

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240006056

APPLICANT REQUESTS:

1. Through counsel, reconsideration of his previous request for the following:
 - voidance of 7 June 2012 Involuntary Separation Board decision
 - voidance of decision to remove servicemember from the Fiscal Year (FY) 2009 Captain Reserve Component (RC) Promotion List
 - removal of DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)
 - removal of the General Officer Memorandum of Reprimand (GOMOR)
 - amend Criminal Investigation Department (CID) and all associated documents the reflect removal of the servicemembers name from the "Title" or "Subject" blocks
 - removal of the CID Report of Investigation (ROI) and all associated documents
2. As a new request removal of two DA Forms 4833 (Commander's Report of Disciplinary or Administrative Action).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Forms 4833
- Memorandum – Subject: CID Report of Investigation
- DD Form 468 (Charge Sheet)
- Offer to Plead Guilty at a General Officer Article 15 Hearing
- DA Form 2627
- Polygraph Result Report

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220011051 on 9 May 2023.

2. The applicant, represented by legal counsel, states in pertinent part that the Boards decision in his previously submitted request should be reconsidered based on the new evidence being presented. Specifically, the polygraph examination performed on 28 February 2024. With regard to the individual items of contention, the applicant argues the following:

a. Removal of two DA Forms 4833 from his Service Record - In October 2009, a CID investigation concluded that the applicant committed the following offenses:

- Fraud
- Larceny of Government Funds
- Conduct Unbecoming of an Officer
- False Official Statement

b. The applicant contends that the two DA Forms 4833 are inconsistent and partially contain conflicting information. In the first report, block 3 the form reports action was taken with regards to the Fraud, False Official Statement, and Conduct Unbecoming of and Officer, and for all three notes the reason as "accepted." The same block reports that no action was taken with regards to the Larceny of Government Funds offense, and for the reason the form notes "other." In block 5, the form reports that the plea and finding for the Fraud, False Official Statement, and Conduct Unbecoming of and Officer was "G" (or guilty) for all three offenses. The form notes that no action was taken on the Larceny of Government Funds. In the second report, block 3 the form reports action was taken with regards to all four offenses. For all four offenses, the form notes that action was "taken" and the reason as "accepted." In block 5, the form reports a plea and finding of "guilty" for all four offenses.

c. On 26 October 2009, court-martial charges of Charge I, Larceny of Government Funds, Charge II, Conduct Unbecoming an Officer, and Charge III, Conduct Contrary to Good Order and Discipline, were preferred against the applicant. However, on 6 April 2010, the applicant endorsed a plea agreement offering to plead the following: Charge I, Larceny of Government Funds (not guilty), Charge II, Conduct Unbecoming an Officer (guilty), and Charge III, Conduct Contrary to Good Order and Discipline (guilty). The applicant agreed to enter the plea associated with the administration of Nonjudicial Punishment (NJP) with the contention that all criminal charges were dismissed and that he is not separated for the alleged misconduct.

d. On 15 April 2010, the applicant accepted the NJP and pleaded as discussed in his submitted plea agreement in exchange for the convening authority not initiating separation action. As such, the applicant contends that the DA Forms 4833 are not factual and offer conflicting information and should therefore be removed from his records.

e. ABCMR Docket Number AR20220011051 and the preceding cases, the applicant presented a substantial amount of evidence to support his requested relief. The applicant argues that the Board denied relief based on its finding that he did not present enough evidence establishing that an error and injustice occurred. In support of his recent argument, the applicant incorporates a polygraph examination. The relevant questions pertained to the titled offenses of the unauthorized wear of awards and ribbons, the receipt of flight pay, and a false official statement. A detailed account of these questions and their answers is further provided in their entirety within the supporting documents for the Board member's review.

3. A review of the applicant's available service records reflects the following:

a. After serving as an enlisted Soldier in the U.S. Navy Reserve and the U.S. Army Reserve (USAR), on 9 June 2004, the applicant was appointed a Reserve commission at the rank/grade of second lieutenant (2LT)/O-1.

b. On 6 December 2006, the U.S. Army Human Resources Command issued Orders Number B-12-608858 announcing the applicant's promotion to the rank/grade of first lieutenant (1LT)/O-2, effective 8 June 2006.

c. On 4 August 2008, the Fiscal Year 2009 Captain (CPT) Reserve Component, Army Promotion List (APL), Non-Active Guard/Reserve (AGR) Promotion Selection Board convened recommending the applicant for promotion to the rank/grade of CPT/O-3. The applicant was further notified that his official records indicated that he had previously received a Referred Officer Evaluation Report for the period of 15 November 2008 – 6 March 2009 and an Article 15 (23 May 2010) after the convene date of the board. Therefore, the applicant would be referred to a Promotion Review Board (PRB).

d. On 12 April 2010, a general officer initiated NJP under the provisions of Article 15, UCMJ in that on or about 4 October 2007, the applicant wrongfully with the intent to deceive, submit a biography with false information indicating that he had graduated from the Military Intelligence Officer Basic Course, the Aviation Officer Basic Course, Immigration and Naturalization Federal Law Enforcement Academy and had obtained a Masters of Public Administration degree in violation of Article 133, UCMJ. Further, on or about 21 October 2008, without authority the applicant displayed upon his uniform the Army Air Assault Badge, Army Aviator Wings, Bronze Star Medal, Joint Service Achievement Medal and the Purple Heart, in violation of Article 134, UCMJ

e. On 15 April 2010, having been afforded the right to consult with legal counsel, the applicant did not demand a trial by court martial but requested a closed hearing for the consideration of the NJP under Article 15. In response, the applicant received a written reprimand (GOMOR) for which the applicant appealed.

f. On 13 May 2010, the applicant's appeal was considered and denied, and the general officer directed that the GOMOR be placed in his performance file.

g. On 3 May 2011, in ABCMR Docket Number AR20100023923, the Board denied the applicant's request for removal of the Article 15 and GOMOR noting that he did not provide convincing evidence that the Article 15 was unjust, in whole or in part, to support removal from his military records.

h. On 13 July 2011, a Field Board of Inquiry was conducted resulting in the recommendation that the applicant be separated from the USAR.

i. On 22 December 2011, ABCMR Docket Number AR20110000301, the Board denied the applicant's request for the removal of the tiling action provided in result of a CID investigation noting that the applicant failed to present evidence which demonstrated the existence of a probable error or injustice. The Board further noted that the evidence of record confirmed that he was cited for wearing unauthorized awards and decorations and conduct unbecoming an officer, larceny of government funds, fraud, and making a false official statement, which resulted in NJP under the UCMJ, after disapproval of his request to appeal the Article 15. Absent evidence to the contrary, the Board concluded that all requirements of law and regulation were met in the titling process, and that his rights were protected throughout the process.

j. On 17 April 2012, the Secretary of the Army (SECARMY) directed that the applicant's name be removed from the FY09 CPT RC APL Promotion Selection List.

k. On 19 April 2012, the applicant was notified that a Promotion Review Board was conducted to reconsider his promotion status. The SECARMY decided to remove the applicant's name from the FY09 CPT, RC, APL, Non AGR Promotion List.

l. On or about 7 June 2012, the applicant was notified that an Involuntary Separation Board was conducted further approving the recommendation that he be discharged from the USAR effective 30 days from the date of this notification.

m. On 13 June 2012, the U.S. Army Human Resources Command issued Orders Number D-06-209012 discharging the applicant from the USAR, effective 6 July 2012.

n. On 5 January 2013, the applicant enlisted in the Army National Guard (ARNG).

o. On 8 October 2013, in ABCMR Docket Number AR20130000560, the Board denied the applicant's request for the removal of the tiling action provided in result of a CID investigation noting that the applicant failed to present evidence which demonstrated the existence of a probable error or injustice. The Board further determined that the evidence confirmed that he was investigated for committing serious

offenses in his capacity as a Soldier and he became the subject of an Article 32 hearing which resulted in his acceptance of NJP under Article 15, UCMJ.

p. On 7 March 2016, the applicant was transferred into the USAR Control Group (Individual Ready Reserve).

q. On 13 December 2016, in Department of the Army Suitability Evaluation Board (DASEB) Docket Number AR20160004938 convened noting that the evidence presented did not provide substantial evidence that the documents in question had served their intended purpose and that its transfer to his restricted performance file would be in the best interest of the Army. Therefore, the board determined the overall merits of the case did not warrant the requested relief.

r. On 6 January 2017, the Army Review Boards Agency, DASEB, informed the applicant that his request for transfer of the Article 15 and GOMOR dated 15 and 21 April 2010, to his restricted file noting that there is insufficient evidence to justify the transfer.

s. On 2 June 2020, in ABCMR Docket Number AR20190002953, the Board denied the applicant's request for removal of the DA Form 2627, dated 15 April 2010 and removal of the GOMOR from his OMPF noting that the presented evidence did not demonstrate the existence of a probable error or injustice. The governing regulation allows for the transfer of Article 15s within the OMPF when they have served their purpose; however, not their removal from the OMPF. The regulatory guidance also states that once placed in the OMPF, a document becomes a permanent part of that file, and the document will not be removed from the OMPF or moved to another part of the OMPF unless directed by competent authority, such as this Board. Based upon a preponderance of the evidence, the Board determined there is insufficient evidence to amend the previous Board's decision. Neither the removal of the NJP nor the GOMOR is warranted.

t. On 2 March 2021, in ABCMR Docket Number AR20190012137, the Board denied the applicant's request for the removal of the tiling action provided in result of a CID investigation noting that the applicant failed to present evidence which demonstrated the existence of a probable error or injustice. The Board further noted that based on a preponderance of evidence there was insufficient evidence of mistaken identity, probable cause, an error or injustice which would warrant granting of his request to expunge the CID Report of Investigation (ROI) and all associated documents. Therefore, the Board recommended that the ROI and associated documents be retained within his records and the CID ROI (29 October 2009) not be amended and that all associated documents retain his name in the "title" and "subject" blocks.

u. On 9 May 2023, in ABCMR Docket Number AR20220011051 the Board reviewed the applicant's request for reconsideration of ABCMR Docket Number AR20170001797, AR20190002953, AR20190012137 and determined that his request should be denied because he failed to present evidence that demonstrated the existence of a probable error or injustice and based upon a preponderance of evidence that probable cause existed then and now to believe that he committed the offenses for which he had been titled and received NJP under Article 15. The Board further determined that the applicant had not demonstrated by a preponderance of evidence that an error existed in relation to his Involuntary Separation Board.

v. On 17 August 2023, the National Guard Bureau (NGB) issued Special Orders Number 272 AR announcing Federal recognition of the applicant's initial appointment as a commissioned Officer in the ARNG at the rank of 1LT, effective 28 October 2021.

w. On 22 February 2024, the NGB issued Special Orders Number 68 AR announcing Federal recognition of the applicant's promotion to the rank/grade of CPT/O-3, effective 14 February 2024.

4. The applicant provides the following a:

a. DA Forms 4833, reflective of information provided to members of the applicant's immediate leadership. Block 3 (Referral Information) reflects the following offenses, actions taken and reason:

- Larceny of Government Fund (11 February 2003), no action taken – other.
- Fraud (11 February 2003), action taken (Article 15) – accepted
- False Official Statement (11 February 2003), action taken (Article 15) – accepted
- Conduct Unbecoming an Officer (11 February 2003), action taken (Article 15) – accepted

Block 4 (Action Taken) reflects: NJP - Article 15

Block 5 (NJP/Courts Martial/Civilian Criminal Court Proceeding Outcome) charge, plea and trial findings reflects:

- No Action Taken - Larceny of Government Fund
- Fraud (Plea and Finding) of guilty
- False Official Statement (Plea and Finding) of guilty
- Conduct Unbecoming an Officer (Plea and Finding) of guilty

b. DA Form 4833, reflective of information provided to members of the applicant's immediate leadership. Block 3 (Referral Information) reflects the following offenses, actions taken and reason:

- Larceny of Government Fund (11 February 2003), action taken (Article 15) - accepted
- Fraud (11 February 2003), action taken (Article 15) – accepted
- False Official Statement (11 February 2003), action taken (Article 15) – accepted
- Conduct Unbecoming an Officer (11 February 2003), action taken (Article 15) – accepted

Block 4 (Action Taken) reflects: NJP - Article 15

Block 5 (NJP/Courts Martial/Civilian Criminal Court Proceeding Outcome) charge, plea and trial findings reflects:

- Larceny of Government Fund (Plea and Finding) of guilty
- Fraud (Plea and Finding) of guilty
- False Official Statement (Plea and Finding) of guilty
- Conduct Unbecoming an Officer (Plea and Finding) of guilty

c. Memorandum – Subject: CID ROI reflective of information gathered by the CID during the conduct of an investigation into the applicant's commission of larceny of government funds, conduct unbecoming an Officer, false official statement. The investigation determined that the applicant committed the alleged offenses.

d. DD Form 468 reflective of the applicant being charged with violating Article 133, UCMJ in that between on or about 1 September 2005 and 31 January 2009, steal flight incentive pay, military property, of a value of more than \$500.00. The applicant was also charged with violating Article 133, UCMJ in that on or about 4 October 2007, wrongfully and dishonorably with intent to deceive submit a military biography, violating Article 134, UCMJ in that on or about 21 October 2008, wrongfully wear unauthorized badges/ribbons upon his uniform.

e. Offer to Plead Guilty at a General Officer Article 15 Hearing reflective of the applicant's offer to plead guilty to the charges two and three stated in item 4d. above as reflected on the DD Form 468. He further offered to accept punishment under Article 15, UCMJ. In exchange for this plea, the convening authority would agree to dispose of the charges under Article 15, UCMJ and dismiss the court martial charges with prejudice upon acceptance of the applicant's guilty plea at the Article 15 hearing. Following completion of the punishment imposed by the Article 15, the convening authority would

agree to release the applicant from active duty and permit him to return to his Reserve unit without initiating an elimination action.

f. Polygraph Result Report reflective of the results of a polygraph examination that the applicant participated in on 28 February 2024. The applicant was asked a question pertaining to his wearing of unauthorized award ribbons during the administration of a Department of the Army photo, to which the applicant responded "no." The applicant was also asked a question about flight pay benefits that he received, to which he responded "no." The applicant was also asked about whether or not he lied in a statement that he provided to investigators, to which he responded "no." The results of this line of questioning failed to reveal evidence of deception. This document is further provided in its entirety for the Board members review within the supporting documents.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Voidance of Involuntary Separation Board Decision. Deny. The Board determined there was no evidence to support reversal of the previous Board's decision to removal the 7 June 2012 involuntary separation board from his AMHRR. The Board found the applicant did not demonstrate an error or injustice exists to support removal.

b. Voidance of Removal from the FY09 CPT RC Promotion List. Deny. The Board found no error or injustice in the applicant's removal by the Secretary of the Army from the promotion list. The Board determined the applicant provided no evidence to support reversal of the previous Board's decision to void his removal from the promotion list.

c. Removal of the DA Form 2627 and associated written reprimand (GOMOR). Deny. The Board determined the applicant did not demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the nonjudicial punishment are substantially incorrect and support removal. Furthermore, the Board found the burden of proof rests with the applicant, and he provided no evidence to support his nonjudicial punishment was in error. The Board concluded based on the preponderance of evidence found in the military record the applicant's claim for removal of the Article 15, imposed on 12 April 2010 is not warranted.

d. Titling Removal. Deny. The Board considered regulatory guidance including Department of Defense Instruction 5505.07. The Board determined a preponderance of

the evidence shows an error or injustice did not occur when the applicant was titled because probable cause existed and still exists to support the titling. The evidence shows in March 2009, the applicant was titled and indexed in the DCII for fraud, larceny of government funds, false official statement, and conduct unbecoming an officer based on falsely presenting himself as an Army Aviator to receive incentive pay to which he was not entitled. The Board first considered whether probable cause did or did not exist (when titled) to believe the offense occurred or the person committed the offenses. The report contains an opinion that shows probable cause existed to believe the applicant committed the offenses. The Board next considered whether probable cause still exists to believe the offense occurred or the person committed the offenses. The Board noted the applicant's contention, through counsel, that substantial evidence, including the applicant's polygraph shows he did not commit the offense; however, the Board found the applicant's account of events to be unsupported by the evidence. Based on the preponderance of evidence available for review, the Board determined the evidence presented was not sufficient to warrant a recommendation for relief.

e. Removal of the CID ROI and all associated documents. Deny. The Board concluded there was no error or injustice in the CID ROI or associated documents and the applicant did not provide evidence to support removal. Therefore, the Board denied relief.

f. Removal of DA Forms 4833. Deny. The Board concluded there was no error or injustice in the DA Forms 4833 and the applicant did not provide evidence to support removal. Therefore, the Board denied relief.

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 amendment of the ABCMR decision rendered in Docket Number AR20220011051 on 9 May 2023.

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.

REFERENCES:

1. Army Regulation (AR) 135-175 (Separation of Officers), provides policies, criteria, and procedures governing the separation of Reserve officers of the Army.

a. Paragraph 2-5 (Limitations) states:

(1) No officer will be considered for involuntary separation for substandard performance of duty or moral or professional dereliction because of conduct that has been the subject of judicial proceedings resulting in an acquittal based on the merits of the case or in an action having the same effect.

(2) No officer will be considered for involuntary separation for substandard performance of duty or moral or professional dereliction because of conduct that has been the subject of administrative involuntary separation proceedings resulting in a final determination that the member should be retained in the service. For purposes of this paragraph, an officer will be considered to have been the subject of involuntary separation proceedings only if allegations against him have been acted on.

b. Paragraph 2-7 (Discharge Authority) states Headquarters, Department of the Army, will take final action on the recommendations of Boards of Officers and resignation in lieu of involuntary separation. Area commanders will forward these cases, with the recommendations and remarks, to the Commanding General, HRC.

2. AR 600-37 (Unfavorable Information), provides policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; ensured that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and ensured that the best interests of both the Army and the Soldier are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. Chapter 3 (Unfavorable Information in Official Personnel Files) provides an administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. Paragraph 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) provides nonpunitive administrative letters of reprimand,

admonition, or censure in official personnel files, such as a memorandum of reprimand, may be filed in a Soldier's AMHRR only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the AMHRR, the recipient's submissions are to be attached. Once filed in the AMHRR, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) provides that once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR.

3. AR 600-8-104 (Army Military Human Resource Records Management), prescribes policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the Official Military Personnel File, finance-related documents, and non-service-related documents deemed necessary to store by the Army. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

4. Department of Defense Instruction 5505.07 (Titling and Indexing in Criminal Investigations), provides policy, assigns responsibilities, and provides procedures for a uniform standard for titling and indexing subjects of criminal investigations by DOD.

a. Paragraph 1.2a. provides that DOD components authorized to conduct criminal investigations, as outlined in DODI 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. Indexing in the Defense Central Index of Investigations (DCII) may be delayed until the conclusion of the investigation due to operational security.

b. Paragraph 1.2b provides that victims and incidentals associated with criminal investigations can be titled and indexed.

c. Paragraph 1.2c provides that titling and indexing are administrative procedures and will not imply any degree of guilt or innocence.

d. Paragraph 1.2d provides that once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if the subject is found

not guilty of the offense under investigation, unless there is mistaken identity, or it is later determined that no credible information existed at the time of titling and indexing.

e. Paragraph 1.2e provides that if a subject's information requires expungement from or correction in the DCII, DOD components will remove the information as soon as possible.

f. Paragraph 1.2f provides that judicial or adverse administrative actions will not be taken based solely on the existence of a titling or indexing record in a criminal investigation.

g. Paragraph 3.1 provides that a subject is titled in a criminal investigative report to ensure accuracy and efficiency of the report. A subject's information is indexed in the DCII to ensure this information is retrievable for law enforcement or security purposes in the future.

h. Paragraph 3.2 provides that a subject who believes he/she was incorrectly indexed, as outlined in paragraph 1.2.d., may appeal to the DOD component head to obtain a review of the decision.

i. Paragraph 3.3 provides that when reviewing the appropriateness of a titling or indexing decision, the reviewing official will only consider the investigative information at the time of the decision to determine if the decision was made in accordance with paragraph 1.2.a.

j. Paragraph 3.4 provides that DOD components that conduct criminal investigations will make appropriate corrections or expungements to criminal investigative reports or the DCII as soon as possible.

5. The National Defense Authorization Act, effective 1 January 2021, authorized appropriations for Fiscal Year 2021 for military activities of the DOD, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes. Section 545 stated:

a. Policy and Process Required. Not later than 16 October 2021, the Secretary of Defense shall establish and maintain a policy and process through which any covered person may request that the person's name, personally identifying information, and other information pertaining to the person shall, in accordance with subsection c, be corrected in, or expunged or otherwise removed from, the following:

(1) a law enforcement or criminal investigative report of the DOD or any component of the Department;

(2) An index item or entry in the DCII; and

(3) Any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

b. Covered Persons. For purposes of this section, a covered person is any person whose name was placed or reported, or is maintained:

(1) In the subject or title block of a law enforcement or criminal investigative report of the DOD (or any component of the Department);

(2) As an item or entry in the DCII; or

(3) In any other record maintained in connection with a report described in paragraph (1), or an index item or entry described in paragraph (2), in any system of records, records database, records center, or repository maintained by or on behalf of the Department.

c. Elements. The policy and process required by subsection (a) shall include the following elements:

(1) Basis for Correction or Expungement. That the name, personally identifying information, and other information of a covered person shall be corrected in, or expunged or otherwise removed from, a report, item or entry, or record described in paragraphs (1) through (3) of subsection (a) in the following circumstances:

(a) Probable cause did not or does not exist to believe the offense for which the person's name was placed or reported, or is maintained, in such report, item or entry, or record occurred, or insufficient evidence existed or exists to determine whether or not such offense occurred;

(b) probable cause did not or does not exist to believe that the person actually committed the offense for which the person's name was so placed or reported, or is so maintained, or insufficient evidence existed or exists to determine whether or not the person actually committed such offense; or

(c) such other circumstances, or on such other bases, as the Secretary may specify in establishing the policy and process, which circumstances and bases may not be inconsistent with the circumstances and bases provided by subparagraphs (a) and (b).

(2) Considerations. While not dispositive as to the existence of a circumstance or basis set forth in paragraph (1), the following shall be considered in the determination whether such circumstance or basis applies to a covered person for purposes of this section:

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

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

(c) the type, nature, and outcome of any action described in subparagraph (b) against the covered person.

(3) Procedures. The policy and process required by subsection (a) shall include procedures as follows:

(a) procedures under which a covered person may appeal a determination of the applicable component of the DOD denying, whether in whole or in part, a request for purposes of subsection (a);

(b) procedures under which the applicable component of the Department will correct, expunge, or remove; take other appropriate action on, or assist a covered person in so doing, any record maintained by a person, organization, or entity outside of the Department to which such component provided, submitted, or transmitted information about the covered person, which information has or will be corrected in, or expunged or removed from, Department records pursuant to this section;

(c) the timeline pursuant to which the Department, or a component of the Department, as applicable, will respond to each of the following:

- a request pursuant to subsection (a)
- an appeal under the procedures required by subparagraph (a)
- request for assistance under the procedures required by subparagraph (b)

(d) mechanisms through which the Department will keep a covered person apprised of the progress of the Department on a covered person's request or appeal as described in subparagraph (c).

//NOTHING FOLLOWS//