



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 22-00588  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Adrienne Driskill, Esquire, Department Counsel

For Applicant:  
Alan V. Edmunds, Esquire

July 25, 2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated security concerns under the Criminal Conduct adjudicative guideline. Based upon a review of the pleadings, Applicant’s testimony, and the exhibits, national security eligibility is denied.

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on February 16, 2021. On January 19, 2023, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DoD after June 8, 2017.

On February 13, 2023, Applicant answered the SOR (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on March 16, 2023. DOHA assigned the case to me on March 27, 2023. DOHA issued a Notice of Video Teleconference Hearing on April 5, 2023, scheduling the hearing on May 12, 2023. The case was heard as scheduled.

The Government offered Government Exhibits (GE) 1 through 5. Applicant testified on his own behalf and introduced 13 exhibits, marked as Applicant Exhibits (AE) A through M. All exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 19, 2023. (Tr. at 11-14.)

### **Findings of Fact**

Applicant is 34 years old. He married a Japanese citizen in January 2017 and has a young child. He enlisted and served on active duty in the U.S. Army from 2011 to December 2014 and in the Army Reserve from 2015 to June 2018. He was honorably discharged from active duty but was administratively separated from the Army Reserve under other than honorable conditions (OTH Separation). He was also reduced in rank from Specialist to Private First Class. He claims he was separated from the Reserve because he missed monthly drills due to an injury. He has held a security clearance since about 2010. He earned a bachelor's degree in June 2018 after attending college classes part time. He has also pursued two professional certifications. Since his discharge from active duty, he has worked for a defense contractor on two occasions, April 2017 through September 2019 and January 2021 to the present. He is seeking national security eligibility in relation to his current employment as a technology specialist. (Tr. at 14-19; GE 1 at Sections 2, 12, 13A, 15, 17, 18, 25; GE 3 at 7; GE 4 at 10; AE E; AE G; AE L.)

When he served in the Army on active duty, Applicant's duty station was in Colorado Springs, Colorado. He never deployed. He has a 100% disability rating from the Department of Veterans Affairs. He suffers from service-related depression and anxiety. (Tr. at 18, 68-69; AE F.)

Applicant testified that he received the OTH Separation in July 2018 from the Army Reserve due to his inability to report to Reserve drilling because he was bedridden after a motorcycle accident in the summer of 2015. He testified that he advised his command of his disability and his inability to drill with his unit. He did not appear before an administrative separation board. He received a letter advising him that he was being separated under other than honorable conditions. Upon being questioned, he acknowledged that he missed drills for "a year or two" in the 2017-to-2018 period. He subsequently limited the time he missed drills to "a year." He then could not explain the three-year time gap between the motorcycle accident and his separation in July 2018. He

thought he had communicated his situation properly to his squadron leader but admitted there must have been “a lack of communication.” He testified that he texted his leader about five times regarding his condition over a period of about a year, but never made a phone call. (Tr. at 30-40.)

### **Guideline J, Criminal Conduct**

The Government alleged that Applicant is ineligible for clearance because of his criminal conduct, which raises questions about his judgment, reliability, and trustworthiness; and about his ability and willingness to comply with laws, rules, and regulations. In his Answer, Applicant denied the allegation of criminal conduct. The specifics of the charges, the underlying conduct, and the prosecution are as follows:

**1.a. May 2018 Spousal Assault.** Applicant was charged with Assault by Means Likely to Produce Great Bodily Injury and four counts of Battery. His wife, the victim in this assault, declined to prosecute Applicant, and the District Attorney dropped the charges. The local City Attorney then filed charges. Applicant entered into an agreement with the prosecutor in 2022 or 2023, which provided that the charges would be dismissed in April 2023 if Applicant complied with the terms and conditions of the agreement. The charges were dismissed about two weeks before the DOHA hearing. (Tr. at 22-23, 541; GE 1 at Section 22; GE 5; AE D.)

The police report of the incident reflects the date and time of the domestic violence incident as May 25, 2018, at 7:40 am. The police were called and arrived at Applicant’s residence. They took a statement from Applicant’s wife. The police statement provides a detailed description of Applicant’s actions that morning, which began with yelling by Applicant because his wife woke him up to go to work. He then threw a blanket over his wife’s head and strangled her with his hand or arm for about 30 seconds. She could not breathe during that period. She freed herself from his grip, and he pushed her face onto a couch cushion for about a minute when she again could not breathe. She freed herself and tried to escape. Applicant then grabbed her hair and banged her head against a wall 10 to 15 times. Four days after the incident, a police officer met with Applicant’s wife and read her statement to her. He asked if everything she said in her statement was correct, and she affirmed that it was. At the DOHA hearing, Applicant denied everything in the statement starting with her comment that she woke him up that morning so that he could go to work. (Tr. at 44-45; GE 4 at 23, 29, 40.)

The police also took a statement from a neighbor (the Witness), who lived in the apartment above Applicant’s residence. The Witness reported that she heard an argument in Applicant’s apartment and then screams from Applicant’s wife. She believed that her neighbor was in distress. She also heard thumping noises. The Witness decided she should intervene and knocked on the door to Applicant’s apartment and rang the doorbell. Applicant answered the door and reported to her that everything was fine. The Witness entered the apartment and found Applicant’s wife sitting on the floor, “shaking and crying hysterically.” The Witness returned to her apartment and shortly thereafter,

Applicant's wife appeared at her door. She told the Witness that Applicant hits her often and gets upset with her when she tries to wake him up so he can go to work. The Witness called 911 and reported the domestic violence incident. In an email dated June 27, 2022, Applicant's wife wrote that she called the police. Applicant testified that none of what the Witness told the police was correct. The police report described the wife's demeanor when they arrived as "upset," "crying," "fearful," and "nervous," confirming the Witness's statement about her condition that morning. Applicant testified that he did not recall his wife's demeanor that morning before he left their home for work. (Tr. at 45-50; GE 4 at 19, 29, 32; AE G at 1.)

Applicant's wife also reported to the police that Applicant had been physically violent with her in the past. She said that he had been physically abusive to her throughout their 17 months of marriage, which is when she immigrated from Japan and they began to cohabit. She told the police that about once a month he would grab her hair or her head and slam her head into a wall in their apartment. She never sustained serious injuries and was never hospitalized. She did not seek medical attention after the May 25, 2018 incident, though she did complain about head pain. Applicant denied that he had ever physically abused his wife. (Tr. at 52; GE 4 at 22.)

After her interview by the police, Applicant's wife requested that she be taken to a women's shelter. She asked that the Witness accompany her. The police took her to a facility for placement in a shelter. Later that day, Applicant's wife obtained a restraining order against her husband. Applicant was also ordered to be removed from the couple's residence. A few months after the May 2018 incident, a more limited protective order was entered, and Applicant was allowed to return to his residence. That order was continued to at least January 2022, according to the court records, though Applicant testified that the order was lifted. Applicant provided an undated document that reflects the dismissal of the restraining order proceeding. (Tr. at 51; GE 4 at 24, 40-47; AE B.)

Applicant denies that any assault occurred on May 25, 2018, or at any other time. He testified that one morning in May 2018, he had an argument with his wife and the argument attracted the attention of their neighbor, the Witness. He claims that the allegations against him were made up by his wife at the urgings of the Witness with whom Applicant and his wife had an unfriendly relationship. He blames the bad, "aggressive" relationship on the neighbor frequently asking him and his wife for financial assistance or to borrow personal property. He testified that he declined all such requests. He claimed that as a result of their interactions, Applicant and his wife were "on bad terms" with the Witness. (Tr. at 19-21.)

Applicant testified that after the argument with his wife, he went to work. The police came to his home while he was at work. When he returned home, he learned that he had been "evicted" from his residence. Based upon the police investigative report, the District Attorney's office filed five domestic violence charges against Applicant, including one felony charge. Applicant insisted that the Witness encouraged his wife to make the complaint against him and that the charges were false. He attributed his wife being

manipulated by the Witness or misunderstanding the police due to her poor English skills. (Tr. at 21-25; GE 3 at 9.)

Applicant's wife was born in Japan and lived there until she immigrated to the United States in January 2017 to marry Applicant. Her primary language is Japanese though at the time of their marriage she spoke some English. She had studied English when she was in school and had traveled to the United States in 2015 when she first met Applicant. He testified that although he spoke a little Japanese, they communicated in English while they were dating and communicating long-distance. Before they had their child in October 2019, Applicant's wife worked in a restaurant where she "had to" communicate in English. (Tr. at 21-29, 40-44, 62; GE 1 at 36.)

GE 5 contains a court record for a proceeding in which Applicant's wife appeared and addressed the court in English on April 24, 2019, less than a year after the incident with Applicant. The court found that an interpreter was not needed because she could understand and speak English. The initial police report also shows that Applicant's wife was able to communicate clearly with the police about the incident in a one-on-one interview. As noted, she also confirmed to the police the accuracy of her statement four days later. (GE 4 at 22-24; GE 5 at 6.)

## **Mitigation**

Applicant's wife prepared an email, dated June 27, 2022, addressed to the prosecutor in her husband's criminal case. In her communication, she asked for help in having the case dismissed. At that time, his case was scheduled for trial the next month. She wrote that she regretted calling the police in 2018 "every day." She noted that prior to the incident, she had suffered a back injury in 2017 and had surgery in March 2018. She commented that she was stressed after her surgery and called the police after an argument with her husband. She also wrote that a neighbor "told me I should call the police." The record evidence reflects that the prosecutor ultimately offered Applicant an agreement that terminated the case on April 25, 2023, after Applicant completed an eight-week anger management/domestic violence course on March 4, 2023. He was also required to be "booked." (Tr. at 23-24, 54-56; AE D; AE G at 1; AE I; AE J.)

Applicant submitted two letters (and duplicate copies of the letters) of support. The letters were dated April 19, 2018, which was before the domestic violence incident and the criminal charges, and April 22, 2019. Applicant worked for this employer from 2017 to 2019. He has since worked for two other companies. One letter from an executive of his former employer praised Applicant's excellent customer service. The second letter was prepared by Applicant's former manager. He noted Applicant's professionalism in the handling of his duties and his care for his wife after she suffered a serious injury. (AE G; AE K; AE L.)

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline J, Criminal Conduct

The security concern under this guideline is set out in AG ¶ 30 as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes five conditions that could raise security concerns under this guideline. The following condition is potentially applicable in this case and may be disqualifying:

(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.

The record evidence supports the criminal charges filed against Applicant, specifically, that he committed serious and repeated acts of violence against his wife on May 25, 2018. This occurred a little over a year after his marriage to the victim. Significantly, the District Attorney and the City Attorney reviewed the evidence developed in the police investigation and concluded that there was probable cause to file criminal charges against Applicant. This evidence satisfies the Government's burden of proof. The Government has not alleged Applicant's OTH Separation as potentially disqualifying under Guideline J, ¶ 31(e) even though any military discharge or separation "for reasons less than 'Honorable'" is potentially disqualifying under that provision of the Directive. As a result, I have not considered the OTH Separation as disqualifying conduct under Guideline J.

The evidence of Applicant's criminal conduct shifts the burden to him to mitigate the security concerns raised by his conduct. AG ¶ 32 sets forth four mitigating conditions under Guideline J. The following three mitigating conditions have possible application to the facts in this case:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) no reliable evidence to support that the individual committed the offense;  
and

(d) there is evidence of successful rehabilitation; including but not limited to, the passage of time without recurrence of criminal activity, restitution,

compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) has not been established. The record includes evidence that Applicant seriously abused his wife at least monthly throughout the first 17 months of their marriage. Even though the charged offenses occurred five years ago, such behavior could recur in the future because Applicant provided no convincing evidence to show that he has sought treatment or taken other steps to end his abusive conduct, other than an eight-week course Applicant agreed to take in exchange for the dismissal of the charges. It is important to note that until two weeks before the DOHA hearing, Applicant was pending trial on domestic violence charges. Moreover, Applicant's criminal behavior, his lack of acceptance of responsibility, and my negative conclusions about his credibility and honesty (see below) all cast serious doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 32(c) has not been established. There is significant, reliable evidence in the record to support that Applicant committed the criminal acts of strangling his wife and beating her head repeatedly against a wall. Applicant's denials of the criminal charges filed by both the District Attorney and then the City Attorney lack credibility. In fact, his general demeanor throughout the hearing suggested that he was fabricating facts to support his version of his narrative. Similarly, much of his testimony simply lacked credibility, including his testimony minimizing his conduct that led to his OTH Separation from the Army Reserve in June 2018, three years after his motorcycle accident in the summer of 2015. Applicant's attempt to blame the Witness for instigating and fabricating the entire basis for the criminal charges was also not believable, nor was his claim that the Witness was motivated to lie about him due to personal animosity against both Applicant and his wife. Also, Applicant's attempt to argue that his wife had insufficient English language skills in May 2018 to avoid being manipulated by the Witness was contrary to the record evidence.

AG ¶ 32(d) has not been established. Applicant has denied any criminal behavior. He has not accepted responsibility for his abusive actions against his wife, and therefore has not shown any remorse or taken any steps to avoid similar conduct in the future. Applicant received a bachelor's degree shortly after the May 25, 2018 criminal conduct. His resumé reflects that he has taken classes to receive two certifications since 2018. Otherwise, there is a paucity of evidence of successful rehabilitation.

Overall, Applicant has not met his burden to establish mitigation of the Guideline J security concerns set forth in the SOR. Paragraph 1 is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the



applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have also weighed the record evidence in light of the whole-person factors quoted above. Further comments are warranted. Applicant's transparently deceptive demeanor and testimony about key facts weigh heavily against him as a trustworthy and reliable person. Also, his OTH Separation from the Army Reserve in 2018 weighs against his worthiness to be entrusted with sensitive U.S. national security information. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON  
Administrative Judge