



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



Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: Melissa L. Watkins, Esq.

02/24/2025

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant's obsession with a college classmate resulted in an extended series of escalating harassment, lies, threats, rules violations, criminal conduct, and other disruptive behavior. Applicant mitigated the use of information technology, sexual behavior, and criminal conduct security concerns. He did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

History of the Case

On February 29, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline M (use of information technology), Guideline D (sexual behavior), Guideline J (criminal conduct), and Guideline E (personal conduct). The DCSA acted under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

In Applicant's May 3, 2024 response to the SOR (Answer), he admitted, with explanations, all of the allegations. He attached six enclosures to his response. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer).

On May 28, 2024, the Government was ready to proceed to hearing. I was assigned this case on September 4, 2024. On November 5, 2024, DOHA issued a Notice of Hearing, scheduling a hearing by video teleconference for November 18, 2024. The hearing proceeded as scheduled. The Government proffered 15 exhibits, which I admitted as Government Exhibits (GE) 1 through 15 without objection. Applicant testified but did not submit any additional documentary evidence. I admitted the six attachments to the Answer into the evidentiary record as part of the Answer without objection. I held the record open until December 18, 2024, to provide the parties an opportunity to respond to the Amendment to the SOR, addressed below, and to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on December 2, 2024. On December 18, 2024, Applicant's counsel submitted a four-page argument (Hearing Exhibit (HE) 3) and a three-page letter (Applicant Exhibit (AE) A). HE 3 was included in the record, and AE A was admitted into evidence without objection. The evidentiary record closed on December 18, 2024.

Amendment to the SOR

At the hearing, I amended the SOR to conform to the record evidence, pursuant to Paragraph E3.1.17 of the Directive, adding SOR ¶ 4.d. as follows:

- d. Your employer is unaware of the circumstances and conduct that led to your Other Than Honorable discharge in October 2019. If known, this information could affect your professional and personal standing.

Neither party objected to the amendment, and I held the record open for both parties until December 18, 2024, to provide evidence and argument in response to the Amendment to the SOR. Applicant submitted HE 3 and AE A in response to the Amendment to the SOR and denied the allegation in SOR ¶ 4.d. Department Counsel offered no further submissions. (Tr. 134-137)

Findings of Fact

Applicant is 29 years old. He graduated from high school in 2013. From June 2013 to May 2017, he attended the U.S. Naval Academy (USNA) and earned a bachelor's degree. He served on active duty in the U.S. Navy from June 2013 to November 2019, when he was discharged under Other Than Honorable (OTH) conditions for serious misconduct. He has never married, and he does not have any children. Since August 2021, he has been employed in the unmanned aerial systems (UAS) field with a DOD contractor. (Answer; GE 1; Tr. 19-22)

The SOR allegations arise from Applicant's conduct between December 2016 and about March 2018, involving a female midshipman (F) at the USNA. In his Answer, Applicant admitted, with explanations, all of the allegations. In his post-hearing submission, he denied SOR ¶ 4.d. (Answer; HE 3)

Intentionally Accessing F's Social-Media Account (SOR ¶¶ 1.a., 2.a., 4.a.)

Applicant and F both attended the USNA. Applicant was two years ahead of F at the USNA and a designated tutor in their shared major. F had initiated contact with Applicant for tutoring help, but, in about November 2016, she had explicitly stated her intent that their contact remain professional, particularly in light of fraternization rumors which she had experienced at the USNA. Applicant had tutored F in common areas and in each of their dormitory rooms, which were situated on the same hall. (Tr. 28-30, 102-103)

On December 11, 2016, Applicant intentionally and illegally accessed F's social-media account. At the hearing, Applicant did not recall how he acquired access to F's social-media account – whether she had left the account open on his laptop or he had guessed her password. He testified that he did not upload any software or use a keylogger to capture her password, but he did attempt to guess passwords or recover passwords of hers. On multiple occasions, he attempted to access her social-media and other accounts, but he was only successful once. He admitted he accessed F's account, searched through her messages, discovered a nude photograph, and transmitted the nude photograph to himself. He also admitted that he changed her password to her social-media account. That same day, F received an alert or notification that someone had sent the nude photo, friended Applicant on the social-media platform, and changed F's password to her social-media account. Applicant explained that he told F that he had received the nude photograph as part of his plan to gaslight or manipulate her. (Answer; GE 3 Encl. 1, 2; GE 10; Tr. 30, 93-101)

The USNA conducted an investigation after F claimed that her social-media account had been hacked and a nude photo sent to Applicant. Throughout multiple investigations, official statements, a proceeding for non-judicial punishment (NJP), and an appeal, Applicant denied accessing F's social-media account or sending himself the nude photograph. Not until his August 3, 2018 Stipulation of Facts, connected with his court martial proceedings, did Applicant admit accessing F's account in December 2016, looking through her messages, discovering the nude photograph, and sending it to himself. (Answer; GE 3, 8)

Improperly Spoofing Email Account (SOR ¶¶ 1.b., 4.a.)

The SOR inaccurately alleges that Applicant illegally accessed another midshipman's email account (SOR ¶ 1.b.). Applicant explained that he spoofed another midshipman's email account to look like the emails came from that individual instead of Applicant. On or about February 25, 2017, Applicant improperly spoofed another midshipman's email account and sent F messages that he intended to break up with her

and emails attacking Applicant. When interviewed by Navy investigators on April 12, 2017, Applicant denied sending any harassing emails to F or to himself. Not until his August 2018 Stipulation of Facts did Applicant admit improperly spoofing the boyfriend's USNA email account. At the security clearance hearing, he also admitted spoofing F's email account and the email accounts of multiple individuals at the USNA beginning prior to his NJP proceedings and continuing after those proceedings. (Answer; GE 3 Encl. 6, GE 8; Tr. 96, 106-111)

Sending Anonymous and Harassing Emails (SOR ¶¶ 1.c., 4.a.)

Between March 10 and 14, 2017, F received harassing and explicit emails from anonymous email services and email-spoofing websites. She also received harassing emails from Applicant's personal Gmail account on March 12 and 14, 2017, and Applicant claimed that his email account had been hacked. These emails discussed sexual acts and used graphic imagery. Applicant informed F that he had also received harassing and explicit emails and texts from an anonymous source. When questioned by investigators, Applicant denied sending the emails and claimed that his email account had been hacked. On March 25 and 26, 2017, F and her boyfriend received harassing emails from an email-spoofing website. F continued to receive harassing emails through at least January 2018. (Answer; GE 3 Encl. 6; Tr. 30, 106-107)

When questioned by investigators, Applicant denied sending the anonymous emails to F, himself, and F's boyfriend. The Navy's forensic investigation concluded that Applicant had taken steps to avoid detection by not using the academy's networks to send the harassing emails. Applicant perpetuated his denials in multiple official statements. Not until the August 2018 Stipulation of Facts did Applicant admit sending F and her boyfriend harassing and explicit emails. (GE 3 Encl. 6)

Sending Unsolicited Photos of Genitalia (SOR ¶¶ 2.b., 4.a.)

On May 27, 2017, F received two emails with photos of male genitalia from an anonymous email account. Through forensic analysis, investigators were able to determine the model of cell phone used to take the photos and when they were taken. On May 31, 2017, Applicant admitted that the photos were of his genitals and requested that no further investigation occur. By email, he wrote:

Additionally, I'm not necessarily certain of how a harassment investigation is handled but, I'm not necessarily comfortable with the investigation at all. Again, I was never consulted before this part of the investigation started and I haven't really been comfortable with it at all. At this point, what options do I have? Can we suspend the investigation or stop it? Since this was started without my consent, I've tried these past few days but I'm just extremely uncomfortable with it and I'd personally much rather keep it to the investigation from prior to this weekend. (GE 3, Encl 6)

On June 1, 2017, Applicant was interviewed by investigators. He admitted that the photos were of his genitals. He claimed that the photos had been taken by him in high school on an old cell phone and that the photos had been stolen from his social-media account when hacked in March 2017. He denied sending any photos of his genitals to F. He declined to consent to a search of his cell phone at the time of the interview. Through multiple investigations, official statements, the NJP proceedings, and an appeal, Applicant denied sending F the photos of his genitalia. Not until his August 2018 Stipulation of Facts, did Applicant admit using an anonymous email service to send F unsolicited photographs of his genitalia. (Answer; GE 3, 8, 10; Tr. 31)

Destroying Evidence (SOR ¶¶ 4.a., 4.b.)

On June 2, 2017, Applicant was re-interviewed. He offered his cell phone for analysis. Despite having 1462 contacts on his phone, the phone had only one photograph, 16 text messages, and four phone calls in its history. Its call history had been deleted after a Navy investigator's phone call at 7:51PM on June 1, 2017. Furthermore, the internet browsing history had been deleted. Applicant admitted deliberately resetting his phone to the factory defaults to eliminate any derogatory or incriminating information. (Answer; GE 2, 3, 5)

Non-Judicial Punishment (SOR ¶¶ 3.d., 4.a.)

On June 23, 2017, Applicant was charged with (1) Article 92 – failure to obey an order or regulation; (2) Article 133 – conduct unbecoming an officer and a gentleman; (3) Article 134 – obstruction of justice. As part of the NJP proceedings, Applicant made a personal statement, wherein he expressly denied emailing photos of his genitalia to F. He also claimed that he did not conduct a factory reset of his phone to destroy any evidence but to transfer his photos and prepare for life after graduation from the academy. (GE 3, 4)

On June 27, 2017, Applicant pled not guilty to sending unsolicited photos of his genitalia to F and to resetting his cell phone to impede the resulting investigation. The chief of staff at the USNA determined that Applicant had sent the photos, in violation of regulations and constituting conduct unbecoming an officer and a gentleman. He concluded that Applicant had deliberately reset his phone as an obstruction of justice. He imposed NJP and determined that Applicant had violated Articles 92, 133, and 134 of the UCMJ. He was awarded a punitive letter, forfeited pay, and a six-month military protective order (MPO) was issued prohibiting Applicant from having any contact with F. (GE 4, 5, 10, 11, 12)

On June 30, 2017, Applicant sent a 15-page memorandum challenging the imposed NJP as unjust. He denied resetting his phone to impede the investigation and denied having sent F the photos of his genitalia. At the security clearance hearing, Applicant admitted making false statements in his appeal. (GE 4, 5; Tr. 111-114)

On July 12, 2017, Applicant formally appealed the imposed NJP. Applicant's appeal was denied on November 7, 2017. On appeal, the Superintendent of the USNA notes that the evidence shows the phone was wiped after Applicant's meeting with the investigator on June 1, 2017, at 8:00PM. (GE 4, GE 5)

In a July 11, 2017 interview with investigators, F reported that Applicant became hostile with her when she withdrew her offer to write a letter of support to be included with his appeal of the NJP disposition. "Within two hours following her withdrawal, [F] began receiving anonymous emails again." During a July 18, 2017 interview with investigators, Applicant admitted sending the anonymous emails because he was "upset with [F's] treatment of him." He also admitted spoofing phone calls and emails to both F and himself to create the appearance that they were both victims. During that interview, he stated he would no longer contact F. (GE 10, GE 13; Tr. 31)

Spoofing F's Telephone Number (SOR ¶¶ 1.d., 4.a.)

In his Answer, Applicant admitted that he had spoofed F's telephone number and sent himself text messages in an attempt to circumvent the July 2017 MPO. (Answer; GE 2)

False Statement to a Law Enforcement Officer (SOR ¶¶ 3.c., 4.a.)

On or about March 7, 2018, Applicant was charged with making a false statement to a civilian law enforcement officer on or about February 24, 2018. On March 5, 2018, Applicant met with two police detectives regarding a burglary report filed on February 24, 2018. There was no evidence of anything stolen or damaged and no signs of forced entry. He described how he found his apartment in general disarray, but that his laptop and drone had not been stolen. He told the detectives that he believed he was the victim of retaliation from F's boyfriend. He later admitted that no burglary had occurred and that he was solely responsible for ransacking his own apartment. He admitted that he had filed the false report to take attention away from the Navy investigation and cast himself as the victim. He was sentenced to probation before judgment (PBJ). (Answer; GE 9; Tr. 51-52, 92)

Special Court-Martial, Resignation, and OTH Discharge (SOR ¶¶ 1.e., 3.a., 3.b., 4.a.-4.c.)

On December 12, 2017, the Navy issued a show-cause statement directing Applicant to show cause why he should be retained in the military. In Applicant's January 17, 2018 response, Applicant reiterated his innocence of the conduct determined in the NJP proceedings. He acknowledged additional alleged misconduct to be addressed at a court-martial, and he expressed denied any such misconduct. He signed and submitted his response under threat of perjury. (GE 7; Tr. 116)

On May 21, 2018, Applicant was charged with several offenses under the UCMJ and court-martial proceedings were initiated:

Three specifications (counts) of willful disobedience of a superior commissioned officer (Article 90)

Specification 1. Applicant violated the MPO issued in July 2017 and reissued in January 2018 by the USNA superintendent when he sent F's grandparents a holiday card and requested that the grandparents forward the card to F. (Answer; GE 8, 12)

Specifications 2 and 3. Applicant violated these MPOs on January 27 and 28, 2018, when he used an anonymous email service to email F. He also admitted sending an email threatening to send five people a nude photograph of F if she did not call him. He expressed his intent to injure her reputation if she did not comply. At the hearing, Applicant admitted that he repeatedly violated the MPOs. (Answer; GE 8, 10; Tr. 52-53)

One specification of failure to report to his command of his civilian criminal charges (Article 92).

Applicant violated Article 92 by not reporting his March 14, 2018 criminal charges filed by civilian law enforcement. At the hearing, Applicant testified that his former defense counsel had advised him against reporting his civilian criminal charge to his command at the time. (Answer; Tr. 56)

Three specifications of false official statement (Article 107).

Specification 1. On July 10, 2017, Applicant claimed to a Navy investigator that F had sent him a nude photograph of herself, when, in fact, Applicant had wrongfully accessed F's social-media account and sent the photograph to himself. (Answer; GE 8)

Specification 2. Applicant repeatedly claimed to a Navy investigator between February 26, 2018 and March 6, 2018 that his apartment had been broken into, when, in fact, Applicant had "placed his own apartment into disarray." At the hearing, Applicant admitted that he made multiple false statements to NCIS about the burglary incident. (Answer; GE 8; Tr. 91)

Specification 3. Applicant admitted altering an email header on or about March 2, 2018, in an email sent to an authorized Navy investigator. (Answer; GE 8; Tr. 91)

One specification of communicating a threat (Article 134).

Applicant's emails threatening to send the nude photograph of F to others if she did not call him constituted the threat. Applicant admitted this conduct. (Answer; GE 8, GE 10; Tr. 108-109)

In June 2018, the preliminary hearing officer (PHO) shared with Applicant and his counsel the thousands of pages of evidence against him to be introduced at the court martial to establish the charged offenses. On August 3, 2018, Applicant stipulated to facts

alleged in the criminal complaint. He was found guilty of all charges except the Article 134 charge. He was sentenced to a 50% reduction in pay for 12 months, a letter of reprimand, and a OTH discharge. Applicant admitted his misconduct and criminal conduct, and he attributed his behavior to irresponsibility and poor judgment. (Answer; GE 2, GE 8; Tr. 49, 78-80, 117)

On March 17, 2019, Applicant agreed to submit his resignation and accept an administrative discharge under OTH conditions. He acknowledged having pled guilty to the charges and to a stipulation of facts. (Answer; GE 8; Tr. 50-51)

Applicant's obsessive behavior compelled him to file an Equal Employment Opportunity (EEO) complaint against F in 2017, where he made several false claims against F. In March or April 2018, he filed a defamation lawsuit against F because he was upset about the MPOs and his belief that he was being unjustly treated or characterized. He proceeded with the lawsuit against the advice of his defense counsel. In the court filings, Applicant made false claims against F. At the hearing, Applicant admitted that he filed the lawsuit because he was angry, obsessed, and hoped to prompt a response from F. He withdrew the EEO claim in 2017 and withdrew the defamation suit in June or July 2018. (Tr. 86-90, 125-127)

On January 23, 2021, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). He admitted his eight convictions under the Uniform Code of Military Justice (UCMJ) and a special court-martial on additional charges resulting in his OTH discharge. He also admitted a March 2018 charge and probation for making a false statement to a police officer, a misdemeanor. (GE 1; Tr. 55)

During his January 28, 2021 interview with an authorized investigator from the Office of Personnel Management (OPM), Applicant admitted illegally or improperly accessing an information technology (IT) system when he accessed F's social-media account. He also admitted deliberately deleting all information from his cell phone to deny criminal investigators access to the communications between himself and F. He admitted that he had improperly accessed the F's social media account and transferred a nude photograph to his own social media account. He also admitted that he had sent private text messages of an obscene and sexual nature to F in June 2017, whom he had previously tutored. She had expressed that she did not wish to keep in touch following Applicant's May 2017 graduation. He had resigned from the U.S. Navy under OTH conditions in October 2019 due to misconduct. (GE 2; Tr. 55)

At the hearing, Applicant admitted the conduct alleged in the original SOR. He described himself during college as "pretty emotionally immature" and "a bit too attached to a specific girl," which developed into an "obsession." He explained that, during the obsessive period, he continued to make poor decisions and believed he could resolve the problems himself and that he was "smarter than everyone else." He gaslit F by sending the anonymous emails also to himself to "draw her back" to him. Applicant also admitted that his conduct continued and escalated after the NJP proceedings.

So, the NJP was in, was in June 2017. The NJP was very informal. So I didn't really – I kind of felt coming out of the NJP that I had gotten away with a lot of conduct that wasn't addressed in it. And so, it kind of emboldened me, if you will, to keep doing some of the anonymous messages stuff, which I did."

(Tr. 28-31, 37, 47-49)

Applicant explained that the MPOs greatly frustrated him and he became angry as he remained obsessed with F. He repeatedly requested exemptions from the MPO and was denied. He claimed the turning point for him was when he was ordered in late February or early March 2018 to participate in a mental-health evaluation. He was ordered to participate in the evaluation after he reported to a Navy investigator that he had suicidal thoughts. At the hearing, Applicant admitted that he occasionally experienced suicidal thoughts between 2016 and 2018. Applicant did not discuss his misconduct or false statements during his evaluation. No diagnosis was given, and Applicant denied receiving any recommendations for counseling or other care. While the evaluation was an epiphany as to the availability of mental-health counseling and may have caused him to begin making changes in his life, Applicant did not avail himself of any mental-health counseling or treatment. Moreover, he continued to send harassing emails to F, filed a defamation lawsuit against F, and did not admit his misconduct until August 2018. There is no evidence that Applicant has engaged in any misuse of IT systems, any misconduct, or any criminal conduct since mid-2018. He has not had any contact with F since the court martial proceedings. (Tr. 32-35, 46, 53, 73, 75-78, 81-83, 122-124, 127)

Applicant did not initially inform his family about the NJP or his conduct. Rather, he informed them of his conduct around the time of his August 2018 stipulation. He testified that his immediate family was generally aware of the conduct alleged in the SOR; however, he admitted that they were not fully aware of the extent of some of his harassing emails. He believed the chief operating officer (COO) with his current employer was generally aware of his conduct and that the COO and former facility security officer (FSO) were aware of the OTH discharge. As of the hearing, none of Applicant's co-workers or supervisors had reviewed the allegations in the SOR. Applicant took full accountability for his past conduct, and he admitted that he still felt embarrassed, "dumb," and "stupid." He admitted that his coworkers may view him differently personally, if they learned about his past conduct, but that it would not impact his professional standing. (Tr. 58, 64-68, 119-122)

Applicant has not engaged in any mental-health counseling, but he has spoken with his friends and family. He also has not participated in any anger management counseling or education. (Tr. 84, 127, 130)

Whole Person

Applicant submitted 12 character-reference letters with his Answer. The president and COO with Applicant's current employer both wrote character-reference letters on his behalf. They praised his integrity, selflessness, commitment, reliability, honesty, work

ethic, and trustworthiness. Applicant's current team lead and nine other current and former co-workers also submitted reference letters noting Applicant's honesty, sincerity, loyalty, subject-matter expertise, work ethic, selflessness, respectfulness, dedication, trustworthiness, community involvement, and professionalism. None of these individuals indicated any awareness of the substance of the SOR allegations or the underlying misconduct. (Answer; Tr. 23-26, 68-72)

After the hearing, Applicant's COO provided an updated character-reference letter. He noted that Applicant had provided him a copy of the SOR following the hearing and that he had some awareness of the concerns prior to Applicant's hiring. Despite learning the SOR allegations, he has no concerns about recommending Applicant for access to classified information, given their daily interaction for much of the last seven years. He emphasized Applicant's dedication to the mission, work ethic, subject-matter expertise, and honesty. (AE A)

Policies

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(a), 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 sensitive 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

sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 M: Use of Information Technology

The security concern for use of information technology is set out in AG ¶ 39:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual’s reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

The guideline notes several conditions that could raise security concerns under AG ¶ 40. The following disqualifying conditions are potentially applicable in this case:

- (a) unauthorized entry into any information technology system;
- (b) unauthorized modification, destruction, or manipulation of, or denial of access to, an information technology system or any data in such a system;
- (d) downloading, storing, or transmitting classified, sensitive, proprietary, or other protected information on or to any unauthorized information technology system;
- (e) unauthorized use of any information technology system; and
- (f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized.

Applicant illegally and without authorization accessed F's social-media account (SOR ¶ 1.a.), transferred media (the nude photograph) to himself (SOR ¶ 1.a.), and changed the password. AG ¶¶ 40(a), 40(b), 40(d), 40(e), and 40(f) apply as to SOR ¶ 1.a.

Applicant's spoofing of email accounts (SOR ¶¶ 1.b., 1.c.) and F's telephone number (SOR ¶ 1.d.) and altering of the email header (SOR ¶ 1.e.) reflect poor judgment, misconduct, and a false statement to an investigator; however, spoofing did not entail accessing or attempting to access an IT system and does not trigger additional Guideline M disqualifying conditions. SOR ¶¶ 1.b.-1.e. are found for Applicant.

Use of information technology security concerns may be mitigated under AG ¶ 41. The following is potentially applicable in this case:

- (a) so much time has elapsed since the 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.

Applicant engaged in a lengthy pattern of inappropriate behavior, dishonesty, misconduct, and criminal conduct between December 2016 and about July 2018. There is no evidence of any misuse of information technology since mid-2018, it is unlikely that such conduct will recur, and it does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 41(a) applies. Applicant mitigated the use of information technology security concerns.

Guideline D: Sexual Behavior

The security concern for sexual behavior 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 guideline notes several conditions that could raise security concerns under AG ¶ 13. The following is potentially applicable in this case:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted.

Applicant illegally accessed F's social-media account and transmitted a nude photograph to himself. He also sent two photographs of his genitalia to F in violation of a Navy regulation prohibiting sexual harassment and Article 133 (conduct unbecoming) of the UCMJ. AG ¶ 13(a) applies.

Sexual behavior security concerns may be mitigated under AG ¶ 14. The following is potentially applicable in this case:

- (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.

It has been over seven years since Applicant obtained the nude photograph of F and sent her photographs of his genitalia. There is no evidence of any recurrence of similar sexual behavior since 2017. AG ¶ 14(b) applies. He mitigated the sexual behavior security concerns.

Guideline J: Criminal Conduct

The security concern for criminal conduct 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

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

Applicant's actions triggered charges under the UCMJ in June 2017 and May 2018. He improperly accessed F's social-media account, sent F photos of his genitalia, deliberately violated the MPOs on several occasions, harassed fellow service members with spoofing emails, threatened to distribute a nude photograph of F to her peers, and repeatedly lied to investigators, to civilian law enforcement, and in statements during his NJP proceedings and appeal. He received an OTH discharge for serious misconduct. AG ¶¶ 31(a), 31(b), and 31(e) apply.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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.

There is no evidence of criminal behavior since Applicant's most recent email spoofing and false official statements in March or April 2018. He has thrived in his professional development since his 2019 discharge, and his current and former supervisors and co-workers attest to his subject-matter expertise, work ethic, and dedication to the mission. Although one or two of the character references mentioned Applicant's community involvement, no further information is in the record as to the nature and degree of such involvement. AG ¶¶ 32(a) and 32(d) apply. Applicant mitigated the criminal conduct security concerns.

Guideline E: Personal Conduct

The 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 guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying conditions are potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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;

(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) disruptive, violent, or other inappropriate behavior; and
- (3) a pattern of dishonesty or rule violations.

(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.

As discussed above, Applicant provided false written statements to investigators, as part of the NJP proceedings, and on appeal. Applicant also repeatedly provided false and misleading information to investigators, his command, and civilian law enforcement when he denied his conduct. AG ¶¶ 16(a) and 16(b) apply.

Applicant harassed and threatened F and other midshipmen at the USNA for more than a year, creating a hostile environment for F and others. He threatened to distribute the nude photograph of F and filed a defamation suit against her out of anger and to prompt her to contact him. He repeatedly defied two MPOs issued to safeguard F, and he demonstrated a pattern of dishonesty and rules violations throughout. AG ¶¶ 16(d)(2) and 16(d)(3) apply.

None of Applicant's character-reference letters submitted at the hearing indicated any awareness of the SOR allegations or Applicant's misconduct. Applicant admitted that even his parents were unaware of all of his email spoofing and harassing behavior. Following the hearing, the COO of Applicant's employer stated that he had reviewed the SOR; however, there is no evidence that he is aware of the full breadth of Applicant's misconduct. Applicant admitted that knowledge of Applicant's conduct may impact how his professional associates view him as a person, although he believed that his professional standing may not be impacted. He further admitted continued embarrassment due to his past conduct. Whereas portions of Applicant's conduct, such as stealing or sending the nude photographs, may be mitigated by time, the full extent of Applicant's obsessive conduct, lies, harassment, and criminal conduct paint a picture likely more harmful to Applicant's standing. AG ¶ 16(e)(1) applies.

The following personal conduct mitigating conditions under AG ¶ 17 are potentially relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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
- (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
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I have considered that there is no evidence of misconduct, falsifications, disruptive behavior, or rules violations since mid-2018 and that Applicant has admitted his past behavior. However, I have also considered that Applicant's conduct continued for nearly 18 months, involved many falsifications to investigators and command, and reflected escalating, obsessive behavior. Only in his August 2018 stipulation of facts, after having reviewed and been confronted by the PHO's evidence, did Applicant admit his pattern of dishonesty, harassment, and terrorizing behavior.

Applicant was command-referred for a mental-health evaluation following suicidal thoughts expressed to the Navy investigator in about March 2018. He did not discuss any of his misconduct during that evaluation, and there is no evidence that he was diagnosed with a mental-health condition or referred for counseling. Nonetheless, Applicant has not sought any mental-health counseling or other treatment since the events of 2016 through 2018. Although he has attributed his behavior to immaturity, his conduct – terrorizing behavior, a defamation lawsuit, and multiple false official statements (constituting Federal felony offenses) is not indicative of a typical 22-year-old college student and cannot be simply ascribed to immaturity. Applicant acknowledged that he often has ruminated on his past misconduct since 2018. His failure to seek or obtain any professional counseling or assistance in identifying the triggering causes for his obsessive behavior reflect a lack of insight. I cannot conclude, despite the passage of time without recurrence, that his misconduct is unlikely to recur. Doubts remain as to his trustworthiness, reliability, and judgment. AG ¶¶ 17(a), 17(c), and 17(d) do not apply.

Prior to the hearing, Applicant's current and former coworkers were largely unaware of his past misconduct or the substance of the SOR allegations. Applicant's COO and perhaps the FSO were aware of the OTH discharge, but not the underlying conduct. Applicant acknowledged that his past misconduct may impact how his coworkers viewed him as a person, *i.e.*, his personal standing. He also admitted that he had not

revealed the full breadth of his harassing emails to his parents, and there is no evidence to corroborate their awareness of Applicant's misconduct. After the hearing, Applicant provided the SOR to his COO for review. While the COO's knowledge of the SOR allegations provides some awareness of Applicant's past misconduct and does reduce his vulnerability to influence to an extent, it does not reveal the full breadth of his actions or reduce his vulnerability as to his other professional associates. Applicant acknowledged his ongoing embarrassment, and his reluctance to reveal his past misconduct to his many character references speaks volumes. Notwithstanding Applicant's positive steps by providing some information to the COO, he has not sufficiently mitigated the security concerns as to his vulnerability to influence. AG ¶ 17(e) does not apply. Applicant did not mitigate the personal conduct security concerns.

Whole-Person Concept

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 Guidelines M, D, J, and E and the AG ¶ 2(d) factors in my whole-person analysis.

Between December 2016 and about July 2018, Applicant's obsession with a fellow midshipman led to an extended series of escalating harassment, lies, threats, rules violations, criminal conduct, a frivolous lawsuit, and other disruptive behavior. Although Applicant finally admitted his behavior in August 2018, and there is no evidence of subsequent misconduct, he has not identified the underlying triggers for his obsessive behavior. Furthermore, he remains embarrassed about his past misconduct and has some concerns as to how awareness of his behavior may impact his personal standing amongst his professional associates. Applicant mitigated the use of information technology, sexual behavior, and criminal conduct security concerns. He did not mitigate the personal conduct security concerns, as doubts remain as to his trustworthiness, reliability, and judgment.

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 M:	FOR APPLICANT
Subparagraphs 1.a.-1.e.:	For Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraphs 2.a.-2.b.:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraphs 3.a.-3.d.:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a.-4.d.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Eric H. Borgstrom
Administrative Judge