



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-02090

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the Guideline D (sexual behavior), Guideline J (criminal conduct), and Guideline E (personal conduct) security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On February 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D, J, and E. The DCSA acted 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 implemented by the DOD on June 8, 2017.

On March 15, 2024, Applicant provided a response to the SOR (Answer). He admitted all the SOR allegations (SOR ¶¶ 1.a and 1.b, 2.a through 2.g, and 3.a through 3.c.) He requested a hearing before a Defense Office of Hearings and Appeals (DOHA)

administrative judge. I was assigned this case on January 3, 2025. DOHA issued a notice on March 12, 2025, scheduling the hearing for May 6, 2025. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1 through 7. Applicant testified and offered seven documents, which I labeled as Applicant Exhibits (AE) A through G; and all of the exhibits were admitted into evidence without objection. Applicant called two witnesses to testify on his behalf, and he requested I hold the record open so he could supplement the record with additional documentation. Without objection, I held the record open until May 27, 2025. DOHA received the hearing transcript (Tr.) on May 13, 2025. Applicant timely submitted AE H, which was admitted into evidence without objection, and the record closed.

Findings of Fact

Applicant is 32 years old. He earned a bachelor's degree in video game design in October 2021. He has been married twice and divorced twice. He is currently engaged. He has two children with his first wife, and their ages are 11 and 13. He is current on his child support of \$399 a month. He has two young children with his second wife, and he does not pay any child support since they share custody of the children (50/50). Since April of 2024, he has been working for a hospital as an IT specialist. The DOD contractor sponsoring Applicant for a security clearance has made his employment conditional upon the issuance of a security clearance due to the nature of his position. (GE 1; Tr. 37-42)

Sexual Behavior, Criminal Conduct, and Personal Conduct

Applicant enlisted in the United States Air Force (USAF) in August 2011. He worked as a vehicle operator and dispatcher. In April 2015, at the rank of Senior Airman (E-4), his first wife informed military personnel that her husband had raped and sexually assaulted her. He was charged in about August 2015 with two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one specification of assault in violation of Article 128, UCMJ. (SOR ¶ 1.a) (GE 1, 4; Tr. 39-40, 44-45)

Based on the records in evidence, in about February 2015, Applicant's first wife reported that he had asked for sexual intercourse, she declined, and after his several unsuccessful attempts at coaxing her, he forced himself on her. She tried to fight him off, but he had her wrists pinned with one hand, removed her pajama pants and underwear with his other hand, and forced her legs open with his legs. He penetrated her vagina with force, which caused her to feel intense pain. The next morning, Applicant acknowledged his wrongdoing and told her he felt "disgusted" while he was having nonconsensual sex with her. She texted multiple witnesses in the days following the incident and informed them she had been sexually assaulted by him. U.S. Air Force Office of Special Investigations (OSI) conducted an extensive investigation. They verified the texts from his wife sent to family members, and their ultimate finding supported the charges against him. The second assault charge was from another incident in April 2015 where he had grabbed her wrist. Applicant testified during the hearing that his first wife had consensual

sex with him, and because of her permission, their intercourse could not be considered rape or a sexual assault. He claimed that she had been contemplating divorce and getting custody of the children, and this incident was motivated by her strategic planning to gain an advantage over him. He stated, "the whole case was a witch hunt to get custody of my children." He reported his attorney had strong evidence which could have proven his innocence during the court-martial, but he was advised against it and told to take a discharge from the military instead. (GE 4; Answer; Tr. 45-50)

Following his attorney's advice, Applicant requested a discharge from the USAF in lieu of trial by court-martial, which was granted. In about April 2016, he received an other than honorable discharge, in lieu of trial by court-martial for the two specifications of sexual assault in violation of Article 120, UCMJ, and one specification of assault in violation of Article 128, UCMJ. (SOR ¶ 1.b) (GE 4; Tr. 49) He stated:

... my attorney on my behalf had recommended that I pursue a discharge in lieu of court martial due to the -- what he called was the biased and unfair atmosphere of sexual-related incidents in the military, is that even though we had a solid defense that would've proved that I did not commit the act, the Air Force's stance on sexual anything was basically a death sentence, was his exact words to me.

Applicant was arrested in about February 2016 and charged with domestic abuse - simple assault with attempt to cause bodily injury. (SOR ¶ 2.a) He stated in his Answer that he was arrested for defending himself from his then girlfriend, soon to be his second wife, after an argument escalated to physical violence directed at him. In an effort to create space between his pregnant girlfriend and himself, Applicant unintentionally struck her in the stomach with his knee. He then immediately called emergency medical services to ensure the well-being of his girlfriend and unborn child. The police report reflected they had been arguing over money. At the hearing he testified that his girlfriend, about five months pregnant, wanted money to purchase marijuana and Xanax. He accepted responsibility and faced consequences from his USAF commanding officer as he was being processed for his discharge. This information was reported in a Letter of Reprimand, as set forth in SOR ¶ 3.a, below. His girlfriend dropped the charges against him. (Answer; GE 5; Tr. 53-57, 82)

Applicant was arrested in about September 2016 and charged with aggravated assault of a family member (with weapon), and simple assault. (SOR ¶ 2.b) Applicant stated in his Answer that tensions escalated between him and his uncle during an argument. His uncle wanted him to leave his house immediately, but Applicant, his girlfriend, and their newborn baby had no place to go, and they needed time to find housing arrangements. His uncle punched him, and during the fight, his aunt intervened to stop the fight. His uncle falsely accused Applicant of attempting to stab him and called police. Although he was not the primary aggressor nor possessed a knife, he was arrested by the police. Applicant stated that his uncle was arrested later that day for assaulting his girlfriend and his aunt. Applicant's charges were dropped, and the record was sealed. Applicant has severed all ties with his uncle. (Answer; GE 3; Tr. 57-60)

Applicant was arrested in about November 2018 and charged with aggravated battery - domestic violence of a pregnant victim, felony 2nd degree. (SOR ¶ 2.c) Applicant stated in his Answer he was arrested following a false accusation made by his second wife, who was pregnant at the time. He and their daughter left the state to spend the Thanksgiving holiday with his parents. His second wife was not invited due her ongoing conflicts with his parents. After Applicant and their daughter returned home, she retaliated against him by making an untruthful claim to police.

The police record reflects his wife reported that they had gotten into an argument over a blanket, and Applicant pushed her. She was taken to the hospital because she thought she might have a miscarriage. She told the nurses at the hospital she fell while mopping. Applicant walked into her hospital room and a dispute started. The nurses asked Applicant to leave the room. At that point, his wife reported to the nurses that he had hurt her, and she was tired of being abused by him. When he returned to the hospital, he was placed under arrest. She dropped the charges against him in February 2019. Applicant denied any physical contact with her. She had a history of calling the police and making false claims against him. (Answer; GE 6; Tr. 60-67, 72, 83-84 He stated,)

...as I mentioned in my opening statement, she used to call the police on me, make some sort of report that I abused her, and, you know, used that as a method of getting control out of me.

Applicant was arrested in about May 2021 and charged with aggravated battery with a deadly weapon. (SOR ¶ 2.d) Applicant prepared divorce papers because he wanted out of his toxic marriage. He asked his second wife to sign the divorce papers. She pleaded with him to stay in the marriage. He stayed firm in his decision and requested she sign the papers showing that she had been served with the divorce paperwork. He was later awoken in the early hours of the morning by police with drawn guns, asking him where his firearm was located. He showed them where he kept his gun, and then discovered that his wife had falsely claimed he had held a gun to her head to coerce her into signing the divorce papers. The charges against him were eventually dropped by his wife in March 2022, and the protection orders, noted below, were dismissed. (Answer; Tr. 72-78, 85)

Applicant was issued a Letter of Reprimand for adultery in February 2016, from his USAF Commander. (SOR ¶ 3.a) (Tr. 52-53)

In May 2021, a temporary protection ordered was filed against Applicant for domestic abuse. Applicant had been removed from the house and his wife and children moved out of state. This order was valid for one year. (SOR ¶ 2.e) (Answer; Tr. 78)

In September 2021, a temporary protection ordered was filed against Applicant for domestic abuse. This order was implemented to prevent Applicant from seeing his children. (SOR ¶ 2.f) (Answer; Tr. 78)

Applicant reiterated that the rape and sexual assault allegations reported by his first wife were completely false and fueled by ulterior motives. The criminal charges alleged under paragraph 2 of the SOR that were brought by his second wife were also fabricated. Her motivation was to control, manipulate, and isolate him. His uncle brought false charges against him due to a heated disagreement. He said, "Importantly, none of these occurrences led to criminal convictions and were deliberate attempts to tarnish my reputation by abusing the legal system." (Answer)

Applicant called two witnesses to testify on his behalf during the hearing. His first witness was a former neighbor in the military who had lived next to Applicant and his then first wife. He testified that he never witnessed any hostile behavior between Applicant and his first wife. He admitted that he was aware of the rape charge made by her because he had been interviewed by OSI during the investigation. The witness had also met Applicant's second wife, initially while she was still his girlfriend. He never observed any abusive behavior from Applicant towards her, but he did note this woman had a difficult personality, and most of her quarrels were with Applicant.

The witness gave an example of observing Applicant's children visiting him from his first marriage. The second ex-wife was Applicant's girlfriend at the time, and he remembered her getting upset that the children had cell phones to call their mother, which she thought was disrespectful and made a big fuss about it. The witness then mentioned that after Applicant had moved to another state, they would stay in touch by playing X-box Live video games together. From time to time, he could hear through his headphones the second wife going into "fits of rage." He said her rage was almost always directed at Applicant. He has never witnessed Applicant engage in any aggressive or abusive behavior.

Applicant's second witness was his fiancée. They met each other in September 2024. Over their courtship of about eight months, she has never known Applicant to be hostile or intimidating. She did not have much to say about his first ex-wife, but she did have an altercation with the second ex-wife. The witness went to Applicant's residence and planned to go out with him and his children. His second ex-wife was living temporarily with Applicant at the time, although they were no longer in a relationship. She asked the witness to come into a room where she showed her bruises on her legs and claimed they were made by Applicant. She told the witness that she looked like a nice girl, and she did not want to see her get mixed-up with an abusive man. When the second ex-wife left the home, the witness said something under her breath that she heard. She came back into the residence and pushed the witness and tried to take a swing at her. His ex-wife called the police, and then she went outside where she scratched herself and busted her lip. When the police arrived, she falsely reported that the witness had struck her. The witness said the police did nothing but have one of them leave the residence for a cooling-off period.

Policies

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(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 access to classified information will be resolved in favor of 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.

Directive ¶ E3.1.14 requires the Government to 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.

Section 7 of Executive Order 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 D: Sexual Behavior

The security concern for sexual behavior is set out in AG ¶ 12:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 13, and the following are potentially applicable:

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

Applicant's first wife reported in 2015 that Applicant had raped and sexually assaulted her. After an investigation by OSI, Applicant was charged in 2015 with two specifications of sexual assault in violation of Article 120, UCMJ. Applicant was granted an other than honorable discharge from the U.S. Air force in lieu of court-martial. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from sexual behavior. The following mitigating conditions under AG ¶ 14 are potentially applicable:

- (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;
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and
- (e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

None of the mitigating conditions apply. I find that Applicant's claim of innocence in this matter is self-serving based on his history of abusive behavior towards family members in the record, and worthy of little probative value. OSI conducted an extensive

investigation into the serious allegations brought by Applicant's first wife, and their findings supported the two specifications of sexual assault. Applicant made an uncorroborated statement that his attorney could have proven his innocence. Due to the military's bias and prejudice concerning any form of sexual misconduct, he was advised to ask for an other than honorable discharge in lieu of court-martial. Applicant's self-serving version of events cast doubt on his current reliability, trustworthiness, and judgment. Sexual behavior security concerns are not mitigated.

Guideline J: Criminal Conduct

The security concern related to the criminal conduct guideline 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.

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying. The following are 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.

(e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

The record evidence and Applicant's admissions establish AG ¶¶ 31(b) and 31(e). Applicant was charged for five incidents involving violent criminal behavior from 2015 to 2021. He received an other than honorable discharge from the USAF in 2016.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

(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.

The Guideline D allegations were cross-alleged under Guideline J. Applicant was cited for five incidents due to physical violence to a family member, mainly his two ex-wives. He does not accept responsibility for any of the charges and claims that all

allegations were based on false accusations. He also noted that he has not been convicted of any crime, however, he did choose to be separated from the military in lieu of a court-martial. It is important to note that the Government is permitted to consider an applicant's misconduct, even if the individual was never charged or convicted of an offense. As the DOHA Appeal Board has "frequently discussed, charges can be dismissed or not pursued for any number of reasons that do not justify a conclusion that an applicant did not commit the conduct in question." ISCR Case No. 22-00761 at 8 (App. Bd. May 27, 2025). Moreover, "similar allegations made against an applicant by different accusers may add weight to the validity of those accusations." *Id.* The Appeal Board noted "the improbability that two women, with no known ties to each other, would fabricate similar allegations against Applicant." *Id.* When granting an individual access to our nation's secrets, it is essential that the overall character and behavior of an individual are fairly evaluated and duly considered.

I have considered Applicant's claim and agree that the police could have been fooled once by convincing falsehoods; however, he did not meet his burden of proving the allegations were mitigated. In November 2018, his second wife initially told hospital staff that she fell after mopping, so his claim that she made false accusations to control, manipulate, and isolate him does not ring true.

Applicant continues to struggle to be honest and forthright with the Government regarding his misconduct. His explanations and minimizing details about his past behavior cast doubt on his reliability, trustworthiness, and good judgment. It also calls into question his willingness to comply with security rules and regulations. AG ¶¶ 32(a) and 32(d) are not applicable. Criminal conduct security concerns are not mitigated.

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 provide truthful and candid answers during national security investigative or adjudicative processes. ...

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is potentially applicable under the established facts in this case:

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

characteristics indicating that the person may not properly safeguard protected information.

Applicant has a history of arrests involving violence and abuse of family members from 2015 to 2021. He received a Letter of Reprimand in 2016 for adultery while he was being separated from the military. In 2021 he had two protection orders filed against him. AG ¶ 16(c) is not a perfect fit since the record evidence is sufficient in supporting a finding of unmitigated security concerns under Guidelines D and J, however, the security concerns under Guideline E, specifically addressed in AG ¶ 16(c), is applicable in this case. All of Applicant's misconduct should be considered as a whole. The disqualifying condition listed above applies

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(c) the offense is so minor or so much time has passed, or the behavior is so infrequent, or 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; and

(d) the individual 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.

The Guideline D and J allegations were cross-alleged under Guideline E. The discussion under both Guidelines above, applies equally here. I do not find evidence of successful rehabilitation. Applicant has not established that his pattern of violent behavior is unlikely to recur; and it continues to cast doubt on his reliability, trustworthiness, and good judgment.

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 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 D, J, and E and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness.

Considering the evidence as a whole, I find Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him 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 D:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.g:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a, 3.b, and 3.c:	Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge