



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



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 19-01699
)
 Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

May 23, 2022

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns raised under the Foreign Influence, Personal Conduct, and Criminal Conduct guidelines. National security eligibility is denied.

Statement of the Case

On May 15, 2017, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a statement of reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). On November 5, 2019, Applicant answered the SOR and requested a hearing (Answer).

On April 28, 2021, Department Counsel filed an Amendment to the SOR, raising security concerns under Guideline J (Criminal Conduct). Subparagraph 3.a reads as follows:

In October 2019, after a trial by jury, you were found guilty on three felony counts of aggravated assault. In January 2020, you were sentenced to 120 days in jail and four years of supervised probation.

Applicant answered the allegations contained in Paragraph 3 of the Amended SOR and admitted their truth.

On May 19, 2021, Department Counsel was ready to proceed, and on January 5, 2022, the case was assigned to me. On January 25, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing, setting it for February 22, 2022. The hearing was held in person as scheduled.

At the commencement of the hearing, Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. GE 1, 2, 3, and 7 were admitted into evidence. The Government offered three exhibits that were Administrative Notice requests for three countries: Hashemite Kingdom of Jordan (GE 4); United Arab Emirates (GE 5); and The Russian Federation (GE 6). Applicant objected to GE 4 because he believed the documents had incomplete information. The facts detailed in GE 4 are drawn from official U.S. Government publications. The motion for administrative notice of GE 4 is granted. Based on Applicant's lack of connections to the United Arab Emirates and The Russian Federation, discussed *infra*, it was unnecessary to take administrative notice of facts relating to the United Arab Emirates and The Russian Federation. GE 5 and GE 6 are attached to the record for appellate purposes.

Applicant submitted Applicant Exhibits (AE) A through G into evidence. Department Counsel objected to AE D, which Applicant submitted in response to the GE 4 and GE 5. All of Applicant's exhibits were admitted. The record closed at the conclusion of the hearing. On March 15, 2022, I received the transcript of the hearing (Tr.).

Findings of Fact

Applicant is 50 years old. He was born in Jordan. He came to the United States on a tourist visa in 1990. He became a naturalized citizen in 2000. In 1992, he married his former wife. She is a U.S. citizen. They divorced in 2002. He has three adult children from the marriage. He has owned a home since coming to the United States. He attended colleges in the United States and earned an associate's degree. (GE 1)

Applicant was employed as a linguist for federal contractors at various times from June 2003 to May 2010. He worked in combat areas in the Middle East more than once. His last assignment ended in May 2010. After returning to the United States, he was unemployed until August 2012, when he started a business in auto sales and repairs. (Tr. 33-36, 123) He maintained that business until May 2017, when he closed it to pursue another linguist position with a federal contractor. He is currently being sponsored for national security eligibility by that contractor. (Tr. 42-42; GE 2 at 6) He worked for [Name of Government Agency redacted due to privacy reasons.] from September 2018 to January 2019. (Tr. 98)

Guideline B: Foreign Influence

In his November 18, 2020 Answer to the SOR, Applicant admitted in part and denied in part the allegations in SOR ¶ 1.a. He stated that his father was deceased, his mother is a U.S. permanent resident, and his brother is a dual citizen of Jordan and Germany, and resides in Germany. He said one of his sisters is married and lives in Qatar. In response to the allegation in SOR ¶ 1.b, he said one sister resides in the United Arab Emirates (UAE).

Applicant's father was born in Jordan. He is deceased. He was a school teacher in Jordan. His mother was born in Jordan. She is a U.S. permanent resident, but now resides in Jordan. Sometimes he communicates with her every other day and sometimes not for a couple months. He uses social media and the telephone to contact her. The last time he saw his mother was in November 2017, when he flew to Jordan for his father's funeral. He stayed there about a month. He has no plans to return. (Tr. 44-46; GE 1)

Applicant has two brothers. Both were born in Jordan. His brother R resides in the United States. He is married to a U.S. citizen. He thinks R may be a U.S. citizen now. His other brother F married a German woman and now resides in Germany. The last time he had contact with F was when they attended his father's funeral in 2017. (Tr. 47-48; GE 1)

Applicant has two sisters. Both were born in Jordan. His sister RE is a Jordanian citizen and resident. She is a hair stylist. Sometimes he speaks to RE if she is visiting his mother when he calls. He spoke to her about three weeks before his hearing. (Tr. 51-51) Applicant's sister RA is a Jordanian citizen and resident. She previously resided in the UAE, but now lives with their mother in Jordan and takes care of her. She worked in a school system in the UAE. He communicates with her by email and speaks to her when he calls his mother. She would like to obtain a visa to visit him in the United States. He stayed with her in the UAE when he visited periodically. He does not provide financial support to any family member residing in Jordan. (Tr. 49-54) He stayed at his father's house with his mother and the brother from the United States when he visited for his father's funeral. (Tr. 56) Applicant reported that between 2002 and 2017, he frequently visited his family in Jordan and his sister RA in the UAE. (Ex. 3)

I take administrative notice of the facts about Jordan that are set forth on pages 2 through 4 of GE 4, which are drawn from official U.S. Government publications. These include that Jordan is a constitutional monarchy ruled by King Abdullah II bin Hussein, who appoints members of their House of Representatives and Senate. Jordan continues to encounter terrorism due to its borders' proximity to Lebanon and Syria, where numerous groups have conducted attacks into it. Jordan's participation in the global coalition to defeat ISIS increases its potential for terrorist incidents. Certain regions in the country hold anti-Western sentiments and protest the United States' policies on Israel. Significant human rights violations are prevalent in the country, many of which are not prosecuted. In April 2021, the U.S. State Department issued travel advisories due to COVID and the presence of crime in tourist or crowded areas.

Applicant's sister RA no longer lives in the UAE; hence, SOR ¶ 1.b concerns are mitigated with respect to that country. It is unnecessary to take administrative notice of facts pertinent to the UAE.

Guideline E: Personal Conduct

Throughout this investigation, Applicant asserted that he had been unofficially working with [another U.S. government agency] through someone he came in contact with in 2015, and will be referred to as [Mr.] N. He claims he started that relationship after his brother F (who now resides in Germany), related information to him about issues in the Middle East that Applicant thought would be of interest to the [U.S. agency]. (Tr. 65, 71-72)

Applicant admits that between July 2016 and January 2017, he had a relationship with [a woman], a Russian citizen, whom he met in [redacted] while he was on vacation. They were staying at the same hotel. He was on his way to see his sister RA in the UAE, when his flight had a 24-hour layover. He stayed with RA a few times over the next several months as he traveled between Amman, Jordan, and the United States. He spent time with [the woman who is a Russian citizen] over those months. In January 2017, [the woman who is a Russian citizen] flew to the United States and stayed with him at his home. Months later she obtained a position with a U.S. university. (Tr. 58-62)

Applicant explained that [the woman who is a Russian citizen] worked for a U.S. company in Russia on a project at a Russian academy. She has advanced degrees in science. She was a "person of interest" to Applicant. (Answer) He told [Mr.] N about [the woman who is a Russian citizen] after meeting her. He said that [Mr.] N became interested in [the woman who is a Russian citizen] and the "scientists she works with in Russia." (Tr. 103; AE E) Applicant said [the woman who is a Russian citizen] bragged about her work in Russia. (Tr. 61) Applicant admitted that he had an intimate relationship with [the woman who is a Russian citizen]. However, he considered her a "subject" from whom to gather information for [Mr.] N. (Tr. 68)

Applicant's last communication with [the woman who is a Russian citizen] was in January 2017, when she visited him in the United States. (Tr. 58-62,102; GE 2 at 13) He said that while she was staying with him, he broke into her email without her authorization and forwarded some emails to [Mr.] N. He claimed he took pictures of some of her information and sent it to [Mr.] N. (Tr. 90)

In his November 18, 2020 Answer to the SOR, Applicant admitted that he had a relationship with [the woman who is a Russian citizen], as alleged in SOR ¶ 2.a. He denied that he intentionally withheld information about it to the government, as alleged in ¶ 2.b, and stated he did not report it because he did not have a "continuing" relationship with [the woman who is a Russian citizen]. (Tr. 104) He admitted that during his June 2017 interview he failed to disclose to an Office of Personnel Management (OPM) investigator that he had made lasting contacts with a non-U.S. citizen while traveling out of the country, as alleged in ¶ 2.c. He said he was precluded from disclosing it because he was working with a [redacted], who told him not to share that information.

Applicant testified that the OPM investigator became aware of Applicant's relationship with [the woman who is a Russian citizen] because a friend, with whom Applicant had worked in 2003, stole his iPad and subsequently informed the OPM of the matter. He was upset that his friend told the OPM investigator about his Russian girlfriend. (Tr. 76-80)

When asked by an OPM investigator during his second background interview in July 2017, why he did not disclose information about [the woman who is a Russian citizen] in his security forms, Applicant said he initially disclosed her name to a U.S. Embassy in the Middle East in July 2016. He said he also met with a second U.S. government agency in a large city and was told not to disclose his relationship with anyone else, including in his security clearance forms. (GE 2 at 13)

Applicant submitted exhibits of emails to and from [Mr.] N as proof of his relationship with [Mr.] N. (AE B) He did not present evidence from [Mr.] N or the second U.S. government agency with whom he allegedly he met to corroborate his claims that he was instructed not to disclose his contacts with [the woman who is a Russian citizen]. He maintained that his briefings and communications with [Mr. N] were obvious proof of the relationship. (Tr. 87-88)

Although [the woman] is a Russian citizen, I find that the specific identity and characteristics of the foreign country involved in this case are not relevant to evaluating Applicant's intentional concealment of their relationship. I find that his intense interest in working with a U.S. [redacted] agency was his motivation for deceiving the government. Hence, the information in the Administrative Notice Request for The Federation of Russia (GE 6) is not material to resolving the Guideline E security allegations.

Guideline J: Criminal Conduct

Applicant admitted the allegation in SOR ¶ 3.a, pertinent to his 2019 criminal conviction. (AE F)

In May 2014, Applicant became embroiled in a violent physical altercation with his daughter and her boyfriend at his daughter's apartment. Applicant said his ex-wife told him that the boyfriend was dangerous and was involved in drugs. During the fight, he seriously injured the boyfriend. At some point Applicant left the apartment. Subsequently, a warrant for his arrest was issued. (Answer) Applicant denied that he was the aggressor in the fight, despite multiple witnesses' statements. (Tr. 95)

Applicant said he did not know about the warrant until January 2019, when he was stopped by the police for a traffic violation. At that time, he had been working for the TSA since September 2018. He was subsequently fired by the agency. (Tr. 95-97; Answer)

On October 22, 2019, Applicant was convicted by a jury of three felony counts of aggravated assault in connection with the May 2014 incident. On January 9, 2020, he was sentenced to 120 days of incarceration and four years of supervised probation. He was ordered to complete 100 hours of community service, pay restitution, and complete

anger management counseling. He was also ordered not to have contact with his ex-wife, his daughter, or her boyfriend. (Tr. 101; GE 7) He remains on probation until 2023 or 2024, according to the court order. (GE 7) He asserted in his closing argument that he completed the anger management course and community hours. (Tr. 168)

Applicant submitted letters of recommendation, awards, and certificates of appreciation that he has received over the years. Several people with whom Applicant worked while he was a linguist in the 2000's commented on his strengths and abilities. (AE G)

Policies

This national security eligibility action was taken under Executive Order 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* (AG), which became effective within DOD on June 8, 2017.

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 AG 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

Finally, as emphasized in Section 7 of EO 10865, [a]ny determination under this order adverse to an applicant 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 B: Foreign Influence

AG ¶ 6 describes the security concerns regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying in this case. Two of them are potentially applicable:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The mere possession of close family ties with a person who is a citizen of, or has close family members residing in a foreign country, is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has normal and familial connections with his mother. She has U.S. permanent resident status, but currently resides in Jordan. He maintains contact with her; with his sister RE, who is a resident and citizen of Jordan; and with his sister RA, who is a citizen and now also a resident of Jordan. These relationships create a heightened risk of foreign pressure, coercion, and exploitation because there are multiple regions in Jordan, including near its borders, where groups hold strong anti-Western sentiments and have been involved in terrorism. Significant human rights' violations are prevalent in the country and crowded areas are subject to criminal activity.

Applicant's ongoing relationships with his mother and two sisters create a potential conflict of interest between his obligation to protect sensitive information or technology and his desire to help family members, should they be pressured, manipulated, or otherwise induced to obtain access to such information. The evidence is sufficient to raise these disqualifying conditions, shifting the burden to Applicant to prove mitigation.

Applicant's brother F no longer resides in Jordan. He now resides in Germany. Security concerns alleged about his citizenship and residency are mitigated.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant did not establish that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States, as a consequence of his mother's and sister RE's residence in Jordan, and more recently his sister RA's residence in Jordan. Those connections create continuing and a significant potential for conflict of interest and risk of coercion, exploitation, or pressure. Although Applicant established connections to the United States since arriving here in 1990, including owning a home, attending college, and working as a linguist for American troops in the early 2000's, he frequently returned to Jordan and the UAE between 2002 and 2017 for family visits, demonstrating his ongoing Jordanian attachments. He maintains frequent contact with his mother and sisters who reside in Jordan. On balance, the evidence demonstrates heightened risk of foreign coercive exploitation, and significant potential for a conflict of interest. Accordingly, Applicant failed to establish substantial mitigation with respect to those relationships under AG ¶¶ 8(a), (b), or (c).

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative 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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case. They include:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

The evidence establishes the above two disqualifying conditions. Between July 2016 and January 2017, Applicant intentionally engaged in an intimate and personal relationship with a woman whom he knew was a foreign national. He claims that he initiated that relationship because he believed she could provide him information that may be of interest to [Mr.] N., an alleged [employee] with another U.S. government agency with whom he had been interacting since 2015 due to [redacted] leads passed on by his brother. He also claims that he first met [the woman who is a Russian citizen] when he was staying in a [redacted] hotel during a 24-hour flight layover while traveling to visit his sister in the UAE.

When he completed Section 19-Foreign Contacts of his May 2017 SCA, Applicant did not disclose [the woman who is a Russian citizen], as a foreign national with whom he had recently been involved for four months. In his November 2019 Answer to the allegation in ¶ 2.b, referencing his omission, he claimed he did not reveal the relationship because he was not in a “continuing” relationship with her, which he interpreted to mean ongoing and into the present.

Applicant’s explanation is not believable, given he had been in contact with an alleged [employee (Mr. N)] since 2015, and his specific purpose in establishing a relationship with [the woman who is a Russian citizen] in March 2016 was to obtain information and pass it on to [Mr.] N. He continued seeing [the woman who is a Russian citizen] into January 2017, about four months before he submitted his SCA. He did not want to disclose the relationship, so he intentionally chose not to disclose the information.

During his June 2017 OPM interview, Applicant denied having had close or continuing contact with any non-U.S. citizen during his international travel in 2016 and 2017. During his subsequent interview in July 2017, the OPM investigator asked him if he had dated anyone from Russia. He then disclosed his relationship with [the woman who is a Russian citizen]. He told the investigator that he did not disclose the relationship because an [employee] with another U.S. government agency told him not to disclose it. He did not submit credible proof that a legitimate U.S. agency directed him to not disclose his relationship during his security clearance investigation. He intentionally failed to disclose requested information during his June 2017 OPM interview.

AG ¶ 17 provides conditions that could mitigate security concerns and include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with

professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(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.

Applicant did not voluntarily disclose his relationship with [the woman who is a Russian citizen] prior to being confronted with the information in July 2017, by an OPM investigator who had learned of it through Applicant's friend. Applicant's non-disclosure was not a minor infraction but significant and repetitive. It is aggravated by his assertion that he intentionally initiated a relationship with [the woman who is a Russian citizen] because she was a foreign national, and he believed she could have important information for his contact with another U.S. government agency. Applicant persistently stressed that he worked with two U.S. government agencies, and was directed by them not to disclose this requested information during the security clearance process. There is no substantive evidence to verify his highly unlikely assertions. The evidence does not establish mitigation under the above three mitigating conditions. The personal conduct security concerns are not mitigated.

Guideline J: Criminal Conduct

AG ¶ 30 sets out the security concern related to criminal conduct:

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

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying. They include:

(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

(c) individual is currently on parole or probation.

On October 22, 2019, Applicant was convicted of three felonies involving aggravated assault. On January 9, 2020, he was sentenced to 120 days of confinement and placed on supervised probation for four years. He remains on probation as of his hearing. The evidence establishes both of the above disqualifying conditions.

AG ¶ 32 describes two conditions that could mitigate security concerns raised under this guideline:

(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.

There is insufficient evidence to establish mitigation under either of the above two conditions. Sufficient time has not passed because Applicant remains on a four-year supervised probation until January 2024. There is minimal evidence that since January 2020, he has been in compliance with all terms of his probation, or that he has established a good employment record and/or other evidence of rehabilitation since then. The criminal conduct security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. I have incorporated my comments under Guidelines B, E, and J under this whole-person analysis. However, one further concern requires mentioning, and that is Applicant's insistence that he did not intentionally withhold information about [the woman who is a Russian citizen] when he submitted his May 2017 SCA and during his June 2017 interview. This record does not contain sufficient evidence to find that anyone from a U.S. government agency directed Applicant to deceive the DoD during the security clearance process. Without such verifiable evidence of those assertions and associations, Applicant's credibility and veracity remain a serious concern.

He failed to mitigate the security concerns raised under the guidelines for foreign influence, personal conduct, and criminal conduct.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

Shari Dam
Administrative Judge