



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



In the matter of: )  
XXXXXXXXXXXXXXXXX ) ISCR Case No. 23-02207  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

08/28/2024

**Decision**

KATAUSKAS Philip J., Administrative Judge:

Applicant has provided sufficient evidence to mitigate the security concerns raised under Guideline J, criminal conduct. Eligibility is granted.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on July 26, 2022, in connection with his employment by a defense contractor. On November 9, 2023, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, criminal conduct. DOD issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 submitted an undated answer to the SOR (Answer) and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. Department

Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 9. On March 25, 2024, the FORM was mailed to Applicant, who received it on April 8, 2024. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He did not submit a response. Government Items 1 and 3, the SOR and the Answer, respectively, are the pleadings in the case. Items 4 through 9 are admitted without objection. Item 2 consists of clerical documents having no probative value. The case was assigned to me on July 17, 2024.

On July 29, 2024, I re-opened the record *sua sponte* until August 9, 2024, and then extended it until August 23, 2024, to allow Applicant to submit documents about the current status of his case. I inquired specifically about documents relating to or memorializing the December 14, 2023 court hearing he referred to having attended in his Answer. In an August 8, 2024 email, he stated that he had no court "close out documents" but would contact his counsel, hence the second extension. With that same email, he submitted documents that are marked and described below. He submitted no additional documents that I received before the August 23, 2024 deadline. On August 28, 2024, he did, however, submit a court docket that included minutes of the December 14, 2023 hearing, which I accepted and admitted into evidence.

### **Findings of Fact**

After a thorough and careful review of the pleadings and the Government's exhibits, I make the following findings of fact.

Applicant is 29 years old and married since July 2017. He has three children, twins six years old and a two-year old. He attended high school from July 2008 until January 2012 but did not graduate. He enlisted in the United States Marine Corps in August 2012 and served until October 2019, when he was honorably discharged. Since October 2020, he has been employed by a defense contractor. (Items 4 and 7.)

Under Guideline J, the SOR alleged that Applicant: Was arrested in March 2022 and charged with: (1) Willfully endangering the health of a child; (2) False imprisonment; (3) Use of Force or Violence Against an Intimate Partner, and; (4) Pleaded not guilty and entered a one-year military diversion program in December 2022. (Item 1.) He admitted those allegations and stated that:

I was accepted into the Military diversion program for a year & was due to complete a 52-week Domestic Violence course, Parenting classes, & individual therapy.

All program prerequisites were met and completed. On December 14, 2023, I appeared before the court for the final hearing in my case. The court ruled in favor Not guilty, and the charges dropped, & records sealed. (Item 3.)

Applicant submitted documents that were marked as Applicant's Exhibits (AE) A through G and admitted without objection. They are described below:

AE A Applicant's Certificate of Completion of a 16-week Anger Management Program dated June 29, 2022;

AE B Applicant's Certificate of Completion of a New Parent Support Program dated March 14, 2023;

AE C Applicant's Certificate of Completion of a 16-week Domestic Violence Perpetrator Program dated July 20, 2022;

AE D Standard Reporting Form for Applicant's participation in a 52-week Batterers' Intervention Program (BiP) for the month of May 2023. This Form is for his participation in a 52-week BiP for the month of May 2023. The Program started (intake) on December 19, 2022. The total sessions needed are 52, and as of May 31, 2023, he has attended 23 sessions with no absences. His evaluation based on eight qualities ranked him 4.0 from 0 (unknown) to 5 (very often).

AE E March 6, 2023 letter from Mr. ABC (LCSW) about Applicant's participation in and conclusion of therapy sessions from March 15, 2022 through March 14, 2023. The author states: "[Applicant] has been motivated and active in his therapy sessions. He has worked to understand the issues, express anger appropriately and make changes to have a healthy marital relationship;"

AE F Military Diversion, Progress Hearing – Participation Instructions, Admission Date December 8, 2022, signed by Applicant on December 8, 2022; and

AE G Court Docket of Applicant's domestic violence case reporting minutes of a December 14, 2023 hearing. The minutes report that: "Court finds defendant successfully completed the Military Diversion Program. Counts 01, 02, 03 [alleged in the SOR] ordered dismissed."

The following is a summary of the police report taken on March 6, 2022, the date of the incident:

Applicant's twin sons (then four) were playfighting with each other on the living room couch, and one of them bit Applicant. He became angry and threw his cell phone at the child. It struck the child on the left cheek causing a bruise. This caused an argument between Applicant and his wife. He took her cell phone from her and pinned her to the floor when she attempted to leave, planning to go to the neighbors to call 911. He yelled at her and gave her phone back. She then went to the backyard and called dispatch. She stated that she had been married to Applicant for five years, and he had done this before four times. She had made no reports to law enforcement in the past. She said this was the first time he had done anything to harm

the children, She declined medical attention. The other twin reported that his dad was upset with him and threw a phone at him. Then his parents began arguing. (Item 7.)

The following is a summary of Applicant's personal subject interview (PSI) taken on March 21, 2023, and verified on October 2, 2023:

Applicant and his spouse had a verbal argument at their home that became heated. He could not recall what it was about. His spouse threatened to leave. He had the keys to the house and the car, and she tried to take them from him. That included clawing and hitting him. To protect himself, he pushed her down to get her away from him. He meant no harm but needed to get her off of him. He never physically restrained her, stood in her way, or took her phone in a manner that would prevent her from leaving the house, or call for help. The doors all had locks that could be unlocked by hand from the inside. While this was going on, his twins (then four) were fighting, and one twin bit the thigh of the other. When one twin yelled, he and his spouse looked over to see what was going on. Applicant threw his phone in the direction of the twins to distract them. The phone tumbled on the ground and hit one twin in the face. The twins were on the floor at the time. There was no mark on the twin's face when he checked. He did not deliberately throw the phone at the twins. He threw to distract them so the biting would stop. His spouse walked outside with her phone, returned, and told him she had called the police. He was arrested for Domestic Battery, False Imprisonment, and Child Endangerment. (Item 6.)

### **Law and 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. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available and 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."

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **Analysis**

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

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

Criminal activity creates doubt about an Applicant’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 conditions that could raise security concerns under AG ¶ 31. The disqualifying condition potentially applicable in this case is:

- (a) 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 admitted his March 6 2022 arrest for: (1) willfully endangering the health of a child; (2) false imprisonment; and (3) use of force or violence against an intimate partner. Therefore, disqualifying condition AG ¶ 31(a) applies.

AG ¶ 32 provides conditions that could mitigate security concerns. The following condition is potentially applicable:

- (b) 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.

In this case, a timeline is instructive. The incident in question happened on March 6, 2022. Applicant’s first exhibit, AE A, is a Certificate of Completion of a 16-week Anger Management Program dated June 29, 2022. To have completed that 16-week program, he would have had to started it in early March 2022, that is, within days after the incident. AE C is a Certificate of Completion of a 16-week Domestic Violence Perpetrator Program dated July 20, 2022. AE F documents his December 8, 2022 admission into the Military Diversion Program, with a projected graduation date of December 8, 2023. AE E is a March 6, 2023 letter from his therapist, Mr. ABC (LCSW), reporting a favorable conclusion to Applicant’s year of therapy from March 15, 2022, to March 14, 2023. AE B is a Certificate of Completion of a New Parent Support Program dated March 14, 2023. AE D is a Form for Applicant’s participation in a 52-week Batterers’ Intervention Program (BiP). This reports his participation in BiP as of the month of May 2023. The Program started

(intake) on December 19, 2022. The total sessions needed are 52, and as of May 31, 2023, he has attended 23 sessions with no absences. His evaluation based on eight qualities ranked him 4.0 from 0 (unknown) to 5 (very often).

This timeline shows Applicant's overall adherence to the elements of the Military Diversion Program. The final document of most significance is AE G, the Court Docket of Applicant's domestic violence case reporting minutes of a December 14, 2023 hearing. The minutes report that: "Court finds defendant successfully completed the Military Diversion Program. Counts 01, 02, 03 [alleged in the SOR] ordered dismissed." The court with jurisdiction over his criminal case has ruled that he has successfully completed rehabilitation.

I find that Applicant has carried his burden to establish that his rehabilitation was successful. Therefore, mitigating condition AG ¶ 32(b) applies.

### **Whole-Person Concept**

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concern arising under Guideline J, criminal 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is granted.

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Philip J. Katauskas  
Administrative Judge