



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



In the matter of:

ISCR Case No. 24-00939

Applicant for Security Clearance

Appearances

For Government: Andrew H. Henderson, Esq. Department Counsel

For Applicant: Christopher White, Esq.

01/05/2026

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under Guidelines J (criminal conduct) and E (personal conduct). National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on April 7, 2022 (Questionnaire). On February 20, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

Applicant responded to the SOR allegations on June 5, 2025, (Answer) and attached nine documents marked as Applicant Exhibits (AE) A through I. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on June 17, 2025. The case was

assigned to me on June 30, 2025. DOHA sent Applicant's counsel a Notice of Hearing on July 18, 2025, scheduling the case to be heard via Microsoft Teams video teleconference on August 27, 2025. Due to a last-minute scheduling conflict it was necessary to reschedule the hearing. DOHA sent to counsel an Amended Notice of Hearing on August 25, 2025, rescheduling the hearing on September 18, 2025.

I convened the hearing as rescheduled. Department Counsel offered four documents marked as Government Exhibits (GE) 1 through 4. Applicant testified and offered AE A through I into evidence. All exhibits were admitted into the record without objection. The record closed on September 18, 2025. DOHA received the transcript of the hearing (Tr.) on September 23, 2025. (Tr. at 11-14.)

Findings of Fact

Applicant is 44 years old. He married in 2016. He and his wife had a long-term relationship prior to their wedding and have a 19-year-old son and three minor children. He received a high school diploma in 1999. He has worked for a U.S. Government contractor as a technician since 2007. He was granted national security eligibility in 2007. (Tr. at 15, 23-25; GE 1 at 5, 8, 9, 14-20, 27; AE F.)

The Government alleged in the SOR, as amended, that Applicant is ineligible for a security clearance due to his criminal conduct and personal conduct. I find the following facts as set forth in the pleadings, developed at the hearing, and detailed in the documentary record.

Paragraph 1, Guideline J (Criminal Conduct)

Under this guideline, the Government alleged that Applicant was arrested in 2022 and charged with three crimes.

SOR ¶ 1.a. 2022 Arrest and Charges. In the evening of October 28, 2022, Applicant had a dispute with his wife. He followed her into their bathroom, and she tried to close the door to keep him out. Applicant shoved the door open, pushing her back. She opened the door and told him to stay away from her. He then pushed her with both hands. Their oldest son, age 16, intervened to try to break up the argument. The son placed himself between his father and mother. (GE 3 at 3.)

Applicant's wife ushered her children outside of the house. He followed them outside, and the son continued to stay between his mother and father. Applicant continued to argue with his wife. The son told his father to go back inside and that the family wanted to leave. This angered Applicant, and he shoved his son. This turned into a shoving match. Applicant then struck his son with his fist or open hand, giving his son a bloody nose. He also grabbed his son by his face, scratching his forehead, nose, and eye area. (GE 3 at 3.)

Applicant's wife and children fled their home. Some of the family had no shoes or coats. They walked to a nearby mall, and she called the police. She reported to police that Applicant had locked his family out of their home and that there has been "a history of Domestic Violence," which she had never reported to the authorities. She described the argument as beginning due to her refusal to allow Applicant to touch her legs. She said that she was afraid to go home. Applicant's oldest son reported to the police that his father was always "harder" on him because he was the oldest child. The police report stated that the son had blood around his right nostril and scratches on his face. One of the officers photographed the injuries. Neither Applicant's wife nor son wanted to press charges. The police, however, determined that it was necessary to arrest Applicant under the circumstances. (GE 3 at 3-4.)

The reporting officer and his partner arrived at Applicant's home. After determining that he had several firearms registered to him, they "tactically approached the home." Applicant claimed at the DOHA hearing that five officers surrounded his house with their guns drawn. Applicant answered the door and spoke with the police through a locked screen door. He refused the police's orders to come outside and surrender. The police demanded to know where his gun or guns were. Applicant closed and locked the front door, forcing the police to try to breach it. They were unsuccessful. Eventually, Applicant unlocked the front door and surrendered to the police. They took him into custody and booked him on three misdemeanor counts, obstructing/resisting a police officer, simple battery of spouse, and child abuse. (Tr. at 35-37, 40; GE 3 at 1, 4.)

On November 29, 2022, the Court entered a protective order against Applicant prohibiting him from threatening, assaulting, or harassing the protected parties. Separately, the Court ordered Applicant to attend an anger management course and avoid any further violations for six months. Upon completion of the course and having no further criminal incidents, the charges were dismissed on June 13, 2023, and the protective order was terminated. (GE 2 at 17, 19, 20.)

At the DOHA hearing, Applicant provided some materially different details regarding the events the night of his arrest. He claimed that his argument with his wife was just a marital dispute. He said that it began as a disagreement over Applicant taking a cellphone away from his oldest son. He also denied that he pushed his wife inside the house or that he struck his son during their altercation. Applicant testified that the police were "just hot to get an arrest." He described conversations he had with others in jail that night, including the bailiffs. He said they told him that there are "bad police out there" and that he would be released in the morning and should be fine. He also exaggerated that he and his wife had been married for 20 years. When pressed, he was obligated to concede that they were married in 2016 after a long relationship. One of Applicant's exhibits was their marriage certificate. (Tr. at 18, 33-34; AE F.)

Paragraph 2, Guideline E (Personal Conduct)

SOR ¶ 2.a. Cross-Allegation of SOR ¶ 1.a. See above.

SOR ¶ 2.b. Failure to Report 2022 Arrest and Charges as Required. In his Answer, Applicant argued that he was not required to report his arrest because the charges were eventually dismissed. In the Report of Investigation summarizing Applicant's security background interview on June 8, 2023, which Applicant adopted as correct in his Interrogatory responses, dated October 24, 2024, he acknowledged that he should have reported the incident after returning to work following his arrest. He testified at the hearing that he did not report the arrest in a timely manner because he was embarrassed by the event. (Tr. at 15-15; GE 2 at 5.)

SOR ¶ 3.c. December 2022 Time-Card Charges. The Human Resources Department of Applicant's employer investigated Applicant for falsely reporting his time and receiving pay for hours he did not work. In a report dated December 22, 2022, Applicant was given a "Final Written Warning" for falsely reporting his time. The report states that Applicant admitted his time-card violations. Applicant submitted a document titled "Employee Warning," dated January 31, 2023, which was part of his yearly performance review. The warning states that he failed to submit accurate time records and that he engaged "in unauthorized personal business while on Company time." GE 4.)

Applicant testified that his father died earlier in 2022, and he had to spend some working time on the phone with lawyers and others regarding his father's estate. Someone complained about his actions and an investigation determined that on about 80 occasions, Applicant failed to properly record his time, and that he was paid for work he did not perform. (Tr. at 14-15, 25-29.)

Mitigation and Whole-Person Evidence

Applicant submitted nine exhibits. One exhibit evidenced the dismissal of the criminal charges, which was characterized as a "conditional dismissal." Another was a Certificate of Completion, dated March 30, 2023, certifying that he had completed a ten-hour Anger Management course. A work-performance evaluation for 2022 reflected positive work performance. Significantly, the record reflects that he has held a security clearance since 2007, apparently without incident. Applicant also submitted his father's death certificate reflecting that he died on June 7, 2022. Applicant argued in his security interview that he was experiencing stress at the time of the October 28, 2022 incident due to his father's passing. (Tr. at 15; GE 1 at 27; GE 2 at 5; AE A at 2; AE B; AE C; AE D.)

Three of Applicant's exhibits are character references written by work colleagues and friends of Applicant. Each reference praises Applicant's character, integrity, leadership, and skills. One reference discussed Applicant's volunteer time with local organizations. (AE G; AE H; AE I.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1, Guideline J (Criminal Conduct)

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

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

AG ¶ 31 describes four conditions that could raise security concerns. The following two conditions have possible application to the facts of this case and may be disqualifying:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Based upon its investigation of Applicant, the police determined that they had probable cause to arrest Applicant and charge him with three separate misdemeanor crimes, and the prosecutor determined that he or she had probable cause to file a criminal complaint against Applicant. This is sufficient to support application of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by his criminal conduct.

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

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

(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.

Neither mitigating condition has been established. Applicant's abusive behavior with his wife and oldest son is sufficiently recent to raise the possibility of recurrence and continues to cast doubt on his reliability, trustworthiness, and judgment. Applicant's refusal to comply with valid police orders is particularly concerning and supports a view that he represents a danger to society generally. I note that no similar criminal behavior has recurred and that he has exhibited a good employment record, at least in 2022. One

of Applicant's references praised his constructive community involvement, but Applicant presented no additional evidence providing details of that involvement. Under the circumstances, including his failure to acknowledge his criminal behavior and his lack of remorse for his actions, Applicant has not carried his burden of mitigation.

Paragraph 2, Guideline E (Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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

AG ¶ 16 sets forth the following two conditions that may raise security concerns and potentially be disqualifying in this case:

(b) deliberately providing false or misleading information, or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(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, 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.

Applicant deliberately withheld information about his arrest from his employer in violation of relevant policy. AG ¶ 16(b) is established. The police report regarding the circumstances supporting his arrest, combined with his employer's investigative summary report about his false timecards constitute credible adverse information supporting a whole-person assessment of questionable judgment, untrustworthiness, lack of candor and unwillingness to comply with rules and regulations. AG ¶ 16(c) is also established by Applicant's behavior with his wife and son and his refusal to comply with police orders. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by his personal conduct.

AG ¶ 17 sets forth the mitigating conditions under Guideline E. The following two conditions have possible application to the facts in this case:

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

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

Neither mitigating condition has been established. Applicant's offenses are not minor or remote in time. They did not occur under unique circumstances since Applicant's wife reported to the police that they have a history of domestic violence. His actions cast serious doubt on his reliability, trustworthiness, and good judgment. Also, the information concerning Applicant's crimes were substantiated and from reliable sources. Applicant's wife reported his abuse, even though she was so loyal to him that she declined to prosecute him for his crimes against her and their son. Other information came from the police, who had to deal with a potentially dangerous situation after Applicant refused their directions to step outside and surrender. Moreover, the prosecutor was convinced that the state's evidence established probable cause that Applicant committed the crimes with which the police charged him.

Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the above whole-person factors and the potentially disqualifying and mitigating conditions under Guidelines J and E in light of all pertinent facts and circumstances surrounding this case. I have carefully weighed Applicant's mitigating and

whole-person evidence, including the reference letters from work colleagues who have known Applicant for years. However, Applicant's offenses evidence significant failures of judgment. His lack of acceptance of full responsibility for his family offenses and his resistance to the police's effort to arrest him undercut his evidence of mitigation. His less than candid testimony on several points was also concerning. As a result of his actions, Applicant's own family cannot rely on him to protect them from harm, to act maturely and responsibly, and to take care of them as he should. His employer has also determined that he acted in an unreliable manner. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b and 2.c:	Against Applicant

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge