

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 December 2024

DOCKET NUMBER: AR20240002286

APPLICANT REQUESTS: through counsel:

- removal of his name from the title and subject blocks of the U.S. Army Criminal Investigation Command (CID) Report of Investigation (ROI), 1 November 2023, as well from the Department of Defense Central Index of Investigation (DCII) and all other federal agency criminal databases
- 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)
- Counsel's Supplement to Petition for Correction – Expungement of Titling Action, (Applicant), 7 May 2024, with supporting documents organized and labeled as enclosures –
 - Enclosure 1 – Power of Attorney
 - Enclosure 2 –
- DD Form 4833 (Commander's Report of Disciplinary or Administrative Action), 16 October 2023
- CID, Fort Irwin, Memorandum (Report of Investigation – Final), 1 November 2023
- Enclosure 3 – CID Letter, 3 January 2024
- Enclosure 4 – CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 17 November 2023
- Enclosure 5 – CID Letter, 26 February 2024
- Enclosure 6 – Ad Hoc Results, 5 September 2023 (urinalysis results)
- Enclosure 7 – Military Medical Documents
- Enclosure 8 – Applicant's Statement, 5 May 2024
- Enclosure 9 – DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 21 August 2023, with associated documents

- Enclosure 10 – State Department of Justice, Division of Law Enforcement, Bureau of Firearms, Letter, 24 September 2023, with allied documents
- Enclosure 11 – Email between Applicant and U.S. Department of Justice, 5 April 2024
- Enclosure 12 – Numerous Military Documents
- Enclosure 13 –

- Troop B, 1st Squadron, 11th Armored Cavalry Regiment (ACR), Memorandum (Additional Duty Appointment Orders for Field Sanitation), 11 April 2024
- Troop B, 1st Squadron, 11th ACR, Memorandum (Additional Duty Appointment Orders for Building Manager), 11 April 2024
- Troop B, 1st Squadron, 11th ACR, Memorandum (Additional Duty Appointment Orders for Better Opportunities for Single Soldiers (BOSS) Representative), 11 April 2024

FACTS:

1. The applicant states he was found not guilty by the evidence to support closing the investigation and the nonjudicial punishment. The CID ROI hinders his ability to be a successful Soldier and his future civilian life after the Army.

2. Counsel states the applicant respectfully requests deletion of his name from the titling block of the CID ROI, 1 November 2023.

a. Statement of the Case. The applicant, like many before him, is the victim of an unjust system that titles personnel based on assumptions and refuses to take corrective action when such assumptions are disproven. He had two urinalyses conducted by his unit within 2 weeks. The first tested positive for methamphetamines. Less than 2 weeks later, he had already submitted to a follow-on test, which returned negative results. Because a positive drug test is considered proof of use, absent a valid prescription for the substance in question and irrespective of whether the individual claims innocence, the individual is titled. Even when evidence exists reflecting subsequent negative testing results, probable cause opinions are issued. In fact, in some cases, individuals are still titled even if they pass a polygraph concerning the very question of whether or not they used illegal drugs. This is a manipulation of the military justice system resulting in permanent arrest records against Soldiers who are the victims of collection errors, laboratory errors, or instances of innocent ingestion, and while arrests do not carry the weight of a conviction, they nevertheless prejudice the subject such as in the instant case when he was denied the right to purchase a firearm because of the "arrest" in question. This Board needs to send a message to CID to cease the "title first and ask questions later" mentality, afford subjects the due process they deserve, and correct mistakes when brought to their attention without requiring this Board's involvement.

b. Background Facts.

(1) On 21 March 2023, the applicant submitted to a unit urinalysis (see enclosure 6). On 30 March 2023, the results were sent to the unit point of contact who immediately sought a Medical Reviewing Officer (MRO) evaluation to determine if the applicant had a valid prescription that could explain the result. In addition to over-the-counter (OTC) medications, vitamins, and supplements, the applicant was prescribed doxycycline-hyclate, ibuprofen, naproxen, ProAir HFA (albuterol sulfate) 90 microgram/inhaler, and tretinoin (see enclosure 7).

(2) On 2 April 2023, the applicant was selected for a random-inspection urinalysis and provided a sample as directed. The results of this test were sent to the unit point of contact on 7 April 2023. On or about 14 April 2023, the results of the first test were sent to CID for an "investigation" into the wrongful use of a controlled substance; however, there is no evidence that the results of the second test were ever provided.

(3) On 14 April, CID read the applicant his rights, which he invoked in order to speak to counsel. Before he could do so and without any further inquiry, CID sought a legal opinion from the legal office, who indicated probable cause existed to believe the applicant committed the offense of wrongful use of a controlled substance. He was never offered the opportunity to undergo an exculpatory polygraph examination.

(4) Based on hearing of both positive and negative results in such close proximity to one another, the applicant submitted a request under the Freedom of Information Act (FOIA) for all records of his urinalysis results to ensure he could provide his command team with all of the relevant information supporting his innocence.

(5) On 21 August 2023, the applicant's battalion commander held a hearing pursuant to Article 15, UCMJ. At the hearing, the battalion commander considered evidence related to the applicant's one positive urinalysis as well as his otherwise unblemished record of negative results from many urinalyses, including the urinalysis administered just 12 days after his lone positive result. Based on the totality of the evidence, the battalion commander found him not guilty of the wrongful use of a controlled substance (see enclosure 9).

(6) Despite the not guilty finding, the applicant is still plagued by CID's "titling" decision. Department of Defense (DOD) Instruction (DODI) 5505.07 (Titling and Indexing by DOD Law Enforcement Activities (LEAs)) requires DOD law enforcement agencies to "title subjects of criminal investigations" and index them in the Defense Central Index of Investigations (DCII) "as soon as there is credible information that they committed a criminal offense" per paragraph 1.2. Because titling decisions are indexed

in the DCII, these decisions show up broadly on a variety of background checks and can tend to make innocent people like the applicant look like criminals.

(7) Indeed, the applicant continues to suffer actual harm from being titled. As the enclosed letter shows, on 24 September 2023, the State [REDACTED] Department of Justice denied his application to buy a firearm based solely on the titling information in the DCII (see enclosure 10).

(8) The applicant submitted his initial application to this Board via online application on 26 February 2024.

(9) On 5 April 2024, the applicant received an email from a victim specialist with the Federal Bureau of Investigation (FBI), Salt Lake City Division, notifying him that some of the OTC weight-loss pills he had purchased were tainted and that he needed to cease taking them immediately. The tainted pills are the subject of an ongoing investigation and, as such, the FBI is not providing additional details at this time (see enclosure 11).

c. Discussion.

(1) The applicant is the victim of a system with no meaningful due process, which was proven by the fact that his negative urinalysis results were not only never considered by CID in its investigation – they were never even provided. The only evidence against him was the lone positive drug test from March 2023. There was no independent evidence of drug use (i.e., an admission, a witness statement, a search resulting in the seizure of drugs or drug paraphernalia, etc.). The only investigative activity performed in this case was to bring him in to see if he would confess. When he did not do so, CID elected not to even offer him the opportunity to take a polygraph examination to prove his innocence, which is standard practice in such cases. CID closed its investigation into the applicant the same day it opened it and has forever detrimentally impacted his life without so much as a second glance.

(2) Four areas of that should be considered when deciding in favor of the applicant: (a) an investigation should be just that – an investigation; (b) methamphetamine testing is too non-specific for probable cause opinions on test results alone; (c) his record weighs against the "credible evidence" standard as applied; and (d) new evidence warrants expungement in the interest of justice (see attachment for further details).

(a) An investigation should be just that – an investigation.

(1) The applicant's case was never actually investigated in the sense that CID only brought him in to see if he would confess and then moved on to "convict" him

administratively – a.k.a. title him with having committed a crime. Had CID even conducted the most cursory review, they would have uncovered the negative results that occurred a mere 12 days after the positive results. There is no evidence that at the time of the test he displayed any symptoms of recent drug use or historic drug use for that matter.

(2) Beyond the subsequent drug tests, CID would have been able to quickly pull the applicant's drug-testing history. Had CID done so, they would have realized that over the course of only 2 years, he was tested 21 times – 14 of which were purportedly random inspections – 16 with the only positive result being the sample taken on 21 April 2023.

(3) While "credible evidence" is a low standard, it is still a standard. When there is no independent evidence of drug use beyond the positive urinalysis result, CID should take the time to at least conduct a cursory investigation to determine if the individual has a history of positive or negative results, determine if independent evidence exists and has not yet been uncovered, and/or offer options to the potential subject for ways to clear himself or herself (i.e., exculpatory polygraph, hair testing results, more in-depth drug-testing options, etc.).

(b) Methamphetamine testing is too non-specific for probable cause opinions on test results alone.

(1) Unjustly, CID simply looks at any positive result, regardless of the underlying controlled substance to which it refers, thereby necessarily including results that have a significant chance of being false positives, as "credible information" to form the basis for titling and indexing. Due to the unreliability of testing for methamphetamine in both the screening and confirmation phases of laboratory testing, a positive test result alone should not be considered credible evidence.

(2) Instead, and to avoid the inevitable confirmation bias of agents, the standard for titling in these cases should shift to that of "probable cause" within the meaning of DODI 5505.07, paragraph 3.2a. This will protect Soldiers from being unjustly titled – an action with permanent consequences – and will still allow CID to meet the evidentiary threshold with few additional resources required to do so. Justice requires the balancing of interests for Soldiers and law enforcement alike, and until CID is forced to modify their processes, the balance will be heavily tipped in its favor on drug cases, especially those concerning methamphetamine, resulting in countless innocent individuals going through life with the prejudice of CID's titling decisions hanging over their heads.

(c) The applicant's record weighs against the "credible evidence" standard as applied. He has no history of illegal drug use, but beyond that, he has an unblemished military career. He has numerous decorations and awards including the Outstanding

Volunteer Service Medal. He has gained the trust of his leadership as evidenced through his appointments as the unit BOSS representative, building manager, and field sanitation point of contact. When considering his military career against the lone positive result for methamphetamines, it becomes readily apparent that there was no "credible" evidence to warrant titling him and that he is instead the victim of false-positive drug testing.

(d) New evidence warrants expungement in the interest of justice.

(1) As noted above, CID is limited to correcting titling actions only in cases of erroneous identifications and cases in which there was no probable cause at the time of titling. However, this honorable Board is not limited in this regard. While the arguments above all go to whether there was actually credible evidence warranting titling at the time it was issued, new evidence has come to light that further calls into question the positive result. Specifically, the FBI recently reached out to him to inform him that a legal weight-loss supplement he ordered was found to be tainted, was the subject of an ongoing criminal investigation, and its use needed to be discontinued immediately (see enclosure 11).

(2) In the instant case, there is independent credible evidence that directly refutes the lone positive drug-test results. This includes: (1) 2 years' worth of Army drug-testing results – that is 20 negative results as compared to 1 positive result; (2) independent studies reporting a voluminous number of false-positive results due to the use of legal prescription and OTC medications and supplements; (3) evidence that the applicant was prescribed and using some of the substances known to produce false-positive results; (4) Brady Notice from a military drug-testing laboratory concerning false-positive results being generated at its facility; and (5) notice from the FBI that an OTC weight-loss supplement purchased by him was found to be tainted. This is more than enough evidence to call into question the reliability of the original test result that culminated in his titling action. Because his titling is actively causing him harm, it is imperative that this Board, in the interest of justice, expunge this titling from CID records.

d. Conclusion.

(1) Here, the titling and indexing of the applicant is unjust because it is based on fundamentally unreliable results and not only risks harm for him – it has already caused it. He suffers mentally and emotionally due to the way DCII entries often come across as a criminal record instead of simply an administrative record of an investigation. Further, he has been unable to exercise his Second Amendment right to purchase a firearm solely because he is titled and indexed. For all the reasons discussed above and in keeping with its prior decisions, this Board should assess that he has suffered

the type of harm that the Board seeks to correct and should view the effect of titling on him as an injustice and inequity warranting corrective action.

(2) Although titling decisions are not meant to imply guilt or innocence, the reality is that being titled has real-world detrimental effects. As such, the Board should direct removal of the applicant's name from the titling block of the subject ROI.

3. The applicant enlisted in the Regular Army on 6 July 2020. He was promoted to the rank/grade of sergeant/E-5 effective 1 February 2022.

4. Counsel provides the DA Form 2627, 21 August 2023, with associated documents, showing the applicant's commander notified him that he was considering imposition of nonjudicial punishment against him on 11 August 2023 under the provisions of Article 15, UCMJ, while assigned to Troop B, 1st Squadron, 11th ACR, Fort Irwin, CA, for in that he did, at or near Fort Irwin, CA, between on or about 31 March 2023 and on or about 2 April 2023, wrongfully use methamphetamines in violation of Article 112a, UCMJ.

a. He was afforded the right to consult with counsel. He did not demand a trial by court-martial. He requested a closed hearing, a person to speak on his behalf, and indicated he would present matters in defense in person.

b. In a closed hearing and having considered all matters presented, the imposing commander found him not guilty of the specification.

c. The imposing commander closed the action on 21 August 2023. The applicant elected not to appeal the action and signed the form on the same date.

5. The applicant's Official Military Personnel File is void of a DA Form 2627, 21 August 2023, with associated documents.

6. The DA Form 4833, 16 October 2023, lists the applicant as the offender.

a. The Referral Information lists the offense of "Wrongful use of D-Methamphetamines (DMETH)," Article 112a, UCMJ, on 21 March 2023. On an unknown date, the commander placed a checkmark in the "No" box by "Sexual Harassment" for the offense and a checkmark in the "No" box by "Action Taken." In the "Reason" block, the commander entered the statement "Insufficient Evidence."

b. No action was taken.

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

- Case History: [REDACTED]
- SM [service member] was found Not Guilty during an Article 15 proceeding because there was additional evidence from a second drug test which created a reasonable doubt

d. The Commanding Officer or Reporting Officer section shows a checkmark was placed in the "Yes" box by "Was a DNA [deoxyribonucleic acid] sample collected from the offender?" The commander's name, grade, and signature were redacted with a signature date of 16 October 2023.

7. The ROI – Final, 1 November 2023, states at the Orderly Room, Building 256E, 5th Street and Barstow Road, Fort Irwin, CA, on 21 March 2023, the following:

a. Executive Summary. CID was notified the applicant tested positive for the presence of DMETH during a unit urinalysis. An MRO was conducted, which revealed the applicant did not possess a valid prescription. The applicant invoked his rights. The investigation established probable cause to believe the applicant committed the offense of wrongful use of DMETH.

b. Narrative.

(1) On 14 April 2023, (Redacted), Troop B, 1st Squadron, 11th ACR, Fort Irwin, CA, reported the applicant tested positive for DMETH. (Redacted) provided documentation, which revealed an MRO evaluation was conducted on 30 March 2023, and the applicant did not possess a valid prescription for DMETH.

(2) On 14 April 2023, the applicant invoked his rights.

(3) Legal Consultation. On 14 April 2023, CID consulted on this investigation with (Redacted), Trial Counsel, Office of the Staff Judge Advocate, Fort Irwin, CA.

(4) On 19 April 2023, (Redacted), Commander, 1st Squadron, 11th ACR, Fort Irwin, CA, was briefed on all aspects of the investigation.

(5) On 16 October 2023, (Redacted) completed a DA Form 4833, which disclosed the applicant was found not guilty at an Article 15 hearing.

(6) No further investigative activity was anticipated by this office.

c. The investigation noted the following statute/offense was considered with this report as wrongful use of DMETH – Article 112a, UCMJ.

8. The CID memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 17 November 2023, states that based on the review of the ROI and amendment packet, the attorney/advisor found there was probable cause to believe the applicant committed the offenses for which he was titled. The attorney/advisor stated:

Public Law 116-283 (William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021), section 545 (Removal of Personally Identifying and Other Information of Certain Persons From Investigative Reports, The Department of Defense Central Index of Investigations, and Other Records and Databases), required the Secretary of Defense to establish and maintain a policy and process for a person to request their Department of Defense (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). As of November 2022, DoD had not published implementation guidance; therefore, the Secretary of the Army directed the Department of the Army Criminal Investigation Division to adopt the probable cause standard for review of amendment requests, as prescribed in Section 545 of Public Law 116-283. Effective 8 August 2023, DoD provided implementation guidance in the Department of Defense Instruction (DoDI) 5505.7, Titling by DoD Law Enforcement Activities, which requires the service components to establish and implement the requirements of Section 545 of Public Law 116-283 and DoDI 5505.7.

[Applicant] was titled for violation of Article 112a, Wrongful Use of a Controlled Substance (D-Methamphetamine), Uniform Code of Military Justice, when he tested positive for D-Methamphetamine at a unit urinalysis. In accordance with DoDI 5505.7, paragraph 3.2, I have reviewed the ROI and amendment request and concur with the Military Justice Advisor there is probable cause to believe [Applicant] violated the offense for which he was titled.

Consistent with the direction received from the Secretary of the Army and DoDI 5505.7, since probable cause existed to believe [Applicant] committed the offense listed in the ROI, 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.

9. The CID letter, 3 January 2024, responded to the applicant's 8 November 2023 request (not available for review) to amend his records within the files of CID. The Chief, FOIA/Privacy Act Division, stated:

After a review of the ROI was completed in accordance with Department of Defense Instruction (DoDI) 5505.7, Titling by DoD Law Enforcement Activities, which requires the service components to establish and implement the

requirements of Section 545 of Public Law 116-283 and DoDI 5505.7 as well as Public Law 116-283 (William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021), section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigative Reports, The Department of Defense Central Index of Investigations, and Other Records and Databases), it has been concluded that your amendment request is denied.

In relation to the ROI and Legal Review, be advised, 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 FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. § 552(b)(6) [Title 5, U.S. Code, section 552(b)(6)] and (b)(7)(C), 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.

These withholdings also comply with the Privacy Act because the responsive records are maintained in a system of records that is exempt, pursuant to Exemption (j)(2), from the access provisions of the Privacy Act, 5 U.S.C. § 552a(j)(2) [Title 5, U.S. Code, section 552a(j)(2)].

This partial denial is made on behalf of the Director, Department of the Army Criminal Investigation Command (DACID), the Initial Denial Authority for DACID records under the FOIA.

You have the right to appeal the redacted document(s) to the Office of the Army General Counsel, the Army's appellate authority. If you decide to appeal at this time, your appeal must be submitted within 90 days of the date of this letter. In your appeal, you must state the basis for your disagreement with the partial denial and you should state the justification for its release. Your 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, Virginia 22134 for forwarding to the Office of the Army General Counsel. Please note that your appeal should address information denied in this response and cannot be used to make a new request for additional or new information.

Please be advised, the Department of Defense (DOD) Instruction 5505.11 [Fingerprint Reporting Requirements] establishes policies and procedures for reporting criminal history data to the Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC), Identification Division of the FBI, for all military service members and civilians investigated by DOD criminal investigative organizations for commission of certain offenses. Those subjects who have resultant judicial, non-judicial military proceedings, or where a

servicing Staff Judge Advocate or legal advisor found probable cause existed to believe the subject has committed the offense in which they were titled, will remain in NCIC. Reporting information to the NCIC depends on the offense committed and the final result of the report.

A check of NCIC reflects that you are listed as the subject in the above referenced ROI. We have updated your disposition in NCIC to reflect the disposition of "SM was found Not Guilty during an Article 15 proceeding because there was additional evidence from a second drug test which created a reasonable doubt". Consistent with Department of Defense (DOD) Instruction 5505.11, retention of this criminal history data in the NCIC does conform to DOD policy. Your name will remain in the NCIC.

If your amendment is denied, you have the right to appeal. You may submit your initial appeal to: Chief Counsel, Office of the Chief Counsel, 27130 Telegraph Road, Quantico, VA 22134, or thru email at: usarmy.belvoir.hqda-usacid.mbx.crfoiapa@army.mil.

You have the right to seek dispute resolution concerning this action. If you intend to do so, you may contact the Army FOIA Public Liaison by email at usarmy.belvoir.hqda-esambx.rmdcJcfoia-public-liaison@army.mil. Please put "Dispute" in the subject line.

You may also seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448 or by emailing OGIS@nara.gov.

10. The CID Letter, 26 February 2024, responded to the applicant's Privacy Act Amendment Appeal, 3 January 2024. The Chief, FOIA/Privacy Act Division, stated:

You submitted an amendment appeal in reference to the denial of your request to remove the titling action related to you, as it pertains to Report of Investigation (ROI) [REDACTED]

After carefully considering the issues presented by your appeal, the Appeal Official, DACID Office of Chief Counsel (OCC), denied your appeal.

You may appeal this denial of your original appeal by submitting a request to: Army Review Board Agency, Army Board for Correction of Military Records (ABCMR), 251 18th Street South, Suite 385, Arlington, VA 22202-3531. Please visit their website at [REDACTED] for information on their application process.

11. The applicant, through counsel, provided the following evidence in addition to those documents discussed above:

a. Enclosure 6 contains an Ad Hoc Results document, 5 September 2023, showing the results of a urinalysis test in which one shows a positive result.

b. Enclosure 7 contains some of the applicant's military medical documents which show his encounters and list of medications that had been prescribed to him.

c. Enclosure 8 contains a self-authored statement, 5 May 2024, wherein the applicant mentions the challenges and repercussions of having a CID titling action against him (see enclosure for details).

d. Enclosure 10 contains the State Department of Justice, Division of Law Enforcement, Bureau of Firearms, letter, 24 September 2023, with allied documents informing the applicant that his firearm application was denied and the reason was due to a drug incident.

e. Enclosure 11 contains electronic email between the applicant and the U.S. Department of Justice, 5 April 2024, wherein the FBI reached out to him to inform him that a legal weight-loss supplement he had ordered was found to be tainted, was the subject of an ongoing criminal investigation, and its use needed to be discontinued immediately.

f. Enclosure 12 contains documents from his military records that include his Soldier Talent Profile, numerous awards, training diplomas, and certificates of training.

g. Enclosure 13 contains three memoranda, all dated 11 April 2024, from his unit appointing him to the additional duties of field sanitation, building manager, and BOSS representative.

12. In connection with the processing of this case, a redacted copy of the CID ROI was obtained on 18 September 2024 from the Chief, FOIA/Privacy Act Division, CID.

13. The applicant was provided a copy of the redacted CID ROI on or about 19 September 2024 for review and an opportunity to comment.

14. The applicant, through counsel, provided a response noting they had a copy of the CID ROI. They reiterated the Commander's Report of Disciplinary or Administrative Action confirmed the applicant was found not guilty at his Article 15 hearing because of a subsequent negative urinalysis. CID rushed to judgment to title him and its effect on him and his future endeavors show the need to expunge the titling from CID records.

15. The applicant is currently assigned to Troop B, 1st Squadron, 11th ACR, Fort Irwin, in a sergeant/E-5 position.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. Counsel's contentions, the applicant's military records, and regulatory guidance were carefully considered. Based upon the multiple urinalysis tests reflecting the positive use of illegal drugs and the primary argument of the applicant and his counsel being that the Battalion Commander found the applicant "Not Guilty" at an Article 15 hearing (which utilizes a different standard of proof than that of this board), the Board concluded there was insufficient evidence of an error or injustice warranting the removal of titling of the applicant for the titled offenses.

The Board concluded that at the time of the titling, there was probable cause to show the applicant wrongfully used illegal drugs. Additionally, the Board found no new evidence which would remove the probable cause from still existing. Therefore, the Board recommended denying the requested relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the Board noted the administrative notes below and recommended the guidance outlined in that portion of the ROP be followed in fairness to the applicant.

3/17/2025

X

CHAIRPERSON

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

ADMINISTRATIVE NOTE(S):

Since the proceedings under Article 15, UCMJ, found the applicant not guilty, the DA Form 2627 was not filed in his Army Military Human Resource Record (AMHRR). Copies of the DA Form 2627, 21 August 2023, and any associated documents provided by the applicant will not be filed in his AMHRR with the contents of this record of proceedings once finalized, as well as all allied documents provided to the Board regarding the Article 15, UCMJ, process.

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 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. 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. DODI 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 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.

3. DODI 5505.14 (DNA Collection and Submission Requirements for Law Enforcement), 5 April 2022, establishes policy, assigns responsibilities, and prescribes procedures for DNA sample collection and submission requirements for the purpose of inclusion in the Combined DNA Index System.

a. CID and other DOD LEAs, DOD correctional facilities, the Coast Guard Investigative Service, and commanders will collect and submit DNA samples from service members and civilians when their fingerprints are collected pursuant to DODI 5505.11.

b. CID and other DOD LEAs, and DOD correctional facilities will develop expungement procedures and provide instructions concerning expungement rights and procedures to all persons from whom DNA samples are collected as outlined in section 4.

c. CID and other DOD LEAs, DOD correctional facilities, and commands will submit DNA samples to the U.S. Army Criminal Investigation Laboratory (USACIL) at the time of collection. CID and other DOD LEAs will take DNA samples from civilians whom they detain or hold and who remain within their control when it is determined there is probable cause to believe the civilian has committed an offense that results in the collection of fingerprints.

d. Former or retired service members from whom samples were taken but who were not convicted of any offense by a general or special court-martial, or can provide a certified copy of a final court order documenting the charge has been dismissed or resulted in an acquittal, may request in writing that their DNA records be expunged in accordance with the procedures in this section. Former or retired service members will submit requests for expungement to the Clerk of Court of the Military Department's Court of Criminal Appeals.

(1) Requests will include:

(a) All reasonably available proof showing that none of the offenses giving rise to the collection of DNA resulted in a conviction at a general or special court-martial (including a final court order establishing that such a conviction was overturned, or establishing action by the convening authority that has the effect of a full acquittal). A court order is not final if time remains for an appeal or application for discretionary review with respect to the order.

(b) The former or retired service member's name, social security number, current address and contact information, date of alleged offense, and contact information of the unit that the former service member belonged to when the sample was taken.

(2) Requests that do not provide adequate information to identify the alleged offense or to confirm that the alleged offense did not result in a conviction will be returned by "return receipt requested" with an explanation of the deficiency.

e. The Clerk of Court of the appropriate Military Department's Court of Criminal Appeals will search their records for any conviction pertaining to the former or retired service member and determine whether the former or retired service member is entitled to expungement. The Clerk of Court of the Military Department's Court of Criminal Appeals will send appropriate requests for expungement by former or retired service members to USACIL.

f. USACIL will review all requests for expungement that it receives to ensure they contain all the required information. Incomplete requests will be returned to the submitter. Only such requests that are deemed meritorious, USACIL will expunge the

DNA records, destroy the submitted sample, notify the individual of its actions, and maintain documentation of that notice.

g. Civilians whose samples are taken and forwarded pursuant to paragraph 1.2.c., but who are not convicted of any offense, or provide a certified final court order documenting the conviction has been overturned, may request in writing that their DNA sample be expunged.

//NOTHING FOLLOWS//