



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03142
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

04/11/2022

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**Decision**  
\_\_\_\_\_

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Abuse), Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 12, 2019. On February 15, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, G, and J. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Applicant responded to the SOR on February 19, 2021. I was assigned the case on October 26, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on January 18, 2022, for a scheduled hearing on January 31, 2022. The hearing was convened as scheduled.

At the hearing, Department Counsel moved to amend the SOR to allege under a new ¶ 4.a., Guideline E: cross-alleging SOR ¶¶ 1.a, 1.b, 2.b, 3.b, and 3.c. In addition, SOR ¶ 3.c, under Guideline J, was amended to conform to the evidence to wit: “Your former spouse accused you of domestic battery on at least three occasions, in July, August, and September 2016.” Applicant objected to the amendments. The objection was overruled and the motion to amend was granted.

Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant objected to the contents of a police report (GE 3). The objection was overruled. Applicant offered five documents that were collectively marked as Applicant Exhibit (AE) A. All exhibits were admitted. Applicant and two character witnesses testified at the hearing. The record was held open to February 28, 2022, for Applicant to submit additional documentary evidence in mitigation. He submitted additional documents, collectively marked as AE B, and admitted into evidence without objection. DOHA received the hearing transcript on February 7, 2022.

### **Findings of Fact**

Applicant is a 44-year-old laborer, employed by a defense contractor since July 2019. He is also self-employed as an independent contractor as an executive protection (bodyguard) service provider since 2014. He was previously employed in an armed security position from January to July 2019; agent-in-charge of special events/field training officer/site lead from February 2018 to August 2018; executive protection officer from June 2017 to July 2019 for two other companies; VIP security host lead from December 2011 to October 2014; and security supervisor from October 2009 to December 2011. Applicant earned an associate’s degree in 2004. He was previously married in 2016 and divorced in November 2018. He remarried in February 2022, and has no children. He has never held a security clearance.

The original SOR alleges under Guideline H that Applicant used marijuana with varying frequency from about July 1993 to about January 2019; and he used cocaine with varying frequency from about February 2008 to about January 2019. Under Guideline G, the SOR alleges Applicant was arrested in another state, in about December 2004, charged and convicted of DUI; and he was arrested in about August 2017 and charged with DUI and open container of alcohol in a vehicle. Under Guideline J, the SOR cross-alleges the previous SOR allegations, and that he was arrested in about March 2015 and charged with trespassing, a charge in which he pleaded guilty; and in September 2016, he committed domestic battery against his former spouse. This allegation was amended to allege that his former spouse accused him of domestic battery on at least three occasions in July, August, and September 2016. In addition, the amended SOR added allegations new ¶ 4.a, under Guideline E, cross-alleging SOR ¶¶ 1.a and 1.b regarding

marijuana and cocaine use; ¶¶ 2.b alleging the 2017 DUI charge, and ¶¶ 3.b and 3.c alleging the trespassing conviction and domestic battery accusations. Applicant admitted to all of the original SOR allegations except SOR ¶ 3.c (alleging domestic battery against his former spouse), and generally objected to the amended SOR allegations.

Applicant admitted to using marijuana recreationally and regularly, usually on weekends and when socializing, from 1993 to 2019. He both purchased it and it was provided by friends. He purchased marijuana approximately twice per month from about 1998 to about 2016, and approximately once per month from about 2016 to 2019. Of note, he denied purchasing marijuana when interviewed by a Government investigator in December 2019. He also declared the accuracy of his personal subject interview (PSI) summary in a January 2021, interrogatory response. (GE 2)

Applicant testified that he used cocaine recreationally about “once every six months,” from about 2008 to January 2019, usually at social gatherings. However, he also inconsistently stated in testimony that he only used cocaine three to four times. However, in his PSI, he stated he used cocaine with his former spouse “weekly to quarterly” during social settings at nightclubs. (GE 2) During this period of illegal drug use, he worked in several security and executive protection positions, purchased firearms in 2009, 2010, and 2020, and held a concealed firearm permit (CFP) for executive protection and personal safety, issued by his current state of residence in 2013 and renewed it in 2018. It remains valid until 2023. The CFP application (Rev 8/19) states:

You are not eligible to carry a Concealed Firearm Permit if any of the following apply: . . . (6) You have habitually used intoxicating liquor or a controlled substance to the extent that your normal faculties are impaired, including DUI convictions within five previous years and Medical Marijuana Patients. (AE B)

In his answer to the SOR, Applicant claimed his use of marijuana “occurred on my personal time.” However, he admitted that in 2006, he was working security and bodyguard jobs in nightclubs and “on the entertainment scene” and “was exposed to the good and the bad that went along with it.” He stated that he initially rejected cocaine that was offered to him, but eventually gave in and used it “to understand the effects and correlate it with the behaviors [he] experienced as a security/bodyguard.” At times it was “offered to [him] from someone [he] or a client of [his] was interacting with.”

Applicant testified that he stopped using marijuana and cocaine on or about January 1, 2019, partly as a result of a new year’s resolution. Coincidentally, he began working in an armed security position in January 2019 that required obtaining a state private investigator license from a state licensing board to carry a firearm, and he worked armed security for several medical marijuana dispensaries as well as jewelry and trade shows. He also applied for a security clearance in August 2019. In a post-hearing submission, Applicant provided a signed notice of intent to abstain from all drug involvement and substance misuse. He also stated he has never failed an employment,

pre-screening, or random drug test, and that he has disassociated from acquaintances with whom he used drugs in the past. (AE B)

In December 2004, Applicant was arrested in another state for DUI at an impaired driving checkpoint. He was convicted in 2005, placed on probation, and required to complete alcohol-related classes. In his answer to the SOR, he stated that he was driving home from a work-related holiday party. He said he “gained valuable insight from that experience.”

In 2017, Applicant was again arrested for DUI and open container of alcohol after he drove into a tree after returning from a bachelor party at 5 a.m. He was the “designated driver” for his friends during the evening. He testified that he had a “shot or two” during the evening, but denied that alcohol contributed to the accident. Of note, in his answer to the SOR, he admitted to having “a drink a couple drinks [sic] with dinner” at a casino. When the police found an open container and a closed beer in his armrest, he stated they were placed there without his knowledge. He said he “dozed off a mile, or less, from home assumedly because [he] was in familiar surroundings and [his] body was comfortable.” He was given a field sobriety test at the scene but he refused a breathalyzer test because he “felt their demeanor and attitude switch towards [him] and [he] no longer trusted the process.” (Ans.) He was arrested for DUI and open container. The police suspected drunk driving and obtained a warrant to take blood samples, but it was hours after the accident. Applicant stated that his subsequent blood tests showed his blood alcohol level was under the legal limit. He was not ultimately charged with drunk driving, but was found guilty of failure to maintain a lane and having an open container of alcohol in his vehicle.

In 2015, Applicant was charged with trespassing. He testified that he was at a casino when he had a vocal disagreement with a card dealer and management over errors he perceived were committed by the table dealer. Of note, he did not mention his disagreement with the dealer during his PSI, rather he stated he was drinking while playing a table game “without incident” when the table game manager asked him to stop playing and leave. He believed he was being treated unfairly and disrespected, and he refused to leave the casino even though the manager and security officials told him they would call the police. He believed it was a “peaceful protest” for the way in which he was treated. Applicant was arrested, offered a deal to plead no contest, and was convicted of trespass. In his answer to the SOR, he claimed the incident was a result of racism and other factors, was asked “one last time to leave or be arrested,” and that he was “comfortable protesting and standing up for what [he] believed was right.” He noted that since then, he has “meditated and looked back on the situation and understands that there are some things that are out of [his] control and it is better to remove [himself] from those situations than to add fuel to the fire.”

Applicant married his former spouse in May 2016, but they lived together before marrying. He moved out in October 2016, and their divorce was final in December 2016. In a September 2016 police report to her local police department, Applicant’s former spouse accused him of choking her and shaking her in July 2016 while they were at his mother’s home in another state. She also accused him of pulling her hair and choking her

during an argument in September 2016, while they were again visiting his family in another state. She did not report the July incident because they were at his mother's home in another state, and that she thought he would change. She reported the September incident about four days after it occurred, apparently after returning to their state of residence. No arrest was made because the incidents occurred in another jurisdiction.

In the same police report, Applicant's former spouse also alleged an incident in August 2016, where they were drinking at a bar when he began arguing with her and made a scene. She left the bar and Applicant followed. He blocked her from entering their vehicle and continued arguing. He became angry and pulled her hair and yelled without letting it go. At some point, he drew his firearm, pointed it at himself, and yelled "what do you want me to do, blow my brains out"? She did not report the incident at the time it occurred because she thought he would change. Applicant admitted drinking that night and taking out his firearm and threatening to kill himself, but denied pulling her hair. He also denied the alleged strangling incident in September 2016, and said he never had a physical encounter with her except "face-to-face encounters."

Applicant's current wife's cousin and his supervisor testified on his behalf. They generally attested to his reliability and good character, but his wife's cousin, a military member that has known him for three years, was unaware of any issues with alcohol or drugs. Neither were aware of the SOR allegations. Applicant also submitted character letters from co-worker and a training director/apprentice coordinator. Both attest to his work ethic, positive attitude, reliability, accountability, and willingness to take on greater responsibilities and to teach new apprentices, but neither mentioned specific SOR allegations. Additionally, Applicant's current spouse wrote a strong, supportive letter on his behalf, attesting to his judgment, kindness, reliability, and compassion. Applicant also noted that after his divorce in 2016, he enrolled in personal counseling with a licensed therapist to address his emotional and mental concerns. No records of diagnosis or treatment were submitted from these counseling sessions.

## **Policies**

"[N]o 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 applicants 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 § 2.

National security eligibility 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, an administrative judge applies these guidelines 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances

that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant purchased and used marijuana between 1993 and 2019, and used cocaine between 2008 and 2019. AG ¶¶ 25(a) and (c) apply.

AG ¶ 26 provides conditions that could mitigate security concerns. I have considered all of the mitigating conditions, and find the following conditions as potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used; and
  - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant has a long history of illegal drug use. He claims to have stopped in January, 2019, coincident with his new armed security position that required obtaining a state private investigator license from a state licensing board to carry a firearm, and the same year he applied for his first security clearance. However, Applicant did not refrain

from using illegal drugs while working armed personal security details as a CFP holder. Despite his submission of a statement of intent to refrain from further drug use, and claim to have disassociated himself from drug using associates, he has not shown sufficient evidence of disassociation, a changed environment, or action to overcome his drug usage history. Of note, he continues to work executive protection contracts, which appears to be the same type of environment in which he used drugs before, and none of his witnesses were able to discuss his past drug use or changes he has made to his lifestyle.

Insufficient time has passed since he stopped using illegal drugs, and I do not find that the circumstances in which he used drugs in the past are unlikely to recur. Of further concern is Applicant's drug involvement while working in a security position and while carrying a firearm. Although the requirements in Applicant's state may be ambiguous as to the degree of illegal drug use allowed by individuals applying for a CFP, obtaining eligibility for a security clearance is not. Also, he falsely denied purchasing marijuana when interviewed by a Government investigator and falsely declared the accuracy of his PSI summary in an interrogatory response. While not alleged in the SOR, this conduct may be considered to decide whether a particular adjudicative guideline is applicable, to evaluate evidence of extenuation, mitigation, or changed circumstances, or as part of a whole-person analysis.

Applicant's history of drug use continues to cast doubt on his current reliability, trustworthiness, and good judgment. Partial mitigation credit is applied for his promise to refrain from further drug use, however, Applicant has not shown convincing evidence that his drug use is completely behind him. Perhaps with his new marriage and time away from the environments where drugs were present in the past, along with a lifestyle change, will enable him to make a convincing case in the future. The matters discussed under this Guideline show questionable judgment that has not been overcome by mitigating evidence.

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern for alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.



Applicant's has two alcohol related driving incidents, including a DUI conviction and a suspected alcohol-related accident with a conviction for having an open container in the vehicle. These meet the conditions set forth in AG ¶¶ 22(a). His involvement in an argument with his former spouse after drinking, drawing a firearm, and threatening to kill himself; a trespassing arrest after drinking; and his alleged spousal abuse are not alleged in the SOR under this guideline. However, conduct not alleged in the SOR may be considered to decide whether a particular adjudicative guideline is applicable, to evaluate evidence of extenuation, mitigation, or changed circumstances, or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's conduct where alcohol was involved to any degree, for these limited purposes.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23, including:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has two alcohol-related arrests, the last in 2017. Although significant time may have passed since these incidents, the fact that Applicant attended alcohol-related classes while on probation from his 2004 DUI, and again drove after drinking alcohol, despite being the designated driver for the evening, raises cause for concern. I am not persuaded that his alcohol consumption has changed to the extent that a recurrence of alcohol-related incidents is unlikely. There is insufficient evidence demonstrating a clear and established pattern of modified consumption; or that he has shown an interest in obtaining a medical evaluation or attending an effective alcohol treatment program given his history of alcohol-related driving and personal interactions. Despite Applicant's testimony, significant doubts remain about his judgment based on his alcohol-related driving offenses, allegations of spousal abuse, arrest for trespassing, and carrying and drawing a firearm with threats of suicide after drinking. His evidence is insufficient to mitigate the alcohol consumption security concern.

## 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. 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's admissions, testimony, and the documentary evidence in the record concerning his purchase and use of illegal drugs, driving arrests, trespassing arrest, and allegations of abusive conduct with his former spouse, are sufficient to establish the disqualifying conditions above.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following 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 not provided sufficient evidence in mitigation. Given the totality of his involvement with law enforcement over a number of years, I continue to have concerns that this pattern of misconduct may continue given the right circumstances. Despite serving probation and alcohol-related driving classes after his first DUI, Applicant had another driving incident where alcohol was involved. Although he has a favorable employment record, there has been insufficient time elapsed to show that he has left criminal activity behind, and changed his lifestyle. Given the totality of his conduct, especially with the combination of drug involvement, alcohol, and firearms, I remain

doubtful about Applicant's reliability, trustworthiness, or good judgment at this time. No mitigation fully applies.

### **Guideline E: Personal Conduct**

The concern under this guideline 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.

The relevant disqualifying conditions under AG ¶16 are:

(c) credible adverse information in several adjudicative issues 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 to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

(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;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States; and

(g) association with persons involved in criminal activity.

Applicant's misconduct as established by his admissions, testimony, and record the evidence support a finding of questionable judgment; disruptive, violent, or other inappropriate behavior; personal conduct that creates a vulnerability to exploitation, manipulation, or duress; and association with persons involved in criminal activity. AG ¶¶ 16(c), (d), (e), and (g) apply. In addition, although not specified in the SOR, Applicant falsified statements related to purchasing marijuana to a Government investigator, and certified those statements as correct in response to Government interrogatories. This may be considered for the limited purpose to decide whether a particular adjudicative guideline is applicable, to evaluate evidence of extenuation, mitigation, or changed circumstances, or as part of the whole-person analysis.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(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 caused 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

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's conduct taken as a whole, displays an attitude of superiority and being above the law; all of which is incompatible with trustworthiness, good judgment, and willingness to follow rules and regulations expected of security clearance applicants. I

found his testimony to be at times elusive, evasive, and unconvincing, especially when it involved allegations of spousal abuse, and the degree to which drug involvement and alcohol contributed to noted incidents.

Based on the totality of the SOR allegations, inconsistent testimony, and recurring inappropriate or illegal conduct, Applicant's judgment continues to be questionable. He has not submitted sufficient evidence to alleviate those concerns. The allegations are not minor, nor did they occur in unique circumstances where they are not likely to recur. He has not accepted full responsibility for his conduct, and appears to downplay the gravity of his conduct or the extent of his involvement. I am not clear why the array of incidents have occurred in Applicant's life, but alcohol, drugs, or anger management seem to be centrally implicated. He is a mature, intelligent adult who has worked and continues to work in a position of trust and reliability, especially while providing armed personal security. I continue to question his past judgment and I am not convinced it is appropriate at this time to mitigate his history of poor decision making and misconduct. I find no mitigating condition is fully applicable.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines H, G, J, and E in my whole-person analysis. I considered Applicant's divorce and remarriage, current work and personal character recommendations, his desire to cease drug use, and his changed personal circumstances. However, I am not yet convinced that Applicant is willing or able to permanently put his past misconduct aside and show good judgment in all areas of his life, especially those that are relevant to security eligibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as amended, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: Subparagraphs 1.a and 1.b:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline G: Subparagraphs 2.a and 2.b:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline J: Subparagraphs 3.a-3.c:	AGAINST APPLICANT Against Applicant
Paragraph 4, Guideline E: Subparagraph 1.a	AGAINST APPLICANT Against Applicant

## Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant Applicant's eligibility for access to classified information. Applicant's security clearance is denied.

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Gregg A. Cervi  
Administrative Judge