



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



In the matter of: )  
)  
) ISCR Case No. 22-01851  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: Samir Nakhleh, Esq.

03/06/2024

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline J, criminal conduct and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 14, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, criminal conduct and Guideline E, personal conduct. The action was taken under Executive Order (EO) 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 on June 8, 2017.

On January 30, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

17, 2024, scheduling the hearing for February 7, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 10. There were no objections, and the exhibits were admitted in evidence. Applicant testified, and offered Applicant Exhibits (AE) A through N, which were admitted without objection. (AE A through J were part of Applicant's answer to the SOR.) DOHA received the hearing transcript (Tr.) on February 16, 2024.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR with clarifications. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He married in 2000 and divorced in 2005. He has two children from the marriage, ages 15 and 24, and a 26-year-old child from a previous relationship. He earned an associate's degree in 2016 and a bachelor's degree in 2018. He has been employed by a federal contractor since June 2021. (Tr. 15, 21GE 1)

Applicant served in the military from 1999 to 2020 and retired honorably in the paygrade E-7. His career was in the financial field, with responsibilities over the years as a financial analyst, budget manager and budget officer. He testified he was responsible for operating budgets in the amount of \$315 million. He received numerous awards and certificates during his military service, including a Bronze Star in support of the mission in the Middle East. He received disciplinary action under the Uniform Code of Military Justice Article 15 twice early in his military career. The first Article 15 related to illegal marijuana use. He admitted he was aware that using marijuana was against the law. He said he used it "probably once or twice" before he received his Article 15. His second Article 15 was for illegally viewing pornography on a government computer. (Tr. 17-20, 37-39, 48-49; GE 10; AE D)

In June 2013, Applicant was arrested and charged with assault causing bodily injury/family member, criminal mischief between \$50 and \$500, and interfering with an emergency call. (SOR ¶ 1.b). In his answer to the SOR, he stated that he was in an argument with his girlfriend at the time, and she attempted to call the police. He stated, "at no time did I interfere with her making that phone call." (SOR answer) He further stated in his answer that during the argument, she threw a lamp at him that was still plugged into the wall, and it traveled backwards and caused property damage and minor injuries to her. He further stated:

After this event, I was not questioned by the police, Instead, they arrested me and charged me with Assault, Criminal Mischief, and Interfering with an Emergency Call. The charges against me were dismissed and I agreed to perform 100 hours of community service, which I completed. (Answer to SOR)

At his hearing, Applicant testified that he and his girlfriend got into a heated argument, and he attempted to leave. He admitted he slapped her phone out of her hand while she was attempting to call the police. He testified he did not perceive this as a violent act. He said she threw a lamp at him that was still plugged into the wall, and she then pushed him as he was walking down the stairs. He testified that he went to the police station to press charges against her, and he was arrested. He said she had already contacted the police about pressing charges, so he was arrested. He was asked what happened to the charges. He testified that “The charges were dismissed after a domestic violence class and then paid a fine and 100 community service hours.” He further testified he is no longer involved with this woman and has had no subsequent domestic violence issues. (Tr. Tr. 26-29)

Applicant was interviewed by a government investigator in January 2022 and in his September 2022 interrogatories, he adopted the summary of his interview. When questioned by the investigator about the domestic violence events from June 2013, he did not tell the investigator or add to his interrogatory statement that he had slapped the phone out of his girlfriend’s hand to prevent her from calling the police. He also said he immediately left the residence and walked two blocks to his home. He said he went to bed and the next morning he went to the police department to file a complaint against his girlfriend. When he arrived, he said he was told there was a warrant for his arrest. He was advised the police attempted to contact him at his residence the night before, but he failed to answer the door. He said he was asleep. He told the investigator that he went to the county court the same month that the offenses occurred, and the charges against him were dropped.<sup>1</sup> (GE 3, 7; Answer to the SOR)

When Appellant was cross-examined at his hearing about what happened to the charges from the June 2013 incident, he admitted his January 2022 statement to the government investigator did not include that he had slapped the phone out of his girlfriend’s hand when she was attempting to call the police. When he was further asked about what happened in court he testified “the case was dismissed after completion of a class and 100 hours of community service.” (Tr. 84-85) He was then asked “Did you ever plead guilty to any of the three charges?” He responded, “I don’t remember.” He explained he could not remember because it was ten years ago and could not recall what his pleas were but did recall the outcome of the case. (Tr. 84-85)

The court documents reflect that in January 2014 Applicant was represented by an attorney, and he entered pleas of guilty to assault on a family member, criminal mischief, and interfering with an emergency call. He received a deferred disposition for 18 months, which required that he complete 120 hours of community service and probation for 18 months, which required he report monthly and be tested for drugs and alcohol. After he completed the terms of his sentence and probation, in accordance with the deferred disposition agreement, his pleas of guilty were amended to not guilty and the charges were dismissed. (Tr. 85-90; GE 4, 7, 8)

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<sup>1</sup> In Applicant’s statement to the government investigator, he listed the offenses as occurring in October 2012 and he went to the county courthouse also in October 2012 and the charges were dropped. He was obviously mistaken as to the actual date of the offenses.

In September 2021, Applicant completed a security clearance application (SCA). Section 22: Police Record inquired if he had ever been convicted of an offense involving domestic violence. Applicant responded “yes.” He disclosed: “I was charged with [d]omestic violence to ex-girlfriend to whom we did not live together nor share children. The charges were later dismissed.” (GE 1) The SCA further inquired:

Please provide all charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, or charges dropped or “nolle pros,” etc.) If you were found guilty of or pleaded guilty to a lesser offense, list both the original and the lesser offense separately. (GE 1)

Applicant disclosed the offense was a misdemeanor and the charge was domestic violence. He then stated, “Outcome: charges dropped.” He further disclosed on the SCA “Case went before judge and charges were dropped.” He did not disclose all the information about his guilty pleas, deferred disposition, and probation for 18 months. (GE 1)

In April 2020, while on terminal leave from the military and awaiting his final discharge on April 30, 2020, Applicant was traveling outside of his home state. He attempted to put an address into his global positioning system (GPS) while he was driving in a high-traffic area, and he hit an 18-wheel tractor-trailer truck from behind. Applicant’s vehicle left the road. The semi-tractor-trailer truck stopped. Applicant testified that when he came to his senses, he began walking along the roadway and railroad tracks to his friend’s house. He did not remain at the scene of the accident. He was experiencing concussion symptoms. He did not have his cell phone with him or any identification. He said he walked between an hour or an hour and a half and arrived at his friend’s house. He used her telephone to contact another friend whose house he had been at before the accident. He asked his friend to pick him up and take him to the hospital where he was diagnosed with a concussion. Applicant testified that he has had concussions in the past and has post-concussion syndrome and is more susceptible to them. (Tr. 29-34, 39-41; GE 4, 5, 6; AE G)

Applicant testified that later while at the hospital, he contacted the police advising them he had been involved in a vehicle accident. He provided the police his address and they spoke with him later. He testified that he was told he would be charged with hit and run, failure to stop, and possession of marijuana. He testified that the police told him that several items had been found outside of his vehicle and that marijuana was found around the area as well. He denied to the police that the marijuana belonged to him. During his January 2022 background interview, he told the investigator that he was told by the police that the marijuana was found either in or around the backpack. The police report stated that, a pistol magazine with 9 mm bullets loaded into it was found in the glove compartment. The report also stated that about 30 feet away from the car in the woods, the police officer found a backpack that contained a loaded Ruger P95 pistol with a matching magazine and an orange vial with a green, plant-like material inside. It was field tested and found to be marijuana. (Tr 34-37, 54-58; GE 3, 6)

The handgun found in Applicant's backpack was legally licensed. In the trunk of his vehicle, he had an AR-556 assault rifle, which was also legally licensed. He admitted the backpack and the weapons belonged to him, but not the marijuana. Applicant testified that, "I am not even saying that the marijuana was in my backpack." He did not know if the police planted the marijuana in his backpack or who it belonged to. (Tr 34-37, 54-59, 71; GE 3, 6)

Applicant was charged with felony failure to stop/accident, following too closely, and possession of marijuana. He testified that he did not intentionally leave the scene of the accident. Rather when he walked away it was "unknowingly," presumably due to his concussion. He was represented by an attorney and pursuant to a plea agreement, he pled guilty to misdemeanor failure to stop/accident, the felony was reduced, and the other charges dismissed. The sentence was not part of the plea agreement. He was sentenced to six months in jail. Five and a half months of the six-month jail sentence was suspended "for a period of five years conditions upon being of good behavior, keeping the peace, obey this order, and paying fines and costs." He was also placed on probation for five years. He paid the fine. The suspended sentence and probation continue until September 2025. Applicant testified that he was aware he had a suspended sentence but was unaware how long the suspension was for. He also testified that he did not know he was on probation because he did not have to report to anyone. He said he was never told by his attorney he was on probation. (Tr. 42-44, 51, 62-69, 81-83; GE 3, 5, 8)

Applicant disclosed on his September 2021 SCA that he was charged with a misdemeanor in March 2021 for failure to stop.<sup>2</sup> He admitted he was sentenced and under the section: Conviction Details he wrote: "Judge sentenced me to 5 days in jail." No other information about this conviction was provided. (GE 1)

In Applicant's SOR answer, he stated:

While at the hospital, I was informed by the investigating officer that marijuana was found outside of my vehicle at the scene of the accident. I denied the marijuana belonged to me, and the charge was dropped by the prosecution. I pled guilty to the Failure to Stop and complied with sentencing. (Answer to SOR)

Applicant was asked at his hearing if he had been arrested for any other traffic incidents. He said he had received a speeding ticket, which is not a criminal traffic offense. He was then asked if he had any traffic charges such as reckless driving, driving while intoxicated, or driving on a suspended license. When questioned further, he admitted he had been stopped by police, given a field sobriety test and breathalyzer, which he passed. He had been drinking before he was stopped but there is no evidence he was intoxicated. He was arrested for reckless driving. This charge was later reduced to a lesser offense of improper driving. (Tr. 91-93; GE 9)

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<sup>2</sup> Based on the records, it is apparent Applicant reported the incorrect month of the incident.

Applicant provided copies of his military discharge record, awards, certificates, resume, work evaluations, disability status, and concussion diagnosis. He also provided character and reference letters. In them, he is described as an asset, an exemplary noncommissioned officer, professional, stellar, conscientious, flexible, open-minded, efficient, detailed-oriented, extremely competent, likable, knowledgeable, loyal, honest, compassionate, disciplined, hardworking, trustworthy, and a person of integrity. (Tr. 22-24; AE B-N)

I did not find Applicant credible. Any derogatory information that was not alleged will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for criminal conduct is set out in AG ¶ 30:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following 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; and

(c) individual is currently on parole or probation.

In 2013, Applicant was arrested and charged with assault causes bodily injury/family member, criminal mischief between \$50 and \$500, and interfering with an emergency call. He entered pleas of guilty to assault on a family member, criminal mischief, and interfering with an emergency call. He received a deferred disposition for 18 months, which required that he complete 120 hours of community service and probation for 18 months, which required he report monthly and be tested for drugs and alcohol. After he completed the terms of his sentence and probation, in accordance with the deferred disposition agreement, his pleas of guilty were amended to not guilty and then the charges were dismissed.

In April 2020, Applicant was charged with felony failure to stop/accident, following too closely, and possession of marijuana. Pursuant to a plea agreement, he pled guilty to the misdemeanor offense of failure to stop/accident and the other charges were dismissed. He received a six-month jail sentence, of which five and half months was

suspended for five years, and he is on probation for five years which ends in September 2025. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(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 was convicted of assault causes bodily injury/family member, criminal mischief between \$50 and \$500, and interfering with an emergency call. Although, this case is more than ten years old, I found that Applicant repeatedly was not forthcoming, evasive, and lacked candor about the facts and the disposition of the charges. I believe he was not completely truthful while testifying.

In April 2020, Applicant was charged with felony failure to stop/accident, following too closely, and possession of marijuana. Pursuant to a plea agreement, he pled guilty to the misdemeanor offense failure to stop/accident and the other charges were dismissed. He received a six-month jail sentence, of which five and half months was suspended for five years, and he is on probation for five years which ends sometime in September 2025.

I cannot find that Applicant is successfully rehabilitated as he repeatedly has attempted to minimize the gravity of his criminal conduct for which he pleaded and was found guilty. He has therefore, not taken full responsibility for his actions. He remains on probation until September 2025, which indicates the state where he was convicted continues to have concerns about him. It specifically suspended his sentence for five years subject to him complying with various terms. Those terms have not expired. I cannot find future misconduct is unlikely to recur. His behavior continues to cast doubts on his reliability, trustworthiness, and good judgment.

#### **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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's 2013 arrest, charges, and deferred prosecution for assault bodily injury/family member, criminal mischief, and interfering with an emergency call and his 2020 charge and conviction for failure to stop/accident (SOR ¶¶ 1.a and 1.b) as alleged under Guideline J, were cross-alleged (SOR ¶ 2.a) under the personal conduct guideline. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the criminal conduct guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's conduct was serious. He has minimized his culpability and not fully acknowledged his responsibility for his conduct, which raises concerns that he is not truly rehabilitated. I cannot find that future inappropriate conduct is unlikely to recur. His conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions, individually or collectively, are sufficiently applicable to overcome Applicant's conduct.

### **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 the 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 and E in my whole-person analysis.

I considered Applicant's military service, awards, certificates, and character letters. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the security concerns arising under Guideline J, criminal conduct and Guideline E, personal conduct.

## 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
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge