DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 16-03256
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: J. Anderson Mullins, Esq.

08/26/2019

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Decision

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MURPHY, Braden M., Administrative Judge:

The Government alleged security concerns under Guideline A (allegiance to the United States) and Guideline E (personal conduct) over Applicant's past membership in a white supremacist organization, including as a high-ranking officer and director of the organization. Other Guideline E concerns relate to Applicant's prior criminal record and marijuana use. The Government did not establish a security concern under Guideline A. However, Applicant did not provide sufficient evidence to mitigate the Guideline E security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) in December 2014. On September 28, 2018, following a background investigation, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued him a Statement of Reasons (SOR), alleging security concerns under Guideline A (allegiance to the United States) and Guideline E (personal conduct). 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 *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017. Applicant answered the SOR on October 19, 2018, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA).

This case was assigned to me on January 9, 2019. On February 1, 2019, DOHA issued a notice scheduling the hearing for February 20, 2019. The hearing took place as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 11, all of which were admitted but for GE 2, the unauthenticated summary of Applicant's background interview. (Tr. 18-19) GE 3 through GE 11 were admitted over Applicant's objections. (Tr. 22-44) Applicant testified. He did not submit any proposed exhibits. The hearing transcript (Tr.) was received on March 4, 2019.

The SOR allegations and the Government's supporting evidence

While I admitted all but one of the Government's proposed exhibits, upon reflection, some of them warrant additional analysis concerning their weight. I address them here, as appropriate, before turning to the Findings of Fact.

Under Guideline A, the Government alleges that until at least January 2015, Applicant was a member and high-ranking officer of an organization that advocates sedition against the U.S. government, advocates the use of force and violence to overthrow and influence the U.S. government, and to prevent others from exercising their lawful, constitutional rights. (SOR ¶ 1.a) This is also cross-alleged under Guideline E as a personal conduct concern. (SOR ¶ 2.a) In his answer to the SOR, Applicant acknowledged that he had been a member of the organization, but denied the characterizations and aims of the group as alleged. He did not address whether he had been a "high-ranking officer" of Group X. (Answer) The other Guideline E allegations concern Applicant's prior marijuana use and criminal offenses. (SOR ¶¶ 2.b – 2.g)

I will refer to the organization at issue as "Group X," and have chosen not to identify the group by name, due to Privacy Act implications. In its case in chief, the Government submitted several documents either from Group X or about its beliefs, all dated between 1983 and 2018. (GE 7-11) (The record copies of these documents submitted at hearing are highlighted. Applicant's counsel had the opportunity to review those highlights during the hearing. (Tr. 45-46))

Government Exhibit 10 is a reported federal appellate case, published in 1983. The case holds that Group X was not entitled to federal tax-exempt status because: a) their materials did not fit a reasonable interpretation of the statutory term "educational;" b) Group X "failed to present any reasoned development of its conclusions" in its publications; and c) Group X "was not 'educational' because its principal function was the mere presentation of unsupported opinion." (GE 10 at 1)

In considering GE 10, I have taken notice of the court's central holding, about Group X's tax status, but cannot consider any of the evidence that court had before it,

since it is not in the record here. I also give GE 10 very little weight, given its age, and lack of specific connection to Applicant.

Government's Exhibit 11 is a 2014 probate case, in which a Canadian court invalidated the testator's bequest of his estate to Group X on the grounds that the writings and other communications of Group X are illegal under Canadian law and contrary to Canadian public policy. (GE 11) As with GE 10, the evidence that was before the Canadian court is not in the record here (with limited exception noted below). Additionally, Canadian case law has no precedential value, either in American administrative law in general, or in DOHA jurisprudence in particular, and it would be error to follow it here. Thus, the conclusions of the Canadian court in that case are irrelevant.

Nevertheless, review of GE 11 reveals that certain paragraphs in the Canadian court opinion include block quotes from published materials from Group X that are in the record in this case. Specifically, paragraphs 15-18 and 20-23 of GE 11 are excerpted from a document entitled "What is [Group X]." That document is not in evidence here. However, the excerpts in those paragraphs in GE 11 appear identical to similar excerpts from Group X's website, printed in May 2018, which is in evidence here, as GE 9. Similarly, paragraph 23 of GE 11 is excerpted from Group X's Bulletin of April/May 1990, admitted in this case as GE 7; and paragraph 24 of GE 11 is excerpted from Group X's Bulletin of January 1994, admitted here as GE 8. Thus, though I may consider those excerpts, their reference in GE 11 is duplicative. GE 11, and its conclusions, are otherwise irrelevant.

Government's Exhibits 7 and 8 are newsletters published by Group X in 1990 and 1994, respectively. Government Exhibit 9 is printout from Group X's website, accessed in May 2018. These exhibits are discussed below in the Findings of Fact.

Findings of Fact

In his Answer to the SOR, Applicant admitted the sole allegation under Guideline A (SOR ¶ 1.a) with an explanation, and, by reference, the cross-allegation under Guideline E (SOR ¶ 2.a). He admitted SOR ¶¶ 2.b – 2.g, also with explanations. I incorporate his admissions and explanations into the findings of fact. After a thorough and careful review of the pleadings and the record evidence submitted, I make the following additional findings of fact. (I also incorporate my factual findings about the Government's evidence, discussed above.)

Applicant is 43 years old. He graduated from high school in 1994. (Tr. 147; GE 1) He has never married but has a longtime cohabitant. They have three children, ages 17, 15, and 13. (Tr. 126-127) He previously worked for a government contractor for several years, until 2001, when he was injured on the job. He received workmen's compensation, and he was unemployed from September 2001 to October 2013. During that time he was a "stay-at-home dad" raising his children. (GE 1 at 13; Tr. 129-131, 141) Applicant returned to the workforce in October 2013, and has worked for his

current employer, a defense contractor, since October 2014. He has not held a security clearance before. (Tr. 9-10, 48, 131-133, GE 1)

Guideline E

In March 1991, Applicant was arrested and charged with breaking and entering after he and some high school friends broke into an office at a mall. (SOR ¶ 2.c). They initially left the scene, but were arrested when they returned a short time later. He was found guilty in juvenile court, placed on probation, and fined. He attended several weeks of counseling and a youth offender program. (GE 3 at 2; GE 5 at "p. 60"; Tr. 66-67)

In June 1993, Applicant was arrested and charged with carrying a concealed weapon after he was found in possession of a knife while at a mall with friends. (SOR ¶ 2.d) He was found guilty in juvenile court and ordered to perform community service. (GE 3 at 2; GE 5 at "p. 60"; Tr. 68-70)

In November 1993, Applicant was involved in an altercation with numerous other students at his high school. The altercation was racially motivated. Though Applicant claimed self-defense, others accused him of having a weapon and pressed charges. (GE 3 at 2-3) Applicant was arrested and charged with assault and battery and brandishing a firearm. (SOR ¶ 2.e) In juvenile court, he pleaded not guilty, but court records state that evidence was sufficient to convict. There is no indication that a conviction was entered, and in December 1994, the charges were dismissed. (GE 5 at "p. 60"; Tr. 70-71)

In March 1994, Applicant was at a party with friends when he had an altercation with an interracial couple. The police were called and Applicant was questioned and released. The couple then pressed charges. When the police came to Applicant's home, they searched it and found a sawed-off shotgun. He was arrested and charged with assault and battery, and felony possession of a sawed-off shotgun. (SOR ¶ 2.f) He testified that the weapon was his father's but that he had altered it. In December 1994, he was convicted on the felony weapon charge and was later sentenced to six years in jail, all suspended, and six years of probation. He was released from probation in 1999. (GE 1; GE 3 at 3; GE 4; Tr. 71-75, 148-149)

In August 1994, Applicant and several friends vandalized a local black church, which the record indicates was located in a white neighborhood. He spray-painted racial and religious slurs on the church, such as "white power," the phrase "n - - - - - s out," (the phrase includes the racial epithet commonly known as "the N word"), a "burning cross," and a reference to Adolph Hitler and the "SS" (GE 2 at 4; GE 5 at "p. 45"; Tr. 71-76) Applicant was arrested and charged with felony willful and malicious defacement of church property. In January 1995, he was convicted and sentenced to five years in jail, three years suspended, and ten years of probation. (SOR ¶ 2.g). (GE 1, GE 4, GE 5) He served ten months in jail and paid a $2,000 fine. He was released from probation early, in October 1999. (GE 5 at "p. 38"; Tr. 150). At hearing, though he accepted responsibility for what he did, Applicant denied knowing at the time that it was a black

church. He acknowledged "painting some pretty offensive stuff on it" and that "it wasn't that funny." (Tr. 76)

Applicant allegedly used marijuana, with varying frequency, from 1986 until 2013. (SOR ¶ 1.a) More specifically, he tried marijuana once in 1986, when he was 10, smoked it daily from about 1990 to 1995, and again "on and off" between November 2005 and August 2013. (GE 1 at 25; GE 3 at 4; Tr. 134, 138-140) He also acknowledged that he procured the marijuana by purchasing it. He resumed using marijuana in 2005 when he joined a band. (Tr. 136-140)

Neither Applicant nor his cohabitant use marijuana. However, he acknowledged that he is around marijuana on a weekly basis, when he is with other band members who use it. He said his friends know better than to offer it to him. He denied any other illegal drug use since 2013. He said he does not intend to use marijuana until it is legalized. (Tr. 134-138) He acknowledged that marijuana is illegal under Federal law and under the law of his home state. He is subject to drug testing at work. (Tr. 142-143)

Guideline A

According to the Government's evidence, Group X was founded in the early 1970s. Among its founders was Dr. P. (GE 9 at 16, 18; Tr. 82, 124) Both GE 7 and GE 8, newsletters published by Group X in 1990 and 1994, contain "Commentary" from Dr. P that can generally be described as racist, anti-Semitic, and homophobic. The commentary also advocates racial and religious genocide. (GE 8 at 5) Applicant was not a member of Group X when those newsletters were published. He denied that Group X's views, as expressed in GE 7 and GE 8 were the views of Group X when he was a member years later. (Tr. 112)

In March 2000, Applicant was interviewed by an agent of the Defense Security Service as part of what was probably a security clearance investigation. (GE 3; Tr. 59-60, 86) In a portion of his sworn statement, Applicant said he had been a self-described "skinhead" since 1991. As such, he described his views concerning white supremacy and white separatism as follows:

> I believe that the white race is the most evolved race and should be preserved. Any further evolution of the white race should occur within the white gene pool only. I believe that white people should not socialize or breed with other races. I believe that other races and Jewish people should exist, but within their own specified territory. I don't like people of other races being in a position of authority to me. I don't think they should be in any positions of power or authority. (GE 3 at 5; Tr. 169-70)

Applicant said in the statement that he regularly used the internet to read and learn about "national socialist views." He printed national socialist literature and distributed it. He acknowledged wearing clothes and having tattoos that symbolized his beliefs, including "the German Cross, the Swastika, the Triskellon (symbol of the South

African resistance), 88 (symbol of skinhead culture), and the confederate flag." (GE 3 at 6)

Applicant acknowledged at hearing that he had most of those tattoos at the time, but he has since had all but one of them covered up with other tattoos. He still has a tattoo of the number "88" on the back of his neck, under his ponytail. He said it symbolized "skinhead culture. He said he has not decided how to cover up that tattoo (with another one). (Tr. 62-65, 162-163)

In the March 2000 statement, Applicant disavowed the use of violence to "enforce my beliefs," or to change the fact that "other races" were "in positions of power." He said, "I plan to use education as opposed to violence to spread my message to others." (GE 3 at 6) He referenced his prior criminal conduct ("vandalism and fighting") and noted that he engaged in those activities when he was "younger and immature." He said, "I am not a violent person and do not want to use violence as a means to accomplish any of my goals." (GE 3 at 6)

In the sworn statement, Applicant also stated that "I am not in any formal group or organization of skin heads. I practice this belief system with my girlfriend and my friends." (GE 3 at 6; Tr. 65) At his hearing, Applicant confirmed that he was not a member of Group X when he made his sworn statement to the DSS Agent. (GE 2). However, he also acknowledged that he had been contemplating joining the group at the time, and testified that he deliberately waited to join Group X until after he made the statement to the DSS agent so he would not have to declare his membership in the group during his background interview. (Tr. 83, 86-87, 145-146)

> So I waited a couple of weeks after the -- until after the interview before I sent in my application for membership. And I did that intentionally so that when I did the interview, I wouldn't have to say I was a member of anything, and I wouldn't be lying. (Tr. 83)

Dr. P died in 2002. According to Group X's website, this led eventually to a "leadership vacuum" and some tension about the organization's future direction. (GE 9 at 18-19) Applicant is not named in GE 9, but he confirmed the group's leadership void and resulting "chaos" after Dr. P's death. (Tr. 88)

Applicant said between 2000 and 2009, he went to group meetings about once or twice a year, at Group X's meeting hall, in a neighboring state. He acknowledged engaging in recruiting efforts, but stopped doing so in about 2007 or 2008. (Tr. 90) He denied attempting to recruit people at work. (Tr. 91)

Applicant testified that as of about 2004, he no longer considered himself a "skinhead." He considered those individuals "pretty much just a bunch of drunken thugs" who did not have a "professional attitude" about anything. He decided to grow his hair out and to be more professional. (Tr. 60-61, 159-161)

Applicant also testified "philosophically I was – I left it [Group X] in 2009." (Tr. 54, 87, 151) However, "I still found some validity in some of their philosophical beliefs." (Tr. 88) For a period of time, he and his cohabitant (whom he had recruited into the group) had little to no involvement with the organization. ("When I left it, I left it, we left it," he said.)(Tr. 129)

In 2012, Applicant was asked by other Group X leaders, whom he knew, to be a member of the board. This led him to change his mind, and he re-engaged. (Tr. 129) Group X was also a corporation chartered in State 1, where Applicant lives. (Tr. 87-89, 151-152) In February 2012, Applicant filed an annual report with State 1's regulatory authorities on behalf of Group X, in his capacity as a director and officer. His title is listed as Vice-President and Treasurer. Applicant is listed on the filing documents as the State 1 Registered Agent, and his home address is listed as the office address for Group X. His name is typed into the signature block on the 2012 Annual Report. (GE 6 at 3) Group X's registered address is also the home address Applicant gave on his SCA, GE 1.

Applicant testified that, as an officer and director of Group X, he attended Group X board meetings three or four times a year. He testified that, despite being listed on GE 6 as the treasurer for several years, he had no knowledge of Group X's financial information. (Tr. 94)

In his December 2014 SCA (GE 1) Applicant disclosed that in about April 2014, he and two other board members of what he called "a not for profit corporation" were sued in State 1 court. Among the people Applicant names in GE 1 are the treasurer (Ms. C) and the president of Group X (Mr. G), as identified in the corporate filing with State 1. (GE 6 at 3; Tr. 118-119)

Mr. G is identified on Group X's website as its chairman at the time. (GE 9 at 19) In late 2014, Mr. G resigned as chairman, and was replaced by Mr. W, the same individual who filed the change of address and change of registered agent form with the State 1 agency in January 2015. (GE 6; GE 9 at 19)

Applicant did not identify Group X on his December 2014 SCA when he disclosed the lawsuit, though he did list several individuals who were then, or who had previously been, Group X members. (GE 1 at 35; Tr. 118-119) There are no documents from that lawsuit in the record evidence in this case to definitively identify the parties involved.

Applicant acknowledged that, being an officer and director of Group X, he was a group leader, and represented the organization's beliefs. (Tr. 94) He confirmed in his testimony that Group X's beliefs, as detailed in GE 9, the 2018 website excerpt, were their beliefs when Applicant was a member of the Group. (Tr. 99-100)

Applicant also stated that he knew, from his prior association with Group X, that "illegal activity was frowned upon," and "there wasn't going to be anything in here that

said ‘go out and violate people’s rights, or overthrow the government, or do this or do that.’ I already knew that wasn’t in there, at least when I was involved.” (Tr. 110) Applicant testified that “it was a very well understood policy of [Group X] that illegal activity would get you kicked out . . . and discussion of it, planning of it, talking about it, was cause for immediate dismissal.” (Tr. 55, 171-172; Answer) In the 1990 newsletter, Dr. P made a similar statement: “We have always, as a matter of policy, avoided illegal acts or other activity which might bring us into conflict with the government’s law enforcement apparatus. . . . in the future we may not be able to avoid such conflict. . . .” (GE 7 at 3-4)

Applicant testified that during a board meeting conducted by teleconference,

> [Applicant] had been pressuring the chairman, for some years, to change the direction of [the group], to stop being adversarial towards other people, other races. And if we really wanted to preserve our people and our culture, that we should really learn to work with people rather than trying to take on the world, that made no sense. And it took several years of finally getting them to agree. We actually changed the bylaws of [the group]. We took a vote on it, by phone. And I believe as soon as the bylaws were changed, that is when the lawsuit kicked off. ” (Tr. 121-122; *see also* Tr. 124-125, 170-171)

Applicant testified that he submitted a letter of resignation and resigned from Group X and its board in March 2014. That letter is not in evidence. During the lawsuit, he learned that he was still listed as the registered agent for Group X, and was still an officer and a director. He testified that in January 2015, Applicant went on the website of the State 1 regulatory authority and removed his name from Group X’s registration papers. (Tr. 117, 152-157; GE 6) Applicant denied that the fact that he had submitted an SCA in December 2014 had anything to do with the timing of his actions. (Tr. 158) Annual reports filed by Group X in later years (2016-2018) with State 1 do not list Applicant as an officer or director and do not list his home address as Group X’s office of record in State 1. (GE 6)

Applicant denied ever having a discussion with other Group X members about issues relating to sedition or overthrowing the United States Government. (Tr. 55) Applicant is a United States citizen. He testified that he has given no thought to renouncing his U.S. citizenship for that of another country. (Tr. 58)

Applicant’s SCA contains several questions about his “Association Record.” (GE 1 at Section 29) Questions asked include: a) whether Applicant had knowingly or intentionally ever been a member of an organization “dedicated to the use of violence or force to overthrow the United States Government and which engaged in activities to that end . . .”; and b) whether he had ever been a member of an organization “that advocates or practices commission of acts of violence or force to discourage others from exercising their rights under the U.S. Constitution or any state of the United States with the specific intent to further such action.” Applicant answered “No” to both

questions, and to all others under Section 29. The Government did not allege in the SOR that these answers were deliberately false. (Tr. 186-187)

GE 9, excerpted from the Group X website, details its white supremacist and separatist views, under a subheading, "Building a New White World." The group's stated goals include "White Living Space," "An Aryan Society," "A Responsible Government," "A New Educational System," and "An Economic Policy Based on Racial Principles." (GE 9)

Under the "Responsible Government" subheading, GE 9 states that due to "the growth of mass democracy," including increased voting enfranchisement of "non-Whites" and the "control over the media" by Jews, "the U.S. government was gradually transformed into the malignant monster it is today: the single most dangerous and destructive enemy our race has ever known." (GE 9 at 7)

Applicant denied that through this statement, or otherwise, Group X advocated sedition against the United States Government, or sought to "overthrow" it, by violence or other means. (Tr. 122-124) He testified,

> [Y]ou are recognizing that apparently there are policies, and programs in place that are dangerous to your people and you have to change that. It doesn't say anything about violating the law or doing anything like that. . . I mean, the government can be considered a threat to many things, life liberty, pursuit of happiness, depending on, you know, how you look at it. So I would say that I don't think declaring it an enemy in, like, a military term. Maybe on a philosophical term. I mean, that it how it reads to me. (Tr. 100-101) (discussing GE 9))

Applicant acknowledged that when he joined Group X, the group believed "that the government was working against the interest of white people and culture, definitely believed that, they definitely believed that . . . and so did I . . . ." (Tr. 122) Applicant denied that Group X advocated going out and stopping "other people from doing what they have a constitutional right to do." (Tr. 103) He also said, "I can't speak for what it stands for now." (Tr. 103)

Applicant testified that if he had been aware that Group X espoused a philosophy of violence or overthrow of the government, he would "absolutely not" have joined it. (Tr. 170) He testified that he has not been a member of Group X, and has not attended any meetings for several years. (Tr. 56, 157) Applicant denied any further contact with anyone he knew to be a member of Group X. Occasionally, he gets phone calls from the former chairman of Group X, but does not believe the individual remains a member. (Tr. 57, 125-126)

Applicant testified that he has never had any issues with coworkers at his current job. His coworkers come from a variety of backgrounds, races, and creeds. (Tr. 48, 133; Answer) He testified that, the day before the hearing, he told some of his coworkers, of

other races, that "I used to be a skinhead, I used to be a white supremacist." (Tr. 134) This testimony is uncorroborated.

Applicant denied that he considers himself to be a "skinhead" anymore. (Tr. 160) He also testified that he no longer considers himself to be a white supremacist; indeed, he testified that he "can't be" one, because he learned in about 2012 that one of his grandparents, who he had never met, was a Native American. (Tr. 161-162)

When asked why his prior membership in Group X should no longer be considered a security concern, Applicant said,

> Well, I'm not a member. I don't believe, or ascribe to those views. . . . I don't know what else to say. I don't follow any of that philosophy, or anything like that, any form of socialism or collectivism, or any of that. (Tr. 168)

Applicant acknowledged his prior criminal record, has accepted responsibility for his actions, and said he has paid the price. He said he has matured and has not been "in trouble" for a long time. (Tr. 168; SOR Answer) To show that he is considered rehabilitated by authorities, he testified that he has a concealed handgun permit in his home state. He testified that he successfully applied with the federal Bureau of Alcohol, Tobacco, and Firearms (ATF) for a permit to build a suppressor for his handgun. He testified that he has been a licensed armed security officer in his home state since 2009. These assertions are undocumented. He has not committed any other crimes beyond those alleged. He has had his voting rights restored. (Tr. 49-51, 144-145) Applicant attested to his patriotism and to the valuable service he provides to the country and to the U.S. military at work. (Tr. 166)

Applicant provided no documents in support of his case, and he offered no character testimony, documented or otherwise. Thus, his own testimony is in all respects uncorroborated by other sources.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Analysis

Guideline A, Allegiance to the United States

AG ¶ 3 sets forth the security concern over an applicant's allegiance:

> The willingness to safeguard classified or sensitive information is in doubt if there is any reason to suspect an individual's allegiance to the United States. There is no positive test for allegiance, but there are negative indicators. These include participation in or support for acts against the United States or placing the welfare or interests of another country above those of the United States. Finally, the failure to adhere to the laws of the United States may be relevant if the violation of law is harmful to stated U.S. interests. An individual who engages in acts against the United

States or provides support or encouragement to those who do has already demonstrated willingness to compromise national security.

AG ¶ 4 describes conditions that could raise a security concern under Guideline A and may be disqualifying:

> (a) involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason, terrorism, or sedition against the United States;
>
> (b) association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts; and
>
> (c) association or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to:
>
> > (1) overthrow or influence the U.S. Government or any state or local government;
> >
> > (2) prevent Federal, state, or local government personnel from performing their official duties;
> >
> > (3) gain retribution for perceived wrongs caused by the Federal, state, or local government; and
> >
> > (4) prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

Under Guideline A, the Government alleges that until at least January 2015, Applicant was a member, high-ranking officer of Group X, an organization that allegedly advocates sedition against the U.S. government, the use of force and violence to overthrow and influence the U.S. government, and to prevent others from exercising their lawful, constitutional rights. (SOR ¶ 1.a)

In his Answer to the SOR, Applicant acknowledged that he had been a member of Group X, but denied the characterizations and aims of the group as alleged. Applicant's answer puts the burden on the Government to establish that his past membership of Group X is an ongoing, unresolved security concern.

First, the Government did not establish, nor did they argue, that Applicant has placed "the welfare or interests of another country above those of the United States." (AG ¶ 3) No foreign country or entity is involved.

Second, though Applicant himself has a 25-year-old criminal record, the Government neither alleged nor established under Guideline A that Applicant's "failure

to adhere to the laws of the United States" or "violation of law is harmful to stated U.S. interests." (AG ¶ 3) Indeed, the Government did not allege or establish under Guideline A that either Applicant or anyone connected with Group X has violated the law or that their actions in that capacity were unlawful.

Government Exhibit 10 is a reported federal appellate case, published in 1983. Government's Exhibits 7 and 8 are newsletters published by Group X in 1990 and 1994, respectively, containing "Commentary" from the Group's founder, now deceased. Applicant joined Group X in about 2000, several years after these exhibits were published. Although they describe Group X's historical views and aims, I give them little weight, as they have little to no direct link to Applicant, given their age. By contrast, Applicant confirmed in his testimony that the views and beliefs of Group X, as expressed in GE 9, the 2018 website excerpt, were the views of and beliefs of the group when he was on the board. Thus, I give GE 9 greater weight. I have not relied on GE 11, the Canadian court case, at all.

Applicant became a "skinhead" in about 1991, during his teenage years. By 2000, when he gave a sworn statement to DSS, he was an avowed white supremacist. He researched similar information on the internet, and passed out similar literature to the public. Soon thereafter, he joined Group X, an organization advocating white supremacy and white separatism, and which has a history of espousing racist, anti-Semitic and homophobic beliefs, as well as advocating violence against other races, even outright genocide. Applicant attended group meetings and engaged in recruiting efforts. He recruited his cohabitant into membership. For a time, his interest in Group X faded as they began to raise their family.

In 2012, Applicant reengaged with Group X when he was asked to join the board of directors. He became the group's vice-president and treasurer. He was also its "registered agent" in State 1 and Group X's registered address was the same as Applicant's home. Applicant filed the group's annual report with State 1 regulatory authorities in 2012. He attended board meetings several times a year. The Government has established that Applicant is a former "member and high-ranking officer" of Group X, as alleged.

At hearing, Applicant acknowledged that, being an officer and director of Group X, he was a group leader, and represented the organization's beliefs. Unlike GE 7 and GE 8, which he disavowed, Applicant acknowledged that Group X's views and beliefs as expressed in GE 9, the 2018 website excerpt, were their beliefs when Applicant was a member of the Group.

Applicant testified that when he was on the board, he attempted to influence Group X's belief system by making it less adversarial towards others. This led, he said, to a change in the bylaws, and, ultimately, to a lawsuit over the Group's future direction, in about 2014, in which Applicant was a party. He testified that around this time, in March 2014, he submitted a resignation letter. All of this is uncorroborated.

Applicant disclosed the lawsuit on GE 1, in December 2014, naming several other individuals, some of whom were Group X officers. He was still listed with State 1's regulatory authority as the Group X registered agent as of January 2015.

The Government argues that Applicant's prior involvement in Group X is a security concern because Group X advocates "sedition" and the "overthrow" of the United States Government. It cites to certain passages in the record evidence, in publications in which Group X asserts, for instance, that the U.S. Government is a "malignant monster" that has become "the single most dangerous and destructive enemy our race has ever known."

In reviewing Group X's materials, particularly GE 9, I conclude that the Government has not established that Group X advocates sedition or "overthrow" of the U.S. Government, at least with any specificity, let alone with a stated plan of action, violently or otherwise. In essence, Group X advocates, in a way that is vociferous and inflammatory, but also vague and conclusory, for a government that is more receptive to their white supremacist and white separatist views and beliefs, abhorrent and offensive though those views and beliefs surely are.

Applicant denied Group X advocated sedition against the United States Government, or sought to "overthrow" it, by violence or other means. He also noted several times, in his testimony and his Answer, that Group X had a policy forbidding its members from committing illegal acts. He also testified that if he believed Group X advocated violence, sedition, or overthrow of the U.S. government, he would not have joined it.

While the federal appellate opinion in the record (GE 10) is quite dated, some of the court's findings about the limitations of Group X's advocacy in 1983 remain apt here. The court found that Group X "failed to present any reasoned development of its conclusions" in its publications; and that "its principal function was the mere presentation of unsupported opinion." The same can be said for the views expressed in the 2018 website excerpt. As such, the Government's evidence about Group X, and about Applicant's connections to it, is insufficient to establish that AG ¶¶ 4(a), 4(b), or 4(c)(1), 4(c)(2), 4(c)(3), or 4(c)(4) should apply.

I might have reached a different conclusion as to AG ¶ 4(c) if the record contained evidence that Group X members actually engaged in acts of violence or other illegal activity that contradicted their disavowals, or if Applicant, while a Group X member, did so himself. There is no such evidence.

To be sure, Applicant does have a history of attempting to "prevent others from exercising their rights under the Constitution or laws of the United States or of any state." Felony willful and malicious defacement of a black church with Nazi references and the "N word" surely qualifies under AG ¶ 4(c)(4), as it was an act seeking to intimidate members of the church community and to prevent them from exercising their First Amendment rights to freedom of speech, religion, association, and assembly. But

that conduct was not alleged under Guideline A. I may consider it under Guideline E and the whole-person concept, but not here.

Lastly, in considering the strength of the Government's Guideline A case, it is noteworthy that the Government, while arguing that Applicant was a member of an organization that advocated violence, illegal activity, sedition, and the overthrow of the U.S. government, did not allege falsification when Applicant did not disclose his membership in Group X on his SCA, despite several questions calling for disclosure of membership of organizations with such aims.

For all of these reasons, I conclude that the Government did not meet its burden to establish a security concern under either the Guideline A "general concern" or any of the possible disqualifying conditions. SOR ¶ 1.a is found for Applicant. Having so concluded, I need not address applicability of the Guideline A mitigating conditions, detailed under AG ¶ 5.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

> 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 cooperate or provide truthful and candid answers during national security investigative or adjudicative proceedings. . .

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

> (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and
>
> (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;

(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; . . .[and]

(g) association with persons involved in criminal activity.

Between 1991 and 1994, Applicant was arrested for several criminal offenses. (SOR ¶¶ 2.c – 2.g) These offenses were not alleged under the criminal conduct adjudicative guideline (Guideline J, AG ¶ 30), but might have been. Under Guideline E, they satisfy the "catch-all" AGs, ¶¶ 16(c), 16(d)(2) (for disruptive, inappropriate, and at times violent behavior), 16(d)(3) (a pattern of rule violations); 16(e)(1), and 16(g), as well as the "general concern" under Guideline E, AG ¶ 15 (conduct involving questionable judgment and unwillingness to comply with rules and regulations).

Similarly, Applicant's use of marijuana (SOR ¶ 2.b) was not alleged under Guideline H, the drug involvement adjudicative guideline (AG ¶ 24) but might have been. The above AGs under Guideline E are also satisfied as to that allegation.

SOR ¶ 2.a cross-alleges Applicant's prior membership and high-level involvement in Group X as a personal conduct security concern. As an initial matter, an applicant's security-related conduct may be alleged under more than one guideline, and, in an appropriate case, may be given independent weight under different guidelines. (*See* ISCR Case No. 04-09251 at 3 (App. Bd. Mar. 27, 2007)) It is also legally permissible for an administrative judge to consider an applicant's conduct under both and to reach different conclusions under both, so long as the judge articulates a rational basis for each. (*See id.*)

As discussed at length above, I did not find that any disqualifying conditions under Guideline A were applicable. Nevertheless, Applicant's membership in Group X (from about 2000 to early 2015) and participation as an officer and director of Group X (from 2012 to early 2015) is a potential security concern under Guideline E.

Group X advocates white supremacy and separatism. Applicant, a self-described "skinhead" and white supremacist, joined the group in 2000. Though his interest waned for a time, in 2012, he became an officer and director of the group in 2012, as well as its

registered agent in State 1. The Group X office address in State 1 was Applicant's personal residence.

There is no specific prohibition against associating with such groups. However, Applicant's membership in Group X and his high-level participation calls into question his awareness of potential security concerns, as well as his judgment.

For instance, Applicant's acknowledgment at hearing that he deliberately waited until after his March 2000 interview statement to join Group X so he would not have to either declare his membership in the group, or lie to the interviewing agent about it, is particularly troubling. The deliberateness of Applicant's thought process in that instance serves to bolster the case that he knew his membership in the Group X was, or at least might be, a security concern.

Then, of course, Applicant not only joined the Group as a member (later in 2000), he became an officer and director. As such, as he acknowledged, he was a group leader, and represented the organization's beliefs. (Tr. 94) He also confirmed in his testimony that Group X's beliefs, as detailed in GE 9, the 2018 website excerpt, were their beliefs when Applicant was a member of the Group.

The Directive presumes a nexus between admitted or proved conduct under any of the Guidelines and an applicant's eligibility for a clearance. *See, e.g.* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). The required nexus is shown because several Guideline E disqualifying conditions apply.

Applicant's membership in Group X and his deepening involvement as an officer and director, all of which occurred after his 2000 security interview, establish AG ¶¶ 16(c), 16(d); 16(e)(1), as well as the "general concern" under Guideline E, AG ¶ 15 for questionable judgment.

It is not sufficiently established that Applicant's membership in and leadership of Group X constitutes association with persons involved in criminal activity. As to SOR ¶ 2.a, AG ¶ 16(g) is not established.

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

> (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;
>
> (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.

Applicant was arrested several times between 1991 and 1994. Most of these offenses occurred when he was in high school. Applicant has not had any arrests since then. While Applicant's defacement of the black church in August 1994 requires further analysis, his other, earlier offenses (SOR ¶¶ 2.c-2.f) are mitigated by the passage of time, under AG ¶¶ 17(c) and 17(d).

Applicant's felony willful and malicious defacement of the black church, however, is a different matter. Despite its age (25 years ago), the offense's racial context remains relevant to this case, given Applicant's admitted beliefs about white supremacy and white separatism (in a 2000 statement) his subsequent long-time membership in an avowed white supremacist and white separatist group, and his participation as an officer and board member of the group from 2012 to 2015. It is therefore harder to mitigate SOR ¶ 2.g on the basis of passage of time. His recent membership and involvement in such a group significantly limits any claim that Applicant is fully reformed and rehabilitated. He also testified at hearing that at the time he committed the act, he did not know it was a black church. Given the record evidence of what was written on the church, this is simply not credible. AG ¶¶ 17(c) and 17(d) do not apply to mitigate SOR ¶ 2.g.

Applicant became a self-described "skinhead" in about 1991. By 2000, he was an avowed white supremacist. He joined Group X, an organization advocating white supremacy and white separatism, and which has a history of espousing racist, anti-Semitic and homophobic beliefs. As already discussed, he deliberately waited until after his 2000 background interview to join Group X, so he would not have to disclose his membership to the interviewing agent, or would have to lie to avoid doing so.

Applicant was a member of Group X member for about 15 years (2000-2015) and was an officer and director of the Group from 2012-2015. He had longtime and deep involvement. He said that he resigned in 2014, and is no longer involved with the group or its members. (With respect to his beliefs on white supremacy, Applicant did not actually disavow those beliefs during his testimony. Instead, he testified that he "can't be" a white supremacist because he learned he has a Native American ancestor).

Applicant testified that he "philosophically" left Group X in about 2009. However, the record also makes clear that in fact his involvement later deepened, as between 2012 and January 2015, he was an officer and director of Group X, its registered agent in State 1, and Group X''s registered office in State 1 was the same as his residence.

Thus, there is record evidence of two separate instances, many years apart, of Applicant's lack of candor to the government about his involvement with Group X. In addition, it is noteworthy that in his answer to the SOR, Applicant acknowledged his prior membership in Group X, but did not address his involvement as an officer or director.

I may not consider these instances of Applicant's lack of candor as disqualifying conduct, since they were not alleged in the SOR. However, I may consider them in weighing mitigation or changed circumstances, whether Applicant has demonstrated sufficient rehabilitation, under the whole person concept, and, most importantly here, in weighing Applicant's credibility. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Applicant submitted no documentary evidence to corroborate any of his testimony. No character witnesses testified on his behalf. His case in mitigation, particularly as to his connections to Group X, therefore rests entirely on his own credibility. This makes Applicant's multiple instances of lack of candor, particularly problematic.

Applicant has a constitutional right to believe whatever he wants. He has a constitutional right to associate with whomever he wants. He does not have a constitutional right to a clearance. (*See Egan*, 484 U.S. at 528). To be determined eligible for access to classified information, Applicant must rebut, explain, extenuate, or mitigate security significant conduct or circumstances established by the Government and he has the ultimate burden of persuasion to obtain a favorable security decision.

I have doubts about the credibility of Applicant's uncorroborated testimony that he is no longer a member of Group X, and has disassociated himself from it. (For instance, Applicant acknowledged that, while he has covered up most of his white supremacist and skinhead tattoos, he has one left – the number "88," which he acknowledged was a symbol of skinhead culture. That tattoo remains – under his ponytail, where no one can see it.) My doubts are exacerbated by his multiple instances of lack of candor to the Government about his connections to Group X, which stretch from his March 2000 statement to his testimony in this hearing.

These instances of lack of candor towards the Government about Applicant's involvement with Group X call into question the truthfulness of his testimony that he has resigned form Group X, that he is no longer associated with Group X or any of its members. The fact that Applicant evidenced lack of candor, including at hearing, about the recency of his involvement with Group X calls the very recency of his involvement with the group into question and causes doubt over whether his involvement with Group X and its beliefs is as in the past as he says it is. As to SOR ¶ 2.a, Applicant did not provide sufficient evidence to mitigate SOR ¶ 2.a under AG ¶¶ 17(c), 17(d), or 17(e).

This leaves Applicant's marijuana use. (SOR ¶ 2.b). Applicant used marijuana mostly in high school, but resumed using it from 2005 to 2013. He testified that he has not used it since. Applicant's marijuana use is not particularly recent. However, he is around marijuana weekly, with members of his band. Applicant acknowledged his understanding that marijuana remains illegal under federal law, and under the law of his home state. Ordinarily, Applicant's marijuana might be mitigated by the passage of time. However, given my conclusions about Applicant's lack of candor, addressed above, his uncorroborated testimony that he avoids marijuana use despite being around it weekly, is not enough to assuage my doubts that SOR ¶ 2.b is fully mitigated under AG ¶ 17(a).

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines A and E in my whole-person analysis. Applicant, through his uncorroborated testimony, did not provide sufficient evidence to meet his burden of relieving all doubts about his security significant conduct. He has not met his burden of establishing that it is clearly consistent with the national interest that he be granted access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for continued access to classified information.

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 A:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, 2.b, 2.g:	Against Applicant
Subparagraphs 2.c-2.f:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national security interests of the United States to grant Applicant access to classified information. Eligibility for access to classified information is denied.

_____
Braden M. Murphy
Administrative Judge