



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



In the matter of: )  
)  
) ISCR Case No. 20-00765  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: Tod D. Stephens, Esq.

September 29, 2022

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline E (personal conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

On January 13, 2013, Applicant completed an Electronic Questionnaires for National Security Positions (SF-86) or security clearance application (SCA). On January 26, 2013, he signed and certified that SF-86. On February 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (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.

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 Guideline E.

On March 16, 2021, Applicant provided a response to the SOR, and he requested a hearing. On July 9, 2021, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On July 12, 2021, DOHA assigned the case to me. On July 22, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 7, 2021. On August 16, 2021, Applicant's counsel entered a notice of appearance. The hearing was held as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 9. Applicant's Counsel objected to GE 4 for lack of foundation. He did not object to the other Government exhibits. After argument by both Counsel, I overruled Applicant Counsel's objection to GE 4, and admitted GE 1 through 9. (Tr. 12-14) Applicant testified and offered Applicant Exhibits (AE) A through M, which I admitted without objection. On September 15, 2021, DOHA received the hearing transcript (Tr.).

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

## **Findings of Fact**

### **Background Information**

Applicant is a 59-year-old information assurance engineer who has been employed by a defense contractor since August 2021. He seeks to retain his Top Secret clearance, which is a requirement of his continued employment. (Tr. 16-14, 28; GE 1)

Applicant graduated from high school in May 1981. (Tr. 19; GE 4) He was awarded a Bachelor of Science degree in computer information in September 2010, and a Master of Science degree in cybersecurity and information assurance in April 2013. (Tr. 20-21; GE 2)

Applicant served in the U.S. Navy from November 1984 to November 2004, and retired after 20 years of service as an operations specialist chief (pay grade E-7)/surface warfare qualified. While in the Navy, he made seven deployments. (Tr. 22, 30-32, 103) Since retiring from the Navy, he has been employed as a defense contractor. Applicant has successfully held a security clearance since 1981, initially with a Secret security clearance in the Navy that was later upgraded to a Top Secret clearance in 2014 as a defense contractor. (Tr. 17-19, 21-22, 32, 103-104, 106; GE 1)

Applicant was previously married from May 1985 to September 1995. That marriage ended by divorce. Applicant remarried in August 2002. His wife suffers from chronic fatigue and fibromyalgia, is disabled, and receives Supplemental Security Income disability payments of \$1,400 per month from the Social Security Administration. She is not employed outside the home. Applicant has no children from either marriage. (Tr. 22-24, 102-103; GE 1)

## Personal Conduct

The SOR lists five allegations under this concern. SOR ¶¶ 1.a and 1b allege that Applicant falsified his January 9, 2013 SF-86 and his January 22, 2015 SF-86, respectively; SOR ¶¶ 1.c and 1.d allege terminations from employment for unsatisfactory performance in October 2012 and January 2014, respectively; and SOR ¶ 1.e alleges a termination from employment for violating his employer's workplace and sexual harassment policy in May 2017.

These allegations are established by his January 9, 2013 SF-86; his January 26, 2015 SF-86; his Office of Personnel Management (OPM) investigation conducted from January 11, 2016 to February 18, 2016, to include his January 14, 2016 OPM Personal Subject Interview (PSI); his May 6, 2020 DOHA Response to Interrogatories; a DISS CATS Incident Report printed July 8, 2021; two former Government contractor employment records; and his March 16, 2021 SOR Answer. (GE 1-7; SOR Answer) These SOR allegations are summarized as follows:

SOR ¶ 1.a – Alleged that Applicant falsified material facts on his January 9, 2013 SF-86 when queried whether in the last seven years he had consulted with a health care professional regarding an emotional or mental health condition or was hospitalized for such a condition. The question instructed applicants to answer 'No' if the counseling was for any of the following reasons and was not court-ordered: strictly marital, family, grief not related to violence by applicant, or strictly related to adjustments from service in a military combat environment. Applicant answered 'No' and is alleged to have deliberately failed to disclose that he received mental health treatment from about 2001 to January 2013. Applicant denied this allegation. (SOR Answer; Tr. 29-30; AE K)

Applicant explained in his SOR Answer, "I did not go back to 2001, 12 years, because the question states seven (7) years and seven (7) years from 2013 is 2006. I only went back to 2006 and do not understand why my treatment prior to 2006 was introduced during this investigation, considering the question's requirement is seven (7) years. Very importantly, my counseling was for my marriage, family matters and life situations." (SOR Answer) Applicant's hearing testimony was consistent with his SOR Answer and his January 14, 2016 OPM PSI. He recounted the counseling he has had throughout the years. (Tr. 33-41, 84-86; SOR Answer)

SOR ¶ 1.b - Alleged that Applicant falsified material facts on his January 22, 2015 SF-86 when queried whether in the last seven years he had consulted with a health care professional regarding an emotional or mental health condition or was hospitalized for such a condition. The question instructed applicants to answer 'No' if the counseling was for any of the following reasons and was not court-ordered: strictly marital, family, grief not related to violence by applicant, or strictly related to adjustments from service in the military combat environment. Applicant answered 'No' and is alleged to have deliberately failed to disclose that he received mental health treatment from about 2001 to January 2013. Applicant denied this allegation. (SOR Answer; Tr. 29-30; AE L)

Applicant explained in his SOR Answer, “I did not go back to 2001, 12 years, because seven (7) years from 2015 is 2008. I only went back to 2008 and do not understand why my treatment prior to 2008 was introduced during this investigation, considering the question’s requirement is seven (7) years. Very importantly, my counseling was for my marriage, family matters and life situations. I used the January 9, 2013 Electronic Questionnaire for Investigations Processing (e-QIP) as a guide for my January 22, 2015, since there was no negative feedback from the 2013 e-QIP. I am proud of the counseling I have completed throughout the years; it has helped my marriage and life greatly knowing I am not the only person with personal issues that can be dealt with effectively with counseling.” (SOR Answer) Applicant’s hearing testimony was consistent with his SOR Answer. He recounted the counseling he has had throughout the years. (Tr. 33-41, 84-86)

Applicant’s counsel introduced a copy of the most recent version of the November 2016 SF-86 noting that the section dealing with psychological and emotional health has been rewritten and no longer asks the question that Applicant was accused of falsifying on his 2013 and 2015 SF-86s. (Tr. 41-44; AE M)

SOR ¶ 1.c – Alleged that Applicant was terminated from his defense contractor’s employment in October 2012 for unsatisfactory performance. Applicant admitted this allegation. (SOR Answer; Tr. 29-30)

Applicant explained in his SOR Answer that the Government Customer (Lead) (GCL) “micromanaged” him from the onset of his employment and complained to his supervisor about “small nonjob related issues.” He stated that the GCL would “bad mouth” Government contractors to other Government employees behind the Government contractors back. Applicant provided specific examples of how the GCL made his work environment very difficult and how Applicant felt like he was in a no-win situation. (SOR Answer) He self-reported this termination on his January 9, 2013 and January 26, 2015 SF-86s. Applicant’s hearing testimony was consistent with his SF-86s, his January 14, 2016 OPM PSI and his SOR Answer. (Tr. 44-47, 87-90; GE 1, GE 2)

SOR ¶ 1.d – Alleged that Applicant resigned in lieu of termination from his defense contractor’s employment in January 2014 for unsatisfactory performance. Applicant admitted this allegation. (SOR Answer; Tr. 29-30)

Applicant explained in his SOR Answer that he resigned in lieu of termination on the advice of one of his supervisors. The supervisor explained to Applicant that it “would look better” if he resigned instead of being terminated. Applicant noted that this Government contractor sponsored him for a Top Secret clearance and rated his performance from January 7, 2013 to September 30, 2013 “As Expected (Solid Performer)” noting in the comments section “[Applicant] is a valuable asset to the team, company and customer.” Applicant stated that he never received counseling regarding his performance nor did he receive any customer complaints. However, he did have an ongoing “personality conflict” with a female team member, who Applicant stated sexually harassed him and performed a lap dance on a male coworker in the conference room in front of a program manager. He provided examples of the sexual harassment. Applicant

also filed an online complaint with his state department of fair employment and housing against the Government contractor and the female coworker; however, the agency made a finding of “unfounded.” He opined that he was terminated due to the personality conflict he had with the female coworker, and stated that he knows his performance was “well received by co-workers, supervisors, and customers.” After he was terminated, his senior line manager wrote a “glowing” letter of recommendation for him. (AE C) (SOR Answer; Tr. 97-100)

Applicant’s hearing testimony was consistent with his January 14, 2016 OPM PSI and his SOR Answer. (SOR Answer; Tr. 90-94; GE 2) Applicant’s counsel introduced a copy of Applicant’s performance evaluation from January 2013 to September 2013, which corroborated Applicant’s SOR Answer and discussed his performance in detail, with all comments being favorable. The source document that provides the basis for this allegation is a one-page Government contractor Personnel Action Form that states as, “Termination Type: Voluntary,” and “Reason: Mutual Agreement.” Applicant testified that his termination was not by mutual agreement, but rather it was as stated in his SOR Answer. His supervisor advised him that it would be better to resign versus being terminated. (Tr. 47-55; AE B)

SOR ¶ 1.e – Alleged that Applicant was terminated from his defense contractor’s employment in May 2017 for violation of the firm’s workplace and sexual harassment policy. Applicant admitted this allegation. (SOR Answer; Tr. 29-30)

Applicant explained in his SOR Answer that this was an “over blown situation, all that occurred was a tap on a young lady’s shoulder to get her attention.” He added that he “did not linger, grab, or squeeze.” Applicant stated that he and the woman “worked well together and never had any issues in the workplace.” The sexual harassment complaint came as “a big surprise” to him, and Applicant assumed that the situation would be resolved through counseling and additional training. Applicant opined that the woman was a Government employee and his Government contractor did not want to jeopardize losing the contract. Applicant stated his performance with this Government contractor was never an issue. He noted that he received an overall rating as “Superior Contributor” on his 2015 performance evaluation and his manager gave him “all positive remarks” on 2016 performance evaluation. (AE D, AE E) (SOR Answer)

Applicant’s hearing testimony was consistent with his SOR Answer and his January 14, 2016 OPM PSI. (SOR Answer; Tr. 94-97, 104-105; GE 2) The source documents that provide the basis for this allegation is a four-page Government contractor document and a May 8, 2017 letter that states, “This termination is due to violation of the firm’s Workplace and Sexual Harassment Policy;” and a three-page DISS CATS Incident Report printed on July 8, 2021. The documents do not elaborate on the underlying facts that led to Applicant’s terminations. The Incident Report also states that Applicant received a “Favorable” Top Secret Eligibility Level determination on June 21, 2017 and same document reported that the Government contractor terminated him 40 days prior on May 8, 2017. Applicant acknowledged that the woman in question interpreted his tapping her on the shoulder as a “harassing gesture” and he accepts responsibility for that. (Tr. 55-64; GE 5, GE 6)

Applicant submitted two performance evaluations from this employer, covering the period January 1, 2015 to December 31, 2015, and January 1, 2016 to December 31, 2016. Both evaluations are very favorable. Applicant has learned from this incident that, "Anybody can perceive anything the way they feel and the way that want to perceive it and the way they want to interpret it. So I ensure that I do not do anything that could be interpreted as hostile or harassing. I maintain a very businesslike demeanor while I'm at work talking to coworkers, whether they're male or female." (Tr. 64-67; AE D, AE E)

Government Exhibit 8 is a July 16, 2019 six-page DOD CAF-initiated evaluation conducted by a clinical psychologist to "determine whether [Applicant's] reliability or judgment present a threat to him handling classified information based upon the belief that he may have a condition or diagnosis which if left untreated, may disqualify him from being eligible to hold a clearance." Attached to the evaluation is the clinical psychologist's four-page resume. The evaluation recounts that every attempt by the psychologist to contact any of the individuals who made complaints about the Applicant or individuals involved with his terminations was unsuccessful. (Tr. 67-69; GE 8, GE 9)

The evaluation was comprehensive to include history and methodology; however, only pertinent portions follow. The Diagnosis Impression states in part, "Clinical interview and the results of psychological testing indicates that the [Applicant] is not currently experiencing any significant psychological symptoms which would disqualify him from being able to hold a security clearance. Additionally, the Prognosis section states in part, "It is the opinion of the undersigned provider that the [Applicant] does not possess an underlying psychological defect which would inherently impair his judgment, reliability, or trustworthiness." Lastly, referring to Applicant's personality responses, the psychologist stated, "While these behaviors should be carefully considered, they do not constitute a psychological defect or condition which impairs the [Applicant's] judgment, reliability, or trustworthiness to safeguard or handle sensitive information." (Tr. 69-72; GE 8, GE 9)

Applicant has sought counseling following his May 2017 termination for violating his firm's workplace and sexual harassment policy. The counseling was to address, in part, the impact that termination and violation of company policy had on himself and his marriage. Among the lessons Applicant said he learned from that counseling was that he may not have thought his conduct was "anything bad," but the offended party "can interpret it and think that way and that's their right." Applicant learned not to touch or compliment and maintain professionalism within the workplace. Applicant's wife is aware of the details surrounding his recent termination and is supportive, adding that she is of the opinion that the complaining woman "went overboard." (Tr. 72-74)

Applicant continues to participate in counseling for mild depression, as well as for marriage enrichment, and to assist him to maintain a professional attitude in the work place. He mentors new employees on how to avoid the mistakes he made in the past. (Tr. 75, 83, 101-102, 107-108)

## Character Evidence

Applicant's DD-214 documents his 20-year Navy career to include training, qualifications, and numerous awards and decorations. His personal awards include the Navy and Marine Corps Commendation Medal and two Navy and Marine Corps Achievement Medals. (AE A) Applicant submitted two photographs, the first is of him at a Labrador and dog rescue organization raffle. He volunteers in support of various aspects of that organization. The second is of him playing Santa Claus at a German Shepherd rescue organization picnic. He also volunteers in various aspects of that organization and adopted two dogs from them. (Tr. 75-77; AE F) Several performance evaluations have already been discussed, *supra*. Applicant's evaluations from his Government contractor employers from 2017 to 2020 were favorable. (Tr. 77, 80; AE H – J) Applicant described his current performance since starting with his current Government contractor in August 2021 as "Great. No Problem." (Tr. 77)

Applicant submitted one reference letter dated January 13, 2014 from his former senior line manager from the Government contractor that terminated him in January 2014 for unsatisfactory performance. In short, his former senior line manager wrote a very favorable assessment of Applicant and his work performance. He concluded by saying, "[Applicant] has my personal recommendation for employment. My team's loss will be your company's gain." (AE C)

When asked if there was anything he would like to say in closing, Applicant stated, "I feel that I am trustworthy. I should be able to continue to work with classified information. Had a couple of bumps on the road on the way through, but I've had a clearance for 37 years. And I just feel that I deserve to keep my clearance. I'm a hard worker. I respect people. I respect my bosses. I respect people I work with. I think that I should maintain my clearance. That's all I can really say." (Tr. 78) Applicant committed to answering SF-86s truthfully, maintaining professionalism in the workplace, and to bring any challenging work-related interpersonal issues to the human resources department. (Tr. 79)

## Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

## **Analysis**

### **Personal Conduct**

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 describes conditions that could raise security concerns and may be disqualifying in this case:



(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

(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:

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

The record evidence establishes AG ¶¶ 16(a) and 16(d), as potentially disqualifying conditions. This evidence shifts the burden to Appellant to establish mitigation. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

AG ¶ 17 includes conditions that could mitigate the security concerns arising from Applicant's personal conduct:

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

With regard to the two falsification allegations, I carefully listened to Applicant's testimony and observed his demeanor, and found him to be credible. His explanation for answering the questions as he did is reasonable. I found him to be precise in the way he answered questions in general and the way he responded to the questions regarding consulting with a health care professional regarding an emotional or mental health conclusion on his 2013 and 2015 SF-86s to be no different.

When queried about his past emotional or mental health counseling during his OPM PSI, in his DOHA Interrogatories, and during his hearing, he was forthright and consistent in his responses. He answered the mental health questions to the best of his ability and I find there was no deliberate attempt on his part to deceive or mislead. There was no Government evidence that rebutted Applicant's version regarding his completion of the mental health questions on his SF-86s. He also provided other adverse information on his SF-86s such as being terminated from employment. I note that the mental health question Applicant answered in 2013 and 2015 was completely rewritten in 2016. In light of the foregoing, I find that Applicant did not deliberately falsify his SF-86s and find for him with regard to SOR ¶¶ 1.a and 1.b.

Problematic, when viewed in light of the totality of circumstances, are Applicant's three terminations that occurred within a five-year period: (1) unsatisfactory performance in October 2012; (2) resigned in lieu of being terminated in January 2014; and (3) terminated for violating firm's workplace and sexual harassment policy in May 2017. These terminations might suggest a greater problem. Applicant provided explanations for each of these terminations and his explanations remained consistent throughout this process. No documentary evidence was presented to rebut or substantially challenge Applicant's explanations. The most recent and most serious termination is Applicant's third termination for violating the firm's workplace and sexual harassment policy. Applicant acknowledged that tapping a female coworker on the shoulder was perceived by her as sexual harassment. The Government's psychologist considered Applicant's workplace behavior and concluded his mental health did not have a bearing on his reliability, trustworthiness, or ability to protect classified information. Applicant continues to receive counseling for mild depression as well as for marriage enrichment and to maintain a professional attitude in the workplace.

As of the hearing date, I note that the first termination is nine years old, the second termination is seven years old, and the third termination is four years old. Sufficient time has elapsed since these incidents and there have been no documented recurrences. The Government's psychologist found, "Clinical interview and the results of psychological testing indicates that the [Applicant] is not currently experiencing any significant psychological symptoms which would disqualify him from being able to hold a security

clearance.” In addition, and perhaps most importantly, Applicant testified credibly to a better understanding of how his conduct might be perceived by others. He has also undergone appropriate counseling, in part to assist him in maintaining a professional attitude in the work place.

In light of the foregoing, Applicant produced sufficient evidence to warrant application of AG ¶¶ 17(c), 17(d), and 17(e). I find for Applicant with regard to SOR ¶¶ 1.b through 1.e.

### **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 Guideline 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 59-year-old information assurance engineer who has been employed by a defense contractor since August 2021. He seeks to retain his Top Secret clearance, which is a requirement of his continued employment. He honorably served in the U.S. Navy and retired as a chief petty officer after serving 20 years. During those 20 years, he made seven deployments and received various awards and decorations. After retiring from the Navy, he has been continuously employed as a defense contractor. In total, Applicant has successfully held a security clearance for 37 years.

Since retiring from the Navy, Applicant has earned a Bachelor of Science degree and a Master’s degree. He is the sole support for his disabled wife. He is also heavily involved in his local community with two dog rescue organizations. Applicant continues to participate in counseling to become a better spouse and employee and avoid the mistakes that may have haunted him in the past.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the

context of the whole person. Applicant mitigated personal conduct security concerns; however, he failed to mitigate financial considerations security concerns.

### **Formal Findings**

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

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| Paragraph 1, Guideline E: | FOR APPLICANT |
|---------------------------|---------------|

|                          |               |
|--------------------------|---------------|
| Subparagraphs 1.a - 1.e: | For Applicant |
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### **Conclusion**

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

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ROBERT TUIDER  
Administrative Judge