



**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 26-00085
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline J (Criminal Conduct).
Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 31, 2025. On February 27, 2026, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline J. The DCSA acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on March 6, 2026, denied all the allegations, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 27, 2026, and the case was assigned to me on April 21, 2026. On April

27, 2026, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 20, 2026. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection.

Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until June 5, 2026, to enable her to present additional evidence. She did not submit any additional evidence. DOHA received the hearing transcript on June 4, 2026. The record closed on June 5, 2026.

Findings of Fact

Applicant is a 36-year-old customer service representative for a federal contractor. She was in a supervisory position until she received the SOR. She has worked for her current employer since September 2022. She is a high-school graduate, and she earned a nursing certificate while in high school. She attended a community college from September to December 2013 but did not receive a degree. (Tr. 14) She married in February 2019, is separated, and is pending divorce. She has no children. She has never held a security clearance.

On July 19, 2025, Applicant was arrested and charged with aggravated assault by attempting to cause serious bodily injury or causing injury with extreme indifference; aggravated assault by attempting to cause or causing bodily injury with a deadly weapon; possession of an instrument of crime; simple assault; recklessly endangering another person; and harassment by subjecting another to physical contact. This arrest is alleged in SOR ¶ 1.a.

According to the police report (GX 4), Applicant had taken a commuter train on that day from her home, intending to go to a nail salon. When she exited the commuter train and began walking, she was approached by a man who struck her in the face twice. She began running away and noticed a group of men chasing her and then surrounding her. She had a kitchen knife in her purse, which she carried because she comes home from work after dark and lives in a “scary area.” (Tr. 17-18) As the men surrounded her, she removed the kitchen knife from her purse, began swinging it around, and apparently struck one of the men. She told the police that she blacked out at that point for a short time. A police officer told her to drop the knife, and she complied. She was arrested, handcuffed, taken to the police station, and charged with the offenses alleged in the SOR. She was jailed and could not make bail, set at \$75,000. She remained in custody because she refused to take a test for tuberculosis. After five days, she had a bail hearing, bail was set at zero, and she was released. Her trial was set for December 1, 2025, and she was represented by a public defender. She was never tried, because all the charges were withdrawn. (GX 9)

On November 6, 2025, Applicant’s husband, from whom she is separated and seeking a divorce, visited her apartment. They had an “altercation,” during which he

kicked a hole in the door of her apartment. The altercation and the argument continued in the hallway outside Applicant's apartment. When he refused to leave, Applicant called the police, who arrived and removed him. (Tr. 30-31) Applicant's neighbor observed the altercation in the hallway and the hole in her entry door. (Tr. 37)

On November 26, 2025, Applicant's neighbor who had observed the altercation on November 6, called the police and accused Applicant of attacking him. Applicant was arrested and charged with criminal attempt to commit burglary, possession of an instrument of crime, and simple assault. (GX 3) This arrest is alleged in SOR ¶ 1.b. She was kept in jail for a week and then released. The neighbor told the police that Applicant chased him with a knife and screamed racial slurs that he could not understand due to a language barrier. He claimed that he retreated into his apartment safely, but Applicant began pulling on the door and banging on it, attempting to gain entry. There were no injuries, and the police could not find a knife. (GX 3)

Applicant was tried by a judge for this incident on May 14, 2026. At the trial, her alleged victim testified through an interpreter because he does not speak English. He claimed that Applicant "charged at him in a jabbing motion about 12 meters away from him" and tried to enter his apartment. (Tr. 29-40) She was found not guilty of attempted burglary and aggravated assault, but convicted of possessing an instrument of crime, simple assault, and recklessly endangering another, and she was sentenced to probation for three years. (GX 9) The terms of probation include supervision by a mental health unit and mental health treatment. (GX 8 at 4) The sparse record in this case does not reflect whether the requirement for mental supervision and treatment was based on Applicant's criminal conduct or her reaction to being tried and sentenced. Applicant testified that she suffered post-traumatic stress disorder and depression after this incident, and that she was still in therapy at the time of the hearing. (Tr. 43) She has not appealed her conviction.

At the hearing, Applicant testified that she lives in a "very bad building," and it is not uncommon for the police to be called to the apartment building. (Tr. 34) She testified that she believed her neighbor used this incident as a means of breaking his lease and obtaining another apartment in a safer location. (Tr. 31)

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, an administrative judge applies these guidelines 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 and 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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." 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* at 531. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. 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* at 531.

Analysis

Guideline J, Criminal Conduct

The concern under this 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.”

The record does not reflect the basis for the withdrawal of the charges that were preferred after the incident in July 2025. Thus, none of the disqualifying conditions are established for the allegation in SOR ¶ 1.a, and I have resolved that allegation in Applicant’s favor. However, the evidence of her conviction and sentencing in May 2026 is sufficient to establish the following disqualifying conditions:

AG ¶ 31(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

AG ¶ 31(c): individual is currently on parole or probation.

The following mitigating conditions are potentially relevant:

AG ¶ 32(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;

AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and

AG ¶ 32(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.

AG ¶ 32(a) is not established. The incident with Applicant’s neighbor is recent and did not occur under unusual circumstances making recurrence unlikely. The sentence to probation reflects the trial judge’s concern about recurrence.

AG ¶ 32(c) is not established. The testimony of Applicant’s neighbor, which Applicant claims was false, was sufficient to convince the judge, who heard the testimony of Applicant and the witness, that Applicant was guilty of several misdemeanors.

AG ¶ 32(d) is not established. Applicant has not accepted responsibility for this incident. It was recent, and she provided no evidence of her job performance, reputation, community involvement, or compliance with the terms of her probation.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An 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.

I have incorporated my comments under Guideline J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline J and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the remaining security concern raised by her criminal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge