



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02339
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: *Pro se*

12/11/2023

---

**Decision**

---

MURPHY, Braden M., Administrative Judge:

In 2015, while a Navy chief petty officer, Applicant was found guilty at a nonjudicial punishment proceeding of failure to obey an order or regulation by wrongfully making inappropriate sexual comments towards a junior sailor about her body parts, and of abusive sexual contact by touching the sailor’s breast without her consent. He subsequently received a general discharge under honorable conditions due to commission of a serious offense and evidence of misconduct. Applicant did not provide sufficient evidence to mitigate resulting security concerns under Guideline D (sexual conduct) and Guideline J (criminal conduct). Guideline E (personal conduct) allegations are either duplicative or are not properly alleged as disqualifying conduct, so they are not established. Applicant made significant payments to address his SOR debts, but he did so only on the eve of hearing, by taking out a loan. His actions are too late to be considered sufficient evidence of good-faith, responsible action to mitigate Guideline F financial security concerns. Applicant’s eligibility for access to classified information is denied.

## Statement of the Case

Applicant submitted a security clearance application (SCA) on November 15, 2020, in connection with his employment in the defense industry. On April 19, 2022, following a background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J (criminal conduct), Guideline D (sexual conduct), Guideline E (Personal Conduct), and Guideline F (financial considerations). The CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant answered the SOR on May 8, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 1, 2023. On July 26, 2023, DOHA issued a notice scheduling the hearing for August 31, 2023, with the hearing to occur via video-conference through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 8. Applicant testified and submitted Applicant's Exhibits (AE) A through J. All exhibits were admitted without objection. At the end of the hearing, I held the record open until September 15, 2023, to allow Applicant the opportunity to submit additional information. He subsequently submitted documents marked as AE K through AE R, all of which are admitted without objection. DOHA received the hearing transcript (Tr.) on September 12, 2023. The record closed on September 15, 2023.

## Findings of Fact

In his Answer to the SOR, Applicant admitted SOR ¶ 1.a and SOR ¶¶ 4.a-4.g, and he denied SOR ¶¶ 2.a and 3.a, all with explanations. SOR ¶ 3.b is a cross-allegation that he did not answer, so I consider that he denied it. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 45 years old. He graduated from high school in 1997 and has taken some college classes. He has been married since 2008, and has a son, 18, and a daughter, 15. He served in the U.S. Navy from October 1997 to November 2016. His DD-214 discharge form reflects that he received the Navy and Marine Corps Commendation Medal, Joint Service Achievement Medal, five Navy and Marine Corps Achievement Medals, and six Good Conduct Medals, along with appropriate service medals. (AE R) Applicant received a general discharge under honorable conditions following "Misconduct (Serious Offense)." He was unemployed for about seven months

after he left the Navy, until beginning his current position with a large defense contractor, in June 2017. He held a clearance in the Navy. (GE 1, GE 5, GE 6, GE 7; Tr. 10, 34, 46-47, 66-69; AE R)

In September 2015, Applicant was a chief petty officer (E-7) on a U.S. Navy aircraft carrier at sea. Sailors were on a "holiday schedule" and were free to watch movies and television. (GE 7 at 2) Applicant and several male sailors were at his work area watching a football game. At about 2100 hours, Sailor S (E-3) went to Applicant's work area to use a computer. Applicant was her mentor at the time. She was wearing unauthorized clothing to transit the ship, including Navy physical training sweatpants and a t-shirt. (GE 5 at 11; Tr. 39, 48-50, 113)

When Sailor S sat down, Applicant said to her, "What happened to [your] ass, you really don't have any back there." Other sailors laughed. Moments later, Sailor S asked Applicant for some candy he was eating. Applicant asked her, "What are you excited about?", referring to the fact that her breasts were visible beneath her shirt. (GE 5 at 11)

Applicant then walked towards Sailor S with the bag of candy. She later told Naval Criminal Investigative Service (NCIS) investigators that he grabbed her right breast while handing her the candy. She said, "he laughed when he grabbed my breast and the other guys did too." She pushed his hand away and said, "What the f---? Why would you do that?" Sailor S then left, went to her own work center, and wrote Applicant an e-mail telling him she found his behavior inappropriate, offensive, and humiliating. (GE 5 at 11)

Sailor S reported the matter the next day. NCIS investigators interviewed the three other sailors present that evening and obtained a sworn statement from Applicant. Only one of the sailors could speak to the allegations. Witness 1 said Applicant told Sailor S to "pull her pants up over her flat ass." Witness 1 was unable to observe whether Applicant grabbed Sailor S's breast. (GE 5 at 11; GE 6 at 11-12)

In her sworn statement provided to NCIS, Sailor S said she felt humiliated and embarrassed on the night in question. She said Applicant began making sexually inappropriate comments towards her in about April 2014. She detailed an incident when she was in the hospital and Applicant came to visit her. She said he sat on her bed, ran his fingers through her hair, and called her "beautiful" and "sexy." She found his behavior offensive but did not report it since she thought of him as a mentor. His grabbing her breast was the catalyst for her report. (GE 5 at 12) She was transferred to another ship following her report. (GE 6 at 3)

Applicant acknowledged in his own sworn statement to NCIS that he asked Sailor S, "why are your pants sagging around your flat ass?" He also admitted that he asked her if she was excited about something because he noticed that her "headlights were on" (meaning her nipples were showing through her shirt). He said he may have "grazed her breast" while handing her the bag of candy, but he told NCIS that any

contact was unintentional. He received the e-mail from Sailor S but did not respond, as he planned to discuss it with her in person. (GE 5 at 11-12; GE 6 at 15)

In the NCIS interview, he said,

I handed the bag to her with my right hand and she grab[bed] with her left because her right hand is in a [cast]. While reaching and returning my hand, she pushed my arm away in a[n] upward manner because I had grazed her breast. I didn't think much of it at the time, this was not intentional or a purposely done act to degrade her. I did not squeeze, grab, pinch, or grope her breast in any way. (GE 6 at 15)

Applicant's interactions with Sailor S led to charges under the Uniform Code of Military Justice (UCMJ) Article 92 (Failure to Obey Order or Regulation), by "wrongfully making inappropriate sexual comments to [Sailor S] about her body parts, creating a hostile work environment"; and Article 120 (Abusive Sexual Contact) by touching the breast of Sailor S without her consent. In December 2015, at a nonjudicial punishment (NJP) proceeding (captain's mast) under Article 15 of the UCMJ, he pled not guilty to both specifications but was found guilty by the ship's commanding officer (CO). Applicant was put on restriction for 45 days and forfeited \$2,764 in pay for two months. (GE 5. Tr. 48-49, 66-69) (SOR ¶¶ 1.a, 2.a, 3.b)

The CO found that the witnesses' statements at the NJP proceeding were consistent with their statements to NCIS. Applicant admitted at the captain's mast that his comments to Sailor S that evening were inappropriate and offensive. He admitted that he had allowed their relationship to become unprofessional and unduly familiar. (GE 5 at 12)

The CO found that "it is clear that [Applicant] made inappropriate comments of a sexual nature about [Sailor S's] buttocks and breasts, engaged in an unduly familiar relationship with her, and fostered an environment where she was comfortable ignoring the uniform restrictions in his work center." He found that Applicant was not credible in asserting that he may have accidentally touched Sailor S's breast, "in light of his sexual statements made immediately before the incident and the evidence of fraternization." (GE 5 at 12) He found that a preponderance of the evidence supported the charges. (GE 5 at 9)

The CO found that Applicant's behavior

impacted good order and discipline, goes against the U.S. Navy's Core Values, and distracts from the Navy's mission. His behavior clearly violated the Navy's sexual harassment policy, created a hostile work environment, and violated all bounds of decency. He abused the trust placed in him by this command as a Chief Petty Officer. He further abused his position as a mentor to junior sailors. This behavior has no place in our Navy. He must be held accountable for his actions. (GE 5 at 13)

Applicant retained legal counsel and appealed the NJP findings to the commander of the carrier strike group, but his appeal was denied. (GE 5) Based on the CO's findings, Applicant was recommended for administrative separation (ADSEP) from the Navy. In March 2016, the ADSEP board convened and found sufficient evidence of misconduct due to his commission of a serious offense. The board recommended a general discharge under honorable conditions. (GE 6 at 5) Applicant was discharged from the Navy as recommended in November 2016. (AE R) (SOR ¶ 3.a) He was discharged after serving 19 years and two months in the Navy, with the rank of chief petty officer (E-7). (AE R; Tr. 34-35, 66-69, 71-73)

Applicant adamantly denied Sailor S's allegations in his security clearance background interview. (GE 7 at 4) In his Answer to the SOR, Applicant admitted receiving captain's mast but denied the underlying conduct, asserting that the CO did not properly consider the evidence presented.

Applicant began his hearing testimony by asserting that the allegations were "very much fabricated." (Tr. 29) He acknowledged using "a poor choice of words" by telling Sailor S to "pull your pants up on your ass, and, hey, your headlights are showing." He said his "intent was to just make her aware of her uniform appearance." (Tr. 30, 45) He denied approaching Sailor S in any sexual manner or making advancements towards her. He believes it was "unfair" for her to have made those allegations. (Tr. 30) He feels the Navy did him a disservice, and he believes people do not want to make statements (in his favor) and jeopardize their own career. (Tr. 30-31)

Applicant said Sailor S was in his department on the ship, one of about 400 sailors. He said he was not her supervisor, but she asked him and another sailor to mentor her. Initially he told her she should be mentored by a first class or second class petty officer, but he agreed to mentor her as a chief petty officer. He saw her in his department "all the time, two of three times a week." (Tr. 38-39) Applicant said their relationship was a strictly professional, mentor-mentee relationship and they were on good terms. (Tr. 50-51, 64)

Applicant testified that on the evening in question, the ship was on "holiday routine" on a Sunday evening. Applicant and some junior male sailors were watching football and relaxing. When Sailor S sat down, he said she needed to "pull your pants up on your ass" and that "your headlights are on" because her nipples were protruding from her shirt. He said he wanted her to be mindful of her appearance around junior male sailors. (Tr. 39; 51-53) He did not recall any of the other sailors laughing or reacting at the time. (Tr. 54)

Applicant said Sailor S asked if he had any candy, and he had some on his desk and he reached over to where she was sitting and gave her some. One of her arms was in a cast. He handed her the candy and she took it. (Tr. 53-56) He denied grabbing her breast. He told the NCIS investigator that he doubted that he accidentally grazed her breast but that it was a possibility. He said he "never grabbed her [and] never did

anything to her physically. I simply handed her the candy.” He said he hit or grazed her arm that was in the cast. (Tr. 57-62; GE 6 at 15-16)

Applicant said that, afterwards, Sailor S sat at the computer for another 30-45 minutes. He later learned that she was upset and went to her division office and was crying, but she was not upset or emotional when she left his office. (Tr. 62-64)

The next morning Applicant was told by NCIS that Sailor S had alleged that he had grabbed her breast. He cooperated with the investigation. He was scheduled to transfer to another duty station, but the investigation put the transfer on hold. He denied going to the emergency room in the hospital with Sailor S. rubbing her hair and calling her “beautiful.” (Tr. 39-43)

Sailor S was transferred off the ship within 72 hours after she made the allegations against Applicant, per Navy policy. Applicant said he did not want to be seen as someone who “goes around grabbing on people, especially females.” He asserted that Sailor S had “character problems,” had twice been to captain’s mast herself, and had been released from the Navy for performance issues. He did not believe he was being treated equally and fairly, as he felt the allegations were based on hearsay and without concrete evidence. (Tr. 43-45, 114)

At captain’s mast, Applicant was asked by the CO about the incident with Sailor S and he said it was fabricated, and he did not know why she would not have done this. He suggested during his testimony that it was because she wanted to get out of the deployment, but he does not know that. (Tr. 63-64)

With respect to Sailor S’s allegations about the incident in the hospital in 2014, Applicant said he escorted her to the hospital once because she was on restriction from a previous captain’s mast. He remained in the lobby for about two hours. The doctor came out and asked him if he knew of any reason that she would not be able to get underway (with the ship). He denied that he visited her in the hospital and was only there to escort her as an E-7 as required. (Tr. 65-66; GE 7 at 4-5)

Applicant said he “went into a spiral” of depression after he was discharged from the Navy after 19 years and two months of service. He said he is a top performer at his job. He also depleted his savings during his period of unemployment after leaving the Navy. He is currently seeing mental health therapists with the Department of Veterans Affairs (VA). (Tr. 32-33, 74, 99-101, 115-116)

Applicant said that after leaving the Navy, he had no income and was “obsessed” with trying to clear his name and get his discharge status overturned (i.e., upgraded). (Tr 32) He also said he was helping family members financially and he took a large pay cut after leaving the Navy, from \$76,000 to \$47,000 annually. He said he had settled and cleared up about \$19,000 of his \$31,000 in delinquent debts. (Tr. 33, 36-37, 105-106) He paid his lawyer about \$13,000 to appeal the captain’s mast and to represent him during and after his ADSEP board proceeding. (Tr. 72-74)

Applicant does not receive retirement pay from the Navy, but he has a service-connected disability for which he receives \$1,907 a month from the VA, with an annual cost of living adjustment. His annual salary at his job is \$67,815, up from \$47,000 when he was hired. His wife is a nurse, earning about \$30,000 annually. They pay household expenses jointly. (Tr. 35-36, 73-77, 108, 117; AE K, AE P, AE Q) Applicant's work evaluations reflect that he is an outstanding leader who makes a significant positive impact. (AE M – AE O)

Under Guideline F, the SOR concerns seven delinquent debts, totaling just under \$32,000. The debts are established by credit bureau reports (CBRs) in the record, from March 2022, June 2021, November 2020, and August 2023. (GE 2-GE 4, GE 8) (SOR ¶ 4) Applicant disclosed some debts on his SCA. (GE 1)

Applicant made payments on most of his SOR debts, but only did so days before the hearing. He financed these payments with a \$19,000 loan, in late August 2023. (Tr. 87-88, 93, 109) He plans to continue to work to resolve his debts and improve financially. (Tr. 115) He is to repay the loan with \$487 payments over 60 months. (Tr. 121; AE L)

SOR ¶ 4.a (\$2,511) is an account placed for collection. It relates to a furniture purchase. Applicant said the furniture began to come apart a month after he bought it, so he stopped paying on the account. He made a settlement agreement with the creditor for \$2,260. The account was resolved with a payment in late August 2023. (Tr. 77-80; GE 2 at 4; GE 4 at 3, GE 8 at 4; AE A, AE B)

SOR ¶ 4.b (\$2,378) is an account that has been charged off. (GE 2 at 4, GE 3, GE 8 at 5) Applicant paid this account in late August 2023. (AE A, AE G, AE H; Tr. 81-83)

SOR ¶ 4.c (\$1,147 past due, total balance \$3,957) is a financial account, probably a loan, money Applicant used for vehicle maintenance and repairs. (GE 2 at 5, 8 at 8) A civil judgment was issued in April 2022. Applicant did not appear in court to defend himself since he was overseas. He went to court and paid the full amount in August 2023. (Tr. 81-85; AE A, AE F)

SOR ¶ 4.d (\$14,267) is a military exchange account placed for collection. The account was pending when Applicant separated from the Navy and he was allowed to defer payments until he found employment, but he did not follow up and the account became past due. He settled the debt for \$12,096, in August 2023. (Tr. 85-88; GE 2 at 7, GE 3, GE 4 at 2, GE 8 at 5; AE A, AE C, AE I, AE J)

SOR ¶ 4.e (\$5,184) is an account that has been placed for collection. (GE 2 at 7, GE 3, GE 4 at 2) Applicant believes he took out this loan to provide financial assistance to a family member with a serious medical issue. He settled the debt for \$777 in August 2023. (AE A, AE D, AE E; Tr. 88-90)

SOR ¶ 4.f (\$328) is an insurance debt placed for collection. It last appeared on a CBR in June 2021. (GE 3, GE 5) Applicant admitted the debt in his Answer to the SOR and said he would settle it. He said at his hearing that he still has insurance with the creditor and is unsure what this debt is about. (Tr. 90-92)

SOR ¶ 4.g (\$3,350) is a debt placed for collection by a loan company. (GE 4 at 3) Applicant said in his Answer that he intended to resolve it. In his hearing he said he wants to clear it up but is not sure if he owes the debt or not. He last contacted the creditor in May or June 2023. (Tr. 90-92)

In about 2015, before he left the Navy, Applicant said he got about \$100,000 from a settlement of what he said was a class- action lawsuit relating to the short sale of some real estate. He said he used the proceeds to pay off debts, buy a car, and for some other expenses. (Tr. 95-98, 103-107)

Applicant acknowledged that he has about \$13,000 in past-due federal income taxes that resulted from that windfall. He said he has been on a payment plan since 2018 and pays \$406 a month. At the time of the hearing (August 31, 2023), he had not filed his 2022 federal income tax return and had not sought a filing extension. He said he had been sent on an overseas assignment for his job that was extended for several months. He missed the filing deadline and neglected to speak with his accountant about it. (Tr. 93-97, 102-107) This is not alleged in the SOR and will not be considered as disqualifying conduct.

Applicant has participated in credit counseling in recent months. After the hearing, he provided monthly budget information detailing his VA benefits (\$1,907), income from his job (\$2,061 biweekly = \$4,122) and monthly expenses, including his mortgage and the \$487 monthly payment on the loan he used to address his SOR debts. (Tr. 108-110; AE L)

Applicant closed his testimony by asserting that if he could go back to September 2015 and do things differently, he would. His work with his counselors has helped him realize that he has responsibilities. He let his personal pride get in the way. He wants to upgrade his discharge and also to address his financial shortfalls. He is valued at work and up to the point of his NJP he was a stellar performer in the Navy. (Tr, 119-120)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially



disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 that "[a]ny 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

### **Analysis**

In 2015, while a Navy chief petty officer, Applicant violated Navy rules and regulations, created a hostile work environment, and exercised extremely poor judgment in his inappropriate and offensive words and conduct towards a junior female sailor, Sailor S, with whom he had a professional mentor-mentee relationship. He admitted using what he called "a poor choice of words" in addressing Sailor S and in discussing her physical appearance and referencing her body parts. He denied groping or grabbing her breast but admitted he may have grazed it inadvertently. However, Sailor S said in a sworn statement at the time that he grabbed her breast and laughed about it. Applicant was found guilty at captain's mast of failure to obey an order or

regulation by wrongfully making inappropriate sexual comments towards Sailor S about her buttocks and breasts, and of abusive sexual contact by touching her breast without her consent. Applicant's CO noted specifically that he did not find Applicant's denials credible. Applicant subsequently received a general discharge under honorable conditions due to commission of a serious offense and evidence of misconduct. His conduct (Guideline D), and the resulting captain's mast and discharge (Guidelines J and E) are alleged as related security concerns. Applicant's delinquent debts (Guideline F) are discussed below.

#### **Guideline D: Sexual Behavior**

AG ¶ 12 expresses the security concern for sexual conduct:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted; and

(d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

Applicant was charged under the UMCJ and was found guilty at captain's mast proceeding of violating Article 120 (Abusive Sexual Contact) by touching the breast of Sailor S without her consent. AG ¶ 13(a) applies to that offense. Whether Applicant's other offense, a violation of UCMJ Article 92 (Failure to Obey Order or Regulation), for "wrongfully making inappropriate sexual comments to [Sailor S] about her body parts, creating a hostile work environment" is a closer call, since it involved words and not conduct. However, I conclude that AG ¶ 13(a) applies to that offense as well. His words and actions towards Sailor S unquestionably constituted a lack of discretion and judgment. They also occurred in public, in view of other sailors, all of whom were junior sailors and all of whom were males. AG ¶ 13(d) applies.

AG ¶ 14 sets forth the potentially applicable mitigating conditions for sexual conduct:

(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

(d) the sexual behavior is strictly private, consensual, and discreet

Applicant's behavior was not private, consensual, or discreet. AG ¶ 14(d) does not apply.

AG ¶ 14(b) does not fully apply. Applicant's actions occurred in September 2015, now more than eight years ago. He also expressed remorse for his words and wishes he could go back and do things differently. However, he only acknowledged touching Sailor S's breast without her consent inadvertently. This is contrary to the findings at the NJP proceeding, at which the CO found that the preponderance of the evidence established that he was guilty of both charges and found that Applicant's assertions about the events were not credible. Applicant paid a high price for his actions, since it cost him his Navy career. He has participated in counseling since then and there is no indication of repeated conduct. Nevertheless, Applicant has not fully accepted responsibility for his actions. AG ¶ 14(b) therefore only partially applies.

#### **Guideline J: Criminal Conduct:**

AG ¶ 30 expresses the security concern for criminal conduct:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

AG ¶ 31(b) applies to Applicant's conduct for the same reason that AG ¶ 13(a) applies under Guideline D, above.

AG ¶ 32 sets forth the potentially applicable mitigating conditions regarding 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.

AG ¶ 32(a) does not fully apply under the same rationale as discussed under Guideline D AG ¶ 14(b).

AG ¶ 32(d) only partially applies. Applicant denied doing anything more than grazing Sailor S's breast and doing so inadvertently. The CO conducting the captain's mast found that Applicant's testimony was not credible, and Applicant was found guilty of touching her breast without her consent. His actions and words occurred several years ago. He paid a high price, as he was separated from the Navy with only months before he could retire, at 20 years. He has participated in counseling with the VA in the years since. He expressed remorse and regret for his actions. He also expressed bitterness at what happened, and he sought to blame the victim during his testimony. His evaluations from his civilian job show he is highly regarded at work, as an outstanding leader.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

Under Guideline E, the SOR alleged not Applicant's conduct itself (alleged under Guideline D), but the resulting negative consequences: both the discharge (SOR ¶ 3.a) and the NJP proceeding that came before it. (SOR ¶ 3.b) First, the NJP action is already alleged under Guideline J, above. A cross-allegation under Guideline E is duplicative

and unnecessary. Further, the second consequence (the discharge) merely followed from the first (the NJP proceeding). As such, it is not properly alleged as an independent allegation. Lastly, negative consequences are not conduct. Thus, SOR ¶ 3.a is found for Applicant. No disqualifying conditions apply under Guideline E.

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out, in relevant part, in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred various delinquent debts in the years after he separated from the Navy in 2016. The debts are established by the credit reports in the record and by Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's various debts arose because he became financially overextended after leaving the Navy. He was understandably depressed as he dealt with the sudden end of his Navy career, only months before retirement. It took time to find good employment and his income level decreased. However, he was also separated from the Navy due to his own misconduct. This does not constitute a circumstance beyond his control. He also did not act responsibly or in good faith, since he addressed his SOR debts only on the eve of hearing. While he has pursued credit counseling and used a loan to address his debts, he has not established a track record of steady payments towards his debts so as to demonstrate good-faith efforts to resolve them. An applicant who waits to address his debts until compelled by the security clearance process to do so does not demonstrate good faith. Applicant's belated actions to address his debts are not sufficient evidence to mitigate the Guideline F security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I 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, E, and F in my whole-person analysis. Applicant exercised extremely poor judgment in his interactions with Sailor S, a young, junior sailor with whom he had a mentor-mentee relationship. He abused his position as a chief petty officer and as her mentor, and he acted inappropriately and offensively towards her in the presence of other junior, male sailors. His actions were very serious, and he paid a high price, since he was found guilty at captain's mast, and most seriously, he received a general discharge under honorable conditions from the ADSEP board only months before he became retirement eligible. Applicant acknowledged his offensive words, but denied the abusive sexual conduct towards Sailor S, despite the CO's findings. While His actions are now quite dated, there is no evidence of recurrence, he has been to counseling, and he has an excellent work record. Nevertheless, it is difficult to credit him with sufficient evidence mitigation without full acceptance of his actions. Applicant did not provide sufficient evidence to mitigate security concerns under Guideline D (sexual conduct) and Guideline J (criminal conduct). Guideline E (personal conduct) allegations are either duplicative or are not properly alleged as disqualifying conduct, so they are not established.

Applicant's financial issues also remain a security concern. He took little to no action to address his SOR debts until only days before his hearing, when he took out a loan to pay them off. While he largely did so, he is now responsible for paying off that loan. This essentially trades one financial responsibility for another, and on this record, that is not a substitute for a track record of steady payments towards his debts, nor is it sufficient evidence of good faith, responsible action to address his debts. I conclude that Applicant did not provide sufficient evidence to mitigate the Guideline F security concerns.

Applicant has not met his burden to establish that it is clearly consistent with the national interest to grant him eligibility for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT

Subparagraphs 3.a-3.b:	For Applicant
Paragraph 4: Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a-4.g:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

---

Braden M. Murphy  
Administrative Judge