

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230015177

APPLICANT REQUESTS: in effect, removal of his name as the subject/suspect of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER), 2 August 2017, and all CID files and databases.

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)
- Priceline.com Customer Service Email (Your Priceline Itinerary for Philadelphia, PA – Sunday, June 04, 2017), 2 June 2017
- Mobile Phone Text Messages, 3 June 2017 through 4 June 2017
- CID Memorandum (LER – Serious Incident Report (Category 2)/Final), 2 August 2017
- Headquarters, 361st Civil Affairs Brigade, Memorandum for Record (Findings and Recommendations for Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) Investigation (457th Civil Affairs Battalion Commander)), 27 November 2017
- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 22 May 2020
- Secretary of the Army Memorandum (Promotion Review Board RP2007-08, Fiscal Year 2020 (FY20), Colonel (COL), Army Reserve Non-Active Guard Reserve, Army Promotion List Competitive Category, Promotion Selection Board), 16 November 2020
- Privacy Act Request to Change Record, 17 July 2023
- CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant) (FA23-4186)), 9 August 2023
- CID Letter, undated (page 1 only)

FACTS:

1. The applicant states the allegations in the CID LER, 2 August 2017, were unsubstantiated by six investigative authorities, to include local police, Army Regulation 15-6 investigation, Department of Defense Consolidated Adjudication

Facility, and U.S. Army Human Resources Command Promotion Review Board and Command Review Board.

a. His former spouse claimed the incident occurred in Houston, TX, on 4 June 2017 between 10:00 a.m. and 11:00 a.m. He was in Philadelphia, PA, at the time and he only had an exchange of text messages with his former spouse outlining her plan to ruin his military career before going to the local police.

b. His former spouse made a false report to local authorities in an attempt to gain leverage against him in their divorce proceedings as well as negatively impact his military career. Part of her false claim is that he was an active duty Soldier deployed overseas. He was not serving on active duty at the time and he was not deployed overseas.

c. The alleged incident highlighted in the CID LER, 2 August 2017, did not occur. He was not charged with a crime and never went to trial. There has never been any evidence or findings that substantiated any of the alleged activities.

d. According to Army Regulation 195-2 (Criminal Investigation Activities), paragraph 3-1, CID has the authority to investigate when there is a reasonable basis the subject is under Uniform Code of Military Justice (UCMJ) authority. As a Reserve commissioned officer, not in a duty status, he was not under UCMJ authority at the time of the incident. His former spouse lied about him being on active duty and deployed to deceive the Fort Hood CID Office. The LER should never have been entered into the system because CID did not have proper authority to investigate.

e. On 10 October 2017, the local law enforcement dismissed the investigation and closed the case.

f. On 3 November 2017, the Commanding General, 7th Mission Support Command, conducted an Army Regulation 15-6 investigation into the alleged incident. The findings returned an unsubstantiated allegation and fully reinstated him with no further action.

2. Following prior Regular Army commissioned officer service, he was appointed as a Reserve commissioned officer of the Army on 21 June 2005.

3. The Priceline.com Customer Service email (Your Priceline Itinerary for Philadelphia, PA – Sunday, June 04, 2017), 2 June 2017, confirmed his reservation for a rental car in Philadelphia, PA, beginning at 2:00 p.m. on 4 June 2017 and ending at 2:00 p.m. on 6 June 2017.

4. He provides seven pages of mobile phone text messages covering the period 3 June 2017 through 4 June 2017, presumed to be a conversation with his then-spouse, regarding the status of their relationship.

5. The U.S. Army Criminal Investigation Command memorandum (LER – Serious Incident Report (Category 2)/Final), 2 August 2017, names him as the subject/suspect for the offense of aggravated sexual assault with a deadly weapon between 10:00 a.m. and 11:00 a.m. on 4 June 2017. The Report of Summary states:

SA [Special Agent] [Redacted] was notified by Detective [Redacted] Houston Police Department, 1200 Travis Street, Houston, TX, who reported [Applicant] assaulted [Redacted]. DET [Detective] [Redacted] stated [Applicant], struck, choked, kicked [Redacted] and also placed a weapon in Ms. [Redacted's] mouth during a domestic altercation that occurred on 4 Jun[e] 2017. [Applicant] was not on active-duty status when the incident occurred.

[Redacted] provided a copy of orders 0020026 which placed [Applicant] on active duty for training. A review of the orders revealed [Applicant] was not on active duty when the incident occurred.

The investigation was referred to the Houston Police Department and continues under their case [number].

6. The Headquarters, 361st Civil Affairs Brigade, memorandum for record (Findings and Recommendations for Army Regulation 15-6 Investigation (457th Civil Affairs Battalion Commander)), 27 November 2017, states the commander agreed with the investigating officer's Army Regulation 15-6 investigation findings and recommendations (not in evidence). The investigating officer noted that "it was not possible to make a factual determination as to whether the alleged incident took place and that they could not conclude by a preponderance of the evidence that [Applicant] committed the alleged acts."

7. The DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 22 May 2020, referred him for the offense of aggravated assault with a deadly weapon under Texas Penal Code 22.02 on 4 June 2017. The Commander's Remarks states: "Coordination with Officer [Redacted], Family Violence Division, Houston Police Department, revealed that [Applicant] was arrested and tried in the 174th District Court, Harris County, TX. On 10 October 2017, Judge [Redacted] dismissed [Applicant's] case."

8. The Secretary of the Army memorandum (Promotion Review Board RP2007-08, FY20, COL, Army Reserve Non-Active Guard Reserve, Army Promotion List Competitive Category, Promotion Selection Board, 16 November 2020, states the

Secretary of the Army retained applicant on the FY20 COL promotion list pursuant to Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers), paragraph 4-11.

9. On 17 July 2023, he submitted a request to the U.S. Army Crime Records Center Freedom of Information Act Division, wherein he requested amendment of the CID LER, 2 August 2017, to remove his name as the subject/suspect from CID files and databases.

10. The CID memorandum from the attorney advisor (Legal Review of Request for Amendment of Record – (Applicant) (FA23-4186), 9 August 2023, determined there was probable cause to believe the applicant committed the offense for which he was titled. The attorney advisor noted, in part:

[Applicant] was titled for violation of Texas Penal Code § [section] 22.02, Aggravated Assault with a Deadly Weapon, when he put a pistol in [Redacted's] mouth. Based on my review of the LER and amendment packet, here [there] was probable cause to believe [Applicant] committed the offense listed in the LER.

Consistent with the direction received from the Secretary of the Army, since probable cause existed to believe [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 into the Defense Central Index of Investigations (DCII) should remain.

11. The CID letter, undated, notified the applicant that his request to amend a record associated with his name within the CID files was denied. He had the right to appeal to the Office of the Army General Counsel, the Army's appellate authority. His appeal must be submitted within 90 days of the date of this letter.

12. His records contain no evidence indicating he appealed the CID decision.

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 carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to deny relief based on the CID report and probable cause that the applicant committed the alleged offense. However, upon further review of the applicant's petition and available military records, the Board determined the applicant spouse (now former spouse) reported to the law enforcement an assault by the applicant stating her struck, choked, kicked and placed a weapon in

her mouth during a domestic altercation that occurred on 4 Jun 2017. Evidence revealed the applicant was arrested and tried in the 174th District Court, Harris County, TX. On 10 October 2017, the judge dismissed the applicant's case."

2. The Board considered whether probable cause did exist when the applicant was titled to believe the offense occurred and the applicant committed the offense. The Board noted the applicant was titled for aggravated sexual assault with a deadly weapon. The Board also considered whether probable cause does exist now to believe the offense occurred or the person committed the offense. The Board noted, CID has the authority to investigate when there is a reasonable basis the subject is under Uniform Code of Military Justice (UCMJ) authority. As a Reserve commissioned officer, not in a duty status, the applicant was not under UCMJ authority at the time of the incident. His former spouse lied about him being on active duty and deployed to deceive the Fort Hood CID Office. During deliberation, the Board found the applicant's unit, Headquarters, 361st Civil Affairs Brigade, conducted an internal investigation noting by a memorandum for record (Findings and Recommendations for Army Regulation 15-6 Investigation (457th Civil Affairs Battalion Commander)), 27 November 2017, which states the commander agreed with the investigating officer's Army Regulation 15-6 investigation findings and recommendations (not in evidence). The investigating officer noted that "it was not possible to make a factual determination as to whether the alleged incident took place and that they could not conclude by a preponderance of the evidence that applicant] committed the alleged acts."

3. The Board determined as a result of this incident the command did not reprimand the applicant and evidence shows on the FY20, COL, Army Reserve Non-Active Guard Reserve, Army Promotion List Competitive Category, Promotion Selection Board, 16 November 2020, the Secretary of the Army retained the applicant on the FY20 COL promotion list pursuant to Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers), paragraph 4-11. The Board found the evidence presented does demonstrate the existence of a probable error of injustice. Therefore, the Board determined the overall merits of this case are sufficient as a basis for removal of the applicant's name as the subject/suspect of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER), 2 August 2017, and all CID files and databases. As such, the Board granted relief.

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 to show removal of the applicant's name as the subject/suspect of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER), 2 August 2017, and all CID files and databases.

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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 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). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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.

2. Army Regulation 27-10 (Military Justice), paragraph 20-2, states U.S. Army Reserve Soldiers will be subject to the UCMJ whenever they are in a Title 10 duty status. Examples of such duty status are active duty, active duty for training, annual training, Active Guard Reserve duty, and inactive duty training. Inactive duty training normally consists of weekend drills by troop program units but may also include any training authorized by appropriate authority. All U.S. Army Reserve Soldiers are subject to the provisions of the UCMJ from the date scheduled to report to active duty, active duty for training, and annual training, including authorized travel days to and from such duty, until the date the Soldier is released from that status.

3. 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, 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//