

which conduct resulted in his administrative separation from the military.¹ The record reflects the following pertinent information regarding Applicant's criminal charges.

On August 19, 2020, police responded to a report that Applicant "had just stabbed his girlfriend." Government Exhibit (GE) 6 at 6. Upon police arrival, he admitted to the stabbing and was subsequently arrested and charged with felony Malicious Wounding. *Id.*; GE 7 at 8.

On October 15, 2020, while released on bond for the pending Malicious Wounding charge, police responded to a report that Ms. C was gathering her belongings and Applicant "placed his arms around her neck in a [choke] hold." GE 7 at 5, 6. He was arrested and charged with Attempted Strangulation of Another. *Id.* at 5, 10.

While the foregoing charges were pending, Applicant disclosed to the police that, earlier in mid-2020, he pointed a loaded rifle at Ms. C and stated that he would kill her, and that Ms. C had recorded the incident on video. GE 8 at 5. As a result, on December 3, 2020, Applicant was charged with Assault and Battery Against a Household Member and Pointing, Holding or Brandishing a Firearm. *Id.*

On December 17 and 18, 2020, the strangulation, assault and battery, and brandishing cases were addressed through a global resolution. Applicant pled guilty to the brandishing charge and was sentenced to 180 days in jail, with all but four days suspended, and 12 months' supervised probation. GE 7 at 38; GE 9. In exchange for the plea, the strangulation charge was dismissed. GE 7 at 38; GE 8 at 6. Applicant also pled guilty to domestic assault and battery and received a deferred sentence for twenty-four months while he was placed on supervised probation with other conditions. GE 8 at 6-7.

As a result of his criminal conduct, Applicant was administratively separated with an Other Than Honorable (OTH) discharge from the military in September 2021. GE 1 at 19-20.

The remaining Malicious Wounding charge was disposed of on August 30, 2023, when Applicant pled guilty to a reduced charge of Unlawful Wounding. GE 4. He was sentenced to five years' incarceration with all but one month suspended if Applicant followed certain conditions, including that he complete anger management counseling and "remain of uniform good behavior," among others. *Id.*

The Judge noted favorably that Applicant's most recent criminal offense was in December 2020, he is no longer involved with Ms. C, and he has an excellent employment record as indicated by his character statements. The Judge ultimately found adversely on all allegations, however, concluding that Applicant committed three crimes against Ms. C in 2020, which "are serious and too recent to be fully mitigated," and that he is currently on probation and is scheduled to remain so until August 2028. Decision at 8, 9. Moreover, Applicant "was not honest and candid at his hearing when he claimed a lack of memory of details about his relationship with Ms. C and specifics of the assaults." *Id.* at 9. While acknowledging Applicant's favorable character evidence, the Judge concluded that the "evidence against mitigation is more persuasive." *Id.*

¹ The single Guideline F concern was withdrawn at hearing and is not an issue on appeal.

Discussion

Applicant's primary argument on appeal is that the Judge incorrectly found that he will remain on probation through 2028, which error he contends "skewed the evaluation of [his] trustworthiness" and "unfairly framed [his] legal situation and exaggerated the perceived risk." Appeal Brief at 18. In support of this argument, Applicant repeatedly asserts that he is on "good behavior" for the 2020 unlawful wounding charge and 2023 conviction, which he contends is not the same as being on probation.² This argument is unpersuasive for several reasons.

First, Applicant's attempt to distinguish between "probation" and "good behavior" is unsupported by the record. The record reflects that, as part of his Plea Agreement for the Malicious Wounding charge, Applicant's five-year prison sentence was largely suspended contingent upon his adhering to certain conditions, including that he "remain of uniform good behavior during incarceration and for 5 years thereafter." GE 4 at 1. At hearing, Applicant testified as follows regarding his probation status:

GOVERNMENT: [Y]ou are to remain in of uniform, good behavior during incarceration and for five years thereafter, correct?

APPLICANT: Correct.

GOVERNMENT: So that would mean if you served in approximately August of 2023, that would take you up through August of 2028, correct?

APPLICANT: Correct.

GOVERNMENT: So those conditions are still active, correct?

APPLICANT: Correct.

Tr. at 33. At no time during the hearing or at any other point in the record did Applicant contest that he was currently on probation, and he offered no evidence to support that his probation could or would end earlier than the five years originally imposed. Additionally, there is no evidence that "good behavior" is a separate and distinct post-conviction status than "probation." Rather, remaining on "good behavior" appears to be – and generally is – a *condition of* probation. The Judge's finding that Applicant was on probation and was scheduled to remain on probation until August 2028 is based on substantial record evidence, as is his application of disqualifying condition AG ¶ 31(c).

² "I am on good behavior for my August 2023 unlawful wounding conviction." Appeal Brief at 2; "I am on good behavior for the unlawful wounding conviction and not under probation supervision for this incident." *Id.* "[T]he unlawful wounding charge does not entail ongoing probation supervision; instead, I am required to maintain good behavior, which is not the same as being on probation." *Id.* "I am on good behavior following my conviction in August 2023, and I am not on probation or this conviction." *Id.* at 18.

Applicant also challenges the Judge’s finding that he made inconsistent statements about the altercations and his relationship, which “damaged his credibility and reflect[ed] poorly on his rehabilitation.” Decision at 8. Applicant asserts that “[a]ny inconsistencies in [his] testimony were not intended to mislead but resulted from the emotional distress caused by reliving these incidents and the amount of time that had passed since the events” and requests that the Board “consider the stress and trauma [he] experienced when assessing [his] testimony.” Appeal Brief at 11. The Appeal Board gives deference to a judge’s credibility determinations, and we find no cause to disturb the unfavorable credibility determination in this matter. Directive ¶ E3.1.32.1.

The remainder of Applicant’s appeal amounts to a request for reconsideration based upon the nature of his relationship with Ms. C and the circumstances leading to his arrests. The Appeal Board does not review cases *de novo*, and an applicant’s ability to argue for a different interpretation of the evidence “is not sufficient to demonstrate that the judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.” ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Conditional Clearance Request

Applicant asks that, in the alternative to reversing the Judge’s unfavorable decision, he be granted a conditional security clearance. Applicant has not established that the granting of an exception under Appendix C of the Adjudicative Guidelines is merited.

Conclusion

Applicant has not established that the Judge committed harmful error. Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b).

Order

The decision in ISCR Case No. 23-01252 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board