DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-00045
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: Donna Price, Esq.

10/25/2023

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Decision

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On July 20, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines J and E. The CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on August 5, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 30, 2022, and the case was assigned to me on August 8, 2023. On August 15, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled

to be conducted on September 12, 2023. Department Counsel amended the SOR on September 5, 2023, adding an additional allegation (SOR ¶ 2.b) under Guideline E. The additional allegation was mislabeled as SOR ¶ 2.a. On a date not reflected in the record, the additional allegation in SOR ¶ 2.b was amended. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 13 were admitted in evidence without objection. Applicant testified, presented the testimony of five witnesses, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. AX A consists of two documents, AX B consists of 22 documents, AX C consists of 80 documents, AX D consists of 10 documents, and AX E consists of 8 documents. DOHA received the transcript (Tr.) on September 22, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, and 1.i. He denied the allegations in SOR ¶ 1.c, 1.g, and 1.h. He did not admit or deny the allegations in SOR ¶¶ 1.e, 2,a, and 2.b as amended. His admissions are incorporated in my findings of fact.

Applicant is a 59-year-old employee of a defense contractor. He married in February 1988, separated in January 2017, divorced in August 2017, and remarried in August 2020. (GX 12 at 4; Tr. 87) He has two adult children. He received a bachelor's degree in mechanical engineering in August 1994 and a master's degree in engineering management in May 2002. He has worked for defense contractors since April 2009.

Applicant enlisted in the Navy in November 1987, was an honor graduate of his initial training classes, received outstanding performance evaluations and numerous commendations, and was selected for the enlisted commissioning program. He completed the Navy Reserve Officer Training Corps and was commissioned as an ensign. His fitness reports through October 2006 were uniformly outstanding and included recommendations for promotion to commander and assignment as an executive officer afloat. (AX C(1) through AX C(80)). He received the Navy and Marine Corps Achievement Medal three times, the Navy and Marine Corps Commendation Medal three times, and the Meritorious Service Medal upon retirement as a lieutenant commander in December 2007.

At the hearing, Applicant admitted on cross-examination that in 2005, he was accused of fraternization, making a false official statement, and adultery, and that he accepted a captain's mast for those offenses. He admitted that he was found guilty and received a letter of reprimand and forfeiture of pay, and he was removed from the ship. (Tr. 205-06) The record contains no documentary evidence of this action, his fitness reports for that period do not mention it, and it was not alleged in the SOR. I have considered it for the limited purpose of rebutting Applicant's evidence of a stellar Navy career.

Shortly after Applicant and first his wife separated, he began dating ML, who also was separated from her spouse. Applicant and his wife had been friends of ML and her

husband for several years, and the two couples had shared many common interests (Tr. 178-79) According to Applicant, he and ML stopped dating because ML was concerned about her three daughters. (Tr. 180)

Before Applicant and ML started dating, he had loaned her a laptop, he had loaned her husband a pressure washer, and he had left a set of weights in their garage. Applicant admitted that, after asking for the return of his property several times, he sent some "pretty pointed" emails to ML and her husband, saying that he wanted his property returned. ML's husband interpreted his emails as threats, and he obtained a protective order against Applicant in April 2018. (Tr. 180-81) The protective order is alleged in SOR ¶ 1.f, but the basis for the order is not alleged in the SOR.

Applicant met TR through an online dating service, and they began dating in May 2017. Their relationship ended in March 2018. After they broke up, two laptops were stolen from TR's home, and Applicant was accused of stealing them. In April 2017, he was arrested and charged with grand larceny, burglary, vandalism, and violating a protective order. (GX 7) In April 2019, he was convicted of breaking and entering, a felony, and petit larceny, a misdemeanor. A sentencing hearing was conducted in August 2019. In September 2019, he was sentenced to four years in jail for the breaking and entering and 12 months for the petit larceny offense, suspended for five years on the conditions of good behavior and no contact with TR. (GX 6) He is still on probation. His arrest, conviction, and sentence are alleged in SOR ¶ 1.g.

On October 25, 2020, Applicant was charged with sending threatening text messages to TR. (GX 2) On October 28, 2020, he was charged with stalking TR, and he was served with an emergency protective order. (GX 3) The record does not reflect the disposition of the charges of sending threatening text messages and stalking. The stalking charge and the protective order are alleged in SOR ¶ 1.a.

In September 2017, Applicant was issued a summons for larceny from a military exchange store. He was accused of taking a small box of cologne, removing the cologne from the box, and placing it in the pocket of the athletic shorts that he was wearing. (GX 9) His trial was delayed several times because the security officer from the exchange did not appear. (Tr. 175-76) In June 2018, he pleaded no contest, was convicted of petit larceny, and was sentenced to 10 days in jail, suspended, and one year of unsupervised probation. (GX 11 at 7; GX 12 at 7) In his answer to the SOR, he admitted the allegation but asserted that his conduct was unintentional and the result of inattention and distraction. At the hearing, he testified that he was carrying bottles of wine while in the store, when his cellphone rang. He placed the wine on the checkout counter and put the cologne in his pocket. He paid for the wine but forgot to pay for the cologne. He was leaving the store when he was confronted by a store security officer. The security officer refused to allow him to pay for the cologne and called the police. (Tr. 171-75) The arrest, conviction, and sentence are alleged in SOR ¶ 1.i.

In October 2017, ML reported to the police that Applicant had posted partially nude photos of her in front of a local business. (GX 8) The charge was based on ML's

speculation that Applicant was the only person who had the photos. When Applicant was interviewed by a security investigator in September 2021, he told the investigator that he believed his ex-wife posted the photos. (GX 11 at 9) At the hearing, he submitted a statement from a friend who believed that Applicant's ex-wife and some friends posted the photos, because he had observed them posting the same photos on the portable toilets at a wine festival. (AX D(7)) Applicant was charged with obscenity by disseminating photos to harass. (GX 8) In his answer to the SOR, he denied being convicted. The arrest, charge, and conviction are alleged in SOR ¶ 1.h, but there is no evidence of a conviction.

In April 2018, the Federal Bureau of Investigation received a report that Applicant had impersonated a federal agent. (GX 10) The record contains no evidence of the source of the complaint or its disposition. Applicant testified that he had no knowledge of such an incident. (Tr. 176-77) The complaint is alleged in SOR ¶ 1.e.

In about March or April 2018, Applicant began dating AK, an acquaintance of TR. AK lost a diamond earring in Applicant's home, and he found it after their relationship ended. He offered to return the earning to AK if she would reimburse him for lodging expenses that he incurred for her son while participating in an athletic tournament. Even though AK ignored the request for reimbursement, he returned the earring. Several weeks later, someone slashed the tires in AK's vehicle, and she told police that she suspected that her tires were slashed by Applicant. She admitted that she did not see who slashed her tires, but she believed, "based upon their history," he was involved either directly or by hiring someone. In August 2019, Applicant was charged with vandalism. There is no evidence that he was convicted. The police records reflect the disposition as "exceptional clearance adult." (GX 5) The vandalism charge is alleged in SOR ¶ 1.c.

The SOR ¶ 1.d alleges that In July 2018, a two-year protective order was issued against Applicant. There is no documentary evidence in the record reflecting this protective order.

In October 2020, TR reported to the police that Applicant had been sending her threatening text messages and stalking her, and an emergency protective order was issued against Applicant. (GX 2; GX 3) The threatening messages, a stalking charge, and the protective order are alleged in SOR ¶ 1.a.

An attorney who represented Applicant in several matters alleged in the SOR testified that in his jurisdiction, a protective order is granted in an *ex parte* proceeding in which the respondent does not have a right to be present. He also testified that the judges in the jurisdiction where Applicant then resided routinely granted requests for protective orders on scant evidence, on the theory that they do not harm the respondent and they "would rather be safe than sorry." (AX A(1); Tr. 119-22)

Applicant's employment record from February 2010 to March 2023, was replete with commendations, pay raises, and accolades. (AX B(1) through B(22) Nevertheless, he was laid off without prior notice on March 1, 2023, when his company was acquired

by a private equity firm and the merger of the two organizations resulted in eliminating his job. (AX E) He was hired by another defense contractor on the following day. (AX E(8))

According to an incident report submitted by Applicant's employer's security officer, dated March 13, 2023, Applicant subsequently called a business partner of the company and threatened the senior executives and the company. This incident was alleged in SOR ¶ 2.a, but it was later amended to allege that he called a business partner of the company, using profanity and derogatory language, and said he intended to create problems for the senior executives and the company. (GX 13)

Applicant testified that he called a former colleague and asked about his abrupt termination. The former colleague was the recipient of the phone call alleged in SOR ¶ 2.a. He knew that Applicant was upset and told him to calm down and think about how to move forward. (Tr. 168) His former colleague testified that he talked to Applicant as both a friend and a colleague. He explained to Applicant that the company had been acquired by private equity firm and the merger of the two organizations resulted in eliminating Applicant's job. He was aware that Applicant received no advance notice that he would be terminated. He described Applicant as flabbergasted and obviously angry. He testified, "There was no threat, it was just an upset person, as anyone would be upset in that situation." He is confident that Applicant was laid off to trim management levels and not because of the conduct alleged in the SOR. (Tr. 68)

The former colleague who received the phone call testified that he has held a security clearance for more than 25 years. Applicant was still on active duty, in 2008 or 2009, when they met. Their relationship started out as purely professional but then grew into a social relationship. In his opinion, Applicant is very talented and well respected in the entire maritime community.

The former colleague testified that he was familiar with the allegations in the SOR and still believes that Applicant should hold a security clearance. (Tr. 44-54) He admitted that he was surprised at some of the conduct alleged in the SOR. He testified that, if he saw similar conduct while doing a background check, he would have to take a second look and exercise due diligence. (Tr. 62) The former colleague submitted a written statement encapsulating the views he expressed at the hearing. (AX D(2))

Applicant also telephoned his program manager and asked him if he thought the termination was handled properly. He testified that the program manager agreed that it was not handled properly. (Tr. 169)

Another friend and former co-worker of Applicant, who holds a top secret clearance and is a senior executive of a defense contractor, submitted a statement and testified at the hearing. She has known Applicant for about four years as a friend and a business colleague. She described Applicant as an honest, thoughtful, easy-going person, and candid, but respectful and considerate of others. (AX D(4)) She was unaware that the SOR alleged that Applicant had threatened any of the executives of his former employer. Prior to reading the SOR, she was unaware of any of the conduct alleged in it. She

testified that the allegations gave her pause, but she believes that she knows Applicant well enough to believe that there are two sides to a story. Aside from her personal opinions about Applicant, she believes that he enjoys a reputation for trustworthiness, as evidenced by the fact that he was offered another job shortly after he was terminated. (Tr. 25-34) She admitted that she would have to "think hard" about hiring someone who was convicted of a felony. (Tr. 39)

Another friend and professional colleague, who has known Applicant for ten years and who has considerable experience in evaluating applicants for security clearances, considers Applicant to be trustworthy, reliable, and responsible. He reviewed the SOR and opined that Applicant's security clearance should be continued. (AX D(1))

Another friend of Applicant who has known him since they were five years old testified on his behalf and submitted a written statement supporting Applicant. This friend is an Army veteran, a former foreign service officer, a former defense contractor, and now owns his own business. He reviewed the SOR and believes that the alleged shoplifting was the product of the inattention and distraction. He would not hire someone with a record like the SOR without asking questions. He was hesitant to comment on the conduct alleged in the SOR without knowing more facts, but he unequivocally stated that he believes Applicant is a trustworthy and reliable person. (Tr. 79-83; AX D(6))

Another friend, who has known Applicant for 20 years, is a licensed realtor and executive director of a non-profit organization, states that Applicant is one of the most trustworthy and loyal people he knows. (AX D(7)

Another friend who worked with Applicant until 2019 regarded him as a talented, resourceful, hardworking, and responsible engineer. The friend is now retired from federal service and is a senior vice-president and program manager for a defense contractor. He tried to recruit Applicant to work for his company but was unable because of the ongoing issues with his security clearance. (AX D(8))

Applicant's son is employed by a defense contractor and holds a top-secret clearance. He admires Applicant for his diligent and efficient work ethic. He regards him as a selfless and generous person. Applicant taught him to be respectful, kind, and patient, and to "take a step back and reflect on situations instead of reacting irrationally to difficult circumstances. (AX D(9))

Applicant met his current spouse in July 2019, and they married in August 2020. His spouse has never held a security clearance. She testified that she was familiar with all the conduct alleged in the SOR, and that Applicant was very open about what had happened during his various relationships. She testified that she knew Applicant was not guilty of slashing AK's tires and sending threatening text messages to TR because they were together when those incidents allegedly occurred. (Tr. 93-94) She believes that Applicant is a loyal, hardworking, intelligent, generous, trustworthy person. (AX D(5))

Applicant and his current spouse were residing in a motorcoach resort that was recently struck by a hurricane. The officers of the motorcoach resort association and 61 residents signed a letter commending Applicant for his extraordinary participation in the recovery and clean-up operation. (AE D(10))

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

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, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

Applicant's admissions and the evidence submitted at the hearing are sufficient to establish the allegations in SOR ¶¶ 1.a, 1.g, and 1.i. The protective orders alleged in SOR ¶¶ 1.b, 1.d, and 1.f and as part of SOR ¶ 1.a are procedures to protect the health and safety of a petitioner. While violations of protective orders are criminal conduct, the protective orders are not criminal offenses. They are civil actions intended to prevent criminal offenses. *See e.g.* [State] Code, § 19.2-152.10; *see also* Black's Law Dictionary, 2.d Ed., https://thelawdictionary.org/protective-order. Thus, I conclude that the allegations in SOR ¶¶ 1.b, 1.d, and 1.f are not established, because they do not allege criminal conduct. Furthermore, because SOR 1¶¶ 1.b, 1.d, and 1.f do not allege the basis for the protective orders, they fall short of the specificity required by the Directive ¶ E.3.1.3.

The conduct that was the basis the protective order was alleged in SOR ¶ 1.a, but it was not alleged in SOR ¶¶ 1.b, 1.d, and 1.f. Unalleged conduct may not be an independent basis for revoking a security clearance.

Applicant denied the allegation in SOR ¶ 1.c (vandalism). The charge was based on the speculation of AK that he was the perpetrator. It is not established.

Applicant denied the allegation in SOR ¶ 1.e (impersonating a federal agent). The record contains no evidence of the basis for this allegation or its disposition. It is not established.

Applicant admitted being charged with the conduct alleged in SOR ¶ 1.h (harassment), but denied being convicted. The charge was based on weak speculative evidence from ML and refuted by the statement of Applicant's friend (the realtor). It is not established.

Applicant admitted that he was convicted of the criminal conduct in alleged in SOR ¶ 1.a, 1.c, and 1.g, but he denied that he was guilty of the offenses. The doctrine of collateral estoppel generally applies in DOHA hearings and precludes applicants from contending that they did not engage in criminal acts for which they were convicted. ISCR Case No. 95-0817 at 2-3 (App. Bd. Feb. 21, 1997). There are exceptions to this general rule, especially with respect to misdemeanor convictions based on guilty pleas. Relying on federal case law, the Appeal Board has adopted a three-part test to determine the appropriateness of applying collateral estoppel to misdemeanor convictions. First, the applicant must have been afforded a full and fair opportunity to litigate the issue in the criminal trial. Second, the issues presented for collateral estoppel must be the same as those resolved against the applicant in the criminal trial. Third, the application of collateral estoppel must not result in "unfairness," such as where the circumstances indicate lack of incentive to litigate the issues in the original trial. Federal courts recognize that an individual may not have an incentive to fully litigate a misdemeanor offense because there is less at stake or because a plea bargain creates a disincentive to litigate the issues. ISCR Case No. 04-05712, (App. Bd. Oct. 31, 2006).

I conclude that collateral estoppel applies to Applicant's conviction of breaking and entering and petit larceny, alleged in SOR ¶ 1.g. It does not apply to Applicant's plea of no contest to the larceny alleged in SOR ¶ 1.i. The offense alleged in SOR ¶ 1.i was a misdemeanor, and Applicant did not think there was much at stake. I found his explanation for leaving the exchange without paying for the cologne plausible and reasonable. I conclude that he has refuted the allegation in SOR ¶ 1.i.

The criminal conduct alleged in SOR ¶¶ 1.a and 1.g is sufficient to establish the following disqualifying conditions under this guideline:

> AG ¶ 31(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
>
> AG ¶ 31(c): individual is currently on parole or probation.

The following mitigating conditions are potentially applicable:

> AG ¶ 32(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;
>
> AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and
>
> AG ¶ 32(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.

AG ¶ 32(a) is not established. Applicant's most recent criminal conduct was three years ago, but he is still under the pressure of complying with the terms of his probation. His criminal conduct did not occur under such unusual circumstances that it is unlikely to recur.

AG ¶ 32(c) is established for the allegations in SOR ¶¶ 1.d, 1.e, and 1.h. There was no reliable evidence to support these allegations.

AG ¶ 32(d) is not established. Applicant's felony conviction, alleged in SOR ¶ 1.g, occurred more than four years ago. His community service after a hurricane was commendable. However, he submitted no evidence of his performance in his current job. He will be on probation until September 2024, and I am not confident that he will not revert to his track record of irresponsible conduct after his probation ends.

Guideline E, Personal Conduct

The SOR ¶ 2.a cross-alleges the Guideline J conduct under this guideline. SOR ¶ 2.b alleges that Applicant called a business partner of his former employer, using profanity and other derogatory language, and said that he intended to create problems for the senior executives and the company. The security concern is set out in AG ¶ 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . ."

SOR ¶ 2.a is established for the cross-allegation of SOR ¶¶ 1.a and 1.g. SOR ¶ 2.b is not established. The executive who received the alleged threatening telephone call from Applicant described their conversation and established that the threats alleged in the SOR did not occur.

The relevant disqualifying condition is AG ¶ 16(e): "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing." This disqualifying condition is established by Applicant's involvement with ML, the married spouse of a close friend, and a felony conviction.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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;

> AG ¶ 17(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;
>
> AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
>
> AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(c) is not established. Applicant was convicted of a felony and is still on probation. His misconduct was not infrequent and did not happen under unique circumstances making recurrence unlikely.

AG ¶ 17(d) is not established. Applicant has acknowledged some of his behavior, but he submitted no evidence of counseling. Based on his track record of inappropriate and dysfunctional relationships, I am not satisfied that his inappropriate behavior is unlikely to recur.

AG ¶ 17(f) is established for the allegation that Applicant impersonated a federal agent. It is not established for the other conduct cross-alleged under Guideline J.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guidelines J and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's military service, and the accolades from former business colleagues. After weighing the

disqualifying and mitigating conditions under Guidelines J and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegations in SOR ¶¶ 1.e, 1.i, and 2.b, but he has not mitigated the security concerns raised by his criminal conduct and personal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge