



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



In the matter of:

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ISCR Case No. 19-01229

Applicant for Security Clearance

**Appearances**

For Government: Daniel O'Reilley, Esq., Department Counsel

For Applicant: Leon Schachter, Esq.

11/08/2019

**Decision**

HARVEY, Mark, Administrative Judge:

The allegations in the statement of reasons (SOR) made under Guidelines J (criminal conduct), E (personal conduct), and D (sexual behavior) are either refuted or mitigated. Access to classified information is granted.

**Statement of the Case**

On May 2, 2018, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On June 14, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines J, E, and D.

On July 8, 2019, Applicant responded to the SOR and requested a hearing. (HE 3) On August 22, 2019, Department Counsel was ready to proceed. On September 9, 2019, the case was assigned to me. On September 16, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 10, 2019. (HE 1)

During the hearing, Department Counsel offered five exhibits, and Applicant offered six exhibits. (Transcript (Tr.) 11-12, 19-20; GE 1-5; Applicant Exhibit (AE) A-AE F) There were no objections to GE 1 and all of Applicant's exhibits, and those seven exhibits were admitted into evidence. (Tr. 19, 21; GE 1; AE A-AE F) On October 21, 2019, DOHA received a transcript of the hearing.

### **Procedural Issues**

Applicant objected to the admissibility of Applicant's responses to DOHA interrogatories and Applicant's Office of Personnel Management (OPM) personal subject interview (PSI) because they were unfairly prejudicial; Applicant was without counsel; and Applicant may not have understood the significance of his answers. (Tr. 12-14) Applicant did not testify on the suppression motion. Applicant also objected to the admissibility of a civilian police report and a Naval Criminal Investigative Service (NCIS) report of investigation (ROI), which is a brief summary of a civilian police report of an allegation of rape and infliction of injury because they are hearsay; he was unable to confront and cross-examine the witnesses who were the sources of the allegations; and the reports lacked an authenticating witness. (Tr. 15-19) He did not dispute the accuracy of the information in the documents.

A civilian police report, GE 4, was admitted over Applicant's objection. (Tr. 19, 50-51) Applicant withdrew his objection to an NCIS report, GE 5, and it was admitted into evidence. (Tr. 19; 50-51) The DOHA Appeal Board has "previously held that an Army Criminal Investigation Division [ROI] constituted an official record within the meaning of Directive ¶ E3.1.20. ISCR Case No. 06-06496 at 2-3 (App. Bd. June 25, 2009). Unlike a DOD personnel background ROI, the CID report was admissible without an authenticating witness." ISCR Case No. 08-08085 at 4 n.3 (App. Bd. Apr. 21, 2010). Applicant's responses to DOHA interrogatories are also admissible. See ISCR Case No. 11-13999 at 6-7 (App. Bd. Feb. 3, 2014) (stating responses to DOHA interrogatories are admissible as an admission of a party opponent).

Applicant adopted the summary of his OPM interview at his hearing, and I admitted it into evidence over Applicant's objection. (GE 3) Applicant's response to DOHA interrogatories was not admitted because the content was cumulative and of limited relevance. (Tr. 77)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## **Findings of Fact**

In Applicant's SOR response, he denied all of the SOR allegations. (HE 3) He also provided extenuating and mitigating information. (HE 3)

Applicant is a 31-year-old manufacturing engineer employed by a defense contractor. (Tr. 28) He was married from July 2010 to December 2012. (GE 1) His children are ages two, four, and five. (Tr. 27) In 2017, he received a bachelor's degree. (GE 1) He is currently seeking a master's degree in business administration. (Tr. 28)

Applicant served in the Navy as a combat medic from 2006 to 2010. (Tr. 31) He served in two combat tours, lost a close friend in combat, and eventually received a 100 percent service-connected disability rating for post-traumatic stress disorder and traumatic brain injury. (Tr. 33; AE D) Applicant dragged a friend to safety on the battlefield, and he received a Bronze Star with "V" Device. (Tr. 78) He also received a Purple Heart, Navy and Marine Corps Achievement Medal, Combat Action Ribbon, Iraq Campaign Medal, Global War on Terrorism Service Medal, Global War on Terrorism Expeditionary Medal, National Defense Service Medal, Sea Service Deployment Ribbon, and various medals for his expertise with weapons. (AE C)

## **Criminal Conduct and Sexual Behavior**

SOR ¶¶ 1.a and 3.a allege Applicant was arrested in March 2010 and charged with Rape of a Spouse and Willful Infliction of Corporal Injury. The NCIS ROI indicates that civilian law enforcement cited these offenses; however, it also indicates the accuser (A) was "girlfriend" and not his spouse. (GE 5) Applicant indicated A was not his spouse.

In July 2010, A called the civilian police and said that in March 2010, on two occasions Applicant sexually assaulted her, and on the second occasion, he threatened to kill her. (GE 5) The police briefed the district attorney about A's allegations, and the district attorney declined to prosecute "due to lack of evidence." (GE 5) The civilian police informed the NCIS of the allegation, and its disposition, and the NCIS generated a summary ROI. The NCIS ROI does not indicate Applicant was ever arrested, formally interviewed, or charged. Applicant was assigned to a Marine Corps Base outside of the state where the offense allegedly occurred. The NCIS ROI indicates Applicant's command declined to take legal or administrative action against Applicant, and the ROI "is not to be attached to or used as an exhibit in an adverse employment or administrative proceeding." (GE 5)

Applicant learned the police were investigating A's allegation when a police officer called him on the phone, and he orally explained his relationship with A to the police officer. (Tr. 41, 44) Applicant provided to the police names of witnesses who could describe his relationship with A. (Tr. 41, 44) He was never advised of his constitutional rights, and he was never asked to render a written statement. (Tr. 76) Several months later an investigator called Applicant and told him no adverse action would be taken against him. (Tr. 41) He was never questioned by his command or the NCIS about the incidents involving A. (Tr. 45) The Government did not produce any evidence that

Applicant was charged for the conduct in 2010, and Applicant said he was unaware of any charges filed against him. (Tr. 48; GE 5)

Applicant denied that he sexually assaulted A. (Tr. 37-47; HE 3) He engaged in sexual activity with her on multiple occasions, and he always stopped sexual activity when she asked him to do so. (HE 3) He described her as crazy, unstable, suicidal (attempted suicide by cutting her wrists), and argumentative about the circumstances of daily living. (Tr. 37-40) She threatened to call the police and make a false allegation against him. (Tr. 39) She destroyed his property and physically attacked him several times. (Tr. 39-40, 58) After Applicant left A, she called him on the telephone and asked him how he would feel if she accused him of rape, and he said he would be unhappy. (Tr. 45-46) She laughed and hung up the phone. (Tr. 46)

SOR ¶¶ 1.b and 1.c allege Applicant was arrested in February 2015 and December 2017 and charged with Domestic Assault. The second alleged offense occurred in July 2016, and the charge was dismissed in December 2017. (GE 4) Applicant resided with his cohabitant (C), the alleged victim of the Domestic Assault, from 2013 to July 2019, except for a period of separation after the alleged assault in February 2015. (Tr. 28, 34) Applicant and C currently reside on opposite sides of the country. (Tr. 35)

In February 2015, Applicant and C were arguing in their residence. (Tr. 52) It was Valentine's Day, and C was complaining about Applicant insisting on studying for a test. (Tr. 52-53) He ignored C, and she became upset and started hitting him. (Tr. 52-53) Applicant wanted to leave the residence and stay with a friend, and C was holding him to keep him from leaving. (Tr. 54) Applicant and C were pushing each other, and Applicant left the residence. (Tr. 55; GE 3) C's mother called the police. (Tr. 55) Later Applicant returned to his residence and went to bed. (Tr. 55) The police talked to Applicant about the incident the next day, and the police left without arresting Applicant. (Tr. 55) The police advised his cohabitant to get an order of protection, and she obtained one. (Tr. 56-57) After the incident, and living apart for several months, Applicant and C resumed their cohabitant relationship. (Tr. 60-61) C was the victim of domestic violence from a previous relationship with someone other than Applicant. (Tr. 58) In March 2016, Applicant appeared in court. (Tr. 55; GE 4) The charge was dismissed without Applicant being arraigned or entering a plea. (Tr. 60, 63-64)

In July 2016, C's son was taking a bath, and he started yelling and crying because he had soap in his eyes. (Tr. 67; GE 4) C was in the bathroom helping her son. Applicant stuck his head in the bathroom, and C pushed the bathroom door, which struck Applicant's head and caused a cut. (Tr. 68) Applicant's head bled profusely, and Applicant called 911 because he wanted an ambulance to take him to the hospital. (Tr. 68) Applicant was worried about his previous service-connected traumatic brain injury. (Tr. 68) Applicant decided to drive himself to the hospital for treatment. (Tr. 68) While he was at the hospital, the police came to his house. Applicant believed that C was worried about losing custody for assaulting Applicant, and she accused Applicant of assaulting her. (Tr. 69) She subsequently admitted to Applicant that she lied to the police because she was worried about losing custody of her son to her previous boyfriend. (Tr. 75-76) When he

went to court, he received a continuance, and after leaving court he learned the charge was dismissed. (Tr. 71-73)

## **Personal Conduct**

SOR ¶ 2.a cross-alleges the criminal conduct in SOR ¶¶ 1.a through 1.c.

SOR ¶ 2.b alleges Applicant failed to disclose that he was charged with the felonies of rape and infliction of injury on his May 2, 2018 SCA. Applicant did not disclose that he was charged with rape and infliction of injury on his May 2, 2018 SCA; however, there is no evidence Applicant was charged with rape and infliction of injury. There is no evidence Applicant failed to disclose required information on his SCA.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 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 applicant’s 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.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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 U.S. 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Criminal Conduct**

AG ¶ 30 describes the security concern about criminal conduct, “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.”

AG ¶ 31 lists two conditions that could raise a security concern and may be disqualifying in this case: “(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness”; and “(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.”

Applicant refuted the allegation of rape and infliction of injury. Applicant credibly explained that he did not commit the rape and infliction of injury offenses. A did not make a timely report of her allegations, and instead she waited until Applicant moved to a different state. The police did not advise Applicant of his constitutional rights, and their only interview of him was over the telephone. Applicant was never arrested or charged with rape and/or infliction of injury.

In February 2015, Applicant and C engaged in an oral argument that became physical. Applicant admitted there was mutual pushing. Civil authorities charged him with Domestic Assault.

In July 2016, C accidentally struck Applicant on the head, and he was injured. Applicant called 911, and went to the hospital. C told Applicant that she told the police Applicant assaulted her because she was worried that she would be accused of assault, and she might lose custody of her son. There is no evidence that she admitted to the police that she lied about the Domestic Assault. Applicant was charged with Domestic Assault.

Civil authorities elected to charge Applicant with criminal offenses. This charging decision means civilian authorities believed there was probable cause to believe he committed the charged offense. Probable cause exists where the facts and circumstances are reasonably trustworthy and “sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been . . . committed.” *Brinegar v. United States*, 338 U.S. 160, 176 (1949). See also *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality opinion) (probable cause does not require a fact to be “more likely true than false”); *Escobedo v. United States*, 623 F.2d 1098, 1102 (5th Cir. 1980) (“probable cause” means “the existence of a reasonable ground to believe the accused guilty”) (internal quotation marks omitted). “Finely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the [probable-cause] decision.” *Illinois v. Gates*, 462 U.S. 213, 235 (1983).

AG ¶¶ 31(a) and 31(b) are established. There is sufficient evidence of the two Domestic Assaults to warrant consideration of mitigating conditions.

AG ¶ 32 describes four conditions that could mitigate security concerns including:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The DOHA Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of

a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 32(a), 32(c), and 32(d) apply to the allegations of Domestic Assault in 2015 and 2016. Applicant’s presentation at his security clearance hearing impeached the reliability of the evidence that he committed the offenses. The charges were dismissed, which is an indication civilian authorities did not believe there was sufficient probable cause to support the charge to take the cases to trial. Security clearance proceedings employ the “substantial evidence” evidentiary standard, which 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). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971). See ISCR Case No. 15-05049 at 4 (App. Bd. July 12, 2017) (“A Judge’s material findings must be based on substantial evidence or constitute reasonable inferences or conclusions that could be drawn from the evidence.”) (citing ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014)). The substantial evidence standard is more rigorous than the probable cause standard. *TVA v. Whitman*, 336 F.3d 1236, 1240 n. 6 (11<sup>th</sup> Cir. 2003).

After careful assessment of Applicant’s case in mitigation, I conclude there is not substantial reliable evidence of record that he committed the 2015 and 2016 Domestic Assaults. Applicant has a common law affirmative defense of self-defense to the 2015 Domestic Assault. He is legally permitted to use minimal reasonable amounts of force to extricate himself from the ongoing assault committed by C. When he pushed C, he was attempting to leave his residence to deescalate the emotion and risk of injury. His conduct was reasonable and prudent. As for the 2016 allegation of Domestic Assault, C admitted to Applicant that she lied when she falsely accused him of assaulting her. Applicant is the person who called 911 and the person who received medical attention.

In addition, the offenses are not recent and did not involve serious injury to C. Applicant and C are separated, and the offenses are unlikely to recur. The offenses do not cast doubt on Applicant’s reliability, trustworthiness, or good judgment. Criminal conduct security concerns are mitigated.



## Personal Conduct

AG ¶ 15 explains the security concern related to personal conduct as follows:

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 processes.

AG ¶ 16 lists conditions that could raise a security concern and may be disqualifying in this case including:

(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;

(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:

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

As discussed in the previous section, Applicant refuted the allegation that he committed rape and infliction of injury in 2010. He also refuted the allegation that he failed

to disclose the rape and/or infliction of injury charges on his May 2, 2018 SCA. The 2015 and 2016 Domestic Assaults establish AG ¶¶ 16(c), 16(d)(1) through (3), and 16(e)(1).

AG ¶ 17 lists conditions that could mitigate security concerns in this case including:

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

As discussed in the previous section, AG ¶¶ 17(c), 17(d), 17(e), and 17(f) apply. Personal conduct security concerns are mitigated.

## **Sexual Behavior**

AG ¶ 12 describes the security concern arising from sexual behavior as follows:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 lists conditions that could raise a security concern and may be disqualifying as follows:

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

(b) pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;

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

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

SOR ¶ 3.a cross-alleged the allegation in SOR ¶ 1.a that Applicant committed rape in 2010. As discussed under the criminal conduct guideline, *supra*, Applicant refuted the allegation of rape. Sexual behavior security concerns are resolved for Applicant.

### **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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines J, E, and D are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 31-year-old manufacturing engineer employed by a defense contractor. In 2017, he received a bachelor's degree. He is currently seeking a master's degree in business administration. Applicant served in the Navy as a combat medic from 2006 to 2010. He served two combat tours, lost a close friend in combat, and eventually received a 100 percent service-connected disability rating for post-traumatic stress disorder and traumatic brain injury. Applicant dragged a friend to safety on the battlefield, and he received a Bronze Star with "V" Device. He also received a Purple Heart, Navy and Marine Corps Achievement Medal, Combat Action Ribbon, Iraq Campaign Medal, Global War on Terrorism Service Medal, Global War on Terrorism Expeditionary Medal, National Defense Service Medal, Sea Service Deployment Ribbon, and various medals for his expertise with weapons.

Applicant refuted the allegations that he committed rape and infliction of injury in 2010 and that he failed to disclose the felony charges of rape and/or infliction of injury on

his May 2, 2018 SCA. He was not charged with rape and/or and infliction of injury. The 2015 and 2016 Domestic Assaults are mitigated for the reasons stated previously.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Criminal conduct, personal conduct, and sexual behavior security concerns relating to allegations of rape, infliction of injury, and failure to disclose information about these offenses on his SCA are refuted. Criminal conduct and personal conduct security concerns related to allegations of Domestic Abuse are mitigated.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	FOR APPLICANT
Subparagraphs 1.a, 1.b, and 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 3, Guideline D:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge