DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-00842
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

12/22/2025

Decision

PRICE, Eric, Administrative Judge:

Applicant failed to mitigate security concerns under Guidelines J (criminal conduct), D (sexual behavior), and E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) in September 2017. On September 14, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J, D, and E. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on December 30, 2022, and requested a hearing before an administrative judge. (SOR Response). The case was assigned to me on January 23, 2024. On April 8, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 28, 2024. Applicant's hearing was held as scheduled using the DOD Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered Government Exhibit (GE) 1 through GE 4. Applicant testified and submitted Applicant Exhibit (AE) WW through AE AE, and requested I consider AE A through AE VV, which were attached to his SOR Response. Applicant's Witness List, Initial Response Exhibit List and Supplemental Exhibit List, and the Index of Government Exhibits and Department Counsel's disclosure letter dated May 18, 2023 were marked as hearing exhibits (HE) I through V. The record was held open to permit Applicant the opportunity to submit additional documentation, and he timely submitted AE AF through AE AH. (Tr. 303; HE VII) There were no objections, and all proffered exhibits were admitted in evidence. DOHA received the hearing transcript (Tr.) on June 6, 2024, and the record closed on June 18, 2024.

Administrative Notice

Without objection from the parties, I took administrative notice of Manual for Courts-Martial (MCM) (2016 ed.), Part IV, ¶ 68a (Article 134 – Child endangerment), and MCM (2019 ed.), Part II, Rules for Courts-Martial (RCM) 705, 910, and 1003, Art. 119b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. 919b, and A17-10, ¶ 59 (Article 119b – Child endangerment). (Tr. 203-205; HE VI)

Findings of Fact

Applicant is 45 years old, and he has been employed by federal contractors since January 2021. He has had a security clearance since 1999. (GE 1-3; AE EE, XX; Tr. 12, 49-51, 103-104, 178-179)

Applicant enlisted in the United States Marine Corps (USMC) from 1998 to 2002 and in the Air Force from 2003 to 2007. He was honorably discharged from both services. He earned a bachelor's degree in 2006 and attended Officer Candidates School in 2007. He served as a commissioned officer in the USMC for more than 14 years attaining the rank of major (O-4) in May 2017. In October 2021, he was retired as a first lieutenant (O-2) under other than honorable (OTH) conditions. (GE 1-4; AE G at 2, AE H, AE L-S; AE U-V, Tr. 34-46, 181)

Applicant married his former spouse (FS) in August 2002, and they divorced in March 2021. FS had a two-year-old daughter (CW) when they married and they later had a child together, both are now adults. He married his current wife in September 2021 and has a 14-year-old stepson. (GE 1-3; AE I, AE EE, AE XX; Tr. 51-57, 98-108, 179-180)

Criminal Conduct, Sexual Behavior, and Personal Conduct

Applicant and FS married when he was 22 years old, and she was 19. They lived together as a family until February 2018 and while they lived together, he "assumed responsibilities" as CW's father. (AE AF at 3) CW's biological father had no role in her life, and FS told him that CW's biological father raped her. Applicant planned to adopt CW, but FS discouraged him from doing so because the adoption would become public record. After discussions with FS, Applicant informed CW that he was not her biological father sometime between June 2011 and June 2014, when CW was between 10 and 13 years

old. CW was upset when she learned Applicant was not her biological father and at about the same time CW learned from someone other than Applicant that her mother became pregnant with her after she was raped. CW had displayed behavioral and disciplinary issues as a child which escalated after she learned that Applicant was not her biological father. (Tr. 51-57, 110-113, GE 1, GE 3 at 1-2; AE AF)

On June 15, 2016, CW, then almost 16 years old, sent an online message to an unidentified recipient stating:

> I am not getting emancipated. I never actually was. I never had any reason to…my dad never did anything bad to me…Long story short, I lie…. My parents really care about me, and yea my dad is gone sometimes, but it's work and it's ok. I didn't think you would like me unless I stayed the [VC] I pretended to be, so I just kept pretending. And I am really sorry.

(GE 3 at 1, 7-8)

In February 2018, CW, then 17 years old, reported Applicant had been abusing her to the Naval Criminal Investigative Service (NCIS). (GE 4) In August 2019, charges were preferred alleging Applicant committed sexual and indecency offenses on CW between February 2011 and February 2018 including penetrating her vulva with his fingers both before and after she attained the age of 12, touching her buttocks with his hands, requiring her to expose her breasts, buttocks, genitalia and anus in his presence on multiple occasions before and after she attained the age of 16; that he made a recording of her private areas without her consent, and that he obstructed justice by telling her to delete text messages regarding his viewing of her private areas in June 2015 and February 2018 in violation of UCMJ Articles 120, 120b, and 120c and Article 134 [hereinafter sexual, indecency, and obstruction of justice charges]. The charges were referred for trial by general court-martial (GCM) in November 2019. (AE E; Tr. 73-74, 155-163, 181-182)

The record does not include documentary evidence from a law enforcement investigation or statements from CW or FS. However, NCIS reported CW "struggled with mental instability and often times engaged in self-harm; cutting herself on her hips and upper thighs." (GE 4) Applicant testified the sexual, indecency, and obstruction of justice charges referred for trial by GCM were based on allegations from CW and FS, and that a preliminary hearing in accordance with Article 32, UCMJ, was conducted before the charges were referred for trial by GCM. (Tr. 73-74; AE E) Applicant's defense counsel asserted NCIS was unable to recover CW's social media messages and that CW's cellphone was damaged during forensic analysis. Applicant's counsel asserted a government examiner found no incriminating evidence on about 32 electronic devices seized from the family home but discovered a document purportedly written by FS stating she had taught her then seven-year-old daughter to lie. (GE 3 at 1, 7; Tr. 74-77, 155, 175-178, 183-185)

In August 2020, the GCM convening authority (CA), a major general, approved a PTA that required Applicant to plead guilty to two charges at a special court-martial

(SPCM), to pay restitution of $10,000 to CW and to FS for custodial support of their minor child, and to avoid contact with CW. The PTA also required Applicant to submit a Retirement in Lieu of Further Administrative Processing (RILFAP) request. The GCM CA agreed to withdraw and dismiss the sexual, indecency, and obstruction of justice charges referred to a GCM without prejudice to ripen into prejudice upon completion of appellate review. The GCM CA also agreed to disapprove any fine and to suspend any adjudged forfeitures for 12 months. The GCM CA could approve any reprimand or restriction adjudged, and there were no other lawful punishments authorized at SPCM for an officer. (GE 1, GE 4; AE G at 6-13; Tr. 159-167; RCM 201, RCM 1003)

On September 2, 2020, the GCM CA referred the following charges of violations of Article 134 (Child Endangerment) and Article 133 (Conduct Unbecoming an Officer), UCMJ and single specifications thereunder to a SPCM for trial discussed further below. The underlying specifications alleged misconduct occurring from about June 2016 to about February 2018. (AE G)

On September 9, 2020, Applicant pled guilty to the two charges and underlying specifications in accordance with the PTA. A military judge accepted his pleas and sentenced him to a reprimand, forfeitures of $1,000 per month for four months (which were suspended for 12 months in accordance with the PTA), and 30 days restriction. In accordance with the PTA the charges previously referred to a GCM were withdrawn and dismissed without prejudice. (Tr. 26-28; GE 4; AE E-F, AE G at 1-19)

Applicant testified that he was initially against a plea agreement because he thought truth and justice would prevail. However, after discussing options with his defense team over a two-and-a-half-year period including potential exposure to lengthy confinement, dismissal from the USMC, lifetime sex offender registration, and multiple PTA offers from prosecutors, he decided to plead guilty in accordance with the PTA he signed. He understood conviction by a SPCM "would be a misdemeanor," and that confinement and a dismissal were not authorized punishments at a SPCM. (Tr. 79-87, 155-163, 185-190)

In December 2020, Applicant submitted a RILFAP as required by the PTA in which he admitted the misconduct to which he pled guilty at SPCM and acknowledged that he could be retired in a lesser grade with a less than honorable characterization of service. He requested to retire as a major with an honorable characterization of service. In April 2021, his commanding general endorsed the RILFAP recommending he be retired as a first lieutenant with an OTH characterization of service. In May 2021, Applicant submitted comprehensive matters in response including the June 2016 online message from CW to another in which she stated Applicant "had not done anything bad to [her]," that she sometimes lied, and had done so to preserve her relationship with an unidentified person. (GE 3 at 1, 7-8) After considering the matters submitted by Applicant outlining CW's struggle with mental health and self-harm, and his desire to retire in grade with an honorable characterization of service, his commanding general maintained the recommendation that he be retired as a first lieutenant with an OTH characterization of service. A higher echelon commander concurred with and endorsed that recommendation. (GE 4; Tr. 91-94, 166-170, 191-194)

On August 2, 2021, the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs (signing for the Commandant of the Marine Corps) wrote:

> In February 2018, [Applicant's] 17-year-old stepdaughter reported a history of abuse to the [NCIS]. The investigation uncovered that [CW] struggled with mental instability and often times engaged in self-harm; cutting herself on her hips and upper thighs. In response to [CW's] bouts of self-harm, [Applicant] subjected her to daily visual inspections. [Applicant] conducted these inspections without the consent of [CW's] mother….
>
> After reviewing the applicable law and regulations, Report of Court-Martial Conviction, retirement request and matters, and chain of command's recommendations, I recommend that [Applicant] be retired as a first lieutenant with an [OTH] characterization of service. [Applicant's] misconduct demonstrates no potential for future service and was a significant departure from the conduct expected of naval officers [and] the last grade at which he served satisfactorily was first lieutenant. (GE 4)

On September 21, 2021, the Secretary of the Navy directed that Applicant be retired as a first lieutenant (O-2) with an OTH characterization of service. (GE 4)

Under Guideline J (Criminal Conduct), SOR ¶ 1.a alleges that:

> In November 2019 [Applicant was] charged with violations of [Uniform Code of Military Justice] UCMJ, Article 120 (Rape of a Child, Aggravated Sexual Contact with a Child, Indecent Liberties with a Child and Indecent Act), Article 120b (Rape of a Child, Sexual Assault of a Child, and Sexual Abuse of a Child), Article 120c (Indecent Recording and Indecent Viewing), and Article 134 (Obstructing Justice). In September 2020, pursuant to a pretrial agreement, [Applicant] pleaded guilty to violations of UCMJ Article 134 (Child Endangerment) and Article 133 (Conduct Unbecoming an Officer). In October 2021, [Applicant was] discharged from the U.S. Marine Corps under Other Than Honorable conditions.

The conduct alleged in SOR ¶ 1.a is cross alleged under Guidelines D (Sexual Behavior) and E (Personal Conduct) in SOR ¶¶ 2.a and 3.a. (SOR; SOR Response; AE E, AE G; GE 1-3)

In his response to the SOR, Applicant admitted the events alleged in SOR ¶ 1.a, but denied his conduct was criminal. He admitted that he was charged with the sexual and indecency offenses, and obstruction of justice alleged in SOR ¶ 1.a, explaining that those charges were withdrawn and dismissed by the GCM CA because the underlying allegations were false and uncorroborated, and because of procedural errors by the Government. He admitted that he pled guilty to Child Endangerment and Conduct Unbecoming an Officer in violation of Articles 133 and 134, UCMJ, at a SPCM because of an extraordinarily favorable pretrial agreement (PTA) offer and based upon advice of counsel. He asserted that he acted as a concerned father would when faced with a

daughter who was hurting herself in an escalating manner, that he acted in accordance with guidance received from a therapist and denied that his conduct was criminal. He admitted that he was discharged from the USMC under other than honorable (OTH) conditions but denied his actions were criminal. (SOR Response at 3-9) He admitted the events listed under Guideline J but denied that his actions raised concerns under Guidelines D and E. His admissions are incorporated herein as findings of fact. (SOR Response at 3-9; Tr. 21-28, 197-203)

The PTA required the parties to enter a stipulation of fact for use by the military judge and reviewing authorities. (AE G at 8, AE AF; Tr. 185-186) The stipulation of fact was signed by Applicant, his defense counsel and government prosecutors. Applicant agreed that everything contained in the stipulation of fact "is true," and that after "entered into evidence, the facts contained in it cannot be contradicted by either the Government or [Applicant]." (AE AF at 1) It includes the following stipulated facts:

> (Article 134 Child Endangerment) . . . Specification: [that Applicant] between on or about 1 June 2016 and on or about 16 August 2016, was responsible for the care of [CW] a child under the age of 16 years, and did, on divers occasions, endanger the mental health of [CW] by requiring [her] to submit to visual physical inspection for self-harm without her mother's presence; and that such conduct constituted culpable negligence, and … was of a nature to bring discredit upon the armed forces.
>
> I believe and admit that I am guilty of the offense of Child Endangerment.

Applicant acknowledged his understanding that: (1) "'endanger' means to subject one to reasonable probability of harm [and that] actual mental harm to the child is not required;" (2) "'duty of care' is determined by the totality of circumstances[;]" and that (3) "culpable negligence is a negligent act or omission accompanied by a culpable (e.g. gross, reckless, wanton, or deliberate) disregard for the foreseeable consequences to others of that act or omission instead of failure to use due care." (AE AF at 2)

Applicant stipulated he had a "duty of care for [CW];" that he married her mother in 2002 when CW was two years old; that he never adopted CW but helped raise her since she was a baby and treated her as his own child, and that he told her he was not her biological father no later than June 2014. (AE AF at 3)

The stipulation noted CW had a "history of engaging in self-harm by cutting and tattooing herself." While living in State [C] CW "engaged in such self-harm and [Applicant] checked her without telling [her] mother [he] stood about five feet away and had her show [him] areas where she had cut in the past." He admitted that he required CW to submit to "visual physical inspection for self-harm without her mother's presence" more than once from June 1 to August 16, 2016. "There is a reasonable probability that [CW] felt distressed and humiliated because of her age and maturity and [his] status as her stepfather… I believe and admit that my actions subjected [CW] to a reasonable probability of harm." (AE AF at 3)

Applicant also stipulated that he believed and admitted that a reasonable person: (1) "would not have subjected their step-daughter to visual inspection for self-harm without the presence of the step-daughter's mother;" (2) would have been aware of the probability of emotional harm "especially when the child has already shown mental fragility," and (3) that he believed and admitted that his "actions, while negligent, were accompanied by a culpable, i.e. reckless, disregard for the foreseeable consequences to CW's mental health. In other words, my lack of awareness was unreasonable and criminally negligent." (AE AF at 3)

He also stipulated to the following:

> (Article 133 Conduct Unbecoming an Officer) . . . Specification: [that Applicant] did, on divers occasions… between on or about 17 August 2016 and on or about 1 February 2018, endanger the mental health of [CW] by requiring [her] to submit to visual physical inspection for self-harm without her mother's presence, and that under the circumstances, his conduct was unbecoming an officer.
>
> I believe and admit that I am guilty of the offense of Conduct Unbecoming an Officer and Gentlemen.

Applicant admitted that: (1) between 17 August 2016 and 1 February 2018, he endangered CW's mental health "by requiring her to submit to visual physical inspection for self-harm without her mother's presence" more than once; (2) he believed that his actions constituted conduct unbecoming an officer and gentleman and dishonored or disgraced him personally when he checked CW without her mother's presence, there is a reasonable probability CW felt distressed and humiliated because of her age and maturity and his status as her step-father. (AE AF at 4-5)

Applicant testified in relevant part as follows.

CW first engaged in self-harm in about 2012, when they lived in State A. (GE 1 at 10, 14, GE 2 at 2) She cut the palm of her hand and showed it to her mother and Applicant. She was seen by psychiatrists and therapists starting in 2012 after her first cutting incident. She was homeschooled by her mother from 2012 to 2014. She then cut her forearms and lower legs and started cutting her thighs, around her waist and her shoulders. Applicant testified that FS and he checked CW for cuts about 12 times by June 2014 and discovered evidence of cutting on fewer than six occasions. They would usually check her together. FS would often check her alone, and Applicant checked CW once or twice on his own. CW stopped seeing a therapist in 2013, and her parents focused on providing her guidance, structure, and emotional support. (Tr. 55-63, 110-130)

In late 2014, during CW's freshman year in high school in State B, she joined an online group with others who engaged in cutting behaviors. During this timeframe FS checked CW for cutting. CW would cut her thighs, waist area and shoulders. In about December 2014, they took CW to a mental health provider who advised Applicant and FS to check CW for cuts by having her pull up her sleeves or her pant leg. From June 2014

to about June 2015 they checked CW for cutting monthly and discovered new cuts about four times. She had started to cut her upper thighs and stomach area, and they were required to roll down her waistline or sleaves to check for cuts. FS conducted most of the checks alone and Applicant sometimes participated. On occasion, FS required CW to put on a bathing suit for examinations, but Applicant did not recall asking CW to do so. He said that during this timeframe FS was experiencing anxiety and depression, abusing alcohol and prescription medications, and had started cutting herself. He submitted evidence FS struggled with mental health issues and took prescription medications for anxiety and depression but did not submit evidence that she engaged in cutting behavior. (Tr. 55-63, 110-136, 217-220; GE 1 at 9-10, 13; GE 3 at 1, 4-5)

Applicant and his family moved to State C in June 2015. (GE 1 at 8-9, 12-13) From June 2015 until at least February 2018 CW was homeschooled by FS. (Tr. 216-218) He thought FS discovered CW was cutting again once after they moved to State C. In about 2016 or 2017, he discovered cutting and tattooing implements (a razor blade, needle and tattoo ink) and that CW had engaged in self-harm. He did not see any "new cuts, but [CW] did have a few marks." (Tr. 221) He immediately confronted CW. FS was not home at the time and CW asked him not to tell FS because FS was experiencing some mental health issues, and CW was concerned that if FS learned about the cutting it would "push [FS] over the edge." (Tr. 64-65) He said CW's cutting behavior was worse in State B but in State C it became tattooing as well as cutting and self-piercing. Applicant decided not to tell FS about CW's cutting and tattooing because he was concerned about FS' mental health and substance abuse, CW's mental health including concerns she might commit suicide and because CW had opened up to him for the first time. Applicant decided not to seek out additional mental health assistance for CW or himself. He acknowledged FS had previously been CW's primary caregiver including checking CW for signs of cutting, and that FS had daily contact with CW including homeschooling her. He believed that FS had CW's best interests at heart and his "biggest concern … was [FS's] apathy and any toxic emotional traits that [FS] was developing and [CW] might pick up on." He also had concerns about FS's lack of emotional involvement with CW and with FS's truthfulness. (Tr. 56-66, 113-114, 133-141, 216-224; GE 3; AE AF at 3)

Applicant intended to conduct the checks only for a "short amount of time until [CW] graduate[d]." (Tr. 136) He thought CW was making emotional progress because she was explaining her thoughts and feelings and had a plan to attend college. He conducted visual inspections "probably twice" or "at least two times" over the summer of 2016 or 2017 because CW did not display other emotional indicators of significant issues. (Tr. 137, 142) He would check CW for evidence of cutting when FS was out of the house. He denied requiring CW to wear a bathing suit. He acknowledged that CW had to pull up her shorts and that he had CW remove her shirt to check her rib cage area and shoulder areas. (Tr. 141-142) He denied having CW remove her undergarments or having her display her genitalia, buttocks, or breasts. He did not discover any signs of fresh cutting during these examinations. He estimated that he conducted his last check in the fall of 2017. (Tr. 136-143, 207; GE 3 at 2)

Applicant subsequently revised the timeline stating he believed that he discovered the cutting and tattooing implements in the summer of 2017 vice the summer of 2016

because CW was going to graduate from high school in the fall of 2017 or the spring of 2018. (Tr. 142-143, 206, 217) He did not recall if CW stopped seeing a therapist before or after he discovered the cutting and tattooing implements. (Tr. 140-143, 205-206)

In February 2018, FS called Applicant while he was temporarily out of the country on military orders and was very upset because she had observed CW doing something inappropriate with her phone. When FS confronted CW about the phone issue CW said, "Dad is still checking me." (Tr. 67) Applicant testified FS was upset by what she had seen on CW's phone (unrelated to Applicant), "[a]nd then the fact that, you know, I had been checking [CW] right? That made [FS] really upset. You know I broke her trust." (Tr. 68) FS screamed and accused him of "all sorts of inappropriate things." (Tr. 68-69) Applicant testified that he then told FS about finding the cutting paraphernalia and how CW had been opening up to him. (Tr. 66-69, 144-154)

Applicant testified that FS called him again in a call recorded by law enforcement. When he returned to the U.S., he was given a temporary restraining order issued by local authorities that prevented him from returning to the family home. He was subsequently issued military protective orders to refrain from contacting his family or returning home from February 2018 until he retired from the USMC in October 2021. He has not communicated with CW since February 2018. FS has refused to allow him to see their son since February 2018 and their son has made it clear that he does not want to have a relationship with Applicant. (Tr. 68-71, 97-98, 150-154; AE II)

Applicant said his defense team "uncovered private messages in [CW's social media] where she was coming clean with one of her friends about allegations that she made against [him]. [S]he was basically saying that she made those things up for attention, to basically fit in and be seen in a certain way in that group." (Tr. 74-75; GE 3) At hearing, he acknowledged that he did not have evidence CW recanted allegations she made to NCIS that he had abused her. He said there was some variance in details she provided during videotaped NCIS interviews. He also acknowledged his testimony that CW fabricated stories about him were in reference to private messages she shared via social media in June 2016, and that that the messages provided limited detail about what she had fabricated. (Tr. 175-178) Applicant said he had a copy of CW's social media post and was informed that he could submit such documentary evidence for my consideration, but he did not do so. (Tr. 183-185; GE 3 at 7-8, Encl 18)

Applicant has asserted that he did not believe checking CW to see if she had been cutting herself was criminal conduct. He asserted that checking CW for self-harm is exactly what he was directed to do by a mental health provider and that the USMC taught him to triage. (SOR Response at 3-9; GE 3 at Encl 1 at 3) He testified that:

> it's exactly what the therapist said to do. If the child is hiding cutting, you have to check on [the child]. You know, you have to be -- like, I would rather them be alive and mad or feel bad about having to be checked. But I'd rather they be alive, and that it -- never did it ever seem inappropriate to me. [T]he only thing that felt wrong was that me as a parent maybe could have done better because [my] kid is cutting, you know. . . .

> [The military judge] said something to the effect of -- I did exactly what the Marine Corps taught me to do. I was triaging my daughter because she very well could have cut herself so badly that she would die and he basically, kind of, told me he understands that.

(Tr. 87-88)

Applicant and his current spouse testified the military judge offered CW and FS an opportunity to make a sworn or unsworn statement at sentencing but neither one did. (Tr. 90, 228) He testified that his local chain of command up to colonel (O-6) recommended that he retire as a major with an honorable characterization of service. He also testified that his then executive officer attended a family advocacy meeting where the NCIS special agent in charge of the local office recommended the allegations not be substantiated but did not submit documentary evidence to support his claims. (Tr. 90-97, 215-216; AE RR, TT, WW)

Applicant was interviewed by a government investigator regarding his security clearance application in July and August 2018 and in January 2019. On advice of counsel, he acknowledged being under NCIS investigation for allegations he engaged in sexual misconduct and abuse of CW, said the allegations were false, and that he could not discuss details because the investigation was ongoing. (GE 2 at 5-7; Tr. 181-184)

In his June 2022 response to interrogatories regarding the background interviews he provided corrections and updates including that: (1) "[t]he NCIS investigation was completed and the Officer-In-Charge recommended to non-substantiate all charges;" (2) "the aforementioned charges were withdrawn and dismissed with prejudice;" (3) an Ex-Parte order was voluntarily withdrawn by his former spouse and their divorce had been finalized; (4) he was "happily remarried [and] executed my voluntary retirement from Active Duty;" and (5) that "[t]he accuser of the allegations of art. 120, has since admitted that she made up all the allegations and that I was a good step-father." (GE 2 at 2-3) He opined that "since so much has changed since the previous interviews, [a supplemental interview] would best assist in understanding the totality of the circumstances[.]" He did not report pleading guilty to offenses at a SPCM pursuant to a PTA or that he was retired from the USMC as a first lieutenant (O-2) with an OTH characterization of service. (GE 2 at 2-3)

Character Evidence and Credibility

Applicant was a highly qualified officer of Marines and attained the rank of Major (O-4). He served honorably as an enlisted member of the USMC and Air Force. He received favorable performance evaluations, and successfully completed extensive military training and education. He earned numerous awards and commendations including the Navy and Marine Corps Commendation Medal (three), Air Force Commendation Medal (two), Navy and Marine Corps Achievement Medal, Combat Action Ribbon, and other personal and unit awards. He had five combat deployments with tours in Iraq, Afghanistan and the North Arabian Sea. During his deployments he engaged in combat operations and was subjected to enemy fire and improvised explosive devices.

He had extensive exposure to injured and deceased combat casualties and suffered traumatic brain injuries (TBI). He has been treated for post-traumatic stress disorder (PTSD), anxiety and depression, and has medical conditions including migraine headaches and insomnia. He received a 90 percent disability rating from the Department of Veterans Affairs (VA). (Tr. 34-49, 108-; GE 3 at Encl 1; AE D, AE G at 1-2, 20-30, AE H, AE K-Q, AE T-EE, AE AE)

Applicant continued to perform his normal military duties from February 2018 until he retired from the USMC. On March 25, 2021, he signed an adverse fitness report covering the period July 1, 2020 to December 18, 2020 documenting his guilty pleas at SPCM, noting the offenses he was convicted of were "serious and demonstrated extremely poor character and judgment [and recommending] that he should not be promoted at any time." Otherwise, he received outstanding fitness reports and a personal award during that timeframe. (Tr. 78-79; AE K, AE AA)

Applicant's current spouse testified he is a role model for her 14-year-old son, that she trusts Applicant completely, that she attended his SPCM and that she does not believe he committed the offenses that were referred to a GCM because he treats everybody with the utmost kindness and respect. She stated he has maintained his innocence of all criminal misconduct and did what he thought was in CW's best interest to save her from harming herself. (Tr. 225-235)

A retired USMC officer testified he had a professional relationship with Applicant and found him to be honest, trustworthy, with an outstanding professional reputation, and supports him having a security clearance. He was aware that Applicant was working through issues but was unaware of the nature of the issues. (Tr. 239-247; AE GG)

A USMC officer who has worked with Applicant for more than 10 years testified that Applicant was very trustworthy and highly respected professionally. Applicant disclosed he had been accused of sexual misconduct involving his stepdaughter. Based upon the amount of time that he was on restriction, and the advice of counsel he concluded that pleading guilty with a PTA was the best resolution. (Tr. 248-259; AE PP)

Applicant's immediate subordinate during the timeframe he was charged with sexual misconduct testified that he and Applicant were similar professionally and socialized together. He said Applicant discussed the allegations with him and he understood that Applicant pled guilty to two offenses because of physical contact with CW while checking her for self-destructive behavior. The guilty pleas did not change his view of Applicant or of his stellar professional reputation. (Tr. 260-270; AE OO)

Applicant submitted numerous letters of recommendation and character references from his former commanding officer, former executive officers, commissioned officers, non-commissioned officers and others including his brother, colleagues, and friends, and neighbors that favorably commented on his reliability, performance, integrity, trustworthiness, judgment, dependability, work ethic, professionalism, leadership, adherence to rules and regulations, commitment to U.S. national security and his mission, and superior performance in combat. Many of the letters directly recommend or support

approval of his continued access to classified information. (Answer; AE GG-UU, AE AG-AH) Several letters include the author's opinions that Applicant is innocent of the charges (apparently in reference to the sexual, indecency, and obstruction of justice charges referred to a GCM). (AE GG-JJ, AE LL, AE NN-PP, AE RR, AE TT, AE AH)

Applicant's brother, a Marine chief warrant officer 5 described his close and ongoing relationship with Applicant. He favorably described Applicant's military service, character, commitment to being a good husband, father, person and Marine, and favorably comments on his judgment, reliability and trustworthiness. He recommended Applicant be retired with an honorable characterization of service and that he retain a security clearance. He opined that the accuser was not of sound mind and that the allegations against Applicant were intentional, "unfounded and meant to be vicious." He asserted that FS suffered from mental health issues, "has been subject to wild accusations, medicated for various issues" and that CW had accused FS of physical abuse. He wrote that CW had "been hospitalized and seen by mental health professionals about her cutting herself" and that she locked his son in a closet and tried to get him to show her his private parts. (AE II, AE AH)

Applicant received favorable annual reviews from his current employer. He testified his current employer is not aware of the sexual, indecency, and obstruction of justice charges referred for trial by GCM, and he does not believe they are aware of the specific SOR allegations. (AE EE-FF; Tr. 104-105) His resume states that he is a "23-year US Marine Corps and Air Force Veteran (Private-Major)" but does not include any information about his retirement as first lieutenant or OTH characterization of service. (AE XX) He is active in his community including service as president of a homeowners' association and has been appointed by city council to a board that exercises quasi-judicial authority. (Tr. 99-102; AE AC, AE AD)

Collateral Estoppel

At hearing, I raised the issue of whether the doctrine of collateral estoppel applied to Applicant's Response to the SOR and testimony at the hearing, specifically that his inspections to determine if CW was cutting herself were not criminal but were the actions of a concerned father acting in accordance with guidance from a therapist and consistent with his military training. Department Counsel argued that any attempt by Applicant to repudiate his pleas of guilty at SPCM were barred by collateral estoppel. Applicant's counsel responded that Applicant admits he is guilty of the charges and specifications to which he pled guilty but that it is important to consider what he was going through at the time and to understand what he had on his mind. The parties were given the opportunity to submit pleadings on this issue but neither did. (Tr. 15-28; 195-215; SOR Response; AE A)

The doctrine of collateral estoppel generally applies in DOHA hearings and precludes applicants from contending that they did not engage in criminal acts for which they were convicted. ISCR Case No. 95-0817 at 2-3 (App. Bd. Feb. 21, 1997). There are exceptions to this general rule, especially with respect to misdemeanor convictions based on guilty pleas. Relying on federal case law, the Appeal Board has adopted a three-part

test to determine the appropriateness of applying collateral estoppel to misdemeanor convictions. First, the applicant must have been afforded a full and fair opportunity to litigate the issue in the criminal trial. Second, the issues presented for collateral estoppel must be the same as those resolved against the applicant in the criminal trial. Third, the application of collateral estoppel must not result in "unfairness," such as where the circumstances indicate lack of incentive to litigate the issues in the original trial. ISCR Case No. 04-05712 at 7-11 (App. Bd. Oct. 31, 2006). "The arguments for not giving preclusive effect to misdemeanor convictions are that an individual may not have the incentive to fully litigate a misdemeanor offense because there is so much less at stake, or that plea bargains create an actual disincentive to litigate these particular issues." ISCR Case No. 04-05712 at 8 (citation omitted).

I find Applicant was represented by counsel at his SPCM and had an opportunity to fully litigate the issues. His pleas of guilty to child endangerment and conduct unbecoming an officer and gentleman were informed decisions, based on advice of counsel, to avoid the possibility of lengthy confinement, to avoid a potential dismissal which could result in the loss of military retirement benefits, and to avoid the possibility of a requirement to register as a sex offender. I further find that Applicant knowingly and voluntarily entered into the PTA after rejecting other offers and that the application of collateral estoppel does not result in unfairness under the circumstances of this case.

Assuming *arguendo* that collateral estoppel does not apply fully to Applicant's guilty pleas because he may not have had the incentive to fully litigate the offenses he pled guilty to because there was so much less at stake, or because the plea bargain "create[d] an actual disincentive to litigate these particular issues" I may consider any stipulation of fact agreed to by Applicant. ISCR Case No. 04-05712 at 8 (citation omitted).

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994); *see also* ISCR Case No. 18-00496 at 3 (App. Bd. Nov. 8, 2019) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see also* AG ¶ 2(b).

Analysis

Sexual Behavior, Criminal Conduct, and Personal Conduct

The SOR cross-alleges the conduct alleged under Guideline J (Criminal Conduct), under Guidelines D (Sexual Behavior) and E (Personal Conduct).

AG ¶ 30 describes the security concern about criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

AG ¶ 12 describes the security concern arising from sexual behavior as follows:

> Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

The security concern for personal conduct is set out in AG ¶ 15, as follows:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 31 lists three conditions that could raise a criminal conduct security concern and may be disqualifying in this case:

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

AG ¶ 13 lists three conditions that could raise a security concern about sexual behavior and may be disqualifying in this case:

> (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.

AG ¶ 16 lists three conditions that could raise a personal conduct security concern and may be disqualifying 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 individual may not properly safeguard classified or sensitive information;
>
> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of . . . any disruptive, violent, or other inappropriate behavior . . . ; 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.

In January 2018 CW reported Applicant had been abusing her, NCIS investigated the allegations, and in August 2019, charges were preferred alleging he committed sexual and indecency offenses on CW between February 2011 and February 2018 including penetrating her vulva with his fingers both before and after she attained the age of 12, touching her buttocks with his hands, requiring her to expose her breasts, buttocks, genitalia and anus in his presence on multiple occasions; that he made a recording of her private areas without her consent, and that he obstructed justice by telling her to delete text messages regarding his viewing of her private areas in June 2015 and February 2018 in violation of UCMJ Articles 120, 120b, and 120c and Article 134.

After a preliminary hearing was conducted, a GCM CA referred the charges for trial by a GCM in November 2019. The basis for referral of charges to a GCM is "reasonable grounds to believe that an offense triable by a court-martial has been committed" by the accused. *See* RCM 601(d)(1), Manual for Courts-Martial (2012 Ed.) The record does not include documentary evidence from a law enforcement investigation or statements from CW or FS. The evidence that Applicant committed the sexual and indecency offenses, and the obstruction of justice offense referred for trial by GCM is sparse, but it is "more than a scintilla" and sufficient to shift the burden to Applicant to rebut, explain, extenuate, or mitigate the facts. *See v. Washington Metro. Area Transit Auth.*, 36 F.3d at 380; *see also* ISCR Case No. 18-00496 at 3.

There is substantial evidence including Applicant's admissions, stipulation of fact, PTA, and other records that show on September 9, 2020, he pled guilty at SPCM to violations of Article 134 (Child Endangerment) and Article 133 (Conduct Unbecoming an Officer), UCMJ, for endangering CW's mental health by requiring her to submit to visual physical inspections for self-harm without her mother's presence before and after she reached the age of sixteen. In October 2021, the Secretary of the Navy ordered Applicant be retired with an Other Than Honorable characterization of service.

AG ¶¶ 13(a), 13(c), 13(d), 31(a), 31(b), 31(e) and 16(e) are established. AG ¶¶ 16(c) and 16(d) do not apply because the evidence is "sufficient for an adverse determination" under Guidelines J and D.

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. The following mitigating conditions under AG ¶ 32 could potentially mitigate criminal conduct 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;
>
> (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
>
> (c) no reliable evidence to support that the individual committed the offense; 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 following mitigating conditions under AG ¶ 14 could potentially mitigate sexual behavior security concerns:

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

The following mitigating conditions under AG ¶ 17 could potentially mitigate personal conduct security concerns:

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant has categorically denied committing the sexual, indecency and obstruction of justice offenses that were withdrawn and dismissed in accordance with a PTA since at least July 2018. Although he pled guilty to Child Endangerment and Conduct Unbecoming an Officer in violation of Articles 133 and 134, UCMJ, at a SPCM in September 2020, Applicant has contended since at least December 2022 that his underlying conduct was not criminal. The record does not include direct evidence supporting his denials, but includes his testimony, favorable character evidence, military service, the opinion of some that the sexual, indecency and obstruction of justice allegations were false, and evidence which raises questions about CW's and FS's mental health and credibility.

Given the paucity of direct evidence, Applicant's testimony and credibility are particularly significant in determining whether he carried his burden to mitigate security concerns. Based upon the record, I have concerns about his credibility including the following.

First, in his June 2022 response to Interrogatories Applicant falsely claimed CW "has since [July or August 2018, or January 2019] admitted that she made up all [sexual assault] allegations and [said] that I was a good step-father." (GE 2 at 2-3) At hearing, he admitted he had no evidence CW recanted any of the sexual assault allegations. He acknowledged his claim was based upon a June 2016 social media message from CW

to an unidentified recipient stating that "[he] never did anything bad to [her]…. Long story short, I lie." The social media message predated CW's report of sexual abuse to NCIS by more than 17 months and predated Applicant's security clearance background interviews by more than two years.

Second, Applicant's claims his visual inspections of CW for self-harm between June 2016 and February 2018 were the conduct of a concerned father faced with a daughter who was hurting herself in an escalating manner and was in accordance with a therapist's advice is unsupported by the record. CW started cutting her thighs, around her waist and her shoulders before 2014, and Applicant claims that from June 2014 to about June 2015 they discovered evidence of new cuts about four times. He testified CW's cutting behavior was worse in State B but claimed tattooing as well as cutting and self-piercing constituted escalating self-harm. He stipulated as fact that he inspected CW from about June 2016 to February 2018 on at least four occasions and found no "new cuts, but [CW] did have a few marks." If CW's harmful behavior was escalating, Applicant's decision not to seek assistance from a mental health provider even though therapy had proven helpful to CW also raises questions about his judgment.

Instead of telling FS about his discovery, Applicant decided to inspect his stepdaughter for self-harm only when her mother was out of the house and without her consent. He did so by standing several feet away and having CW pull up her shorts or roll down her waistline so he could inspect her upper thighs and waist, and by having her remove her shirt so he could check her rib cage and shoulder areas. Though Applicant denied having CW remove her underwear or bra and denied having her display her genitalia, buttocks, or breasts; the charges referred for trial by GCM included multiple allegations that he required her to expose her breasts, buttocks, genitalia and anus. There are at least three plausible explanations for this conduct: (1) that his actions were those of a concerned father; (2) that his conduct endangered CW's mental health and could reasonably have caused her to feel distressed or humiliated through culpable negligence (as he stipulated to and admitted at trial by SPCM); or (3) that his actions were intentional, wrongful, a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and that tends to excite sexual desires or deprave morals with respect to sexual relations (as alleged in multiple charges referred for trial by GCM and withdrawn and dismissed pursuant to a PTA).

Third, Applicant's explanations about why he decided not to tell FS about discovering cutting and tattooing implements and CW's suspected cutting and tattooing are unsupported by other evidence, inconsistent or illogical. Applicant testified CW requested he not tell her mother about his discovery and cited concerns CW may commit suicide if he told FS. However, he claimed one reason he did not tell FS was because CW had not displayed other emotional indicators of significant issues and because CW was making emotional progress by explaining her thoughts, feelings and plans to attend college. Although his claim that FS experienced some mental health issues is corroborated by some evidence, his claim that he did not trust FS in part because she was then emotionally disengaged from CW and cutting herself is unsupported by evidence. Notably, FS was CW's primary caregiver and had previously conducted the

vast majority of self-harm checks on CW. She also had extensive daily contact with CW including homeschooling her from 2012 to 2014 and from June 2015 to at least 2017.

Fourth, Applicant's decision to inspect CW for self-harm without FS' consent or knowledge apparently violated an agreement or understanding he had with FS. He testified that CW's report to FS that he "is still checking me" so upset FS that she accused him of all sorts of inappropriate behavior. When asked why FS would be so upset, he admitted "the fact that, you know, I had been checking [CW] right? That made [FS] really upset. You know I broke her trust." The significance of this breach of trust is clear because CW and FS reported abuse that resulted in the sexual, indecency and obstruction of justice offenses to law enforcement shortly thereafter, Applicant and FS separated and then divorced, and all communication between Applicant and CW and Applicant and his biological son ceased.

Fifth, Applicant's SOR response and testimony were inconsistent with facts he stipulated to at trial. He testified he conducted visual inspections of CW "probably twice" or "at least two times" over the summer of 2016 or 2017 and intended to conduct the checks only for a short amount of time until she graduated from high school in the fall of 2017 or the spring of 2018. He later testified he discovered the cutting and tattooing implements in the summer of 2017 vice the summer of 2016, but had stipulated that between about June 1 and August 16, 2016, he required CW to submit to more than one visual physical inspection for self-harm and that between August 17, 2016 and February 1, 2018, he had also required her to submit to more than one inspection.

Applicant also asserted his inspections for self-harm were not criminal conduct. However, he stipulated that his conduct violated Articles 133 and 134, UCMJ. He also stipulated that requiring CW to submit to visual physical inspections for self-harm during the summer of 2016 without her mother's presence endangered her mental health, constituted culpable negligence, "i.e. reckless, disregard for the foreseeable consequences to [CW's] mental health [and that his] lack of awareness was unreasonable and criminally negligent." Since at least May 2021, he has asserted there is no evidence of any harm to his stepdaughter attributable to his "negligent checks" but had stipulated that ""endanger" means to subject one to reasonable probability of harm [and that] actual mental harm to the child is not required."

AG ¶¶ 32(a), 32(d), 14(b), 14(g), 17(c) and 17(d) are not fully established. The alleged sexual, indecency and obstruction of justice offenses, and the child endangerment and conduct unbecoming offenses occurred more than seven years ago. Applicant pled guilty to child endangerment and conduct unbecoming an officer for this conduct over five years ago and was retired under OTH conditions more than four years ago. He has no other history of criminal misconduct. He no longer has any contact with his ex-wife and has had no contact with his former stepdaughter or son from his ex-wife since 2018. He is gainfully employed, happily remarried, has a positive relationship with his current stepson and is actively engaged as a leader in his community.

However, the seriousness of CW's allegations of sexual, indecency and obstruction of justice offenses and Applicant's false claim that she subsequently recanted

those allegations is difficult to overstate. His efforts to deny the criminal nature of the offenses he pled guilty to pursuant to an admittedly favorable PTA and to recast his misconduct as reasonable conduct of a concerned father "undercuts a conclusion of reform and rehabilitation," ISCR Case No. 20-00331 at 7 (App. Bd. Aug. 2, 2021) and makes it difficult to conclude that such behavior is unlikely to recur. Notwithstanding his strong character evidence including his military record, he has failed to establish that the conduct no longer casts doubt on his reliability, trustworthiness, or judgment.

AG ¶¶ 32(c) and 17(f) are not established. The evidence Applicant committed the sexual and indecency offenses, and the obstruction of justice offense referred for trial by GCM is sparse, but his denials and contradictory testimony were insufficient to overcome the evidence against him because of a lack corroborating evidence and credibility concerns detailed above. Applicant admitted pleading guilty to Child Endangerment and Conduct Unbecoming an Officer and Gentlemen in violation of Articles 133 and 134, UCMJ, and stipulated to conduct that shows he committed the offenses. He also admitted that he was retired from the Marine Corps with an OTH characterization.

AG ¶¶ 14(c) and 17(e) are not fully established. Applicant's wife, friends, and some other individuals are aware of his criminal history, including the serious offenses referred for trial by GCM and dismissed pursuant to a PTA; that he pled guilty to child endangerment and conduct unbecoming an officer in accordance with a PTA, and that he was retired with an OTH characterization of service. However, he has not informed his employer about the sexual, indecency and obstruction of justice charges and there is insufficient evidence to conclude that his employer is aware of the SOR allegations including that he pled guilty to two offenses at a SPCM or that he was retired as a first lieutenant (O-2) with an OTH characterization of service. The nature and seriousness of the allegations and stigma that attaches when one is charged with sexual and indecency offenses against their teenage stepchild is not easily cast off. Applicant's conduct continues to serve as a potential basis for coercion, exploitation, and duress.

AG ¶¶ 14(d) and 14(e) are not established.

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 D, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were already addressed, but some warrant additional comment.

I considered Applicant's age, military service including his combat record, civilian employment record, security clearance history, character evidence, community involvement, and that he is happily remarried.

I also considered that on advice of counsel Applicant voluntarily pled guilty to two offenses because he believed he received a favorable pretrial agreement and that he signed a comprehensive stipulation of fact. I considered that the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs, after consideration of matters submitted by Applicant and recommendations from his chain of command, recommended he be retired as a first lieutenant with an OTH characterization of service because his misconduct demonstrated no potential for future service and was a significant departure from the conduct expected of naval officers. I considered that the Secretary of the Navy directed he be retired as a first lieutenant (O-2) with a characterization of OTH.

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As discussed above, I did not find portions of Applicant's testimony credible. He has not accepted full responsibility or demonstrated remorse for his misconduct. I also considered that he has not informed his employer about the sexual, indecency and obstruction of justice charges and that there is insufficient evidence to conclude his employer is aware of the SOR allegations including that he pled guilty to two offenses at a SPCM or that he was retired as a first lieutenant (O-2) with an OTH characterization of service. Therefore, the potential for pressure, coercion, exploitation, or duress persists.

It is well settled that "[o]nce a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown,* 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome that presumption.

After weighing the disqualifying and mitigating conditions under Guidelines J, D, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated criminal conduct, sexual behavior and personal conduct security concerns. Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national interest 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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline D:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is denied.

_____
Eric C. Price
Administrative Judge