



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00347
)
Applicant for Security Clearance)

Appearances

For Government: Dan O'Reilley, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

03/30/2021

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding Criminal Conduct and Personal Conduct. Eligibility for a security clearance is granted.

Statement of the Case

On July 8, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date, an unidentified office within the Department of Defense issued him a set of interrogatories to verify the accuracy of an investigator's summary of an interview. He responded to those interrogatories on February 27, 2020. On May 12, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (AG) (December 10, 2016), effective June 8, 2017.

The SOR alleged security concerns under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct), and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On an unspecified date, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. The administrative record is silent until December 15, 2020, when his attorney entered a Notice of Representation and noted that Applicant had previously erroneously indicated a waiver of a hearing, and now he was requesting a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 20, 2020. The case was assigned to me on January 14, 2021. A Notice of Hearing was issued on February 5, 2021, scheduling the hearing for February 18, 2021. Upon the request of Applicant, the hearing was postponed and continued. On February 26, 2021, a new Notice of Hearing was issued. I convened the hearing as scheduled on March 15, 2021.

During the hearing, Government Exhibits (GE) 1 through GE 11, and Applicant Exhibits (AE) A through AE J were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on March 29, 2021. The record closed on March 15, 2021.

Findings of Fact

In his response to the SOR, Applicant admitted, with extensive comments, nearly all of the SOR allegations pertaining to criminal conduct (SOR ¶¶ 1.a. through 1.d. and 1.f., and 1.g.) and personal conduct (SOR ¶ 3.c. and 3.d.). Applicant's admissions and his comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 31-year-old employee of a defense contractor. He has been serving as a help-desk technician since August 2018. He previously held a variety of full-time and part-time positions (exchange administrator, cyber watch officer, construction security assistant, package handler, security officer, substitute teacher, patient-care technician, patient transporter, and environmental services) with different employers. He is a 2008 high school graduate. He enlisted in the US. Navy Reserve in November 2014, and served on active duty until June 2015, when he was honorably discharged as a seaman (E-3), and transferred to the Inactive Reserve. He is currently in the same military status. He was granted a security clearance in 2014, but because of issues discussed further below, that clearance was suspended in November 2017, reinstated in July 2018, and again suspended in April 2019. The most recent suspension is the basis for this security clearance eligibility review. He was married in 2017. He has three children, born in 2012, 2014, and 2015, as well as one stepchild, born in 2010.

Military Awards and Decorations

During his period of active duty, Applicant received the National Defense Service Medal and the Navy Marksman Ribbon for pistol and rifle. (AE I)

Criminal Conduct and Personal Conduct

Applicant is involved in an extremely volatile and hostile relationship with the mother of one of his children, and that relationship that has led to numerous conflicts and negative interaction that resulted in Applicant's repeated engagements with law enforcement authorities and the court system. The SOR alleged seven different incidents of criminal conduct, which also were alleged separately under personal conduct. Five of the incidents, and possibly six of them, because Applicant could not recall one particular incident, consisted of interactions involving the same participants during 2016 – 2019 associated with a custody dispute over their child: Applicant, and the mother of the particular child, who repeatedly brought charges against him, essentially for variations of domestic violence, including assault, child abuse, and trespassing; and the eventual resolution of the various criminal charges, with the charges associated with the six incidents dismissed *nolle prosequi* or placed in a Stet status. The seventh incident was unrelated to the others, and it referred to an incident involving Applicant's operation of a motor vehicle while intoxicated, with additional charges, during Mardi Gras, for which he was convicted.

Because the child's mother continued to interfere with, if not actually prohibit, Applicant's attempts to see his daughter, in 2015, he filed for custody. (Tr. at 25-26) At that point, the situation turned from interference with his visitation rights to increased hostility involving repeated accusations and criminal complaints against him. The incidents and their eventual results are as follows:

SOR ¶ 1.f. refers to an incident that actually took place in January 2016, not June 2016, as alleged in the SOR, when Applicant went to the residence of his child and her mother to exercise his child visitation rights. A verbal dispute took place when the mother refused to allow Applicant to leave the residence with their daughter. Applicant initially refused to answer any questions regarding the incident, and did not leave the residence when asked to do so. Eventually, he did slowly leave the building, but stopped periodically. He was arrested, handcuffed, and transported to the police station for processing. He was charged with (1) failure to obey a reasonable and lawful order; and (2) trespass on private property, both misdemeanors. In July 2016, all charges were dismissed *nolle prosequi* because the State Attorney acknowledged that there was a custody agreement in place. (GE 2, at 7-8; GE 3, at 3-4; GE 7, at 1-4, 31-32; AE D, at 10)

SOR ¶ 1.g. refers to an incident that actually took place in June 2016, not January 2016, as alleged in the SOR, when Applicant went to the residence of his child and her mother to exercise his child visitation rights. A verbal dispute turned physical when the mother refused to allow Applicant to leave the residence with their daughter. The mother, designated the "victim" by the police, told the responding police officers that when she tried to stop Applicant from leaving with their daughter, he started strangling her with both

hands around her neck for “about 3 minutes.” As he attempted to depart, the victim started pulling on his shirt, but he pushed her down. One arresting officer initially noted a slight redness on the victim’s neck, but after taking photos of the neck, the redness was no longer observable. Another arresting officer noted scratch marks on Applicant’s neck. Applicant denied attempting to strangle the woman. Applicant was charged with (1) assault in the 2nd degree; (2) failure to obey a reasonable and lawful order; and (3) trespass on private property, all misdemeanors. A handgun in his car was turned over to the police at the time of the arrest, but it was later returned to him. (GE 7) In July 2016, all charges were dismissed *nolle prosequi*. (GE 2, at 8; GE 3, at 4; GE 7, at 1-2, 5-26, 28-30; AE D, at 9)

SOR ¶ 1.e. refers to an incident that reportedly took place in August 2016. No facts regarding the circumstances of the incident were submitted by either party, and Applicant did not recall the event. For some unexplained reasons, Applicant was arrested and charged with (1) trespass on private property; (2) malicious destruction of property less than \$500; (3) and disorderly conduct, all misdemeanors. In March 2017, all charges were dismissed *nolle prosequi*. (GE 3, at 4-5; GE 8, at 6-7; AE D, at 7-9)

In January 2017, an Amended Order was issued by the court ordering that Applicant and the child’s mother shall have joint legal custody of the minor child. Among the compliance requirements were that all conversations, interactions, and dealings of any sort between the parties shall be conducted in a civil and courteous manner; they shall not place the child in a stressful or traumatic situation as a result of conflict between the parties; and neither party shall disparage the other party in front of the minor child. (AE E)

SOR ¶ 1.c. refers to an incident that took place on September 30, 2018. Applicant and his wife met with the child’s mother and her boyfriend at a mall to exchange physical custody of their daughter pursuant to the child custody agreement. An exchange of verbal comments was followed by certain gestures, and a mutual physical assault occurred. The two women attacked each other. Both women sustained scratches on their faces, arms, and feet. The child’s mother claimed that Applicant “strangled” her, allowing his wife to scratch her face. In addition, she accused Applicant of holding her from behind for about one minute, during which she could not breathe. Applicant claimed that the mother punched him in the face, but acknowledged trying to separate the two women. The responding police officer noted small scratch marks on Applicant’s arms but no noticeable facial injuries. One witness acknowledged that all four individuals were involved in the brawl, but did not specifically recall Applicant choking the mother. (GE 8, at 9-18) The following day, Applicant was arrested and charged with (1) assault in the 2nd degree; and (2) reckless endangerment, both misdemeanors. In January 2019, all charges were dismissed *nolle prosequi*. (GE 2, at 9-10, 16; GE 3, at 5-6; GE 6; AE D, at 1)

SOR ¶ 1.b. refers to an incident that took place in January 2019. At the time of the incident, the child was temporarily residing in Applicant’s residence during a week of custody. When she returned from school one particular Thursday, he noticed that she was acting strangely because she had received a referral at school for striking another child and not listening at school. He disciplined her with two smacks on her bottom with

a cloth belt and sent her to bed early. He claimed that he did not bruise her. When the child eventually returned to her mother on the following Monday, the mother found her to be oddly quiet. The mother noticed a bruise on the child's thigh and wrist. She called the police. The authorities called Child Protective Services, and the child was placed in her mother's emergency protective custody. Shortly thereafter, upon learning that there was a warrant for his arrest, he turned himself into the authorities. They charged him with (1) child abuse in the 2nd degree – custody; (2) child abuse in the 2nd degree – house; (3) assault in the 2nd degree; and (4) reckless endangerment, the first two charges being felonies, and the remaining charges both misdemeanors. Charges (1) and (2) were merged into charge (2), and charges (3) and (4) were merged into charge (3)(GE 2, at 9; GE 3, at 5-6; GE 5, at 2-7) In June 2019, both charges were "closed" when a Stet notice was issued, placing them on an inactive docket and forgotten by the state. Applicant was required to attend anger management, to be completed within six months, and to avoid unlawful contact with the minor child. (GE 11; GE 5, at 12-16)

SOR ¶ 1.a. refers to a series of alleged violations that took place over an unspecified period that eventually resulted in Applicant's arrest in March 2019. He was charged with seven violations, all of which were misdemeanors, such as violation of conditional release, violation of release, violation of release conditions, and failure to obey court order. All of the charges were associated with the criminal charges, already discussed above, for which those charges were dismissed *nolle prosequi* or placed on the Stet docket. All of these charges were placed on the Stet docket in June 2019. (GE 3, at 6-7; GE 4)

Although it was not alleged in the SOR, there was another incident between the same two protagonists that took place in August 2020 during another custody exchange. Applicant reportedly removed his daughter's watch and placed it on the hood of the mother's automobile, purportedly scratching the car. The mother got out of the car to return the watch to their daughter, but as she attempted to hand it to the child, Applicant rolled up the window and started to drive away, almost running over the mother's foot. She managed to return the watch, but Applicant took it and threw it out the window. Applicant disputed her allegations and claimed she came over to his car and kicked it, and then she reached inside the window and hit him in the face. (Tr. at 31) After the mother reported the incident to the police, Applicant was eventually arrested and charged with (1) malicious destruction of property less than \$1,000. (GE 10) The matter has not yet been resolved. (GE 9)

Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-

20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unalleged criminal conduct will be considered only for the five purposes listed above.

Applicant is remorseful about the situation with the mother of his child, and his sole desire is to maintain a healthy and loving relationship with the child. Because of the repeated situation, he requested and obtained mutual protective orders and has altered the location of the child custody exchanges away from the mother's residence, initially requesting that they take place at the police barracks. (GE 2, at 10) In addition, he has attempted to limit conversations to email. He now seeks alternative ways to discipline his daughter when discipline is necessary. In October 2018, he successfully completed a 6-hour Co-Parenting/Divorce Class (AE F), and he routinely participates in family, as well as, class activities with his daughter. (AE C; AE H)

As noted above, there is also one incident that is vastly different from the ones involving the mother of his child. SOR ¶ 1.d. refers to an incident that occurred during Mardi Gras in February 2017, when Applicant got behind the wheel of his automobile after consuming too much beer and becoming intoxicated. He was stopped by the police and administered a breathalyzer. The reading was 0.98. He was arrested by the police and charged with (1) operating a vehicle while intoxicated (DWI); (2) operating a vehicle with a suspended license; and (3) procedure on approach of an authorized emergency vehicle (similar to failure to yield the right of way), all misdemeanors. He was ordered to perform 40 hours of community service and fined \$900. (GE 3, at 2; GE 2, at 9; AE A)

Additional Personal Conduct

In addition to the joint criminal conduct and personal conduct issues described above, the SOR also alleged three incidents of personal conduct, not criminal conduct, which raised additional security clearance issues associated with his failure or unwillingness to comply with rules and regulations, thus questioning his reliability, trustworthiness, and ability to protect classified or sensitive information. Those incidents and their eventual results are as follows:

SOR ¶ 2.d. refers to an incident that reportedly took place in June 2016 when he was terminated from the city public charter school for failure to meet performance standards. He was initially hired in August 2013 as a substitute teacher and intern in a specific health-care program managing approximately 40 students over three classes of differing content. When a certified teacher was hired for that position, Applicant was moved into another internship with the health and physical education teacher in the middle grades. At the end of his first year at the school, his supervisor, the school principal retired. During the second year, Applicant was a health teacher, but his mentor was a math teacher. Teaching on his own, he struggled because he was in over his head and needed help, but it was apparently not given to him. At the end of the year, the new principal informed him that the health program was no longer to be offered and the teaching position was going to be abolished. Applicant was given referrals to other schools looking for health teachers. Applicant admitted that he was placed on a performance improvement plan (PIP), but otherwise denied ever being told that his performance was substandard. The following year, rather than securing another teaching

position, he chose to seek different employment elsewhere. (GE 2, at 12-13; AE B, at 4; Answer to the SOR, at 1, 3) Other than the fact that Applicant initially admitted the allegation, there is no other evidence to contradict Applicant's other descriptions of his relationship with the school system or how or why that relationship ended.

SOR ¶ 2.c. refers to an incident that took place in January 2017 when he was terminated from his employment with a multinational technology company, where he had been working in package direction, for falling asleep while on shift. At the time, he had been working at multiple jobs, and on this one occasion he fell asleep while on break working the night shift. He was called into the office and fired. Applicant acknowledged that he had placed himself in a position where he had taken on more than he should have, and he pledged not to put himself in another similar situation in the future. (GE 2, at 6; Answer to the SOR, at 3)

SOR ¶ 2.b. refers to an incident that reportedly took place in December 2017 when he was terminated from his employment with a corporation that was sponsoring him for a security clearance after it had previously been suspended. He was in the process of completing a new SF 86 and assumed that the information appearing in his original SF 86 would be sufficient. However, because of new developments, the new SF 86 was incomplete. By the time the entire security clearance eligibility process was completed and his security clearance was reinstated, the employer no longer had the position available for him. He denied that he was terminated. (GE 2, at 6; Answer to the SOR, at 3; Tr. at 33) There is no evidence to contradict Applicant's description of his relationship with the employer or how or why that relationship ended.

Character References and Work Performance

Applicant's first city charter-school supervisor and principal, and a veteran, noted that Applicant connected with the students in a way that many new teachers can't, which contributed to his success while assigned to his position. Applicant was considered a definite asset to the school program. His "can-do attitude for any task assigned, his willingness to go the extra mile, and his ability to develop relationships with all students and adults he came into contact with was a trait necessary to be successful in any course of work. . . ." (AE B, at 4)

Applicant's uncle, an ophthalmologist and a veteran, described Applicant in glowing terms: he maintained a 3.0 grade point average while he played football, "demonstrating versatility and a multifocal approach toward achievement"; he was a volunteer tutor for elementary, middle, and high school students; he honed critical skills in the health profession while working in the emergency room at the shock trauma center at a large medical center; he became a certified educator in the state; and he has a constant will to overcome obstacles. (AE B, at 3)

A lieutenant in the U.S. Navy Chaplain Corps has known Applicant his entire life. He noted that Applicant leaned on his faith and family members to persevere and endure "the fiery trials that came to him." He "withstood the pressures that crush most young men

of his age, but he thrived” He added that Applicant is “a driven and talented young man with outstanding moral character.” (AE B, at 1-2)

The president and chief executive officer of the state university medical center congratulated Applicant for completing ten years of service toward the commitment to improve the health of people in the community. (AE J; AE K)

Applicant’s two most recent U.S. Naval Reserve Evaluation Report and Counseling Records reflect that he is a vital member of the unit who displays the ability for increased responsibilities. He is a solid and proven performer who produces quality work and approaches each endeavor with a positive attitude and without complaint, in a timely manner ensuring his dependability. He has unlimited growth potential, and he should be promoted early. He either meets or is above the reported performance traits. (AE G)

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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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, *Safeguarding Classified Information Within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1))

“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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes two conditions under AG ¶ 31 that could raise security concerns:

(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;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

As noted above, during the three year period from 2016 through 2019, Applicant was arrested and charged on seven different occasions for a variety of incidents, with all but one of those incidents involving alleged violent behavior with the same woman – the mother of one of his children – who, since he was able to obtain joint custody of their daughter in 2015, reported him to police and lodged the complaints that led to his arrests. All of the six arrests eventually resulted in all charges being dismissed *nolle prosequi* or placed on the Stet calendar. The one other incident, in 2017, was isolated and unrelated to the others, as it was for several driving violations, including DWI, for which he was fined and ordered to perform community service. Based on those seven incidents described above, AG ¶¶ 31(a) and 31(b) have been established.

The guideline also includes examples of conditions under AG ¶ 32 that could mitigate security concerns arising from criminal conduct. They include:

(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;

(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.

AG ¶¶ 32(a), 32 (c), and 32(d) fully or partially apply. As noted above, Applicant is involved in an extremely volatile and hostile relationship with the mother of one of his children, and that relationship that has led to numerous conflicts and negative interaction that resulted in Applicant's being repeatedly engaged with law enforcement authorities and the court system. On each occasion, the woman's version of the events – the sole source of the information presented to the police – was accepted by the arresting police officers, even when there was little or no independent evidence that her versions were truthful. It is especially noteworthy that she reported that Applicant had attempted to strangle her with both hands around her neck "for three minutes" on one occasion when there were no other witnesses, and that he tried to strangle her again on another occasion

when there were witnesses who refuted her accusations. Applicant disputed much of what she had described, and he steadfastly denied the allegations both to the prosecutorial authorities and the judges before whom he appeared. With few exceptions, his explanations have gone un rebutted. Several of the charges, especially those related to child abuse, assault, reckless endangerment, and malicious destruction of property, were investigated by the prosecuting authorities or the Child Family Services, and those criminal charges were dismissed. Examining the rather sketchy and incomplete damaging documentary evidence submitted against him, and the substantial number of dismissals, leads to a conclusion that Applicant's explanations are essentially true.

The lone independent criminal charges – the ones associated with his 2017 DWI during Mardi Gras – occurred four years ago, and such conduct was not repeated. He acknowledged that his actions were foolish, and he has modified both his alcohol consumption and driving after consuming alcohol. Considering the period of time since that incident, it appears that it is unlikely to recur. He has been described as “a driven and talented young man with outstanding moral character,” and he is dependable. His positive activities with youth as well as his substantial volunteer work in the healthcare system seem to be at odds with the characteristics described by the woman who shares their child's physical custody with him.

A person should not be held forever accountable for misconduct from the past, and in this instance the most recent alleged criminal conduct – which had also been closed – is two years ago. With the expectation that other criminal complaints will probably be filed against him by the same woman, there are, nevertheless, no realistic concerns about future criminal conduct. Applicant's past history of alleged criminal conduct, under the circumstances, no longer casts doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes an example of a condition that could raise security concerns under AG ¶ 16:

(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.

My discussion related to Applicant's criminal conduct is adopted herein. In addition to the criminal conduct allegations discussed above, Applicant was allegedly involved in three incidents or situations that brought into question his personal conduct: being terminated from employment. There is a scarcity of evidence presented by the Government, and aside from Applicant's comments, all of the evidence presented is from him, and there is no independent evidence from the employers that support the allegations. Applicant denied having been terminated from one employer and contended, without rebuttal, that he was not terminated, but that once his security clearance was reinstated, there was no longer a position open for him. While he acknowledged being on a PIP, he denied being terminated from the charter school and contended that he was recommended for a school position at other schools. Other than the fact that Applicant initially admitted the allegation, there is no other evidence to contradict or rebut Applicant's other descriptions of his relationship with the school system or how or why that relationship ended. He was admittedly terminated from another position when he fell asleep during the night shift during a period when he was working multiple jobs. There is no evidence to rebut his comments regarding that situation. As to the allegations regarding the alleged personal conduct, with respect to SOR ¶¶ 2.a. and 2.c., AG ¶ 16(c) has been established. However, with respect to SOR ¶¶ 2.b. and 2.d., AG ¶ 16(c) has not been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

(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.

AG ¶¶ 17(c), 17(d) and 17(e) apply. My comments associated with the criminal conduct section also apply in an assessment of personal conduct concerns. Applicant has taken various steps to insulate himself from the ire of his child's mother; modify his driving habits after consuming alcohol; and taken a more realistic approach to life without extending himself beyond his capabilities to avoid situations such as the one where he fell asleep on the job while holding multiple jobs. Those who know him attest to his trustworthiness, reliability, and outstanding performance. It is highly unlikely that Applicant's alleged personal conduct, especially that which was associated with his criminal conduct, will recur.

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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Applicant was involved in seven different incidents of criminal conduct, which also were alleged separately under personal conduct. Five, and possibly six, of those incidents consisted of interactions involving the same participants during 2016 – 2019 associated with a custody dispute over their child: Applicant, and the mother of the particular child, who repeatedly brought charges against him, essentially for variations of domestic violence, including assault, child abuse, and trespassing; and the eventual resolution of the various criminal charges, with the charges associated with the six incidents dismissed *nolle prosequi* or placed in a Stet status. The seventh incident was unrelated to the others,

and it referred to an incident involving Applicant's operation of a motor vehicle while intoxicated, with additional charges, during Mardi Gras, for which he was convicted. He was also fired by one employer because he fell asleep while on the job. While he was granted a security clearance in 2014, that clearance was suspended in November 2017, reinstated in July 2018, and again suspended in April 2019.

The mitigating evidence is simply more substantial and compelling. Applicant is a 31-year-old employee of a defense contractor. He has been serving as a help-desk technician since August 2018. He previously held a variety of full-time and part-time positions (exchange administrator, cyber watch officer, construction security assistant, package handler, security officer, substitute teacher, patient-care technician, patient transporter, and environmental services) with different employers. He is a 2008 high school graduate. He enlisted in the US. Navy Reserve in November 2014, and served on active duty until June 2015, when he was honorably discharged as a seaman (E-3), and transferred to the Inactive Reserve. He is currently in the same military status. His military performance reported that he is a solid and proven performer who produces quality work and approaches each endeavor with a positive attitude and without complaint, in a timely manner ensuring his dependability. One character reference, a U.S. Navy chaplain, characterized him as "a driven and talented young man with outstanding moral character."

Applicant is involved in an extremely volatile and hostile relationship with the mother of one of his children, and that relationship that has led to numerous conflicts and negative interaction that resulted in his being repeatedly engaged with law enforcement authorities and the court system. He was involved in seven different incidents of criminal conduct, which also were alleged separately under personal conduct. Six of the incidents, associated with a custody dispute over their child, were initiated when the child's mother repeatedly brought charges against him. All of the charges were eventually dismissed *nolle prosequi* or placed in a Stet status. Applicant disputed much of what she had described, and he steadfastly denied the allegations both to the prosecutorial authorities and the judges before whom he appeared. With few exceptions, his explanations have gone un rebutted. Several of the charges, especially those related to child abuse, assault, reckless endangerment, and malicious destruction of property, were investigated by the prosecuting authorities, or the Child Family Services, and those criminal charges were dismissed. While falling asleep while working during a period when he had multiple jobs is unacceptable in the workplace, and a poor performance in doing one's job in the workplace may also be unacceptable, neither activity comes anywhere close to an unwillingness to comply with rules and regulations.

Overall, the evidence leaves me without any questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his criminal conduct and personal conduct. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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. through 1.g.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. through 2.d.:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge