



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



In the matter of: )  
)  
) ISCR Case No. 22-01000  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Andrew H. Henderson, Esquire, Department Counsel

For Applicant:  
Alan V. Edmunds, Esquire

11/01/2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns arising under the national security adjudicative guidelines for Criminal Conduct, Sexual Behavior, and Alcohol Consumption. National security eligibility for access to classified or sensitive information is denied.

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on April 20, 2021. On January 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines J (Criminal Conduct), D (Sexual Behavior), G (Alcohol Consumption), and E (Personal Conduct). This 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 DoD after June 8, 2017.

Applicant answered the SOR in a written response on March 19, 2023 (Answer). He requested a hearing before an administrative judge. Department Counsel was ready to proceed with the hearing on April 17, 2023. The case was assigned to me on April 19, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on April 24, 2023, scheduling the hearing for June 27, 2023. The case was heard as scheduled.

At the hearing, Department Counsel offered 13 exhibits marked as Government Exhibits (GE) 1 through 13, which were admitted without objection. Applicant testified on his own behalf and submitted 29 exhibits marked as Applicant Exhibits (AE) A through CC. All of Applicant's exhibits were admitted without objection. The day after the hearing, Applicant submitted a request to reopen the record to permit him to submit documents in response to an issue that arose during the hearing. Department Counsel objected to this request. In an email identified as Hearing Exhibit (Hearing Ex.) I, I overruled the objection and granted Applicant the opportunity to submit additional proposed exhibits on or before July 5, 2023. I granted Department Counsel the opportunity to object to or comment on any additional proposed exhibits submitted by Applicant. (Hearing Transcript at 11.)

On June 30, 2023, Applicant submitted five proposed exhibits, marked for identification purposes as AE DD through HH. Department Counsel objected to the proposed exhibits on the grounds of relevance. The documents are news and journal articles that were unrelated to any of the specific SOR allegations but related more generally to an issue raised by Applicant during the hearing. My evidentiary ruling on the AE DD through HH is discussed below. The correspondence relating to Applicant's post-hearing submission has been marked as Hearing Ex. II through IV. DOHA received the transcript of the hearing (Tr.) on July 5, 2023, and the record closed on that date. (Tr. at 9-19, 64-65; Hearing Ex. II through IV.)

### **Evidentiary Ruling**

As stated, Department Counsel objected to the admission of AE DD through HH. The proposed exhibits consist of two news articles (AE DD and EE), two articles that appeared in university publications (AE GG and HH), and a privately funded report that was published on an internet website (AE FF) (collectively referred to as the Publications). Applicant has not requested that I take administrative notice of the facts appearing in the Publications. Instead, he offers the Publications as evidence. Department Counsel correctly notes that as evidence, the articles bear little relevance to the particular facts in this case. None of the Publications discuss Applicant's arrest in March 2019 for assault and resisting arrest (SOR ¶ 1.a), any of the charges that were prosecuted in Applicant's June 2012 court-martial (SOR ¶¶ 1.c through 1.e), or his arrest for abusive sexual conduct (SOR ¶ 1.b). The Publications address fatal police interactions with criminal suspects

during arrests, and, in particular, the percentage of minority suspects who die during such interactions due to the police's use of fatal force. (AE DD through HH.)

The facts found below under SOR ¶ 1.a include Applicant's unusual behavior in failing to cooperate with the police when questioned about an alleged altercation with a ride-share driver. In his testimony about the incident, Applicant made a reference to police violence in the United States when arresting minorities as a justification for his refusal to cooperate and his resisting arrest. At the hearing, Applicant's counsel argued that Applicant's behavior was motivated by fear for his safety. (Tr. at 53, 64.) For that reason, I overrule the Government's objection and admit the Publications as evidence in this case. I will give these exhibits the weight that they deserve in the context of all of the other evidence presented.

### **Findings of Fact**

Applicant is 33 years old. He has never married, but he is presently engaged. He has no children. He attended a U.S. military academy (the Academy) from June 2009 to November 2011. He played football at the Academy. He was dismissed from the Academy before he had earned a degree. In April 2017, he completed his undergraduate courses and received a bachelor's degree at another university. He also earned a master's degree in October 2020. He has worked as an engineer since 2017, most recently as a systems engineer for a U.S. Government contractor. He seeks national security eligibility in connection with his employment. He was denied eligibility by another government agency in March 2021, one month before he submitted the e-QIP. (Tr. at 12-13, 40; GE 1 at 7, 14-20, 30, 62-64; GE 6 at 4.)

### **Paragraph 1 (Guideline J, Criminal Conduct)**

In the Answer, Applicant admitted "with clarifications" each of the five allegations under this guideline. The record evidence supports the following findings with respect to the matters alleged in paragraph 1 of the SOR:

1.a. March 2019 Arrest for Attempted Assault, Resisting Arrest, Obstruction of a Police Officer, and Assault or Battery. Applicant engaged in a dispute with a driver from a ride-share company (the Driver) after a night in a bar with friends. Applicant and his friends were arguing with each other over where the Driver should go first. The Driver pulled over and asked the occupants to get out of his car. Applicant got out of the car and proceeded to punch the Driver in his left cheek with a closed fist through the open window. Applicant and his friends entered a nearby hotel. The Driver called the police, and upon arrival at the scene, the police interviewed the Driver. He provided the police with a description of Applicant's assault and advised that Applicant and his friends had entered a hotel across the street. At the DOHA hearing, Applicant denied that he punched the Driver in the face. He also claimed it was the Driver who was being aggressive, and it was Applicant who demanded the Driver to pull over and let the group leave the car so they could find another ride to their homes. (Tr. at 15, 51; GE 4 at 1; GE 5 at 1-10.)

The police entered the hotel and identified Applicant by the Driver's description of him. The police attempted to question Applicant about the dispute. Applicant declined to respond, even refusing to provide his name and identification card. He testified at the DOHA hearing that he was unaware that he was required to provide his name and identification to the police. The police asked Applicant to provide his side of the story regarding his interactions with the Driver. He refused to speak and told his friends to "shut up." The police further advised Applicant that he would not be allowed to leave without properly identifying himself. He again refused. At the hearing, Applicant justified his lack of cooperation with the police by testifying "there was a lot of racial things going on in the nation, and I didn't want to be involved or be one of them." He also claimed he was unaware of the reason why the police were asking him questions. He was placed under arrest for assaulting the Driver. He continued to refuse police orders and actively refused to put his hands behind his back so that he could be handcuffed. He was so strong that the police could not undo his grip on his hands in front of him. He continued to resist all instructions from the police, even after being told he would be pepper sprayed in the face if he did not cooperate. He was then pepper sprayed and handcuffed with his hands behind his back. He refused to walk to the police vehicle, and due to his large size, four police officers had to carry him to the vehicle. He further resisted the officers attempt to have him sit in the vehicle. Instead, he laid on the back seat with his feet hanging outside the door preventing it from closing. (Tr. at 14-17, 51-55; GE 2 at 8-9; GE 3 at 10-11; GE 4 at 1; GE 5 at 1-10.)

The police determined that based upon the Driver's statement regarding the incident that they had probable cause to arrest Applicant for assault. They also concluded that they had probable cause to arrest him for resisting arrest/obstructing a police officer. He was charged with those two misdemeanor offenses. Applicant's version of the incident with the Driver was unpersuasive, and his demeanor throughout his testimony regarding his interaction with the police further undercut the credibility of his testimony. Moreover, Applicant's behavior was totally at odds with his stated concern about the police overreacting and using excessive force against him. In reality, his behavior reflected his abuse of alcohol that evening, which would explain why the criminal trial judge ordered Applicant to abstain from consuming alcohol for 90 days as part of his agreement to dismiss the charges. (Tr. at 14-17, 51-55; GE 2 at 8-9; GE 3 at 10-11; GE 4 at 1; GE 5 at 1-10.)

1.b. January 2013 Arrest for Abusive Sexual Conduct in Violation of the Uniform Code of Military Justice (UCMJ) Article 120. On or about May 14, 2011, Applicant, others from the Academy, and a female civilian (the Civilian) were together drinking alcohol at a night club. The group then went to a hotel room to continue drinking alcohol. The Civilian was intoxicated and laid down on a bed in the room. She then fell asleep. When Applicant and the Civilian were later alone in the room, Applicant laid down on the bed next to The Civilian and touch her genitals through her underwear. The Civilian awoke and told him to stop several times, which he did briefly. He continued to arouse himself against her body and eventually ejaculated. The next day the Civilian filed a sexual assault complaint

with the local police, though she did not know Applicant's identity. She received medical attention, and it was noted that there were bruises on her thigh. Also, Applicant's DNA was found on her back. She subsequently identified Applicant when she saw his picture on a television show in connection with other sexual assaults. The local police ceded primary jurisdiction over the investigation and charges to the Academy. Applicant was charged with violating Article 120 of the UCMJ. At the June 2012 courts-martial described in SOR ¶ 1.c, Applicant was found not guilty of this charge. (Tr. at 17, 46-48; GE 6 at 2, 4; GE 10 at 1-2.)

1.c. June 2012 Court-Martial Trial and Conviction for Violations of UCMJ Articles 80, 120, and 128. In June 2012, Applicant was court-martialed for the conduct set forth in SOR ¶¶ 1.b, 1.d and 1.e. He was charged with violating Articles 80, 120, and 128 of the UCMJ, and he was convicted on the specifications relating to the incidents alleged in SOR ¶¶ 1.d and 1.e. Applicant was sentenced to dismissal from the service, six months of confinement, and forfeiture of all pay and allowances. A punitive dismissal is the legal term for the dishonorable discharge of an officer or academy cadet. He appealed and his conviction was upheld by the Court of Criminal Appeals for his branch of the military. He was dismissed from the Academy. (Tr. at 21-22, 44; GE 6 at 1-2; GE 7; GE 8; GE 12.)

1.d. December 2011 Arrest for Wrongful Sexual Contact in violation of UCMJ Article 120. In November 2011, Applicant was investigated for a sexual assault involving a female classmate (the Classmate) that occurred in about March 2011 in Applicant's dorm room at the Academy. He, two male classmates, and the Classmate spent several hours drinking alcohol and playing cards late at night. He met the Classmate for the first time that evening. The Classmate became intoxicated and vomited. She fell asleep on the bed of Applicant's roommate. The male classmates left the room to return to their rooms, leaving Applicant alone with the Classmate, who was asleep. Applicant was highly intoxicated. Applicant pulled his pants and underwear down to midthigh. The Classmate felt Applicant entering the bed in which she was sleeping and lie behind her, pressing his body against hers. He then took her hand and rubbed it against his genitals. After a few seconds, she was coherent enough to realize what Applicant was doing and pulled her hand away. She then vomited again. He claimed at the DOHA hearing that he stopped his sexual actions when she told him to stop. Applicant testified at the DOHA hearing that he was wrong to make the Classmate feel "uncomfortable." Applicant was charged and convicted of Wrongful Sexual Conduct in violation of Article 120 of the UCMJ. His conviction was upheld on appeal. Applicant did not acknowledge that his conduct was criminal. (Tr. at 22-24, 45-46, 50-51; GE 7 at 3; GE 9 at 2, 8.)

1.e. November 2011 Arrest for Assault by Battery and Attempted Sexual Contact in violation of Articles 128 and 120, respectively, of the UCMJ. After a night of drinking alcohol at a bar in November 2011, Applicant returned to the Academy campus with friends from the Academy, including a former classmate (FC) who had passed out in the bathroom of the bar. FC had no memory of what happened after she passed out. Applicant and his friends carried FC to a dormitory room. The classmates left Applicant and FC alone in the room, and he locked the door. The classmates returned and

demanded that Applicant open the door. An altercation ensued between the classmates and Applicant when the classmates found the lights were off in the room. The classmates found FC unresponsive with her jeans unbuttoned unzipped and her shirt pulled up to chest level. An ambulance was called, and FC was taken to a hospital. In the investigation of the incident, Applicant denied that he touched FC, but claimed he was too intoxicated to be certain. He admitted that he kissed her earlier in the evening while she was incoherent. His overall version of the events that evening developed in the investigation significantly differed in critical details from the appellate court's recitation of the facts developed at the court-martial. At one point, Applicant provided a statement in which he acknowledged getting into bed with FC, who was passed out. He commented that "I strongly believe its possible" that he unbuttoned FC's jeans, "but I am not 100% sure because I cannot recall those events." At the DOHA hearing, Applicant denied he kissed FC and he otherwise did not recall what he did with FC that evening. Applicant was charged and convicted of punching both classmates and choking one of them. Applicant was also charged with and convicted of unwanted sexual conduct with FC, including kissing her when she was incoherent. His convictions under UCMJ Articles 80 and 128 were upheld on appeal. See SOR ¶ 1.c, *infra*. (Tr. at 17-20, 41-45, 50-51; GE 6 at 1-2; GE 7 at 2; GE 8 at 2, 3.)

### **Paragraph 2 (Guideline D, Sexual Behavior)**

In the Answer, Applicant admitted with clarifications the two allegations under this guideline. The record evidence supports the following findings with respect to the matters alleged in paragraph 2 of the SOR:

2.a. The SOR cross alleges SOR ¶¶ 1.b through 1.e under Guideline D in this subparagraph.

2.b. Current registration as a Sex Offender in State 1. Applicant was required to register as a Sex Offender as a result of his court-martial convictions. He registered in State 1 on June 22, 2012, and his registration requirement expires on June 22, 2027. He claimed at the hearing that, due to a change in the laws of State 1, he was eligible to have his name removed from the registration list at that time. (Tr. at 25, 57; GE 3 at 7.)

### **Paragraph 3 (Guideline G, Alcohol Consumption)**

In the Answer, Applicant admitted with clarifications the two allegations under this guideline. The record evidence supports the following findings with respect to the matters alleged in paragraph 3 of the SOR:

3.a. Alcohol Consumption during the period October 2011 to at least March 2019. All of Applicant's criminal conduct alleged in paragraph 1 of the SOR was preceded by his significant use of alcohol resulting in his intoxication. At the hearing, Applicant admitted that he, at times, consumed alcohol in excess during the period alleged, but not during the entire period. (Tr. at 25-26, 50.)

3.b. April 2019 Alcohol Counseling. Applicant testified that he was ordered, by the court in the criminal case arising from his March 2019 arrest, to abstain from drinking alcohol for 90 days. He stated that he complied with this court order. Applicant claimed that his participation in the counseling class was voluntary and that he completed the counseling. In a letter addressed to Applicant's criminal defense attorney, dated April 29, 2019, the alcohol counselor wrote that Applicant "appeared to accept responsibility for his behavior [on the day of his March 2019 arrest.]" The counselor noted that Applicant had decided to abstain from any further use of alcohol effective the night of his arrest. Applicant attended four individual counseling sessions. This letter was submitted to the court. At the DOHA hearing, Applicant testified that he no longer drinks alcohol to the extent he used to drink before his 2019 arrest. He refined his comment about his drinking habits to say that he only consumes alcohol on rare occasions, such as at a wedding. (Answer at 6; Tr. at 26-27, 33-34, 56; AE A.)

#### **Paragraph 4 (Guideline E, Personal Conduct)**

In the Answer, Applicant admitted with clarifications the single allegation under this guideline. The SOR cross alleges SOR ¶¶ 1.a. through 1.e under Guideline E in this paragraph.

#### **Mitigation and Whole-Person Evidence**

Applicant provided extensive evidence in mitigation and in support of a favorable whole-person assessment. I have carefully reviewed all of the evidence and note the following specific items:

Applicant provided a written statement of his intent to modify his drinking habits and attend counseling. He also wrote that he understood that any inappropriate future involvement with alcohol may be grounds for the revocation of his national security eligibility, if granted to him. Applicant provided no evidence of any alcohol counseling or treatment subsequent to the four sessions in March and April 2019.

In addition, Applicant provided six character-reference letters. A former classmate at the Academy wrote a letter prior to Applicant's 2019 arrest praising Applicant's "determination and perseverance to reach his goal of becoming an engineer." He also wrote that he has been impressed by Applicant's "unwavering devotion to overcoming his past." In an undated letter, Applicant's former girlfriend praised his character and "ability to be respectful." She commented that Applicant "did not allow his past to determine who he is, and it is not an accurate reflection of what he will be in life." A friend of ten years wrote that Applicant is passionate and determined to reach his goals. Applicant's fiancée wrote two letters that were submitted into the record. In her most recent letter, she commented that the couple recently purchased a home. She wrote that Applicant was completely transparent before they began their dating relationship about his past problems that are the subject of the SOR allegations. She also confirmed that Applicant

no longer abuses alcohol. She describes Applicant as “a respected member of his community, both personally and professionally.” A longtime close friend also praised Applicant’s outgoing personality and willingness to help others. This friend also commented on Applicant’s perseverance. (AE F at 3-5; AE S; AE BB at 1-3.)

Applicant also submitted a lengthy letter from a licensed clinical social worker (the LCSW), who described the incidents leading up to Applicant’s court-martial and provided her analysis of Applicant’s qualifications under the adjudicative guidelines for Alcohol Consumption and Sexual Behavior. Her recitation of the facts was sometimes at odds with the facts set forth in the official records submitted by the Government. Her version of the facts was generally quite favorable to Applicant, minimizing the seriousness of his actions. Applicant specifically denied to the LCSW that he had ever “engaged in any sexual assault.” Also, he only reported to the LCSW one incident at the Academy and advised her that he had “blacked out” after excessive alcohol consumption and did not recall the details of the incident, which occurred in November 2011 and is the basis for the allegations in SOR ¶ 1.e. The LCSW wrote in her letter that despite his court-martial conviction and the adverse decision on appeal, Applicant still maintains that he is innocent of all of the charges. She wrote that the accusations against him were “unfounded.” She explained in another part of her letter that Applicant believes he was set up by a classmate who was acting as a confidential informant. The LCSW concluded that despite Applicant’s history, he has “no probability of sexual addiction” or “alcohol use disorder.” He also denied to the LCSW that he assaulted the Driver in 2019. (AE P at 3-8.)

The LCSW also reported that according to Applicant he has never engaged in any habitual or binge consumption of alcohol. He advised the LCSW that, as of the date of his November 2021 interview with her, he drinks alcohol two to four times a month and drinks three to four drinks when he does consume alcohol. (AE P at 5, 8.)

Applicant also submitted evidence of his community involvement, specifically with an orphanage founded by his parents in the country of his birth. He is a member of the Board and assists with fundraising, among other activities. (AE H, AE Y, AE Z.)

## **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**

### **Paragraph 1 - Guideline J - Criminal Conduct**

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

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 the following three conditions that could raise security concerns and may be disqualifying in this case:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (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; and
- (e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

The record evidence established all three disqualifying conditions. With respect to the allegations under SOR ¶ 1.b, the evidence of the sexual assault discussed above satisfies the substantial evidence standard applicable in this case, even though Applicant was found not guilty of these specifications at the court-martial under the more stringent evidentiary standard applicable in a criminal case under the UCMJ. The offense was reported to the law enforcement authorities the next day and the victim, the Civilian, went to the hospital where physical evidence was collected against him. This evidence and the evidence presented that addressed SOR ¶¶ 1.a and 1.c through 1.e, which includes his court-martial conviction and resulting dismissal from the Armed Forces, shift the burden to Applicant to mitigate the security concerns raised under this guideline.

The guideline includes the following two conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's criminal conduct:

- (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; 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.

Applicant has not provided sufficient evidence to establish either of the above mitigating conditions. Applicant has a history of criminal conduct that began in 2011 and most recently occurred in 2019. In light of that pattern of criminal behavior, insufficient time has passed to permit a conclusion that similar behavior is unlikely to recur. Moreover,

that pattern of behavior still creates serious doubts about Applicant's reliability, trustworthiness, and judgment.

Applicant has produced some evidence of rehabilitation. He has earned two degrees and has been employed by U.S. Government contractors. He has also provided evidence of constructive community involvement. More importantly, however, he has not shown any significant contrition, either to the females he wrongfully assaulted under circumstances where he knew the women were so intoxicated and/or unconscious that they had no reasonable opportunity to participate willingly or to object. He also has denied punching the Driver, and he has expressed no regret for failing to comply with the legitimate instructions from the police officers, especially after he was placed under arrest. Applicant's active resistance directly conflicts with his purported concerns about excessive force by law enforcement. Rather, Applicant's conduct reflects questionable judgment and casts doubt on his ability to comply with laws and rules. The absence of any credible evidence of contrition on Applicant's part for his criminal conduct substantially undercuts his evidence of rehabilitation under this mitigating condition. Paragraph 1 is found against Applicant.

## **Paragraph 2 – Guideline D, Sexual Behavior**

The security concerns relating to the guideline for sexual behavior are set out in AG ¶ 12, which states:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes the following three conditions that could raise security concerns and may be disqualifying in this case:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

The record evidence supports the application of all of the above conditions. Applicant repeatedly engaged in criminal sexual behavior. His history, and ongoing denial of culpability, make him vulnerable to coercion, exploitation, or duress. His sexual behavior with a very intoxicated woman in his dorm room was of a public nature since his classmates descended on him once they determined what he had done behind a locked door. Moreover, Applicant's conduct reflects a serious lack of judgment, even though some of it might not be considered to have been "of a public nature."

The guideline includes the following two conditions in AG ¶ 14 that could mitigate the security concerns arising from Applicant's sexual behavior:

(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress.

Applicant refuses to accept responsibility for his actions. He denied to the LCSW that he ever committed any sexual assaults, notwithstanding his court-martial conviction, which was upheld on appeal. His evidence in mitigation is insufficient to permit a conclusion that his past behavior is unlikely to recur. His past actions combined with his ongoing denials cast doubt of his current reliability, trustworthiness, and good judgment. Mitigation under AG ¶ 14(b) has not been established.

State 1 requires that Applicant register as a sex offender so that the public is aware of the potential danger he represents. His registration, however, somewhat reduces the potential for coercion, exploitation, or duress. Accordingly, AG ¶ 14(c) has some application. Overall, however, Applicant's evidence is insufficient to establish mitigation of security concerns created by the pattern of criminal sexual behavior developed by the record evidence.

### **Paragraph 3 - Guideline G, Alcohol Consumption**

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes the following two conditions that could raise security concerns and may be disqualifying in this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The record evidence supports the application of these conditions. Applicant has experienced numerous incidents in which his excessive alcohol consumption and binge drinking contributed to his criminal conduct and impaired judgment. This evidence shifts the burden to Applicant to mitigate the security concerns raised under this guideline.

The guideline includes the following four conditions in AG ¶ 23 that could mitigate the security concerns arising from Applicant's alcohol consumption:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant's problematic alcohol consumption was frequent and happened under such circumstances that it might recur. As commented below, it is apparent that he is not just drinking alcohol on rare occasions as he asserts. Also, his alcohol consumption casts continuing doubt on his reliability, trustworthiness, and judgment. Mitigation under AG ¶ 23(a) was not established.

Applicant and his fiancée assert that he no longer abuses alcohol. However, there is limited evidence in the record demonstrating a clear and established pattern of modified consumption. At the hearing, Applicant testified that currently he rarely drinks alcohol – for example, when he attends a wedding or special occasion. In a more credible statement, Applicant advised the LCSW in 2021 that he typically drank three to four glasses of alcohol two to four times a month. Moreover, there is no evidence that he has modified his consumption of alcohol in accordance with treatment recommendations. Applicant’s four classes of alcohol counseling in April 2019 are insufficient to qualify as alcohol treatment. The record contains no evidence that Applicant has ever had any ongoing treatment to help him prevent future abuse of alcohol. Mitigation under AG ¶ 23(b) has not been established.

There is no evidence that Applicant has ever participated in alcohol treatment other than four counseling sessions in March-April 2019. AG ¶ 23(c) and 23(d) are not applicable. Overall, Applicant’s evidence is insufficient to establish mitigation under this guideline. Paragraph 3 is found against Applicant.

#### **Paragraph 4 – Guideline E, Personal Conduct**

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 sets forth the following condition that could raise security concerns and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

SOR ¶ 4.a is merely an additional cross-allegation under Guideline E of conduct already alleged under Guideline J. AG ¶ 16(c) is not established, as it requires “credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline. . . .” The personal conduct general

concern (AG ¶ 15) and the whole-person analysis below are established, given that Applicant's criminal conduct evidences his questionable judgment, untrustworthiness, and unwillingness to comply with rules and regulations. However, since the conduct is fully addressed under other guidelines, as discussed above, I consider the personal conduct cross-allegation to be duplicative, and I find SOR ¶ 4(a) for Applicant solely on that basis.

### **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 facts established under the guidelines alleged in the SOR and the whole-person concept.

I have considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, D, G, and E in my whole-person analysis. Further comments are warranted. The overall impression that Applicant established is that he is young man with a difficult past to explain. Instead of sincerely owning what he has done and establishing the ways that he has matured or otherwise changed, he has minimized his past misconduct, first with the LCSW and then at the hearing. For instance, he regrets that he made a woman feel "uncomfortable" with his sexual advances without admitting that he sexually assaulted her and committed a crime in doing so. Similarly, he deflects responsibility by arguing that he was too intoxicated to recall the events of a second sexual assault. He expressed no regret for his excessive drinking that night. The events surrounding Applicant's 2019 arrest show that his pattern of problematic alcohol consumption, questionable judgment, and criminal behavior has persisted in his post-Academy civilian life. Applicant has not provided credible evidence to show he has achieved the necessary maturity or experienced sufficient personal growth to correct his past behavior, particularly under the influence of alcohol. Overall, the record evidence

leaves me with 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: Subparagraphs 1.a through 1.e:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline D: Subparagraphs 2.a and 2.b:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline G: Subparagraphs 3.a and 3.b:	AGAINST APPLICANT Against Applicant
Paragraph 4, Guideline E: Subparagraph 4.a:	FOR APPLICANT For 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