



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



In the matter of: )  
)  
) ISCR Case No. 23-02916  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Aubrey M. De Angelis, Esquire, Department Counsel

For Applicant:  
*Pro se*

06/10/2024

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

Applicant failed to establish that he has filed his 2020 Federal income tax return. He was also the subject of a domestic violence restraining order in 2022. He provided some information regarding two minor allegations of criminal conduct made by his now-estranged wife, but during his hearing, he refused to answer any questions about an allegation of marital rape. Applicant is denied national security eligibility.

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP) on September 7, 2022. On January 23, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations), J (Criminal Conduct), 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 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 on or about January 24, 2024, (Answer) and requested a hearing before an administrative judge. On March 18, 2024, Department Counsel was ready to proceed with the hearing. The case was assigned to me on April 3, 2024. On April 17, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Microsoft Teams Video Teleconference Hearing, scheduling the hearing for May 9, 2024. The case was heard as scheduled.

At the hearing, Department Counsel offered three proposed exhibits marked as Government Exhibits (GE) 1 through 3, which I admitted without objection. Applicant testified on his own behalf and submitted two exhibits, marked as Applicant Exhibits (AE) A and B, which I also admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 16, 2024. (Tr. at 10-13.)

### **Procedural Issue**

During the cross-examination of Applicant regarding a claim by his wife that he had raped her after they had separated emotionally, but were still living in the same apartment for financial reasons, he chose not to respond to Department Counsel's questions. Applicant denied the claim in the Answer, but when pressed for details about his version of the incident at the hearing, he declined to provide further explanation. He said that he understood that there may be a police report regarding his wife's allegation, and he refused to comment further. Applicant was advised that he had the right to not answer any questions regarding the criminal allegations, but that his decision to do so would result in a determination that he was not eligible for a security clearance.

Pursuant to Directive, Additional Procedural Guidance ¶ 3.1.17, Department Counsel moved to amend the SOR to conform to Applicant's statements about declining to respond to her questions regarding the alleged rape. Specifically, Department Counsel moved to amend the SOR by adding the following second allegation under Guideline E:

3.b. On May 9, 2024, you refused to cooperate with questioning during the course of your Security Clearance hearing, regarding questions from the incident that is alleged to have occurred with your wife in June 2021.

(Tr. at 55-59.) Applicant did not object to this amendment, or request further time to prepare to address it. I hereby granted the Government's motion to amend. Applicant did not wish to make any further statements on the subject of the amendment.

## Findings of Fact

In the Answer, Applicant admitted SOR ¶ 1.a under Guideline F, with an explanation and update. He also admitted the facts alleged in SOR ¶ 2.a under Guideline J, regarding court proceedings filed against him by his wife, but he denied that the underlying claims made against him by her were true. Therefore, I consider his admission to the facts alleged in SOR ¶ 2.a to be a denial of the underlying claims of criminal conduct. Applicant denied the cross-allegations in SOR ¶ 3.a. Applicant's admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 28 years old and has one minor child. He married in 2018 and is presently separated from his wife with a pending divorce proceeding. He earned a high school diploma in June 2014. Later that year he enlisted in the U.S. Army and served until January 2018. He then transitioned to the U.S. Army Reserve and served until September 2021. Both his discharges, from the Army and the Army Reserve, were characterized as Honorable. Applicant has been employed as a technician by a defense contractor since December 2020, except for a three-month period in 2021 when he worked for a private employer. (Tr. at 15-19, 37-38; GE 1 at 5, 10-11, 11-19, 20-21, 23-24, 25-26.)

In 2013 or 2014, during his senior year in high school, Applicant applied for and was granted a Secret clearance. He submitted the e-QIP in 2022 to renew his national security eligibility in connection with his employment by the defense contractor. (Tr. at 13-19; GE 1 at 32-33.)

Applicant failed to file his Federal income tax return for tax year (TY) 2020 as required. He was unemployed during most of 2020 due to the COVID-19 pandemic, except he was paid for his Army Reserve duties. Applicant qualified for a \$1,200 "tax relief credit" and was paid that amount by the U.S. Government on April 15, 2020. As a result of his limited income in that year, he did not believe that he was required to file Federal or state tax returns for TY 2020. He was subsequently advised that he should have filed returns for that year. He wrote in his August 2023 response to the Government's interrogatories that he intended to schedule an appointment with a professional tax preparer "regarding the missed tax year." (Tr. at 19-34; GE 1 at 86.)

At the time of his March 2023 personal subject interview, Applicant stated that he earned about \$8,000 in TY 2020 and believed he may owe about \$1,000 in taxes, which he could not afford to pay. (GE 2 at 5.) [This is a one-sentence paragraph. Maybe merge with below?]

Applicant claimed at the hearing that he personally prepared his TY 2020 tax returns on his computer using an online service. He testified that he mailed the returns in early March 2024. He asserted that the late returns could not be filed electronically due to a limitation as to how the online tax service functioned. Applicant failed to provide copies of his TY 2020 tax returns or any other evidence to support his testimony that the returns were prepared and mailed. In his August 2023 response to the Government's

interrogatories, he provided a copy of the IRS account transcript for TY 2020, dated June 8, 2023. The account transcript reflected that no tax return had been filed as of that date. He did not update that account transcript at the hearing with a new transcript reflecting that the TY 2020 tax return was indeed filed as he claimed. Applicant also testified that he has timely filed his subsequent returns, and that at this time, he does not owe any taxes to the IRS or his state government. He also provided, with his interrogatory response, copies of account transcripts for TYs 2017, 2018, 2019, and 2021, which reflect that he filed his Federal tax returns for those years as required. (Tr. at 19-34; GE 3 at 86, 87-93.)

On May 20, 2022, Applicant's wife and the couple's child moved out of the marital home and temporarily moved in with her new partner. At about the same time, his wife filed a Request for Domestic Violence Restraining Order (DVRO). Based upon the statements set forth in her request, a court subsequently issued a temporary restraining order against Applicant. As of the date of the SOR, the DVRO remained in effect. In her request for a DVRO, Applicant's wife claimed that in June 2021 she and Applicant were living apart in their home and were in the process of physically separating. During the night of June 26-27, 2021, he raped her while she was sleeping. She wrote in her request that she had taken melatonin that night. He woke her up and announced that they had just had sex. She further claimed that in the past, he had frequently raped her while she slept. She also asserted separately that Applicant had verbally and physically assaulted their young child and had thrown the child's sipping cup at her, hitting her in her eye. (Tr. at 50; GE 3 at 10, 11.)

In response, Applicant submitted a declaration, dated May 20, 2022, in which he denied all of his wife's allegations in her DVRO request. He claimed that she had entered his room the night of the alleged rape and climbed into bed with him. They then had consensual sex and she fell asleep. In the morning, Applicant woke her up and told her that they had just engaged in sex. She started to cry and expressed concern about how she was going to explain this to her new romantic partner. Shortly thereafter, his wife's new partner picked her up along with her young child and went to the partner's home for about two weeks. Applicant also asserted in his declaration that his wife suffers from several mental disorders. Applicant's wife's request for a DVRO was not made or submitted until 11 months after the alleged marital rape in June 2021. (GE 3 at 23-33, 34-38.)

Applicant also denied his wife's allegation of marital rape during his March 2023 personal subject interview. He made the statement in the interview that since approximately December 2020, he had never had any physical contact with his wife. This statement is inconsistent with his comment in the DVRO declaration that he had consensual sex with his wife in June 2021. This inconsistency and others in his testimony, along with his general demeanor while testifying, significantly undercut his credibility and reliability as an honest person. (GE 2 at 3; GE 3 at 36.)

After many trial dates and other procedural matters, a new trial judge proposed in January 2023 that the parties submit their dispute to a diversion program offered by the county where Applicant resided that was available for veterans. She and Applicant agreed to have the matter resolved in the diversion program. This program provides Applicant and his wife an opportunity to receive treatment for any issues related to the underlying dispute between the parties and avoid the damage to his or her reputation and employment that a resolution by a court might create. The program lasts for one year, and the DVRO was continued for that year. The parties' involvement in the program was overseen by a judge. Applicant had to actively seek treatment during the year of his involvement in the program. He participated in a "Batterer's Treatment Program." He attended 30 weekly meetings and otherwise satisfied the requirements of the program. As of the date of the hearing, no criminal charges have been filed against Applicant. (Tr. at 35-38, 44, 46-47.)

The parties have successfully completed the year involvement in the diversion program and the DVRO was allowed to expire in March 2024. They still have their ongoing divorce proceeding to resolve. (Tr. at 37-38, 47-48.)

As noted above, Applicant refused to answer questions at his security clearance hearing regarding the allegations made by his wife in her request for a DVRO that he had raped her. He testified that he understands that there is or may be a police report about an investigation regarding this allegation. Applicant was advised that his refusal to cooperate by answering Department Counsel's questions about this allegation will result in a denial of his security clearance eligibility. He responded by stating that he wished to maintain his right not to answer Department Counsel's questions. (Tr. at 55-59.)

### **Whole-Person Evidence**

Applicant provided character-reference letters from a supervisor and a co-worker. His supervisor praised Applicant's technical abilities in handling an important U.S. Government project and Applicant's trustworthiness. He believes in Applicant's ability to safeguard the interests of the United States. Applicant's co-worker wrote that Applicant is an exemplary employee who conducts his work professionally and reliably. (AE A, AE B.)

### **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 F, Financial Considerations)**

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes nine conditions that could raise security concerns under this guideline. The following condition is potentially applicable in this case and may be disqualifying:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has admitted that he did not file his TY 2020 Federal tax returns as required. Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by his noncompliance with of this important financial obligation.

AG ¶ 20 sets forth six mitigating conditions under Guideline F. The following two mitigating conditions have possible application in this case:

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant failed to fully establish either of the above mitigating conditions. His failure to file happened about three years ago and it was infrequent. Also, the circumstances that gave rise to his failure to file are unlikely to recur. However, Applicant's testimony about mailing his tax returns was not sufficiently credible to be believed in the absence of supporting documentary evidence. The absence of credible supporting documentary evidence establishing that he has corrected his omission by filing his TY 2020 tax returns casts significant doubt on Applicant's current reliability, trustworthiness, and good judgment. Applicant failed to offer into evidence a recent IRS account transcript for TY 2020. The transcript would contain a notation as to when the tax return was filed if it had been filed. Applicant did not even make the effort to introduce into evidence copies of his TY 2020 Federal and state tax returns to establish that he had in fact prepared the returns.

AG ¶ 20(g) is also not established for the same reasons. There is insufficient credible evidence in the record to support a conclusion that Applicant has satisfied his obligation to file his tax return for TY 2020. Paragraph 1 is resolved against Applicant.

## **Paragraph 2 (Guideline J, Criminal Conduct)**

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

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

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

(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; and

(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.

Applicant's wife made serious allegations against Applicant, which were sufficiently convincing for the state court to issue a DVRO against Applicant protecting both his wife and his child from any further abuse. Accordingly, her allegations of Applicant's criminal conduct satisfy the substantial evidence standard of proof applicable in security clearance adjudications. This evidence shifts the burden to Applicant to mitigate security concerns.

AG ¶ 32 sets forth four mitigating conditions under Guideline J. The following two mitigating conditions have possible application in this case:

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

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

Mitigation under either AG ¶¶ 32(a) or 32(c) has not been established. Applicant's wife's allegations were sufficiently credible and reliable to be accepted by the state court as a basis for the issuance of the DVRO. Also, Applicant's denials made during his



personal subject interview and those submitted in connection with the DVRO proceeding are insufficiently reliable to be credible. Moreover, Applicant's criminal behavior casts serious doubts on his reliability, trustworthiness, and good judgment. Paragraph 2 is found against Applicant.

### **Paragraph 3 (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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including, but not limited to meeting a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant's refusal to answer questions posed by Department Counsel at Applicant's personnel security clearance hearing invokes AG ¶ 15(b). Under that guideline, Applicant's refusal to answer questions regarding an issue raised by the SOR "normally [will] result in an unfavorable national security eligibility determination [or] security clearance action." Under the circumstances, I conclude that Department Counsel's attempt to ask questions about the criminal allegations made by Applicant's wife against him were "lawful" and his refusal to answer those questions is grounds for an unfavorable security clearance action. Receiving a security clearance is a privilege, not a right, and to be eligible for that privilege, an applicant must answer all lawful questions about his or her background.

With respect to the two cross-allegations set forth in SOR ¶ 3(a), the following disqualifying condition is 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.

Paragraph 3.a of the SOR cross-alleges the single SOR allegation under Guideline F and the single allegation under Guideline J. For the reasons stated above, the facts supporting the cross allegations of subparagraphs 1.a. and 2.a are sufficient to establish the potentially disqualifying condition set forth in AG ¶ 16(c). Accordingly, the burden shifts to Applicant to mitigate all of the security concerns raised by his personal conduct. AG ¶ 17 sets forth the following a mitigating condition under Guideline E that has possible application to the facts in this case:

(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.

Applicant has not established the mitigating condition quoted above. The tax filing violation was infrequent and may not recur, but it is not so minor as to have no security significance. His behavior casts doubt on his reliability, trustworthiness, and good judgment. Also, Applicant's criminal conduct involving domestic violence and rape casts significant doubt about his reliability, trustworthiness, and good judgment. SOR ¶¶ 3.a and 3.b are resolved against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, J, and E in my whole-person analysis. I have weighed Applicant's honorable military service and his continued excellent work for the U.S. Government as a contractor. I have also weighed that he has completed a 30-week program to prevent future domestic violence. However, Applicant has acted immaturely and irresponsibly since 2021 when he failed to file his tax returns as required. His serious criminal behavior in June 2021 also raises significant concerns about his character and judgment. Applicant has failed to provide sufficient evidence to mitigate the security concerns raised by his actions. Moreover, Applicant's refusal to answer lawful questions posed by Department Counsel regarding his wife's allegations of marital rape is grounds for an unfavorable security clearance determination. Overall, the record evidence leaves me with substantial 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3. Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

## **Conclusion**

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

**JOHN BAYARD GLENDON**  
Administrative Judge