

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240004126

APPLICANT REQUESTS: through counsel:

a. correction of the U.S. Army Criminal Investigation Command (CID) Report of Investigation (ROI), 17 October 2014; and Directorate of Emergency Services Law Enforcement Report (LER), 19 January 2017, alleging violations of Article 112a (Wrongful Use of Controlled Substance) and Article 85 (Desertion), Uniform Code of Military Justice (UCMJ); to reflect unsubstantiated findings; and

b. in effect, removal of her name as the subject/suspect from any index items or entries in the Defense Central Index of Investigations (DCII) and any other record maintained in connection with such a report or index.

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) (listed as exhibit 9)
- Counsel's Brief in Support of Application for Correction of Records, undated
- CID Memorandum (CID ROI – Initial Final), 17 October 2014
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 8 September 2015
- Directorate of Emergency Services Memorandum (LER – 2nd Corrected Final), 19 January 2017
- Two DA Forms 4833 (Commander's Report of Disciplinary or Administrative Action), 15 March 2017 and 30 October 2020
- Army Discharge Review Board Case Report and Directive Docket Number AR20150018493, 16 June 2017
- CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 2 June 2023
- CID Letter, 29 June 2023
- Prairie View Agricultural and Mechanical University Bachelor's Degree, August 2023
- National Association of Social Workers Certificate of Attendance, 14 October 2023
- Applicant's Letter, 17 November 2023

FACTS:

1. The applicant defers to counsel.
2. Counsel states the applicant participated in a unit urinalysis inspection and tested positive for tetrahydrocannabinol (THC) in September 2014. Subsequently, an investigation determined she committed the offense of wrongful use of a controlled substance (Article 112a, UCMJ).
  - a. As a result, the Office of the Staff Judge Advocate Trial Counsel concurred that probable cause existed to believe she committed the offense of wrongful use of a controlled substance (marijuana). According to the DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 15 March 2017, she was administratively discharged under other than honorable conditions in lieu of trial by court-martial as result of the positive urinalysis.
  - b. A second CID LER, 19 January 2017, titled her for the offense of desertion (Article 85, UCMJ). According to the LER, she failed to report to her place of duty at 0830 hours on 2 April 2015 and remained absent without leave (AWOL) until 30 April 2015. On 19 January 2017, the U.S. Army Deserter Information Point confirmed the applicant returned to her duty station and received a reduction in rank/grade from sergeant/E-5 to private/E-1 and was discharged from the Army effective 8 September 2015.
  - c. The applicant has been the victim of a material injustice that continues to cause prejudice in her civilian life. Her character, professionalism, and moral fortitude have all been called into question by potential employers because of the improper titling in her CID records. Most recently, she was denied a position with the Texas Department of Family and Protective Services as a case manager because of her CID records. This latest denial is just one example of many opportunities that she has been deprived because of the unjust stigma that has been created by the false information in her CID records.
3. Following prior enlisted service in the Regular Army and Army National Guard, the applicant enlisted in the Regular Army on 24 August 2006.
4. The CID memorandum (CID ROI – Initial Final), 17 October 2015, names the applicant as the subject for the offense of wrongful use of marijuana (Article 84, UCMJ) on 16 September 2014. The Investigative Summary states:

This office was notified by Mrs. [Redacted] Human Resource Technician, Sacramento Recruiting Battalion Shop 1, 2880 Sunrise Boulevard., Suite 230, Rancho Cordova, CA 9574 [95742], that [Applicant] tested positive for

Tetrahydrocannabinol (THC), the active ingredient in Marihuana [marijuana], during a unit urinalysis inspection (UUI).

Investigation determined [Applicant] committed the offense of Wrongful Use of a Controlled Substance (Marihuana) [marijuana] when she provided a urine specimen which subsequently tested positive for THC. [Applicant] was advised of her rights which she invoked, and declined to make a statement.

CPT [Captain] [Redacted] Trial Counsel, Office of the Staff Judge Advocate, Presidio of Monterey, CA 93944, concurred probable cause existed to believe [Applicant] committed the offense of Wrongful Use of a Controlled Substance (Marihuana) [marijuana].

5. The applicant's discharge packet, including the DD Form 458 (Charge Sheet) and her request for voluntary discharge in lieu of trial by court-martial, is not filed in her Army Military Human Resource Record and is not available for review.

6. The applicant's DD Form 214 shows she was discharged in the rank/grade of private/E-1 on 8 September 2015 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 10 (Discharge in Lieu of Trial by Court-Martial). She completed 9 years and 15 days of net active service during this period. Her service was characterized as under other than honorable conditions.

7. The Directorate of Emergency Services memorandum (LER – 2nd Corrected Final), 19 January 2017, names the applicant as the subject/suspect for the offense of desertion (Article 85, UCMJ) from 22 April 2015 to 30 April 2015. The Report of Summary states:

At 1245 hours, on 30 April 2015, CPT [Redacted] reported to this station an AWOL. Investigation revealed that [Applicant] has failed to report to her place of duty. [Applicant] status has changed from present for duty to AWOL as of 0830 hours on 22 April 2015. [Applicant] is at large at this time. This is a final report.

On 19 January 2017, USADIP [U.S. Army Deserter Information Point] confirmed [Applicant] returned to her duty station at San Joaquin Recruiting and received a reduction in rank from E-5 to E-1. [Applicant] was discharged effective 08 September 2015. This is a final report.

8. The DA Form 4833, 15 March 2017, referred the applicant for the offense of wrongful use of marijuana on 16 September 2014. The Commander's Remarks states: "On 8 Sep[tember] [20]15, [Applicant] was administratively discharged under other than

honorable conditions in lieu of court martial. See attached DD FM [form] 214 and request for chapter."

9. On 16 June 2017 in Case Report and Directive AR20150018493, the Army Discharge Review Board approved the applicant's request for an upgrade of her discharge under than honorable conditions to general under honorable conditions. The board determined the characterization of service was too harsh based on the applicant's length and quality of service, to include her combat service, and circumstances surrounding her discharge and AWOL. The board further determined the reason for discharge was proper and equitable and voted to not change it.

10. The DA Form 4833, 30 October 2020, referred the applicant for the offense of desertion on 22 April 2015. The Commander's Remarks states: "On 19 January 2017, the USADIP [U.S. Army Deserter Information Point] confirmed [Applicant] returned to her duty station at San Joaquin Recruiting and received a reduction in rank from E5 to E1. [Applicant] was discharged effective 08 September 2015. This is a final report."

11. The CID memorandum (Legal Review of Request for Amendment of Record – (Applicant)), 2 June 2023, responded to the applicant's request for amendment of the ROI, 3 September 2009, and LER, 19 January 2017. The CID Attorney Advisor determined there was probable cause to believe the applicant committed the offenses for which she was titled. The applicant was titled for violation of Article 112a (Wrongful Use of a Controlled Substance), UCMJ, when she tested positive for marijuana during a unit urinalysis and Article 85 (Desertion), UCMJ, when she failed to report to her place of duty, remained away from her unit, and communicated to her command that she intended to remain away permanently. The applicant's record should not be amended to remove her name from the title block and any corresponding entry in the DCII should remain.

12. On 2 June 2023, CID notified her that her request to amend her record within the files of the CID had been denied.

13. In August 2023, she completed a Bachelor of Arts in Social Work degree at Prairie View Agricultural and Mechanical University.

14. Counsel additionally provided:

a. the applicant's Bachelor of Arts in Social Work degree at Prairie View Agricultural and Mechanical University, completed in August 2023; and

b. the applicant's National Association of Social Workers Certificate of Attendance, 14 October 2023.

15. The applicant's letter, 17 November 2023, states she served honorably in the Regular Army for 17 years. She was never in possession of, smoked, or had any marijuana in her possession or in her system. Her chain of command lied and never allowed her to go before judge via courts-martial. She is a 100-percent disabled, combat veteran and currently enrolled in the Doctor of Philosophy Program for Mental Health Counseling. She cannot find gainful employment since her discharge upgrade in 2018. She deployed twice, once to Iraq from 2007 to 2008 and once to Afghanistan from 2009 to 2010 for 13 months. She had a decorated career that included being inducted into the prestigious Sergeant Audie Murphy Club, earning the Bronze Star Medal, five Army Commendation Medals, five Army Achievement Medals, four Army Good Conduct Medals, and other awards and decorations. Before August 2014, she had no other UCMJ violations, letters of reprimand, and never tested positive in a urinalysis test.

**BOARD DISCUSSION:**

After reviewing the application and all supporting documents, the Board determined relief was not warranted. Counsel's contentions, the applicant's military records, and regulatory guidance were carefully considered. Based upon the available documentation showing a probable cause determination was made at the time of the offenses for the titling action and the insufficient new evidence submitted by the applicant showing how the titling was improperly implemented at the time or would result in probable cause failing to be determined now, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

**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.

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 635-200 (Active Duty Enlisted Administrative Separations), effective 6 September 2011 and in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Chapter 1 (General Provisions) provided that when a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per Army Regulation 600-8-19 (Enlisted Promotions and Reductions), chapter 10 (Reductions in Grade).

b. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) provided that a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial included a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

(1) The discharge request may be submitted after court-martial charges are preferred against the Soldier or, where required, after referral, until final action by the court-martial convening authority.

(2) Commanders will ensure that a Soldier is not coerced into submitting a request for discharge in lieu of trial by court-martial. The Soldier will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(3) Consulting counsel will advise the Soldier concerning:

- elements of the offense(s) charged
- burden of proof
- possible defenses
- possible punishments
- provisions of this chapter
- requirements of volunteerism
- type of discharge normally given under the provisions of this chapter
- rights regarding the withdrawal of the soldier's request
- loss of veterans' benefits
- prejudice in civilian life based upon the characterization of discharge – consulting counsel may advise the Soldier regarding the merits of this separation action and the offense pending against the Soldier

(4) After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request certifying that he/she:

- has been counseled
- understands his/her rights
- may receive a discharge under other than honorable conditions
- understands the adverse nature of such a discharge and the possible consequences

(5) The Soldier's written request will also include an acknowledgment that he/she understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser-included offense(s) therein contained which also authorizes the imposition of a punitive discharge.

3. Army Regulation 600-8-19 (Enlisted Promotions and Reductions), effective 2 March 2015 and in effect at the time, prescribed policies and procedures governing promotions and reductions of Army enlisted personnel. Chapter 10 (Reductions in Grade) provided

that when the separation authority determines a Soldier is to be discharged from the service under other than honorable conditions, he/she will be reduced to the lowest enlisted grade.

4. 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//