



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-03026
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Anthony H. Kuhn, Esq.

03/04/2019

Decision on Remand

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 16, 2016. On December 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on February 19, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 2, 2018, and the case was assigned to an administrative judge on August 7, 2018. On August 13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 13, 2018. The case was reassigned to me on September 4, 2018, due to the unavailability of the previously assigned administrative judge. I convened the hearing as scheduled. Department Counsel submitted Government Exhibits (GX) 1 through 4, which were admitted without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through T, which were admitted without objection. On October 12, 2018, I granted Applicant's application for a security clearance.

At the hearing, Department Counsel refused to submit any official government documents to support a request for administrative notice about the United Kingdom. He stated, "Department Counsel does not provide administrative notice where there's no country conditions that are relevant to the larger, heightened-risk analysis [we] do not have administrative notice that is going to provide country conditions for countries we consider the neutral or friendly nations." (Tr. 13.) He further explained, "[T]he Chief Department Counsel has determined that we're not arguing country conditions and . . . administrative notice is not a requirement in every Guideline B case and should only be made when the Government believes it's relevant to its case." His final comment in response to my question whether he was "willing to leave this in a vacuum" was, "Yes, Your Honor. We're not providing the administrative notice for friendly countries. It wouldn't be – amount to anything more than a travelogue of what it is." (Tr. 15.)

I concluded that Department Counsel had not submitted sufficient evidence to establish a "heightened risk" of foreign influence or a "potential conflict of interest." I granted Applicant's application for a security clearance.

Department Counsel appealed my favorable decision, and the Appeal Board remanded my decision on January 16, 2018. The Appeal Board held that it was error to grant Applicant a security clearance without evidence in the record of the nature of the country involved and to appropriately consider the nature of the foreign contacts involved in the case. The Appeal Board authorized me to reopen the record on the motion of either party.

On January 30, 2019, Department Counsel requested that the record be reopened and submitted a request for administrative notice of relevant facts concerning the United Kingdom. (Remand Exhibit I.) I reopened the record and granted the request for administrative notice without objection from Applicant. The facts administratively noticed are set out in my findings of fact. On February 18, 2019, Applicant supplemented the record with Applicant's Exhibit (AX) U. Neither party requested that additional testimony be presented. The record closed on February 21, 2019.

The Appeal Board decision and the remand order addressed only the Guideline B issues. I adhere to my previous findings of fact, analysis, and conclusions regarding the allegations in the SOR under Guideline C.

Findings of Fact¹

Under Guideline B, the SOR alleges that that Applicant served as an officer in the British Army from 1980 to 2001 (SOR ¶ 2.a); that he expected to inherit a share of his mother's property and assets located in the United Kingdom (UK) (SOR ¶ 2.b); that he maintained contact with "many foreign nationals" due to his UK citizenship and service in the British Army (SOR ¶ 2.c); that he has friends and acquaintances who are serving in the British Military (SOR ¶ 2.d); and that he possessed a security clearance from the UK Ministry of Defense (SOR ¶ 2.e).

In Applicant's answer to the SOR, he admitted SOR ¶ 2.a, and 2.e. He denied SOR ¶ 2.b, denied ¶ 2.c in part, and denied ¶ 2.d. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 56-year-old employee of a federal contractor. He was born in the United Kingdom, graduated from the UK military academy at Sandhurst, and served as an officer in the British Army and held a UK security clearance from 1980 to 2001, when he retired as a lieutenant colonel. While in the British Army, he served as an exchange officer with the US Army from 1997 to 1999. He held a limited DOD security clearance while serving as an exchange officer. (Tr. 31.) He received two evaluation reports from US Army officers while he was an exchange officer. His rater was a US Army colonel and his senior rater was a US Army brigadier general. Both reports gave him the highest possible rating. One report commented, "Every day he turns in an outstanding performance," and he "has made it hard for anyone else to be the best." The other report commented that he had "far exceeded all other majors and the vast majority of lieutenant colonels." (AX R.)

Applicant testified that he started thinking about "retirement and the next things in life" when he completed his exchange tour and returned to the British Army. When a US defense contractor offered him a job in the United States, he and his family decided to "completely move." He submitted his application for early retirement at some time before March 2001 and retired in August 2001. Applicant and his wife sold their residence in the United Kingdom, and the entire family came to the United States in August 2001. Applicant has been employed continuously by federal contractors in the United States as a senior systems engineer from September 2001 to the present. (GX 2 at 16; AX S.)

Applicant and his family became permanent US resident aliens, applied for US citizenship as soon as they were eligible, and became naturalized US citizens.

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Applicant, his wife, and one son became US citizens in October 2013. His other two sons became US citizens in July and December 2014. His daughter became a US citizen in June 2014. His daughter lives in the United States and is a recruiting manager for a major security company. One of his sons lives with his daughter. His oldest son is an investment banker working in the United States. His youngest son also works and lives in the United States. (GX 3 at 9-10; AX P; AX Q; Tr. 49-50.)

Applicant has a UK passport that was issued in January 2010 and will expire in January 2020. He has not used it for foreign travel since he became a US citizen and obtained a US passport. (GX 2 at 8-9; GX 3 at 8.)

Applicant receives a pension from the United Kingdom for his military service. When he and his wife reach age 67, they will qualify for retirement pensions from the United Kingdom, similar to US Social Security.

Applicant's father is deceased. His mother is a citizen and resident of the United Kingdom. She is in failing health, suffers from dementia, and lives in an assisted living facility. Applicant and his brothers expected at one time to inherit his mother's home and assets, but the home has been sold. His mother's medical expenses are covered by the National Health Service in the United Kingdom, but the cost of living in an assisted living facility is not covered. (Tr. 61.) Applicant anticipates that his mother's estate will have some cash when she passes away, and it will be split among Applicant and his two brothers. (Tr. 41-42.)

Both of Applicant's brothers are citizens and residents of the United Kingdom. One is a security officer employed by an educational institution. The other is self-employed as a used-car salesman. (GX 2 at 35-38; GX 3 at 10.)

Applicant and his wife purchased a plot of undeveloped property on a remote island in the Bahamas in 2001 for the equivalent of about \$8,000. They purchased the property as an investment. They have never visited the property and it remains undeveloped. (Tr. 39-40.)

Applicant maintains a bank account with a small balance in the United Kingdom, which he uses for convenience when he visits and to pay the expenses incurred for his mother's care. His British Army pension, which is about \$2,000 per month, is deposited directly into a bank account in the United States. (Tr. 35.) It was previously deposited in a UK bank, but he changed it to the US bank in January or February 2018 after learning that a foreign bank account might cause a problem with his application for a security clearance. (Tr. 52.) He contributes the maximum allowable amount into a 401(k) retirement plan with his current employer. (Tr. 38.)

Applicant and his wife own their home in the United States. The market value of their home is about \$400,000, and they have equity in the home of about \$220,000 (Tr. 41; AX K.)

While Applicant was on active duty and an exchange officer with the US Army, he worked on a system of computer networks for combat vehicles. (Tr. 30.) After he retired and was hired by his current employer, he continued to work on basically the same program, which had been adopted by the US Army. (Tr. 29-30.)

Applicant testified, “I retain friendship with probably about ten, if that, people.”² (Tr. 43.) All have retired, except for one, a lieutenant general who is still on active duty. Applicant testified that a few of his retired colleagues were employed in the defense industry, but he did not know the identity of their employers. He believed that one of his retired colleagues may be employed by the military. (Tr. 57.) Applicant and the lieutenant general knew each other on active duty and were neighbors when they both attended a military school, but Applicant has not maintained contact with him. (Tr. 44.) Applicant’s relationship with the lieutenant general was a subject of concern in the Appeal Board’s decision.

The lieutenant general was present at joint US-British Army staff talks on interoperability between their military units in February 2017. During the staff talks, Applicant made a presentation on behalf of the US Government and his program office. His presentation was designed to convince the British Army to buy and adopt the computer system for combat vehicles developed by his employer and adopted by the US Army, because it would promote interoperability between US and British military forces. (Tr. 58.) After his presentation, he “bumped into” the lieutenant general, not expecting him to be there, and they talked briefly. (Tr. 44-45, 58.) Neither Department Counsel nor Applicant’s attorney questioned Applicant about the substance of their brief conversation.³

Applicant maintains regular contact with a retired British brigadier,⁴ who was a classmate at Sandhurst. (Tr. 56.) They served in the same regiment, and they have contact about six times a year. (GX 2 at 19.) The record does not reflect whether the brigadier is currently employed or has any connection, other than his retired status, with the UK Government.

Applicant has quarterly contact with another retired British officer with whom he served. (GX 2 at 42.) This officer lives in India and is self-employed. (GX 4 at 3.)

² In Applicant’s submission on remand, he argues that his contacts from his former service in the British Army are “acquaintances” rather than “friends.” Some of the information in Applicant’s submission is testimonial, providing additional descriptions of the nature of his contacts with present and former British officers. Since neither party requested that the record be opened for additional testimony, I have treated Applicant’s submission as argument based on the testimony reflected in the hearing transcript and not as additional testimony.

³ In Applicant’s submission on remand, he proffered testimony that his conversation with the lieutenant general was limited to niceties and questions about family. I have not considered his proffer, because neither side requested that the record be reopened for additional testimony.

⁴ The Appeal Board decision refers to this officer’s rank as “brigadier general.” The officer’s rank is brigadier, which is the British rank equivalent to a US brigadier general.

Applicant has quarterly contact with another retired British officer, with whom he attended high school and with whom he served in the same regiment. Applicant is godfather to this retired officer's son. This retired officer is not currently employed or affiliated with the UK Government. (GX 2 at 40-41; GX 4 at 3; AX T at 32.)

Applicant also maintains occasional contact with a retired British Army officer in Nepal, who was his second in command of a squadron in a British Gurkha brigade and his son's godfather. They have "occasional, yearly" email contact and see each other on Facebook. (Tr. 54-55.) This officer has no current connection with the UK Government.

Applicant's facility security officer (FSO) is also a part owner and vice-president of the company by whom Applicant is employed. He has worked closely with Applicant and has socialized with his family. He testified that Applicant has ties to his past military service and is proud of it, but he is also very proud of being a US citizen. The FSO strongly supports Applicant's application for a security clearance. (Tr. 18-22.)

A retired US Army colonel who worked with Applicant from 2001 to 2017 considers him a lifelong friend. He admires Applicant for his commitment to the success of the US military. He considers Applicant to be honest, dependable, and sincere in his devotion to the United States. (AX H.)

Applicant's performance evaluation for the period ending in January 2018 rated him as exceeding expectations. He was commended for defining and developing systems-engineering processes and his "dogged determination to do the right thing," whether it was for a customer, the company, or another employee. (AX G.)

I have taken administrative notice of the facts recited in the Department of State Fact Sheet, *US Relations with United Kingdom* (Feb. 26, 2018), which states in pertinent part:

The United States has no closer ally than the United Kingdom, and British foreign policy emphasizes close coordination with the United States. Bilateral cooperation reflects the common language, ideals, and democratic practices of the two nations. Relations were strengthened by the United Kingdom's alliance with the United States during both World Wars, in the Korean conflict, in the Persian Gulf War, in Operation Iraqi Freedom, and in Afghanistan, as well as through its role as a founding member of the North Atlantic Treaty Organization (NATO). The United Kingdom and the United States continually consult on foreign policy issues and global problems and share major foreign and security policy objectives.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 US 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*, 484 US at 531. “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. See 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*, 484 US at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual maybe manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with US interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target US citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The following potentially disqualifying conditions under this guideline are relevant:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

AG ¶ 7(c): failure to report or fully disclose, when required, association with a foreign person, group, government, or country; and

AG ¶ 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

In Applicant's answer to the SOR and at the hearing, he denied that his connections to the United Kingdom made him vulnerable to manipulation, exploitation,

or coercion; and he denied that they created a potential conflict of interest. Department Counsel set out the Government's position in this case as follows:

[T]he Government's heightened risk concern is based primarily upon Applicant's status as a retired senior British army officer receiving a pension from the British Government, his ongoing relationships with other British military officers, including two Generals, and his various other ties to the United Kingdom, rather than specific country conditions in the United Kingdom.

(Remand Exhibit I.)

The United States and the United Kingdom are close allies, and the armed forces of both countries have a history of bilateral exchanges and cooperation. However, Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant or an applicant's family members are vulnerable to government coercion. The risk of direct or indirect coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, an applicant or an applicant's family members or friends are associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Applicant's mother and two brothers, with whom he has regular contact, are citizens of the United Kingdom. However, his family members are not in positions likely to cause a conflict of interest. His mother has dementia and resides in an assisted living facility, one brother works for an educational institution, and the other brother is a used-car salesman.

I conclude that the "heightened" risk under AG 7(a) is not established. The amicable and cooperative relationships between the United States and the United Kingdom and their armed forces and their shared ideals and democratic practices are inconsistent with the coercive and manipulative measures contemplated by AG ¶ 7(a).

However, AG ¶ 7(b) does not include an element of "heightened risk." Instead, it requires a lower standard of a "potential" conflict of interest. Of the retired officers with

whom Applicant has continuing contact, three have no current connection to the United Kingdom beyond their retired status. The record does not reflect whether the retired brigadier, Applicant's closest friend, has any current governmental connection. However, the active-duty lieutenant general has a professional interest in the technology being developed by Applicant and his federal employer. Even though Applicant does not maintain social contact with the lieutenant general, Applicant's military status and connections to former comrades in arms, including a retired brigadier (whose current employment, if any, is not reflected in the record) are sufficient to raise the potential conflict of interest contemplated by AG ¶ 7(b).

The following mitigating conditions are potentially applicable:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the US interest;

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

AG ¶ 8(d): the foreign contacts and activities are on US Government business or are approved by the agency head or designee;

AG ¶ 8(e): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

AG ¶ 8(f): the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶ 8(a) is partially established. The United States and United Kingdom have a close, amicable, and cooperative relationship with shared ideals. All but one of Applicant's military comrades in arms are retired. Three of the four with whom he maintains regular contact have no current affiliation with the UK government beyond

their retired status. He has had no contact with the active-duty lieutenant general except for the unexpected meeting in February 2016.

AG ¶ 8(b) is established. Applicant served honorably in the British Army for 21 years, including two years as an exchange officer with the US Army, during which he held a limited clearance from the DOD and established a track record of protecting sensitive and classified information. While serving as an exchange officer, he developed a strong affinity for the United States. Since Applicant's immigration to the United States in August 2001, he has developed deep and long-standing relationships and loyalties in the United States. When presented with an opportunity to pursue a second career as a US citizen, he and his family jumped at the opportunity, moved to the United States, and became US citizens as soon as possible. His children have established careers in the United States. He has substantial financial interests in the United States. He has been employed by US defense contractors for more than 17 years. As a US citizen and the employee of a defense contractor, he has earned a reputation as a talented, honest, dependable, and loyal member of the US defense establishment.

AG ¶ 8(c) is established for most of Applicant's former comrades in arms except for the retired brigadier, the retired officer for whose son Applicant is a godfather, and the retired officer who is the godfather for one of Applicant's sons. Applicant's only contact with the active-duty lieutenant general was the one unexpected meeting in February 2016.

AG ¶ 8(d) is established for the February 2016 meeting with the lieutenant general, which was during official US business.

AG ¶ 8(e) is established for the retired brigadier and the four retired officers with whom Applicant maintains contact. He disclosed those relationships in his two SCAs and during interviews with security investigators. There is no evidence in the record showing a requirement for after-the-fact reporting of the unexpected meeting with the lieutenant general.

AG ¶ 8(f) is established. Whatever inheritance, if any, Applicant may receive after the demise of his ailing mother is substantially outweighed by his financial interests in the United States. Department Counsel conceded that its concern is based on Applicant's retired military status and his ongoing relationships with British officers. Thus, there is no issue regarding the likelihood that that Applicant's military pension and entitlement to a retirement pension at age 67 would be leveraged by the UK Government to coerce him to disclose sensitive or classified information is not at issue.

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 and applying the adjudicative factors in AG ¶ 2(d).⁵

I have incorporated my comments under Guideline B and C (in my original decision) in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant has been candid and open throughout the security-clearance process. He retains an affinity for certain cultural aspects of the United Kingdom, but he has clearly demonstrated his loyalty to his adopted country. After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his former life as a British military officer, his continued affinity for his former friends and comrades in arms, his minimal foreign financial interests, and his family members residing in the United Kingdom.

Formal Findings

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

Paragraph 1, Guideline C (Foreign Preference):	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge

⁵ The factors are: (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.