

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 June 2025

DOCKET NUMBER: AR20240002684

APPLICANT REQUESTS: removal of the applicant's name and identifying information from the Defense Clearance and Investigations Index (DCII) and all reports of investigation (ROI) arising from allegations of aggravated sexual assault, Article 120.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record) (Exhibit 6)
- Attorney's Brief
- Exhibit 1 - Power of Attorney
- Exhibit 2 - Army Criminal Investigation Division (CID) Records
- Exhibit 3 - Separation Response
- Exhibit 4 - Response to Administrative Separation
- Exhibit 5 - Notification of Administrative Separation
- Exhibit 7 - CID Letter Denying Removal of Titling Action

FACTS:

1. The applicant defers to his attorney who states, in pertinent part:

- There was no, and continues to be no, credible evidence the applicant committed abusive sexual contact
- He and the victim engaged in consensual sexual contact
- When the victim said she did not want to continue the applicant stopped
- There were no witnesses that any abusive sexual contact occurred
- He should have the titling removed as there is no probable cause he committed abusive sexual contact
- The Monterey Police Department refused to press charges and the Army legal authorities never went forward with court-martial charges even after he turned down nonjudicial punishment for court-martial
- There is a preponderance of evidence that an error or injustice has occurred in this case
- In November 2020, the victim wrongfully accused the applicant of sexual assault by touching her in an inappropriate sexual manner without her consent

- The Monterey Police Department conducted an investigation with CID and the Monterey Police Department denied to file charges
- The Chief of Justice opined probable cause existed against the applicant and that there was enough evidence to prosecute him
- No legal action, including nonjudicial punishment, was initiated against him
- The applicant and the victim were in a hotel together; the victim was drinking; she showed the applicant a picture of her breasts; she got on the bed with him and she stated she and he kissed; once she asked him to stop he stopped and got off the bed
- On 18 February 2022, he was offered nonjudicial punishment, which he turned down and demanded trial by court-martial
- The Army never moved forward with court-martial charges; he received a General Officer Memorandum of Record (GOMOR) and administrative separation was initiated
- The attorney submitted a request to CID to remove the titling action; their request was denied

2. The applicant provides and his service record shows:

- On 5 August 2019, the applicant enlisted in the Army and entered active duty in the Regular Army on 24 September 2019
- On 30 April 2021 a Military Protective Order was issued to the applicant
- On 1 October 2021, a legal opine was provided for the CID Investigation into abusive sexual contact; the opine states probable cause exists that the applicant committed the offense
- On 7 October 2021, a final Law Enforcement Report shows the offense of abusive sexual contact and a protective military order was issued
- On 14 September 2022, the applicant was disqualified from receiving the Army Good Conduct Medal due to adverse action
- On 22 September 2022, he underwent a Report of Mental Status Evaluation which shows there were no duty limitations due to behavioral health reasons
- On 26 October 2022, he received a GOMOR for abusive sexual contact; the applicant submitted a rebuttal and legal response to the GOMOR; on 11 January 2023, the GOMOR was filed in his Army Military Human Resource Record
- On 3 November 2022, a Report to Suspend Favorable Personnel Actions (Flag) was placed on him due to involuntary separation
- On 3 November 2022, he was notified his commander was initiating his separation for commission of a serious offense for having a substantiated abusive sexual contact charge

- On 10 November 2022, the applicant responded to his notification of administrative separation stating he loved the Army and wanted to remain in its ranks
- On 16 November 2022, his attorney responded to the notice of administrative separation stating the separation of the applicant represents a complete miscarriage of justice
- On 11 January 2023, the appropriate approval authority approved his separation and directed an under honorable conditions (general) discharge
- On 10 February 2023, he was discharged from the Army for misconduct (serious offense) with an under honorable conditions (general) discharge
- On 6 March 2023, a Commander's Report of Disciplinary or Administrative Action shows the offense of abusive sexual contact on 13 November 2020; he received a GOMOR and an administrative separation
- On 3 August 2023, CID responded to the applicant's request to remove titling denying the request

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 considered regulatory guidance including Department of Defense Instruction 5505.07.

2. The Board determined a preponderance of the evidence shows an error or injustice occurred when the applicant's request to be removed as the subject of a Law Enforcement Report was denied by CID. The Monterey Police Department (MPD) conducted a joint investigation along with CID after the allegations. MPD determined they were unable to determine that probable cause existed to believe that applicant committed a sexual assault. According to the Law Enforcement Report, MPD declined to file charges with the District Attorney and "recommended the case for documentation purposes only." Applicant turned down unit initiated Non-Judicial Punishment (Art. 15) and demanded trial by courts martial. The unit instead proceeded with a letter of reprimand and administrative separation. The unit recommended elimination with a General, Under Honorable Conditions characterization of service. Due to his probationary status, applicant did not receive/was not entitled to a unit field board of inquiry to consider the merits of his case and he was administratively separated from the Army.

3. Upon consideration of and weighing all the file evidence, the Board determined the overall merits of this case are sufficient to grant relief. It is directed that the Army's records be corrected to remove the titling and any associated entries related to the allegation of abusive sexual contact.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was 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 removing the applicant's name from titling in all law enforcement records/systems.

X //SIGNED//

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.

REFERENCES:

Department of Defense (DoD) Instruction 5505.07 (Titling and Indexing by DoD Law Enforcement Activities), 8 August 2023, establishes policy, assigns responsibilities, and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DoD law enforcement activity (LEA) reports and indexing them in the Defense Central Index of Investigations (DCII).

a. Public Law 106-398, section 552, and Public Law 116-283, section 545, codified as a note in Title 10, U.S. Code, section 1552, establish procedures for DoD personnel through which:

(1) covered persons titled in DoD LEA reports or indexed in the DCII may request a review of the titling or indexing decision; and

(2) covered persons titled in DoD LEA reports or indexed in the DCII may request their information be corrected in, expunged, or otherwise removed from DoD LEA reports, DCII, and related records systems, databases, or repositories maintained by, or on behalf of, DoD LEAs.

b. DoD LEAs will title subjects of criminal investigations in DoD LEA reports and index them in the DCII as soon as there is credible information that they committed a criminal offense. When there is an investigative operations security concern, indexing the subject in the DCII may be delayed until the conclusion of the investigation.

c. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Judicial or adverse administrative actions will not be taken based solely on the existence of a DoD LEA titling or indexing record.

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DoD LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DoD LEA report or indexed in the DCII may submit a written request to the responsible DoD LEA head or designated expungement officials to review the inclusion of their information in the DoD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DoD LEA report, DCII, and any other record maintained in connection with the DoD LEA report when:

(a) probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred;

(b) probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense; and

(c) such other circumstances as the DoD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs 3.2.a.(1) and (2).

(2) In accordance with Public Law 116-283, section 545, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DoD LEA head or designated expungement official will also consider:

(a) the extent or lack of corroborating evidence against the covered person with respect to the offense;

(b) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and

(c) the type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

//NOTHING FOLLOWS//