

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 December 2024

DOCKET NUMBER: AR20240005670

APPLICANT REQUESTS: amendment of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER) – Final, 24 October 2017, to remove the charges of family and domestic abuse from CID, Defense Central Index of Investigations (DCII), and other federal 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)
- Counsel's Brief in Support of Application for Correction of Records, 10 January 2024, with supporting documents organized and labeled as exhibits –
 - Exhibit 1 – U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER) – Final, 24 October 2017, with allied documents
 - Exhibit 2 – DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 28 November 2017
 - Exhibit 3 – CID U.S. Army Crime Records Center Letter, 13 May 2021
 - Exhibit 4 – DA Form 4833 (page 6 of 7 only)
 - Exhibit 5 –
 - DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 12 October 2017
 - District Court Document, 30 October 2017
 - DA Form 268, 16 November 2017
 - DA Form 5248-R (Report of Unfavorable Information for Security Determination), 16 November 2017
 - DA Form 4856 (Development Counseling Form), 17 November 2017
 - State Uniform Abuse Prevention Order – Order of Protection, 21 November 2017
 - District Court Stipulated Judgment, 8 January 2019
 - Exhibit 6 – DD Form 214 (Certificate of Release of Discharge from Active Duty) for the Period Ending 27 April 2020

FACTS:

1. The applicant states she now has new and material evidence that she wishes to present to the Board and requests amendment of her CID LER; specifically, removal of the charges of family and domestic abuse so they no longer appear in CID, Department of Justice, Criminal Justice Information Service, National Crime Information Center (NCIC), and National Instant Criminal Background Check System (NCIS). Her request is being made on the basis of material error and material injustice.

2. Counsel states:

a. Statement of Facts.

(1) The titling on the applicant's CID record stems from a 2017 CID investigation conducted by the Fort Polk military police. At the time of the investigation, she was a specialist in the U.S. Army. The investigation determined that she was in the restroom when she heard someone jingling car keys. When she exited the bathroom, she saw her husband, whom she had recently told she wanted a divorce, had her car keys and was taunting her by refusing to return them when asked. According to witness statements, her husband became physical with her when she attempted to retrieve her keys. A "tussle" occurred, which resulted in her and her husband's continued wrestling for the keys, even after exiting the house (see exhibit 2).

(2) The applicant was eventually able to secure the keys, at which time she went to the Directorate of Emergency Services (DES) to report the incident. At 2147 hours on 10 October 2017, military police were dispatched in reference to a walk-in for domestic abuse. Law enforcement contacted her, who had reported that her husband had physically assaulted her. She provided a statement to the Fort Polk military police. In her statement, she readily admits that she attempted to reach for the keys, but it was her husband who escalated the argument into a physical altercation and assaulted her. She was immediately treated as a victim of domestic abuse upon reporting the incident. She was provided with a victim's statement of rights that had contact information for the Fort Polk Legal Assistance Office, Special Victims Counsel, and Criminal Law Division, as well as the Crimes Victims Reparation Board.

(3) During the investigation, a witness to the event wrote that they heard a "tussling" between the applicant and her husband on the night of the incident. The witness went out into the hallway to intervene, when the witness saw her husband holding her against a wall. The event spilled outside where her husband eventually gave her the keys. The witness stayed with her because she was afraid of what the husband might do. The instance of domestic violence is not the first report she has filed against her husband. Previously she filed a police report with the Leesville Police Department on 4 July 2017, reporting a similar instance of violence against her (see exhibit 1).

(4) According to the Commander's Report of Disciplinary Action, the applicant was "referred to FAP [Family Advocacy Program] after they were flagged for investigation and an MPO [Military Protective Order] was established for the mandatory cool down period. FAP conducted [their] mandatory portion and found that the case did not meet the criteria for FAP. Soldier's flag was removed." Despite not receiving any disciplinary action, she received a locally filed written letter of concern.

(5) As a result of the 10 October 2017 incident, the applicant was entered into the CID database for active investigations, which appears when background checks are performed. Her entry in the CID database is erroneous and should be expunged.

(6) The applicant filed a written request to the CID CRC Director to have her titling action and information related to the 10 October 2017 incident expunged from her records. On 13 May 2021, she received a letter denying her request to have her records expunged. She subsequently applied to the ABCMR for consideration; however, her request was denied on 4 August 2023 for failing to exhaust all administrative options prior to filing with the ABCMR (see exhibit 3).

b. Argument.

(1) Material Error.

(a) The applicant's titling for the offenses of Family Abuse/Domestic Abuse and Domestic Abuse is materially erroneous as the investigation conducted on 10 October 2017 clearly demonstrates that she was the victim of domestic violence. After CID conducted its initial investigation, she was referred to the FAP (see exhibit 4). FAP determined that the incident on 10 October 2017 was outside of their jurisdiction and closed the matter on their end. Her company commander removed the adverse action flag from her file, filed a written letter of concern, but found no further action was warranted.

(b) Department of Defense (DOD) Components authorized to conduct criminal investigations, as outlined in DOD Instruction 5505.16 (Investigations by DOD Components), will title and index subjects of criminal investigations as soon as the investigation determines there is credible information that the subject committed a criminal offense. In the instant case, there is insufficient evidence to establish credible information existed that she was the aggressor in the 10 October 2017 incident. Witness statements establish that husband as the aggressor (see exhibit 1).

(c) Under the National Defense Authorization Act (NDAA) for Fiscal Year 2021, the standard for eliminating a titling has changed. Under the new standard, a titling must pass the probable cause muster to remain in effect and consider whether any adverse

action occurred, such as administrative separation, court-martial, or nonjudicial punishment. Taking the current DOD instruction and NCIS manual into consideration, with the 2021 NDAA, the current NCIS standards fall well below of what is now law. Because of this, the applicant's case must be considered under the new standard and pass the probable cause standard as well as the adverse action consideration in order to continue her titling.

(d) Under the 2021 NDAA, the applicant's titling should be expunged. During the investigation, CID interviewed several witnesses to the events that transpired and provided the information to her company commander for review. Her company commander reviewed the information and found that no nonjudicial or judicial punishment actions would be taken, indicating that only a letter of concern/counseling statement would be written and filed locally in her unit file. Coupled with the FAP's determination that the case did not meet the criteria for FAP involvement, her company commander removed the adverse record entry (flag) against her (see exhibit 2).

(e) When the applicant's company commander, who had the ultimate authority to move forward with the charges, viewed all the evidence of the 10 October 2017 incident, he concluded that the evidence did not rise to the level of requiring nonjudicial punishment against her. Because the 2021 NDAA requires probable cause and adverse personnel actions, her titling should be removed.

(2) Material Injustice.

(a) In this instance, the applicant has clearly been the victim of a material injustice with this erroneous titling. The facts of this case clearly and convincingly demonstrate that she is the victim of domestic abuse, not only in this instance, but in the prior incident reported on 4 July 2017. Her involvement in this incident and status has been evaluated by civilian and military authorities. In the Judicial Court, the court issued an indefinite protection order in her favor. The order acknowledged she was the victim in the 10 October 2017 incident and further granted her exclusive use of the vehicle in question and return of the keys to her (see exhibit 5). It is worth noting that the State thoroughly reviewed her case and determined that no criminal charges were brought against her. She was the victim of domestic abuse and continues to be punished for her ex-husband's actions toward her.

(b) Following all investigations, the applicant's company commander, Captain [REDACTED] removed all adverse flags against her records. The flag removal was due to the investigations closing in her favor. She was honorably discharged from the U.S. Army on 27 April 2020.

(c) The applicant has been wrongfully titled as an individual under investigation for domestic violence, which has undoubtedly created a stigma that has negatively

impacted her reputation and impugned her character. Her CID records are discoverable whenever a federal background investigation is completed, which has led to unfair judgment of her virtue. Despite being cleared of wrongdoing by military investigators and receiving an indefinite protection order from civilian courts, she will continue to be inequitably harmed by this titling until her military records are corrected by this Board. The erroneous titling has resulted in lasting and reverberating detrimental effects in her civilian life and will continue to cause undue harm until the records are corrected.

c. Conclusion. In light of the facts and argument presented herein, and in accordance with Army Regulation 190-45 (Law Enforcement Reporting), the applicant respectfully requests amendment of the CID records to remove the inaccurate charges of Family Abuse/Domestic Violence – Adult from the CID database and all other relevant databases. The facts gathered during the CID investigation do not reach the level of probable cause that she was the aggressor on the night of 10 October 2017, but rather was the victim of domestic violence. She has been unjustly characterized by the titling in CID records and seeks to remove the incorrect information from her records.

3. The applicant enlisted in the Regular Army on 12 August 2013 in the rank/grade of private first class/E-3. She was promoted to the rank/grade of specialist/E-4 effective 1 September 2015.

4. The LER – Final, 24 October 2017, with allied documents, states the following occurred at Fort Polk, LA, on 10 October 2017:

a. Report Summary.

(1) At 2147 hours 10 October 2017, (Redacted) was dispatched to DES in reference to a walk-in for domestic abuse. Upon arrival to DES, contact was made with the applicant who stated she had gone upstairs after dinner to use the restroom. While in the restroom, she heard a set of car keys and noticed after she exited the restroom that her husband, had the car keys and was holding onto them. When she asked for them, her husband replied "no" because he was upset that she wanted a divorce. Meanwhile, (Redacted) and (Redacted) were at the residence conducting an interview with (Redacted). While on the scene, (Redacted) stated the applicant and her husband were wrestling and it broke outside. The applicant then jumped on her husband's back and her husband attempted to create distance by giving her the keys. While patrols were out at the scene with her husband, she rendered a DA Form 2823 (Sworn Statement).

(2) The applicant was advised of her rights, which she waived, saying she didn't want to be asked any further questions. She would be further processed with a return time of 0900 hours, 11 October 2017, for fingerprints. She was then released to her unit representative (Redacted). Her husband denied medical treatment and she requested

medical evaluation, where she was then escorted to the Bayne-Jones Army Community Hospital by (Redacted) to receive further medical evaluation. After a courtesy escort to the residence, she was given time to gather up the items that she needed for the 72-hour separation from the house. This is a final report.

b. Disposition: Released to unit. Case: Closed in the files of the office. The applicant was titled for violation of Article 134 (Domestic Abuse) and released to her unit on a DD Form 2708 (Receipt for PreTrial/Post-Trial Prisoner or Detained Person).

c. The investigation noted the following statute/offense of Domestic Abuse (Article 134, Uniform Code of Military Justice (UCMJ)). The report further noted the unique circumstances as Family Abuse/Domestic Violence – Adult.

5. The DA Form 268, 12 October 2017, shows a flag was initiated against the applicant's records effective 11 October by reason of the LER.

6. The Judicial District Court document, 30 October 2017, shows the applicant (Plaintiff) was present with counsel and her husband (Defendant) was present in person. The document noted her husband had no objection to granting a protective order. The court ordered granting the protective order indefinitely.

7. The DA Form 268, 16 November 2017, shows the flag was removed against her records effective 16 November 2017 by reason of the case being closed favorably.

8. The DA Form 5248-R, 16 November 2017 notes the applicant's security clearance was not suspended and that FAP closed her case on 16 November 2017 as it did not meet the established criteria for Family Abuse/Domestic Violence – Adult. The report further noted her flag had been removed.

9. The DA Form 4856, 17 November 2017, shows the applicant was counseled by her company commander for the purpose of removing a flagging action.

a. The summary noted:

A Law Enforcement Investigation Flag has been initiated for the incident occurring at [REDACTED] Fort Polk, LA 71459 on 10/11 October 2017. The investigation to this incident has been completed. The results to the investigation have found that the individual did not meet the criteria. This counseling is to inform you that the flag regarding this investigation is being lifted.

b. She agreed with the counseling and she and her commander both signed the form on 17 November 2017.

10. The State Uniform Abuse Prevention Order – Order of Protection, 21 November 2017, shows the applicant petitioned the court for an order of protection against her husband on 21 November 2017 for an indefinite period of time.

11. The DA Form 4833, 28 November 2017, lists the applicant as the offender.

a. The Referral Information lists the offenses of Family Abuse/Domestic Violence – Adult on 10 October 2017 and Domestic Abuse, Article 134, UCMJ, on 10 October 2017. On 16 November 2017, the commander:

(1) placed a checkmark in the "No" box by "Sexual Harassment" for the offense of "Family Abuse/Domestic Violence – Adult" and a checkmark in the "Yes" box by "Action Taken." In the "Reason" block, he entered the statement: "Accepted"; and

(2) placed a checkmark in the "No" box by "Sexual Harassment" for the offense "Domestic Abuse" and a checkmark in the "Yes" box by "Action Taken." In the "Reason" block, he entered the statement: "Accepted."

b. The Action Taken block shows a checkmark in the "Administrative" box.

c. The Administrative Actions block shows the actions taken as:

- Non-Adverse: Family Advocacy – date referred – 16 November 2017, and date responded – 16 November 2017
- Adverse: Counseling/Concern – written local with date imposed 11 October 2017
- Adverse: a flag was imposed on 11 October 2017

d. The Commander's Remarks block contains the following entries:

- Case History: [REDACTED]
- Soldier was referred to FAP after they were flagged for investigation and a MPO [Military Protective Order] was established for the mandatory cool down period. FAP conducted there [their] mandatory portion and found that the case did not meet the criteria for FAP. Soldier's flag was removed.

e. The Commanding Officer or Reporting Officer block shows a checkmark was placed in the "No" box by "Was a DNA sample collected from the offender?" The commander's name and grade were redacted with a signature date of 28 November 2017.

12. The Judicial District Court Stipulated Judgment, 8 January 2019, shows the court rendered exclusive use of a vehicle to the applicant (Petitioner) and ordered her husband (Defendant) to surrender the keys to the vehicle within 30 days. The document was signed by the judge on 8 January 2019.

13. The applicant's records contain a DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) showing a PEB convened at Joint Base Lewis-McChord, WA, on 6 January 2020 to determine her medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 60 percent and her placement on the Temporary Disability Retired List with reexamination during October 2020.

14. U.S. Army Installation Management Command and Headquarters, U.S. Army Garrison, Fort Polk, Orders Number 029-126, 29 January 2020, promoted her to the rank/grade of sergeant/E-5 effective 27 April 2020. The authority for this promotion is shown as Army Regulation 600-8-19 (Enlisted Promotions and Reductions), paragraph 1-21 (Disability Evaluation System Promotion).

15. She retired on 27 April 2020 in the rank/grade of sergeant/E-5 by reason of temporary disability. Her DD Form 214 shows she completed 6 years, 8 months, and 16 days of net active service during this period.

16. The CID letter, 13 May 2021, responded to counsel's request (not available for review) and states, in part:

This is in further response to your request to correct information from the files of the U.S. Army Criminal Investigation Command (USACIDC) on behalf of your client [Applicant] and supplements our response of 12 May 2021. Your request was received on 10 May 2021.

The information you provided does not constitute as new or relevant information needed to amend the report; therefore, your amendment request is denied.

We recommend that you read over the responsive record previously released to you (FA20-3735) and review the amendment criteria below to modify or remove your client's name from our records.

If you disagree with this amendment denial, [Applicant] may appeal to the Army Review Boards Agency, Army Board for Correction of Military Records, 251 18th Street South, Suite 385, Arlington, VA 22202-3531. Please visit their website at <http://arba.army.pentagon.mil/> for information on their application process.

[Applicant] has the right to seek dispute resolution concerning this action. If she intends to do so, she may contact the U.S. Army Criminal Investigation Command, Crime Record Center FOIA [Freedom of Information Act] Public Liaison, Ms. [REDACTED] by email at army.hqdaaaa-ahs.mbx.rmda-foia-public-liaison@mail.mil. Please put "Dispute" in the subject line.

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

17. The DA Form 199, 28 January 2022, shows another PEB convened at Joint Base Lewis-McChord, WA, on 24 January 2022 to reexamine the applicant's unfitting condition. The PEB determined she was physically unfit and recommended a disability rating of 70 percent and her permanent disability retirement. She concurred and waived a formal hearing of her case on 27 January 2022.

18. U.S. Army Physical Disability Agency Orders D-031-37, 31 January 2022, removed her from the Temporary Disability Retired List effective 31 January 2022 and permanently retired her in the rank of sergeant with a disability rating of a 70 percent.

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. One potential outcome discussed was to deny relief based upon insufficient evidence to remove probable cause that the applicant was involved in a domestic abuse offense. However, based upon the available documentation related to the offenses for which the applicant was titled, the Board first concluded that there was probable cause to title the applicant for domestic abuse at the time of the offense, but based upon the actions taken by the Court following the titling (such as issuing her a protective order from her spouse), the Board concluded there was insufficient evidence of probable cause to continue titling the applicant for domestic abuse. Therefore, the Board recommended amending the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER) – Final, 24 October 2017, by removing her name from the charges of family and domestic abuse from CID, Defense Central Index of Investigations (DCII), and other federal databases.

BOARD VOTE:

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| ■ | ■ | : | 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 Army records of the individual concerned be corrected by amending the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER) – Final, 24 October 2017, by removing her name from the charges of family and domestic abuse from CID, Defense Central Index of Investigations (DCII), and other federal databases.

12/27/2024

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CHAIRPERSON
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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:

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//