DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 20-00964
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: Stacey Lee, Personal Representative

08/22/2022

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Decision

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HARVEY, Mark, Administrative Judge:

The criminal conduct allegations in the statement of reasons (SOR) under Guideline J (criminal conduct) and cross-alleged under Guideline E (personal conduct) are mitigated. On October 2, 2018, Applicant falsely denied that he had any arrests for alcohol-related crimes and arrests for other criminal offenses in the previous seven years on an Electronic Questionnaires for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) The allegations under Guideline E relating to the falsification of his SCA are not mitigated. Access to classified information is denied.

Statement of the Case

On October 8, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines E and J.

On November 17, 2021, Applicant responded to the SOR and requested a hearing. (HE 3) On January 6, 2022, Department Counsel was ready to proceed. On March 25, 2022, the case was assigned to me. On April 12, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 14, 2022. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits into evidence, and Applicant offered one exhibit. (Transcript (Tr.) 13-14, 19-23, 37-38; GE 1-4; Applicant Exhibit (AE) A) There were no objections and all proffered exhibits were admitted into evidence. (Tr. 20-23, 38; GE 1-GE 4; AE A) On July 13, 2022, DOHA received a transcript of the hearing. Applicant provided five post-hearing exhibits. (AE B-AE F) The record closed on July 21, 2022. (Tr. 27-28, 113; AE F)

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

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a and 1.b, 2.a through 2.f, and 2.h through 2.j. (HE 3) He denied the SOR allegations in ¶¶ 2.g and 2.k. He did not admit or deny the allegation in SOR ¶ 1.c. He provided a handwritten statement with extenuating and mitigating information. (Tr. 11, 14; HE 3) His admissions are accepted as findings of fact. (HE 3)

Applicant is a 39-year-old mail-room worker employed by a DOD contractor since 2018. (Tr. 35, 37) He has not served in the military. (GE 1 at 18) In 2003, he received a bachelor's degree in physical education, and in 2006, he received a bachelor's degree in kinesiology with a minor in psychology. (Tr. 35) He played college-level basketball. (Tr. 100) His daughter is nine years old, and he is unmarried. (Tr. 35) He frequently visits the mother of his daughter; and they live in separate apartments in the same apartment complex. (Tr. 36) Applicant is current on his child-support responsibilities. (Tr. 37) He has not received any disciplinary action from his employer. (Tr. 38) There is no evidence of abuse of illegal drugs. (GE 1)

In 2007, a truck hit Applicant. (Tr. 40) He was severely injured, and he has screws in his arms and legs. (Tr. 81, 100-101) He had a head injury too. (Tr. 93) There was a lengthy rehabilitation period. (Tr. 100) The accident may have affected his memory. (Tr. 40, 93) He is working for a company which rehabilitates and assisted disabled people, and the company provides employees for a government contractor. (Tr. 65)

Criminal Conduct

SOR ¶ 2.a alleges in about 2003, Applicant was arrested and charged with Contempt of Court for Failure to Appear or Complete Jury Service. Applicant admitted the allegation. (SOR response) His mother paid the fine. (Tr. 39)

SOR ¶ 2.b alleges in about January 2009, Applicant was found guilty of Trespassing, Disorderly Conduct, and Contempt of Court. He admitted the SOR allegation. (SOR response) At his hearing, he said he could not remember the trespassing and contempt of court charges. (Tr. 40) He was unsure about the disorderly conduct charge; however, he remembers asking an officer a question about moving his friend's car. (Tr. 40-41) He received a citation and paid a fine. (Tr. 40) He did not appear in court for the charge. (Tr. 40) The court record reflects a guilty finding and $200 fine for trespassing and a guilty finding and $200 fine for disorderly conduct. (GE 4 at 2)

SOR ¶ 2.c alleges in about March 2009, Applicant was charged with Contempt of Court, and he received a fine. The court docket indicates he was found guilty and received a $107 fine. (GE 4 at 2)

SOR ¶ 2.d alleges in about July 2009, Applicant was charged with Public Drunkenness, tried in abstentia, found guilty, and fined $50. (GE 4 at 4) He forfeited his cash bond. (GE 4 at 1, 4) He admitted the SOR allegation. (SOR response)

SOR ¶ 2.e alleges in about October 2011, Applicant was charged with Driving Under the Influence of alcohol (DUI), tried, and found guilty. Applicant admitted the SOR allegation. (SOR response) Applicant said he only had one or two drinks. (Tr. 42, 91) At a road block, a police officer told Applicant to pull over. (Tr. 43) He received a field sobriety test, and "he did the eye thing." (Tr. 91) He believed the request for a breathalyzer test was unfair because he was the only one required to do a breathalyzer test, and he refused the proffered breathalyzer test. (Tr. 43, 92) Applicant testified in court that he was not drunk; however, he was found guilty of DUI, and his driver's license was suspended until he completed an alcohol-awareness class. (Tr. 44, 92) He completed the alcohol-awareness class about two months later, and his driver's license was reinstated. (Tr. 26, 45, 82) He said he was advised that the DUI conviction would be removed from his record after five years. (Tr. 26)

SOR ¶ 2.f alleges in about August 2013, Applicant was arrested for Ran Stop Sign/Light, Seatbelt Violation, Driver License Suspended for DUI (1st), and Disorderly Conduct-Failure to Comply. Applicant said the only charge with a guilty finding was the Ran Stop Sign/Light offense. (Tr. 45-48) The court docket indicates in September 2013, he was found guilty with testimony in open court of Disorderly Conduct-Failure to Comply, and he received a $500 fine and other charges of $182. (GE 4 at 5)

SOR ¶ 2.g alleges in about September 2013, Applicant was arrested for Driver's License Suspended for Other Reasons (1st) and DUI (2nd) No Test. Applicant said his driver's license was not suspended. (Tr. 26, 45-47) He denied that he was drinking any alcohol that day. (Tr. 49-50) He refused the breathalyzer because "why should I have to

breathe every time I get pulled over because I had a DUI three, four years ago." (Tr. 50) Applicant said he "beat the case" in court. (Tr. 27, 50) Applicant said the police officer who arrested him left the police force, and the case was dismissed because the officer "quit lying about his involvement of giving [him] the DUI." (Tr. 31, 51) The police officer quit or retired from the force because "he wasn't going to participate or involve [himself] in messing with people's lives." (Tr. 51) After his hearing, Applicant provided an abstract of court record, which states his attorney "entered guilty plea 30 days to appeal or pay 5 days jail and 10 mandatory days comm service (dismissed in appeal court-see court order)." (AE E) The abstract also indicates the other two charges were dismissed. (AE E)

SOR ¶ 2.h alleges on or about October 26, 2014, Applicant was arrested for and then subsequently pleaded guilty to Driver's License Suspended for DUI (2nd) and Speeding. Applicant said he was unaware his driver's license was suspended after his second DUI arrest, and at the time of the driving with suspended license arrest the case related to the second DUI arrest in 2013 was still pending a trial. (Tr. 51-53) He pleaded guilty to the speeding offense. (Tr. 54)

SOR ¶ 2.i alleges on or about October 29, 2014, Applicant was arrested for and then subsequently pleaded guilty to Driving While License Suspended for Other Reasons. The police record indicates he pleaded guilty at trial. (GE 4 at 1) However, he said the only time his driver's license was suspended was after the first DUI until he received the certificate showing he completed the alcohol-awareness class. (Tr. 32-33)

SOR ¶ 2.j alleges in about September 2015, Applicant pleaded guilty to Disorderly Conduct-Failure to Comply. Applicant said he had an argument with the mother of his child. (Tr. 55) A police officer wanted Applicant to leave the apartment he was sharing with the mother of his child, and Applicant refused to leave. (Tr. 56) The police officer took Applicant to jail. (Tr. 57) The police record indicates he pleaded guilty at arraignment. (GE 4 at 1) The court docket indicates he was found guilty of Disorderly Conduct–Failure to Comply, and the court imposed a $500 fine and $172 in costs. (GE 4 at 6)

SOR ¶ 2.k alleges in about August 2018, Applicant was charged with Failure to Appear and Contempt, after he knowingly violated a court-issued protective order. Applicant received an order from the court directing him not to contact the mother of his child for 30 days. (Tr. 57) He was authorized to speak to her through a third party. (Tr. 59) Applicant went to a police station to obtain help getting his clothes from the mother of his child. (Tr. 29, 60) The mother of his child works at the police station. (Tr. 30) He thought the police would help him; however, he was arrested for violation of a protective order. (Tr. 29) The charge was dismissed because Applicant did not understand how he could get his clothing returned from the mother of his child. (Tr. 29-30, 84) The judge found Applicant did not understand the parameters of the protective order. (Tr. 73)

Applicant currently has a good relationship with the mother of his child, and he speaks to her about every day. (Tr. 29, 58) They have meals together, and he described his relationship with her as "wonderful." (Tr. 64)

Applicant does not consume any alcohol to a large extent. (Tr. 61-62) He drinks alcohol about once a week. (Tr. 62) He limits himself to consumption of one or two drinks. (Tr. 63) He has not received any alcohol counseling after the alcohol-awareness class he received shortly after the October 2009 DUI arrest. (Tr. 63)

Personal Conduct

SOR ¶¶ 1.a and 1.b allege Applicant failed to disclose in his October 2, 2018 SCA the criminal offenses in the criminal conduct section, *supra*. SOR ¶ 1.c cross alleged the allegations in the criminal conduct section, *supra*.

Section 22, Police Record, asks in the last seven years: (1) whether Applicant was issued a summons, citation, or ticket to appear in court in a criminal proceeding; however, fines less than $300 for offenses unrelated to alcohol or drugs are not reportable; (2) whether he had been arrested by any law enforcement official; and (3) whether he has been, charged, or convicted of any crime in any court. (SOR 1.a; GE 1 at 26-27) Section 22, Police Record, also asks whether he had "**EVER** been charged with an offense involving alcohol or drugs." (*Id*. at 27; SOR ¶ 1.b (emphasis in original)) Applicant incorrectly answered, no, to these questions. (GE 1 at 26-27)

Applicant said he received assistance completing his SCA, and he answered everything to the best of his ability. (Tr. 32, 66) He may have misunderstood the questions. (Tr. 32) He focused on the seven-year time limit in several questions. (Tr. 68) He did not disclose the 2011 DUI because of the seven-year time limit, and the second DUI charge "shouldn't be on [his] record anymore. I beat the case." (Tr. 69-70) He said he believed he did not have to disclose the second DUI arrest because it was thrown out in court. (Tr. 73) Applicant understands the difference between an arrest, a charge, and a dismissed charge. (Tr. 72-73) As to the August 2018 offense, Applicant acknowledged the police arrested him for violation of the protection order, but he did not disclose it because he believed there should not have been a record of the offense and the charge was dismissed. (Tr. 73-74)

Applicant said he did not tell the person assisting him with completion of his SCA about the DUI arrest in 2014. (Tr. 95-96) He told her about the arrest in 2018, and that the charge was dismissed, and she said "to put no and keep going." (Tr. 85) He did not ask her for a statement corroborating her advice about not disclosing the information about dismissed charges on his SCA prior to his hearing. (Tr. 93) I suggested that he ask her for a statement after his hearing. (Tr. 93-95) On July 12, 2022, the director of the entity assisting the developmentally disabled wrote "Our staff did not guide or direct his responses to the information which he provided" on his SCA. (AE B)

On April 24, 2019, an Office of Personnel Management (OPM) investigator interviewed Applicant. (Tr. 75-76) Applicant did not remember the interview. (Tr. 75-80) The summary of interview indicates Applicant disclosed the details of his August 2018 arrest for violation of the protective order to the OPM investigator. (GE 2 at 3) The OPM investigator confronted Applicant about several of his other arrests. (GE 2 at 4-5)

Applicant's sister believes Applicant made an honest good faith mistake on his SCA because he was focused on the dismissal of the charges and not on the arrests. (Tr. 86) He believed the seven years elapsed and his first DUI was outside that time limit. (Tr. 86) He was following the advice of the person who assisted him with the completion of his SCA. (Tr. 90) He did not intend or attempt to be deceptive. (Tr. 86)

Character Evidence

Applicant gets along well with his coworkers. (Tr. 34) He wants to provide financial support to his family. (Tr. 34) On March 11, 2022, the director of a company assisting the developmentally disabled said Applicant "has performed his work in our mail room very well. We have seen no personal or employment related issues and do consider him to be of good character." (AE A) On July 12, 2022, the director wrote that Applicant "has been an excellent employee" and there were no known issues of concern pertaining to his security clearance. (AE B)

Applicant's sister said he has been able to live on his own in an apartment since he was hired to work in the mail room. (Tr. 87) He has a separate apartment from the mother of his child. (Tr.88) He is trustworthy, and he does a good job in the mail room. (Tr. 86, 99) He has matured tremendously in the last several years. (Tr. 99)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance

decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Criminal Conduct

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

AG ¶ 31 lists two conditions that could raise a security concern and may be disqualifying in this case:

> (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
>
> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

AG ¶¶ 31(a) and 31(b) are established. The disqualifying conditions will be discussed in the mitigation section, *infra*.

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

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

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

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

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

From 2003 to August 2018, Applicant was charged with multiple misdemeanor-level criminal offenses, including disorderly conduct, contempt of court, and DUI. He was clearly not guilty of the August 2018 violation of the protection order because he went to the police station to seek assistance from a police officer to ask the mother of his daughter for some of his clothing. The judge dismissed this charge.

Applicant's most recent criminal offense was disorderly conduct and failure to comply in September 2015, almost seven years ago. He has been successfully employed in the mail room. He is more mature and responsible now. After careful assessment of

Applicant's case in mitigation, I am persuaded that his criminal conduct does not cast doubt on his current reliability, trustworthiness, and good judgment. Criminal conduct security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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

AG ¶ 16 lists conditions that could raise a security concern and may be disqualifying pertaining to SOR ¶¶ 1.a and 1.b including:

> (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.

Applicant's October 2, 2018 SCA asked clear and easily understood questions about Applicant's record of arrests and convictions of criminal offenses. He has two bachelor's degrees, and understood the information the government sought. He was required to disclose any alcohol-related arrests. Applicant said he thought about his answers before he provided them, and he rationalized that he did not need to disclose alcohol-related arrests unless they were after October 2, 2011, and they resulted in a conviction. Applicant intentionally failed to disclose his alcohol-related arrests on his 2018 SCA as follows: 2009 (public drunkenness); 2011 (DUI); and 2013 (DUI).

Applicant was supposed to report his arrests or citations in the previous seven years in which he received a fine over $300 and for any criminal offense. Applicant intentionally failed to disclose on his 2018 SCA the following arrests: 2013 (Disorderly Conduct-Failure to Comply fined $500); 2015 (Disorderly Conduct-Failure to Comply fined $500); and 2018, (Failure to Appear and Contempt, dismissed).

"Applicant's statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge." ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

> When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's mens rea in light of the entirety of the record

evidence. *See, e.g.*, ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id*.

I find that Applicant understood the questions on his 2018 SCA about arrests for various criminal offenses, and he intentionally failed to disclose this information with intent to deceive.

As for the criminal conduct being cross-alleged under the personal conduct guideline, AG ¶ 16 has three disqualifying conditions that are relevant in this case to assessment of SOR ¶ 2.f. AG ¶¶ 16(c), 16(d)(3), and 16(e)(1) read:

> (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected 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 person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and
>
> (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . . .

AG ¶ 16(d)(3) does not apply to the allegation in SOR ¶ 1.c. As indicated in the previous section, Guideline J is the most appropriate guideline for Applicant's criminal conduct. AG ¶¶ 16(c) and 16(e)(1) are established. The disqualifying conditions will be discussed in the mitigation section, *infra*.

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

> (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;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

Applicant's repeated instances of criminal conduct from 2003 to 2015 hurt his reputation in the community and must be considered under the totality of the circumstances. However, as indicated in the criminal conduct section, the offenses are not recent, he has matured since 2015, he is living independently, and he has a good employment record. SOR ¶ 1.c is mitigated.

None of the mitigating conditions fully apply to Applicant's failure to disclose his arrests for alcohol-related criminal offenses and other criminal offenses in the past seven years on his October 2, 2018 SCA. His denials of relevant arrests for criminal offenses on his 2018 SCA continue to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns alleged in SOR ¶¶ 1.a and 1.b 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. My comments under Guidelines J and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 39-year-old mail-room worker employed by a DOD contractor since 2018. In 2003, he received a bachelor's degree in physical education, and in 2006, he received a bachelor's degree in kinesiology with a minor in psychology. Applicant is current on his child-support responsibilities. He has not received any disciplinary action from his employer. There is no evidence of abuse of illegal drugs. He was severely injured in an accident in 2007, and the accident may have affected his memory. He is working for a company that assists in the rehabilitation of disabled people.

Applicant gets along well with his coworkers. He wants to provide financial support to his family. On March 11, 2022, the director of a company assisting the developmentally disabled said Applicant "has performed his work in our mail room very well. We have seen no personal or employment related issues and do consider him to be of good character." (AE A) On July 12, 2022, the director wrote that Applicant "has been an excellent employee" and there were no known issues of concern pertaining to his security clearance. His sister said he is trustworthy, and he does a good job in the mail room. He has matured tremendously in the last several years.

Applicant committed multiple misdemeanor-level criminal offenses from 2003 to 2015. He has not committed any criminal offenses since 2015. His criminal offenses are mitigated for the reasons described in the criminal conduct section, *supra*.

The evidence against mitigation of his false statements on his 2018 SCA is more convincing. On October 2, 2018, Applicant completed an SCA, and he failed to disclose arrests for alcohol-related criminal offenses and arrests for other criminal offenses within seven years. He rationalized that he should only have to disclose convictions not arrests and arrests with convictions within seven years. Even so, he failed to report two criminal convictions within seven years that resulted in $500 fines for each one.

I have carefully applied the law, as set forth in *Egan,* Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Criminal conduct security concerns are mitigated; however, personal conduct concerns related to the falsification of his 2018 SCA are not mitigated.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a through 2.k:	Against Applicant

Conclusion

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

_____
Mark Harvey
Administrative Judge