



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



In the matter of:)
)
) ISCR Case No. 19-03803
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Guillermo Cuadra, Esq.

03/22/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline I, psychological conditions security concerns. He mitigated the Guideline F, financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 10, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct, Guideline F, financial considerations, Guideline I, psychological conditions, and Guideline J, criminal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on October 25, 2021. After coordinating with Applicant's attorney, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 7, 2021, scheduling the hearing for January 13, 2022, via Microsoft Teams. On January 10, 2022, Applicant's attorney requested a continuance due to contracting the COVID-19 virus. His request was granted and an amended notice of hearing was issued on January 12, 2022, scheduling the hearing for February 8, 2022. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 11. Applicant's attorney objected to GEs 2 through 11 on the basis of relevance. The objections were overruled and GE 1 through 11 were admitted into evidence. Applicant testified and offered Applicant Exhibits (AE) A through D. There were no objections and the exhibits were admitted into evidence. DOHA received the hearing transcript on February 16, 2022.

Findings of Fact

Applicant denied all of the SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He earned an associate's degree in 1994, a bachelor's degree in 2000, and a master's in business in 2018. He served on active duty in the military from 1994 to 2004 and then was in the inactive Reserve until 2006. He was honorably discharged as an E-6. He served in combat and earned a bronze star for valor. After his discharge, he worked for federal contractors. He held a security clearance until 2014. He has never married. He has a 24-year-old son. (Tr. 25-27, 58; GE 1, 2)

Applicant has a history of criminal conduct. In May 1990, he was arrested and charged with disorderly conduct, carrying a concealed weapon (mace), and damage to property-criminal mischief. He was found guilty of the misdemeanor offenses. No information was provided regarding his sentence. (GE 3, 4)

Applicant was arrested in March 1991 and charged with disorderly conduct and resisting an officer. He was acquitted of the charges. (GE 3)

Applicant was arrested in September 1993 and charged with carrying a concealed weapon, resisting an officer, and obstruction. The charges were dismissed. (GE 3, 4)

Applicant was arrested in November 2002 and charged with disorderly intoxication, public place cause disturbance, misdemeanor second degree. The charges were nolle prossed.

In February 2006, Applicant was detained by law enforcement for several hours in London, England, for being involved in a minor altercation. He was not arrested. (GE 2)

In June 2008, Applicant was arrested and charged with felony aggravated battery with a deadly weapon and armed burglary of a dwelling firearm possession. He had an

altercation with the ex-husband of his girlfriend, when they were picking up her two small children. Applicant testified at his hearing that his girlfriend's children were with their father. Applicant and their mother, his girlfriend, went to pick them up. The children came out of the house, and Applicant buckled the kids into their car seats, and then heard his girlfriend scream from inside the house. He went inside and saw her ex-husband with a sawed off shotgun. He wrestled it away from him. Applicant was terrified. He grabbed a ceremonial sword from the wall and used it to hit the man's arm. Applicant testified that he reported the incident to the police and Applicant was arrested. The charges against him were later dismissed. (Tr. 134-146, 154; GE 2, 5)

In 2011, Applicant was arrested and charged with aggravated assault. He testified that he was at a bar, having a private discussion with his friend, when a man intervened and they got into an argument. Then the man threw a wet napkin at him. Applicant retaliated by throwing a napkin holder at the man and striking him in the face. Applicant said he regretted his conduct and should not have thrown the object. (Tr. 118-119)

Applicant made a statement to police at the time of his arrest. He told them he and a friend were walking by a bar and an employee of the bar singled him out and began yelling at him. He began to yell back. He told the police he never went inside the bar and remained outside during the verbal altercation. He said the men from the bar began to chase him and his friend. Applicant told the police he observed a hand gun. He said one of them had brass knuckles with a knife attached and was waving it at him saying "come on" in a threatening manner. He said he was in fear of his life. He testified that he lied to the police. (Tr. 117-123; GE 2, 6, 7)

Witness statements and a surveillance video differ from Applicant's version of events. Applicant was inside the bar, and he began yelling at one of the employees, who was later identified as the manager of the bar. Applicant gave him the middle finger and the manager responded in kind. Applicant picked up a plastic napkin holder and threw it at the manager, striking him on the left side of his head. The manager and another employee began chasing Applicant and his friend outside the bar and down the street. While in pursuit, the manager called the police. Applicant had pepper spray and pointed it at the manager, who turned away, and Applicant sprayed his back. The police arrived and confiscated brass knuckles from the employee who ran with the manager. There was no gun. (GE 2, 6, 7)

The police reviewed the videotape and noted that the manager was behind the bar, and Applicant walked up to it and began yelling at him. Applicant then gave the manager the middle finger. The manager gave it back and then Applicant threw the napkin holder at the manager, striking him on the side of the head. Applicant would not leave the bar. The manager then called the police and he and his employee chased Applicant and his friend. Applicant admitted he lied to the police because he was afraid of getting in trouble. He said he later told the truth to the judge. He testified that the state decided not to prosecute the charge in exchange for Applicant completing community service, which he did. The charges were nolle prossed. He believed he also paid a fine. There were no probation requirements. (Tr. 123-134, 151-152; GE 2, 6, 7)

In June 2014, Applicant was arrested and charged with battery, aggravated assault with a deadly weapon, a firearm, child neglect and possession of a firearm in the commission of a felony. These charges were the result of an incident involving road rage. Applicant's testimony differs greatly from police reports and witness statements of what transpired. Applicant claimed he was the victim. His son, 16 years old at the time, was in the car with him. Applicant testified that the other vehicle tried to run him off the road. He and the occupants of the other vehicle were cursing at each other back and forth while driving. They met at a traffic light. He said his vehicle was blocked in by the other cars. He testified that he got out of the vehicle and saw two men approaching his vehicle. He asked them to leave and was attacked by two men. He pepper sprayed them. He thought one had a knife because he was stabbed. Applicant then ran back to his car to retrieve his gun, and chambered a round. The man was crawling away from Applicant on his hands and feet, retreating. Applicant estimated he was maybe 10-15 feet away, but still a threat. Applicant then walked over to the man and pointed the gun at him and asked him where the knife was. The man ignored his command. Applicant then left the area and was later stopped by the police. (Tr. 29-32, 76 -117, 158-172)

Applicant told the police that when he stopped his car, two men came to his vehicle and tried to grab his son from the interior of the car and tried to fight him. Applicant was defending himself. He went crazy when they tried to hit his son. He used pepper spray on them to get them away. He took out his gun to hold them back. He was in fear for his and his son's lives. He told the police that after he stopped the car, a man who was not an occupant of the other vehicles, who had been sitting on the curb, walked up to Applicant's vehicle and attacked him. Applicant pepper sprayed him, and they began to fight. Another person, also not involved in the road rage, also began attacking him. Applicant told police because these men were now chasing him he ran and got his gun from his car. He pointed it at them. He said he feared for his life. When he realized they were no longer chasing him, he left the scene. (GE 8)

Applicant's son provided a statement to the police after the incident. He confirmed there was a mutual road rage incident that occurred. While driving, his father retrieved pepper spray and a hand gun from the glove box of the vehicle. When they stopped, a woman exited the other vehicle and said she was calling the police. His father made harassing statements to the woman. Then a man, not involved in the road rage, who his son and others believed was trying to diffuse the situation, walked up to Applicant's car and his father reached into the vehicle and grabbed the pepper spray and sprayed the man. Then his father attacked the man, took him to the ground, and began fighting him. His son stated this man did not attempt to attack his father. While on the ground, another man came to the man's assistance, and kicked Applicant in the face. Applicant and the man on the ground continued fighting. The son was yelling at his father to stop fighting. His father then kicked the man in the head. This man was able to get away and crossed the street in retreat, where he collapsed. (GE 8)

Applicant's son said his father then went back to his car, retrieved his gun and pointed it at the second man who intervened and then pointed it at the first man. Applicant admitted that when he went back for the gun there was a magazine in it with rounds and

he chambered one round. He admitted seeing the man crawling away on his hands and knees. He walked up to him and could not see a knife, but yelled at him to drop it, while pointing the gun at him. He then kicked the man in the head. Applicant was wearing boots that had 4 one-inch plastic spikes in the toe. Applicant testified he wears the boots for protection. He claimed that even though the man was crawling away he was still a threat. His son's statement said that Applicant then ran back to the car, put the gun between the driver's seat and the console and the pepper spray on the front seat and told his son they needed to leave the area before the police arrive. (Tr. 76-117, 156-172; GE 8)

Numerous witness statements, including those with no direct interest in the case, contradict Applicant's version of what happened and essentially corroborate his son's statement. Applicant admitted that his initial statement to police was false. He denied that he got pepper spray and the gun out of the car console while they were still driving, contradicting what his son said. He believes the police coached or influenced his son's statement. I did not find Applicant's testimony credible. (Tr. 34, 76-117; GE 8)

Any derogatory information that was not alleged will not be considered for disqualifying purposes, however, it may be considered in making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

A search of Applicant and his vehicle revealed one 40 caliber hollow-point bullet, black gloves, three cans of mace, steel boots with spikes, a semi-automatic Glock gun, and two Glock magazines, one with 12 rounds and one with 13 rounds. Applicant testified that he has hollow-point bullets because they will do the most damage. A regular bullet is not as accurate or efficient. He explained the hollow-point bullet is the standard to protect your life. (Tr. 174-175; GE 8)

There were a total of nine charges against Applicant. He testified his bail was over a million dollars. He was in jail for two months and under house arrest for another eight months. In March 2015, he accepted a best-interest guilty plea to felony aggravated assault with a deadly weapon, and firearm possession. Adjudication was withheld on this charge. The charges of aggravated battery with a deadly weapon, a firearm, and improper exhibition of a dangerous weapon or firearm, were nolle prossed. Applicant was sentenced to four years of probation, ordered to meet with his probation officer monthly, 50 hours of community service, and to pay \$100 a month of court costs. He completed his community service and his probation was terminated early in May 2017. Although Applicant's probation was terminated, no court documents were produced to show the final adjudication of the charge. It likely was dismissed, but I do not have the documents to corroborate the final disposition. Applicant testified that he pleaded guilty because he ran out of money. He said he regretted the incident. He stated in his answer to the SOR: "After weighing all of the facts of the case carefully, the judge elected to withhold adjudication of guilt, although I admitted to pointing the firearm at the aggressor. I was not found guilty of the alleged charges." (Tr. 35-40, 74; Answer to the SOR; GE 9)

After Applicant completed his probation, he went back to school, volunteered at the VFW and created a veterans' nonprofit organization. He testified he sits on the

governing board for a charity and participates in other philanthropic projects. Tr. 37, 40-43)

The SOR ¶ 1.i alleges that in 2017, there was an incident report made to the university police department, where Applicant was attending classes, alleging he had made a threat of violence against one of his classmates. The incident report was not provided as evidence. Applicant denied he threatened a classmate. Without the incident report or **any** other information about what allegedly occurred, there is insufficient evidence to corroborate a threat was made. I find in Applicant's favor on this allegation. (Tr. 49-56, 60-74, 151)

In January 2017, Applicant filed Chapter 7 bankruptcy. His debts (\$107,061) were discharged in May 2017. He attributed his financial difficulties to his 2014 arrest. He lost his job while he was in jail and was unable to pay his debts. He testified that he is now a small business owner and works in real estate. No additional financial issues have been raised. (Tr. 48-49, 146-149, 155-156; GE 11)

The government requested Applicant undergo a psychological evaluation. One was conducted in October 2019 by a government-approved licensed clinical psychologist who is a board certified neuropsychologist. As part of Applicant's medical history, he disclosed that he has post-traumatic stress disorder (PTSD), but did not seek treatment for it until 2018. He underwent exposure therapy through the Veterans Affairs and found it effective. He did not feel he would engage in any further violent interactions with others.

Applicant disclosed to the psychologist the 2011 incident at the bar where he threw the napkin holder at the manager. He told the psychologist that the incident was his fault. The manager was an Arab and the incident occurred during the Arab uprising events. When he saw something on the television, he became enraged and threw the object at the manager. He said he attended individual and group anger management training and learned how to calm himself.

Applicant also gave his version of the facts of the 2014 aggravated assault with a deadly weapon incident. He said after a road rage incident, he was assaulted by two men, who he assumed were part of the traffic incident. He later learned they were good Samaritans. He said he pepper sprayed them and told them to stay back, but they did not. He said they then assaulted him. He said that he eventually got away from the men and went back to his car and pulled his gun out. The men ran away, and Applicant left the scene. He denied he pulled the gun out while he was driving. After discussing the events with the psychologist he stated "I used less violence than I could have in all of these situations." (GE 10)

The psychologist diagnosed Applicant with antisocial personality disorder with narcissistic traits. She did not see any signs of PTSD at present. Based on his background, she concluded that his personality disorder and narcissistic traits are a security concern, and she has concerns about his judgment, trustworthiness, and

reliability. His condition is pervasive and unlikely to improve, and his prognosis is poor. (GE 10)

Applicant apologized for the mistakes he made. He said he had to make split-second decisions and he made some wrong ones. He was emotional at the time. (Tr. 57-58)

Applicant's evidence included his medical record supporting his PTSD diagnosis. He also provided an article from the American Journal of Psychiatry from 2015 on narcissistic personality disorder, copies of potential job offers, and documents from his military service record. He provided excerpts from his performance evaluations throughout his military and civilian career, character statements from friends and family, and certificates of completion, training, and transcripts. He is described as intelligent, a team player, devoted, tenacious, respected, a leader, a person with integrity, a patriot, and loyal. He is a small business owner and a realtor. (Tr. 150; Answer to the SOR; AE A, B, C, D)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an 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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J: Criminal Conduct

The security concern 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 several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG § 31, and the following are potentially applicable:

(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 was involved in minor offenses in 1990, 1991, 1993, 2002, and 2006. Most of the charges were either dismissed or nolle prossed. He was acquitted of the offenses that occurred in 1991 and was found guilty of the 1990 offenses. In 2008, he was involved in an aggravated assault incident where the charges were dismissed. In 2011, he was involved in an incident in a bar and was charged with aggravated assault. The charge was nolle prossed after he agreed to complete community service. In 2014, he was charged with felony aggravated assault with a deadly weapon and various other charges. He plead guilty to the aggravated assault charge and adjudication was withheld until he completed certain court requirements. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(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; 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.

Applicant has a history of criminal conduct that began with minor offenses, but his more recent conduct in 2011 and 2014 is serious. Although much of his conduct has not culminated in convictions, his behavior is a cause of concern. His admissions and evidence indicate he was the instigator when he assaulted the manager of a bar in 2011. In 2014, Applicant was charged and pleaded guilty to felony assault with a deadly weapon, a gun, but under a plea agreement the judge withheld adjudication. He was sentenced to four years of probation and community service, which he completed successfully. He seems to believe that this exonerates him of any wrongdoing. It does not.

There was a significant period of time, while serving in the military, that Applicant did not have any criminal offenses. However, his conduct in 2011 and 2014 is a cause of concern. I have considered all of the facts surrounding Applicant's conduct. I am not convinced that he has addressed his behavior and taken responsibility for his conduct. Based on his history, there is insufficient evidence to find that his conduct happened under unique circumstances and it is unlikely to recur. His conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 32(a) does not apply.

There is evidence of rehabilitation. Applicant went back to school to earn a master's degree and is involved in philanthropic projects. I have also considered the time that has passed since his last criminal conduct. Although AG ¶ 32(d) applies, it is not enough to overcome the concerns raised by his past criminal conduct.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns 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 information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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

(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; . . .

Applicant's criminal conduct was cross-alleged under Guideline E, personal conduct. Some of his conduct alleged under the criminal conduct guideline was minor, and did not result in an arrest, charge, or conviction. Although some of the offenses were nolle prossed or dismissed, his personal conduct alleged in the SOR is a security concern and the above disqualifying condition applies.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(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; and

(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.

The same analysis under Guideline J applies under the personal conduct guideline. It appears Applicant is in a better emotional and mental state, but there is insufficient evidence to conclude he has acknowledged his past behavior and adequately addressed it through counseling. I find the evidence is insufficient to conclude future inappropriate behavior is unlikely to recur. The above mitigating conditions do not apply.

Guideline I: Psychological Conditions

The security concern for psychological conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist, or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative interference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 28, and the following are potentially applicable:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

Applicant was evaluated by a DOD-approved licensed psychologist in October 2019. He was diagnosed with antisocial personality disorder with narcissistic traits. She concluded that his personality disorder and narcissistic traits are a security concern, and she has concerns about his judgment, trustworthiness, and reliability. His condition is pervasive and unlikely to improve, and his prognosis is poor. I find the above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

There is insufficient evidence to apply any of the above mitigating conditions. Although, Applicant's medical records indicated that he suffered from PTSD, he merely alluded to treatment he had to resolve it. He also mentioned he attended anger management, but again no corroborating evidence was provided. There was no evidence of any of the following: that he is participating in a treatment program regarding his current diagnosis, that there is a favorable prognosis, that his condition is under control or in remission, or there is a low probability of recurrence.

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(a) inability to satisfy debts.

In 2017, Applicant had his debts discharged in Chapter 7 bankruptcy because he was unable to work after his 2014 arrest. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

Applicant was arrested in 2014 and was unable to work, which resulted in him being unable to pay his debts. He is responsible for his actions, and his arrest was not beyond his control. AG ¶ 20(b) does not apply. It does not appear that Applicant had any financial concerns prior to his arrest. It also appears that he currently pays his bills on time and there are no other financial concerns raised. I find that his financial problems happened under unique circumstances and are unlikely to recur. AG ¶ 20(a) applies

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), 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 E, F, I and J, in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant served honorably in the military, was decorated for his service, and provided numerous positive statements from his past military and civilian performance reports and his philanthropic ventures. However, Applicant has not fully embraced his responsibility for his past behavior. Of particulate note is that during both the 2011 and 2014 incidents he lied to the police. Although adjudication was withheld on the most serious offense in 2014, it does not exonerate Applicant regarding his underlying behavior, whether or not it ultimately resulted in a criminal conviction. He pleaded guilty to the offense. He was placed on probation for four years. This is not absolution by the

judge for his conduct. Although the judge gave Applicant a second chance and he admitted he made mistakes, **I am not convinced that has** fully accepted that his behavior was dangerous and inappropriate. I did not find Applicant credible throughout portions of his testimony. Applicant failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline I, psychological conditions. He successfully mitigated the Guideline F, financial considerations security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Paragraph 3, Guideline I:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline F:	FOR APPLICANT
Subparagraph 4.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge