memoranda from various members of the military intelligence community recommending his retention on the CW4 promotion list.

8. He was promoted to CW4 effective 1 November 2020.

9. The sworn affidavit from his son, 26 July 2023, states:

I, C____ G____ G____-M____, do swear or affirm that the following facts are true and accurate to the best of my knowledge.

I am writing to provide my statement regarding the events that took place in early 2019. My dad, myself, and my family have suffered greatly due to my actions. It is important that I do my part and put forth every effort to be heard and acknowledged instead of dismissed as I was then.

It has been five years since the incident I am addressing, so I cannot provide the specific dates in which the incident occurred. What I can attest to is the details and my role in the incident.

While my dad, C____ D____ G____-M____, was away for work my mom and I got into an argument over allowing my little brother to play my video game. I was furious with her for making me turn my game console off because I refused to share. As I often did during that part of my adolescents [sic], I threw a fit. My anger towards her did not subside, rather I carried that anger to school with me the next day.

I had no idea the ramifications of what I had done until it was too late. I went to the school counselor and relieved my frustrations towards my parents by fabricating stories of abuse by both my mom and dad. Of course, the more details I gave the more they believed me. I was kept after school and forced to stay separated from my mom and siblings while the military police twisted my words and used them against my mom when she came to pick me up. The MPs [military police] tried to get my mom to give consent to have my body photographed telling her, "It's in your best interest to prove there are no marks on his body." I immediately regretted my actions and was horrified at the notion of having my body photographed. Thankfully, my mom allowed me to make the decision to have my body photographed.

I was finally able to go home with my mom and siblings. I was thankful to be home. The next day the social worker came to the school to speak with me again. During that visit I informed her that I made up everything. As is evident by my dad's military record, he was not home during the instances of abuse in which I had alleged. I was simply upset with my parents because my video games were taken away. I wanted them to feel the anger I was feeling so I acted out and gravely harmed my family.

Due to my own selfishness, anger, and immaturity I singlehandedly set into motion devastating consequences for my dad's career. Despite the non-existence of evidence to support my claims and the recanting of my own story, the military investigators chose to label my father a child abuser. It is my hope that my words this time will be taken seriously. My actions were an inappropriate and thoughtless response to having my own consequences. We have all suffered because of my lies and the military's decision to slap labels without conducting a proper investigation. Had they done so, they would've known immediately there was no validity to what I said.

I am about to embark on my own journey away from home. It is important to me to know that I haven't ruined my dad's future ability to work and provide for my mom and siblings as he has so lovingly done for me.

10. The CID memorandum from the attorney/advisor (Legal Review of Request for Amendment of Record – (Applicant)), 7 August 2023, found there was probable cause to believe the applicant committed the offense for which he was titled based on the review of the LER and amendment packet. He was titled for violation of Article 128 (Assault Consummated by a Battery upon a Child under 16 Years), UCMJ, when he grabbed his son by the neck and lifted him above the ground and shook him, and then pushed him into a door.

11. The CID letter, 8 August 2023, denied his request to amend the LER.

12. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 19 January 2024, shows a PEB found him physically unfit and recommended a disability rating of 70 percent and placement on the Temporary Disability Retired List (TDRL) with reexamination during October 2024.

13. Department of the Army Orders 0007557528.00, 13 March 2024, retired him effective 18 May 2024 and placed him on the TDRL in the grade of CW4. He completed 21 years, 3 months, and 10 days of total active service.

BOARD DISCUSSION:

1. The Board determined 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.

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

a. The evidence shows CID agents were notified that the applicant's son reported to the school guidance counselor that he was strangled by the applicant to the point of unconsciousness. The CID Command Psychologist reviewed the applicant's son's interview and concluded applicant's son's level of detail suggested true recall vice a very well-rehearsed story. Trial Counsel, Office of the Staff Judge Advocate, opined probable cause existed to believe the applicant committed the offense of assault consummated by a battery upon a child under 16 years in violation of Article 128, UCMJ. Trial Counsel based his opinion on a comprehensive investigation that determined every element of the listed UCMJ offense was met.

b. Family Advocacy determined the incident did not meet criteria for physical abuse and recommended adolescent psychiatric evaluation, parenting classes, and family therapy. The Commander's Report of Disciplinary or Administrative Action listed the applicant as the offender for two offenses of assault upon a child under 16 (Article 128) and that the applicant's previous chain of command recommended no action be taken because of lack of sufficient evidence as the victim also recanted statement. The applicant's son did in fact provide a statement recanting his previous allegation.

c. The Board noted inconsistencies in accuser's account of events. The applicant's son initially made the allegations that led to the titling action but later recanted and provided an affidavit stating his claims were false. The Board also noted the accuser's mental status, hospitalization, and diagnosis at the time. Given the credibility of the applicant versus the accuser and the lack of any adverse action taken by the chain of command, the Board believed that while probable cause may have existed to believe the applicant committed the offense of assault consummated by a battery upon a child, based on the overall circumstances, the Board determined given probable cause should not continue to exist.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by the removal of his name and all personally identifiable information from the title block of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER), 15 October 2019, and the Defense Central Index of Investigations (DCII).

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

REFERENCES:

1. Army Regulation 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 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 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//