



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



In the matter of:)
)
) ISCR Case No. 25-01251
)
Applicant for Security Clearance)

Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines D (Sexual Behavior), J (Criminal Conduct), and E (Personal Conduct). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 26, 2024. On January 28, 2026, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines D, J, and E. 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 February 6, 2026, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 19, 2026. A complete copy of the file of relevant material (FORM)

was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The FORM consists of 12 exhibits. Government Exhibits (GX) 1 and 2 are the pleadings in the case. GX 3 through 12 are the evidence in support of the allegations in the SOR. GX 3 through 12 are admitted in evidence.

Applicant received the FORM on March 31, 2026, and did not respond. The case was assigned to me on June 2, 2026.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR, except SOR ¶ 3.c, which he denied. His admissions of SOR ¶¶ 1.a, 2.a, and 3.a are limited, as discussed below. His admissions are incorporated in my findings of fact.

Applicant is a 27-year-old audio-video technician employed by a defense contractor. He graduated from high school in June 2017 and enlisted in the U.S. Marine Corps in March 2018. He received a security clearance in June 2019. (GX 3 at 28) He was discharged from the Marine Corps in September 2021 with an other than honorable discharge. He has never married and has no children.

The evidence regarding the allegations in the SOR is summarized below.

SOR ¶ 1.a (Guideline D, Sexual Conduct): Violation of Article 120, Uniform Code of Military Justice (UCMJ) by committing a sexual act on a sleeping or unconscious victim on or about March 1, 2019; cross-alleged in SOR ¶ 2.a as Guideline J, Criminal Conduct, and in SOR ¶ 3.a, as Guideline E, Personal Conduct.

The evidence in support of these allegations was gathered during a security investigator's interview of Applicant in April 2025. According to the investigator's summary of the interview, Applicant, another male Marine, and a female Marine went to a bowling alley on a military installation. Applicant consumed about six drinks during a two-hour period. The three Marines returned to their barracks, and Applicant and the female Marine fell asleep in Applicant's room. Applicant and the female Marine did not have a romantic relationship. When Applicant awakened, the female Marine was gone. About a week later, Applicant was informed that the female Marine had accused him of a sexual assault by penetrating her vulva with his finger. Applicant told the security investigator that he did not sexually assault the female Marine, but that she was jealous because Applicant was having a relationship with her roommate. (GX 4 at 5)

Applicant was charged with committing a sexual assault on the female Marine. He was pending trial by court-martial for this sexual offense and represented by a military attorney when he entered into a plea agreement providing for disposition of the offense by nonjudicial punishment instead of a court-martial. The plea agreement required him to plead guilty at the nonjudicial punishment proceeding. On April 29, 2021, he pleaded

guilty and received nonjudicial punishment of reduction in rank, forfeiture of pay, and restriction to his places of duty, billeting, mess, and worship. (GX 7 and 8)

In Applicant's answer to the SOR, he stated that he accepted the plea agreement because he was approaching his end of active service, which would be delayed if a trial by court-martial was ongoing, and the plea agreement would allow him to continue to a civilian life with little impact aside from losing benefits.

Applicant's answer to SOR ¶¶ 1.a, 2.a, and 3.a admits that he was punished for the alleged conduct, but it falls short of a full and unqualified admission of guilt, and it raises the question whether the doctrine of collateral estoppel applies to his answer to the SOR. The doctrine of collateral estoppel generally applies in DOHA proceedings 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). A finding of guilty in a nonjudicial proceeding is equivalent to a misdemeanor conviction.

There are exceptions to the doctrine of collateral estoppel, 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. Federal courts recognize that an individual may not have an incentive to fully litigate a misdemeanor offense because there is less at stake or because a plea bargain creates a disincentive to litigate the issues. ISCR Case No. 04-05712 (App. Bd. Oct. 31, 2006).

All three parts of the test are established. Applicant had the opportunity to litigate his guilt before a court-martial and was represented by an attorney. The conduct for which he received nonjudicial punishment is the same conduct that was referred for trial by court-martial. With respect to the third part of the test, Applicant was faced with the possibility of extending his military service if he chose to litigate his guilt at a court-martial. However, there is no evidence that delaying his discharge from the Marine Corps would have worked any hardship on him. I conclude that the doctrine of collateral estoppel precludes Applicant from asserting his innocence during the adjudication of his security clearance. His guilty plea in the non-judicial punishment proceeding and his admissions in his answer to the SOR are sufficient to establish the conduct alleged in these allegations.

SOR ¶ 2.b: Applicant was administratively discharged from the U.S. Marine Corps on September 23, 2021, for reasons less than "Honorable." This allegation is established by Applicant's admission in his answer to the SOR and the evidence in the FORM. (GX 11)

SOR ¶ 2.c: Violation of Article 90, UCMJ on three occasions in April 2021 by disobeying a superior officer's no-contact order, cross-alleged in SOR ¶ 3.b. When Applicant was interviewed by a security investigator in June 2025, he disclosed that he was ordered by his commander to have no contact with a female enlisted Marine that he was dating, and that he violated the order by communicating with her, going to the beach with her, and spending a night in her barracks room. (GX4 at 9) The record does not reflect why Applicant's commander issued the no-contact order. Nevertheless, Applicant admitted that he received the order and disobeyed it on three occasions. He received nonjudicial punishment for his disobedience. His punishment was reduction in rank, forfeiture of pay, and restriction and extra duties for 60 days. This allegation is established by Applicant's admission in his answer to the SOR and the evidence in the FORM.

SOR ¶ 3.c: Counseling for making unofficial social media posts in violation of U.S. Marine Corps guidance. In May 2018, Applicant was counseled by his commander for making unofficial online social media posts in April 2018, in disregard of USMC Social Media Guidance. The guidance encourages Marines to "responsibly engage in unofficial internet posting about the Marine Corps and Marine Corps related topics consistent with their professional expertise, personal experiences, or personal knowledge," and "to professionally and respectfully correct errors or misrepresentations about the Marine Corps." The guidance prohibits postings that "harm good order and discipline or that bring discredit upon themselves, their unit, or the Marine Corps." It prohibits defamatory, threatening, harassing language, and indecent language. (GX 12) The record does not reflect what Applicant was alleged to have posted in violation of the media guidance. Applicant denied this allegation in his response to the SOR, stating that he had no knowledge of this infraction and that it could not have occurred because he was in boot camp at the time with no access to electronic devices. This allegation is not established.

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 D, Sexual Conduct

The concern under this guideline is set out in AG 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. . . .

The applicable disqualifying condition is AG ¶ 13(a) (“sexual behavior of a criminal nature, whether or not the individual has been prosecuted”). It is established by Applicant’s admissions in his guilty plea during the nonjudicial proceedings.

The relevant mitigating condition is AG ¶ 14(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). This mitigating condition is not established. The incident occurred in March 2019, more than seven years ago, and there is no evidence of similar misconduct. However, Applicant has not accepted responsibility for his conduct. Instead, he has claimed that he was not guilty of the alleged misconduct, and that he pleaded guilty in the nonjudicial punishment proceeding to move on with his life and remove the stress of a potential negative outcome of a court-martial. His failure to take responsibility for his conduct undercuts the mitigating value of the passage of time.

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 following disqualifying conditions are established by Applicant’s admissions and the evidence in the FORM:

AG ¶ 31(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;

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

Ordinarily, when the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). In this case, Applicant's discharge from the Marine Corps was based, at least in part, on the conduct covered by AG ¶¶ 31(a) and 31(b). It was the consequence of his misconduct, but not a separate act of misconduct. However, because Applicant's discharge is specifically covered by a separate disqualifying condition, I have not resolved any of the allegations under this guideline in his favor.

The following mitigating conditions are potentially applicable:

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; 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 for the reasons set out in the above discussion of AG ¶ 14(b) under Guideline D.

AG ¶ 32(d) is not established. Applicant's military service was characterized by inability or unwillingness to comply with rules. He has submitted no evidence showing that his attitude toward compliance with rules has changed and no evidence of further education, a good employment record, or constructive community involvement.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15: "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. . . ."

The disqualifying conditions under this guideline are established by the evidence in the FORM:

AG ¶ 16(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; and

AG ¶ 16(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 . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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

AG ¶ 17(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.

AG ¶ 17(c) is not established. The sexual offense was not minor, but it happened more than seven years ago. The repeated disobedience of the no-contact order was arguably minor, and it happened more than five years ago, but it was not infrequent. None of the incidents happened under unique circumstances. For the reasons set out in the above discussion of AG ¶ 32(d), I am not convinced that recurrence is unlikely.

AG ¶ 17(d) is not fully established. Applicant has not acknowledged his guilt of the sexual misconduct. He has acknowledged his problems with complying with orders while on active duty. However, he submitted no evidence of counseling and no evidence from supervisors, co-workers, neighbors, or other associates that he has learned to comply with rules and regulations in his current job or in his personal life. I am not convinced by the limited evidence in this record that recurrence is unlikely.

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 D, J, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines D, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern raised sexual conduct, criminal conduct, and personal conduct.

Formal Findings

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

Paragraph 1, Guideline D (Sexual Conduct):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant
Subparagraph 3.c:	For 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