



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



In the matter of:

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

09/11/2025

Decision

LAFAYE, Gatha, Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 2, 2022. On October 11, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines J, D, and E. Applicant answered the SOR on November 20, 2024 (Answer) and elected to have his case decided on the written record in lieu of a hearing. The case was assigned to me on June 6, 2025.

The Government's written case was submitted on January 16, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 2, 2025, and did not object to the Government's evidence, but submitted an email memorandum to support his case in mitigation.

Evidence

Government Exhibit (GE) 1 and GE 2 consist of the SOR and Applicant's Answer. GE 3 through GE 14 are admitted in evidence without objection. Applicant's response to the FORM is marked as Applicant Exhibit (AE) A and admitted in evidence without objection.

Findings of Fact

In Applicant's Answer, he admitted the allegations in SOR ¶¶ 1.a through 1.g, 2.a, and 3.a, but denied the allegation in SOR ¶ 2.b. Applicant's admissions are incorporated in my findings of fact. After thorough review of the evidence, I make the following additional findings of fact.

Applicant is 34 years old. He earned his high school diploma in May 2009. He continued to work part-time as a line cook after graduation until 2012 when began he working as a general laborer for a private company. He attended college part time during the spring of 2012, 2014, and the fall of 2016 but has not yet completed a degree. (GE 3, 4) Applicant first married in 2009, divorced in 2010, and remarried the same woman in July 2018. He and his wife have two sons, ages 15 and 8 years. (GE 5) In his SOR Answer, Applicant said they divorced again in 2023, he has custody of the children, and his now ex-wife pays \$100 monthly for child support. (SOR Answer) He did not submit documentary evidence to support these assertions.

Applicant has worked as an Information Technology (IT) technician for a defense contractor since December 2020. He previously worked as an IT technician for a different defense contractor from August 2018 through December 2020, when the previous defense contractor lost the contract bid. (GE 3, 5)

In September 2018, Applicant completed his first SCA. A favorable determination was made and he was granted security clearance eligibility in late 2018. He completed a new SCA in September 2022 after changing jobs. In Section 22 – Police Record, he disclosed prior police record incidents that occurred in 2014, 2020, and 2021. (GE 3, 4) In 2014, he said he was charged with "text message harassment to ex-girlfriend" and he said that the charges were "dropped in court by (the) judge." (GE 3 at 32) In August 2020, he said his "ex-girlfriend pressed harassment charges against me for sending her a friend request on the 'LinkedIn' website." (*Id.*) In June 2021, he disclosed being charged with harassment of his wife, and commented as follows: "My wife and I got into an argument and her sister called the police." (GE 3 at 33-34)

Under Guideline J, the SOR alleges seven incidents of criminal conduct between 2010 and 2021. Applicant has a history of being arrested and charged with 3rd degree domestic violence and harassment incidents involving his wife, ex-girlfriend (X1), and a previous ex-girlfriend (X2). In 2022, Applicant was convicted of domestic violence/harassment of his wife and sentenced, which is discussed more fully below.

In March 2010, Applicant was arrested, charged with 3rd degree domestic violence and harassment (SOR ¶ 1.a). He had a heated argument with his wife. There was name-calling and shoving, and police officers were called. He was arrested and said his wife was arrested too. The case was dismissed at his wife's request. (GE 11; SOR Answer)

In July 2013, Applicant was arrested and charged with domestic violence and harassment (SOR ¶ 1.b). The victim, a previous ex-girlfriend (X2) said he attacked her because he wanted his cell phone back. Police observed scars on her neck, bruises on her left forearm and a lighter burn. Applicant claimed that X2 admitted, in front of his attorney, that she falsely pressed charges in order to "get her belongings back." Applicant was required to pay a fee and the case was dismissed on motion of the prosecutor. (GE 10; SOR Answer)

In August 2013, Applicant was arrested and charged with 3rd degree domestic violence and harassment against X2 a second time (SOR ¶ 1.c). Police officers responded to complaints of physical fighting near a highway and upon arrival found only victim X2 on the scene. She said she got into a physical altercation with Applicant and when she stopped the car, Applicant forcibly removed her keys from the ignition and her phone. He bit her right forearm, exited the car, threw her keys and phone in a field in opposite directions and walked away with his minor child. Police officers located Applicant and he confirmed X2's account of the events but claimed she bit him too. Police officers noted self-inflicted bite marks on his upper right wrist and arrested him on the scene. (GE 9 at 9) Applicant's account of events in his SOR Answer contradicts statements he made to the police at the time. He paid court costs, agreed to undisclosed required pre-conditions, and the case was dismissed on the prosecutor's motion. (GE 9; SOR Answer)

In April 2014, Applicant was charged with communicating threats of domestic violence (SOR ¶ 1.d). A more recent ex-girlfriend, X1, filed a complaint with police stating that Applicant contacted her and threatened to kill her and her family. Police officers interviewed him and he admitted he sent threatening messages to X1 and her mother because he was upset. He also admitted to intentionally damaging X1's phone and police were unable to extract images. Prosecution was declined. Applicant's account of events in his SOR Answer contradicts statements he made to police officers conducting the interview. (GE 14; SOR Answer)

In about January 2016, Applicant was charged with 3rd degree domestic violence and harassment for multiple instances of unwanted, inappropriate texts, calls, messages, sending an explicit image of his genitals, and making verbal threats to kill victim X1 and her child after being told not to communicate with her (SOR ¶ 1.e). X1 said she dated Applicant for about six months two years earlier, that he continues to contact her and that he sent her a photo of his genitals on her birthday. Applicant was found not guilty at trial. (GE 8) In his Answer, Applicant admitted he sent X1 a photo of his genitals on her birthday. He said they had an "unhealthy cycle of on-and-off contact" since the breakup but denied threatening her, and expressed regret for sending the photo. (SOR Answer)

In September 2020, police officers responded to a domestic dispute at Applicant's home. His wife stated they had been in a verbal altercation. Officers observed redness under his wife's eye and a bloody fingernail. Both parties denied having a physical altercation. Officers observed both parties were highly intoxicated, and they agreed to separate within the home. No arrests were made. (GE 13)

In June 2021, Applicant was arrested and charged with 3rd degree domestic violence and harassment (SOR 1.f). Applicant's wife had face-timed a family friend and said she was being beaten at home and not allowed to leave. Police officers arrived at the residence, and after initially hesitating to speak, his wife said the last three days had been really bad. She described being thrown to the floor, and choked with Applicant's forearm over her throat. When she was able to get away, she said she face-timed her friend for help. When police arrived, she was afraid to open the door and to talk to them because she feared what Applicant might do. She opened the door when her friend kept calling. (GE 7)

Police officers spoke to Applicant, who denied any physical altercation had occurred and claimed that they were arguing about finances, but he would not provide his account of the events. Police officers observed physical injuries on his wife's arms and throat, and on the scene medics responded and treated the victim. Applicant was arrested at the scene and placed in jail as ordered by a magistrate. Applicant was restrained and enjoined from contacting victim, communicating any threats, and from possessing any firearms as conditions of his bonded release. In January 2022, he pled guilty to harassment, was sentenced to 180 days jail (suspended for one year), paid a cash bond, and was ordered to attend anger management training. (GE 7)

In his Answer, Applicant admitted the allegation, stating this was a very difficult time for him. He claimed his wife was an alcoholic and that she "had severe anger problems." He claimed he was arrested because his wife had a bruise that she caused herself, that he pled guilty because he did not have money to hire an attorney and that he "could not bring himself to testify against (his) own wife." (SOR Answer)

On June 22, 2021, Applicant's ex-girlfriend X1 went to the police station and complained of harassing communications by the Applicant. X1 informed police she told Applicant on August 20, 2020 to never contact her again "by any means whatsoever." She complained of receiving a LinkedIn contact request from Applicant on June 18, 2021. She told police she remains in constant fear that Applicant will find out where she lives and harm her and her unborn child, and that she has been dealing with his constant harassment for about seven years and she wants it to stop. The police officer repeated what X1 told the magistrate:

He has continued to harass me over the years, and most recently tried to seek out my place of employment, and contacted me via LinkedIn to correspond with him. I would like a protection of abuse order and communications harassment charge on him to deter any future engagements. (GE 6 at 7)

The record shows that Applicant was arrested on June 21, 2021 as a result of X1's complaint to the magistrate, stated above. (GE 6 at 11, 13) He was arrested again in September 2021 and charged with harassing communication related to the LinkedIn account communication (SOR ¶ 1.g). The court "was not reasonably assured that the defendant would appear as required and/or the defendant's being at large does not pose a real and present danger to others or to the public." (GE 6 at 10, 12) Applicant was to be released only upon compliance with the following conditions:

- Execution of an appearance bond of \$500;
- To have no contact with the victim whatsoever directly or indirectly. (*Id.*)

Applicant signed the acknowledgment of the magistrate's order on September 3, 2021. Applicant pled not guilty, testimony was taken in January 2022, and the no contact order remained in place. In March 2024, the charge was dismissed but the no contact order has remained in place. (GE 6 at 4) In his Answer, Applicant admitted sending the LinkedIn request but stated he did not know it was going to X1 until it was too late. He said he made "zero" contact with her and that the case was dismissed because he did not commit a crime. (SOR Answer)

Under Guideline D, the SOR cross-alleges SOR ¶ 1.e, which concerns Applicant sending an explicit image of his genitals to the victim (SOR ¶ 2.a), which he admitted. Applicant denied the allegation in SOR 2.b, which alleges he sent an extended relative a photo of his genitals to her "OnlyFans" account.

In November 2020, an extended relative contacted police alleging Applicant sent a photo of his genitals to her OnlyFans account before she realized who she was messaging. She alleged he showed up at her mother's residence and startled her by banging on the door while everyone was sleeping. Police were called, Applicant claimed he was there to see the relative's mother who is elderly, and he was ordered to leave. The relative says she feels alarmed by his communications, she asked him to stop and she feels he is following her. The case status was reported as "inactive." (GE 12)

In his Answer, Applicant denied the allegation. He said he told his wife and her relative that he did everything he could to prove the image was not of him. He said:

I showed them my bank accounts. I made every effort to prove my innocence. I even made side-by-side picture comparisons of mine and this (person's) face and p**is to prove to my wife that it was not me. (SOR Answer)

Lastly, the SOR cross-alleges the entirety of the SOR allegations under Guideline E (SOR ¶ 3.a), which Applicant admits.

Applicant acknowledged his aberrant behavior and past mistakes and said he has learned and matured from them. He sought professional help and is currently in treatment. His counselor said he is in a stable relationship and that he maintains an amicable co-

parenting relationship with his ex-wife. She favorably endorsed his application for a security clearance. (AE A)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

The security concern for criminal conduct is described in AG ¶ 30:

Criminal activity creates doubt about an Appellant’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.

Applicant’s admissions and the evidence in this case establish the following disqualifying conditions under AG ¶ 31.

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; and

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.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following 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) and 32(d) are established for SOR ¶ 1.a due to the passage of time. Applicant was a 19-year-old, newly married father of a young child at the time of the 2010 domestic dispute. It was the first reported domestic dispute incident with his wife, who also shared responsibility for the incident. SOR ¶ 1.a is mitigated by time.

AG ¶¶ 32(a) and 32(d) are not fully established for the criminal conduct alleged in SOR ¶¶ 1.b through 1.g, despite the passage of time for the 2013 through 2016 incidents. Applicant's impulsive and irresponsible behavior evidenced by his multiple domestic violence and harassment incidents against his last three domestic partners between 2013 and his last court administrative action in 2024, shows the continuation of a pattern of abusive behavior that has not been adequately addressed or resolved. His actions and criminal conduct reflect extremely poor judgment and raise serious questions about his trustworthiness, reliability, and overall suitability for a security clearance.

Guideline D, Sexual Behavior

SOR ¶ 2.a cross-alleges the conduct alleged in SOR ¶ 1.e, and relates to Applicant's transmission of an explicit photo of himself. The security concern for sexual behavior is described 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. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

The following disqualifying conditions are potentially applicable under AG ¶ 13:

AG ¶ 13(a): sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

AG ¶ 13(c): sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

AG ¶ 13(d): sexual behavior of a public nature or that reflects lack of discretion or judgment.

The above disqualifying conditions are established by Applicant's admissions and the evidence submitted in this case for SOR ¶ 2.a. His transmission of an explicit photo of himself to victim X1 on her birthday was unwanted, criminal in nature, made him vulnerable to coercion, exploitation, and duress, and reflected poor judgment. AG ¶ 13 is not established for SOR ¶ 2.b, which Applicant denied and the record evidence is insufficient to establish.

The following mitigating conditions are potentially applicable under AG ¶ 14:

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;

AG ¶ 14(c): the behavior no longer serves as a basis for coercion, exploitation, or duress; and

AG ¶ 14(d): the sexual behavior is strictly private, consensual, and discreet.

AG ¶¶ 14(b) and 14(c) are established to mitigate SOR ¶ 2.a. Applicant expressed deep regret for sending a photo of his genitals to X1 on her birthday. He used extremely poor judgment in doing so, but the event occurred about 10 years ago and there is no indication that he repeated this action. AG ¶ 14(d) is not established given Applicant's lack of discretion and judgment demonstrated in this instance.

Guideline E, Personal Conduct

The security concern under this guideline is described 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

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;

AG ¶ 16(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: (2) any disruptive, violent, or other inappropriate behavior; 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: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

AG ¶¶ 16(c) and 16(d) are not established. SOR ¶ 3.a cross-alleges every allegation in the SOR under Guideline E, and AG ¶ 16(c) requires "credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline" Similarly, AG ¶ 16(d) requires "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination" Applicant's conduct is already adequately addressed under Guideline J, and making an independent assessment of the same conduct under AG ¶¶ 16(c) and 16(d), is duplicitous and unnecessary.

However, Applicant's conduct as under AG ¶ 16(e) is established. Applicant has a history of engaging in domestic violence that spanned more than a decade. Some of the incidents in which he was involved occurred in public places, or in clear view of neighbors, spectators and onlookers, i.e. alongside a highway, in his yard or on the porch of his home. In this regard, Applicant's behavior and tendencies if known by neighbors, onlookers, spectators, and concerned citizens who reported the incident with X2 on the side of a highway, could have caused him concerns about his professional standing and reputation and as an employee of a defense contractor.

The following mitigating conditions are potentially applicable under AG ¶ 17:

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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant acknowledged his behavior and obtained counseling to change his past inappropriate behavior. He completed the court's required anger management course. Additionally, he said he is no longer married, has full custody of his children, and has limited contact with his ex-wife and her family. His counselor also said that he is in a stable relationship, that he successfully co-parents with his ex-wife, and she favorably endorsed his application for a security clearance. AG ¶¶ 17(d) and 17(e) are applicable.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. 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 Guidelines J, D, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I noted several inconsistencies in Applicant's statements to police officers at the time of the incidents, and the statements he made in his SOR Answer. Because this case is decided on the written record, there was no opportunity to question him about the inconsistencies and any of the security concerns raised in the case. For the same reason, there was no opportunity to observe his demeanor and thereby assess his credibility.

Thus, after weighing the disqualifying and mitigating conditions and evaluating all evidence in the whole-person context, I conclude Applicant mitigated the security concerns under Guidelines D and E, but failed to mitigate the security concerns under Guideline J.

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
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b – 1.g:	Against Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraph 2.a - 2.b:	For Applicant

Paragraph 3, Guideline E: FOR APPLICANT

Subparagraph 3.a: For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge