



**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



Date: June 2, 2026

In the matter of:

Applicant for Security Clearance

ISCR Case No. 24-01752

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 17, 2025, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline J (Criminal Conduct), Guideline D (Sexual Behavior), Guideline E (Personal Conduct), and Guideline I (Psychological Conditions) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On March 25, 2026, Defense Office of Hearings and Appeals Administrative Judge Gatha LaFaye denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background

The Judge found against Applicant on two of the Guideline J and six of the Guideline E allegations (SOR ¶¶ 1.a, 1.b, and 3.c through 3.h). The Judge found for Applicant on the remaining Guideline J and Guideline E allegations, as well as on the Guideline I allegations (SOR ¶¶ 1.c through 1.e, 3.a, 3.b, 3.i, 4.a, and 4.b). On the Guideline D allegation that cross alleged certain criminal conduct, the Judge found for Applicant on three parts (cross alleged SOR ¶¶ 1.a, 1.d, and 1.e), but found against Applicant as to the cross-allegation of the conduct under SOR ¶ 1.b. We will limit our discussion to the allegations found against Applicant and the arguments that pertain to those allegations.

In September 2019, Applicant was arrested and charged with rape by force/threat; object sexual penetration; and assault and battery; he was subsequently arrested in December 2019 with related crimes, including obstruction of justice and violation of a protective order (SOR ¶¶ 1.b and 2.a). He admitted he was arrested and charged with these allegations by his girlfriend at the time (Ms. H), but denied the events ever happened in his testimony.

Applicant said he and Ms. H had dated for about three years. They had dinner at a restaurant near his apartment on August 17, 2019, had an argument, and broke up at the restaurant. He said she wanted to go back to his apartment to stay overnight instead of taking a rideshare home. He told the investigator during his background interview that he and Ms. H watched TV for a few hours after returning to the apartment before going to bed. During the hearing, however, he testified he “went to sleep almost immediately” after returning to the apartment. He explained the remainder of the evening as follows:

[W]hen I woke up, I had a missed call from [Ms. H], and I believe it was 1:00 [AM]. I called her back that next morning, and she said that I had tried to rape her. And of course to me, I’m like, we just broke up yesterday. We just broke up last night, and now this. At that point, I told her, . . . I don’t want to have any contact with you. I don’t want to speak with you anymore, and I just want to move on. Unbeknownst to me, she had, I guess, went and made a report of some kind and I was then arrested.

Transcript at 72.

Ms. H, on the other hand, reported to police that she fell asleep and woke up to the Applicant pulling on her and taking her clothes off. She resisted and he started slapping her face and choking her neck with his hands. Applicant was able to take off her pants, put on a condom, and attempted to rape her with his penis and fingers. He stopped and went to the bathroom, and she was able to run away from his apartment with her belongings. She reported the incident to police at about 1:00 AM at the hospital shortly after she left the apartment. Ms. H requested and received an emergency protective order signed at about 3:00 AM the same day. Applicant said Ms. H has a bachelor’s degree in psychology, and he believes she told police he had bipolar disorder.

A warrant for Applicant’s arrest was issued immediately after the criminal complaint, and he was eventually arrested at his apartment in mid-September 2019. Ms. H contacted police and asked to drop the criminal complaint, but said she desired to keep the emergency protective order in place. In December 2020, Ms. H petitioned the court to continue her protective order against Applicant, stating, “[Applicant] attempted to rape me in August 2019. This incident was followed with a protective order being put in place.” Government Exhibit (GE) 3 at 149. The court granted her request prior to the conclusion of the criminal case. The protective order prohibited Applicant from communicating with Ms. H and two family members residing with her.

In early November 2019, the state criminal court ordered Applicant to undergo a psychological evaluation to determine his competence to stand trial for felony attempted rape by force/threat, object sexual penetration, and assault and battery. A licensed clinical psychologist (Dr. N) conducted a competency evaluation and, during the interview, Applicant disclosed having a history of mental illness and said he had been diagnosed with bipolar disorder and PTSD, and

was prescribed Abilify, an antipsychotic and mood stabilizer. Dr. N described Applicant as calm, pleasant, logical, and communicative, and said Applicant was working and had restarted mental health treatment. Dr. N ultimately determined he was competent to stand trial. *Id.* at 110.

In mid-November 2019, Applicant's defense counsel petitioned the court for a second mental health evaluation to determine his sanity at the time of the offense, referencing Applicant's history of mental health treatment and "his guarded, at times irrational, statements on legal consultations." *Id.* at 97. The court granted the petition and in March 2020, Applicant participated in an in-depth, two-session, clinical forensic evaluation conducted by a second licensed clinical psychologist (Dr. Z). During the two interviews with Dr. Z, Applicant disclosed having a history of auditory and visual hallucinations.

In his clinical forensic evaluation of Applicant, Dr. Z said Applicant claimed he last heard voices "a few years ago," and that this was "one of the reasons I was hospitalized." *Id.* at 100. Dr. Z said Applicant did not report hearing voices to any of the clinicians shortly after his hospitalizations in June and July 2017. He said that when he asked Applicant specific questions about his auditory hallucinations, he was unable to recall the content. However, he confirmed that Applicant's reported history of suicidal ideation was consistent with information he received from military providers.

In December 2019, Applicant drove to Ms. H's home when he knew she would not be there, and he left her possessions with her mother. Her mother called Ms. H when he arrived, and Ms. H contacted the authorities to report that Applicant had violated the protective order she had against him. He said he was unaware at the time that Ms. H's protective order also included her two family members.

Applicant said that a police officer arrived at Ms. H's home and that, after he explained the situation, he was allowed to leave. Another police officer stopped him as he was driving away from Ms. H's home. He said he did not immediately comply with the second police officer's request because the first police officer cleared him to leave. He was arrested and charged with obstruction of justice, disregarding law enforcement command, and violation of a protection order (SOR ¶ 1.a). At the hearing, he took full responsibility for his actions in escalating the situation because he failed to follow the commands of a law enforcement officer, which caused him to spend three months in jail.

In December 2020, Applicant pled no contest or *nolo contendere* to disregarding a law enforcement command. He was found guilty of a misdemeanor violation of a protective order and obstruction of justice without force/threat. He was sentenced to 180 days of confinement (90 days suspended), and 18 months of unsupervised probation for violation of protective order; and 180 days of confinement (180 days suspended) and 18 months of unsupervised probation for obstruction of justice without force/threat.

With respect to the charges of rape by force/threat; object sexual penetration; and assault and battery (SOR ¶¶ 1.b and 2.a), a sentencing hearing occurred in August 2021. Pursuant to a plea agreement, Applicant entered a plea of guilty to the misdemeanor assault and battery charge (count three) and the court accepted the prosecutor's *nolle prosequi* decision to resolve Applicant's felony attempted rape and object sexual penetration charges (counts one and two).

Applicant responded “no” in response to the psychological and emotional health questions in both his April 2022 and January 2024 security clearance applications, listed below.

Has a court or administrative agency EVER ordered you to consult with a mental health professional?

Have you EVER been hospitalized for a mental health condition?

Have you EVER been diagnosed by a physician or other health professional (for example, a psychiatrist, psychologist, licensed clinical social worker, or nurse practitioner) with a psychotic disorder ... bipolar mood disorder, et al.?

Applicant’s “no” responses to the above questions are alleged as falsifications of material facts in the SOR (SOR ¶¶ 3.c – 3.h). Despite admitting these allegations, Applicant claimed that he mistakenly believed that the questions were narrowly focused on current treatment or diagnosis that impacted his ability to perform his duties safely and reliably at the time of completing the form. In December 2024, Applicant sent a message to a DOHA Department Counsel and disclosed that he “provided a response to a previous question that needs to be corrected,” in reference to his responses to the psychological conditions and emotional health questions listed above. Applicant Exhibit (AE) M; AE N.

Discussion

Applicant first argues that, under Guidelines D and J, the Judge erred by finding that he “pleaded guilty or no contest to felony sexual offenses” and improperly discounted the related expungement records. Appeal Brief at 4. Applicant appears to be addressing SOR ¶ 1.b (cross alleged in part, as SOR ¶ 2.a). This argument has some merit. Initially, the Judge noted, “Regarding SOR ¶ 1.b, the prosecutor elected to *nolle prosequi* the felony attempted rape and object sexual penetration (counts one and two) of the indictment pursuant to a *nolo contendere* plea agreement, and he was found guilty of misdemeanor assault and battery (count three).” Decision at 11-12. However, the record is devoid of a *nolo contendere* plea agreement with respect to this incident. Instead, the record contains evidence of a 2018 *nolo contendere* plea agreement for a separate assault and battery charge. The Judge continued in her mistaken analysis:

Despite Applicant’s *nolo contendere* plea to counts one and two of the indictment, during the hearing, he denied the underlying attempted rape events ever occurred. Applicant gained the benefits of a plea bargain in his criminal trial and then repudiated his *nolo contendere* plea and its legal effect in these proceedings. Applicant’s denial of the underlying conduct is not credible. His unwillingness to accept responsibility for his actions is evidence that detracts from a finding of reform and rehabilitation. His actions and criminal conduct reflect poor judgment and raise serious questions about his trustworthiness, reliability, and overall suitability for a security clearance.

Id. at 12.

With respect to the August 2019 charges, the criminal court judge accepted a plea agreement reached by the parties in August 2021, under which Applicant pled guilty to assault and battery and the Commonwealth agreed to *nolle prosequi* the felony charges—counts one and two.

They were dismissed that day. The judge deferred a finding of guilt on the assault and battery charge for 12 months and dismissed it in August 2022. A *nolle prosequi* serves merely “to discontinue the prosecution relative to the charges.” *Cook v. Commonwealth*, 597 S.E.2d 84, 86 (Va. 2004). Counts one and two of Applicant’s indictment, attempted rape by force threat or intimidation and object sexual penetration by force/threat/incapacity, were *nolle prosequi* and his denial at hearing only repudiated his plea to the third charge in the indictment, assault and battery, which was dismissed.

If an appealing party demonstrates factual or legal error, then the Board must first consider if the error is harmful or harmless. *See* ISCR Case No. 02-11489 at 2 (App. Bd. Sep. 11, 2003) (citations omitted). An error is harmless when there is not a significant chance that, but for the identified error, the judge would have reached a different result. DISCR OSD Case No. 91-0129, 1992 WL 388334 at *3 (App. Bd. Jul. 23, 1992). Here, the Judge’s error was harmless because she fully considered Applicant’s underlying conduct in her evaluation.

The Board has previously noted, “[e]ven if criminal charges are reduced, dropped, or result in an acquittal, the Judge may still consider the underlying conduct in evaluating an applicant’s security clearance eligibility.” ISCR Case No. 17-00506 at 3 (App. Bd. Aug. 7, 2018). Relevant disqualifying conditions under both Guideline J and Guideline D highlight this point, providing that a security concern may arise from conduct or behavior, regardless of whether the individual was formally charged, prosecuted, or convicted.¹ In this case, the Judge’s determination that Applicant committed sexual behavior of a criminal nature is merely an administrative conclusion that substantial evidence exists in the record to establish Applicant engaged in security-significant conduct under Guidelines J and D. Applicant failed to establish that the Judge acted beyond the authority provided her in the Directive when she concluded Applicant’s denial of the underlying conduct is not credible. *See also* ISCR Case No. 18-02018 at 4 (App. Bd. Nov. 4, 2021).

With respect to Applicant’s argument that the Judge improperly discounted expungement records, we disagree. The Judge noted, “Applicant claims that all three charges were expunged in February 2025, but the document he submitted does not reference the relevant case numbers, and no supplemental document was provided.” Decision at 9. We are unable to match the court case numbers on the expungement order to any of the criminal case records in the file. We note that on appeal, Applicant submitted additional documents relating to his application for expungement. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. Additionally, under the law of Applicant’s state, expungement means only that a record is removed from public view and normal access; it does not eliminate the record entirely. Further, the Federal Government is not bound by state law concerning expungement of state criminal records. *See* ISCR Case No. 03-22563 at 4 (App. Bd. Mar. 8, 2006).

Applicant also argues that the Judge failed to properly apply the mitigating conditions and Whole-Person Concept, and that her conclusions under Guidelines J, G, and E were not supported by substantial evidence. With respect to mitigation for the criminal conduct and sexual behavior concerns, he argues that AG ¶¶ 32(c), 14(b), 14(c), and 14(e) provide full mitigation and should

¹ AG ¶¶ 13(a): sexual behavior of a criminal nature, *whether or not the individual has been prosecuted*; 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, *regardless of whether the individual was formally charged, prosecuted, or convicted*. (Emphasis added).

have resulted in those allegations being found in his favor. Under Guideline E, we interpret Applicant's argument to contend that he should have been credited for his "substantial corrective efforts prior to governmental discovery of the omissions" through application of mitigating condition AG ¶17(a) and the Whole-Person Concept. Appeal Brief at 11. Applicant's disagreement with the Judge's weighing of the evidence is not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See* ISCR Case No. 04-08975, 2006 WL 2725032 at *1 (App. Bd. Aug. 4, 2006) (citation omitted). The decision reflects that the Judge considered the record before her, weighed the disqualifying and mitigating conditions, and reasonably determined that the concerns about Applicant's criminal behavior, sexual behavior, and personal conduct alleged in SOR ¶¶ 1.a, 1.b, 2.a, and 3.c through 3.h were unmitigated.

Conclusion

Applicant has not established that the Judge's conclusions were arbitrary, capricious, or contrary to law. Rather, the Judge examined and weighed the disqualifying and mitigating evidence and articulated a satisfactory explanation for the decision. The record is sufficient to support that the Judge's findings and conclusions are sustainable. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Dep't of the Navy v. Egan*, 484 U.S. 518, 528 (1988). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

Order

The decision in ISCR Case No. 24-01752 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board