DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-02215
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

01/05/2024

_____

Decision

_____

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

This adjudication was prompted by Applicant's 2018 arrest for which he submitted an Electronic Questionnaire for Investigations Processing on December 5, 2018 (2018 EQIP). His submitted his first EQIP on May 7, 2013 (2013 EQIP), to adjudicate his initial eligibility for a security clearance. On November 18, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J and E. The CAS acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on November 30, 2022 (Answer) and requested a hearing before an administrative judge. On February 2, 2023, he requested a decision based on the written record in lieu of a hearing. On February 21, 2023, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 11. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on March 22, 2023, and timely responded by submitting four evidentiary documents. The case was assigned to me on June 1, 2023.

Evidentiary Matters

Applicant appended to his Answer two evidentiary documents, which are admitted into evidence as Applicant Exhibit (AE) A and B without objection. The four evidentiary documents comprising Applicant's response to the FORM are admitted into evidence collectively as AE C without objection. Items 1 through 3 contain the pleadings in the case. Items 4 through 11 are admitted into evidence without objection. Although Item 5 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a prominent notice advising him of his right to object to the admissibility of Item 5 on the ground that it was not authenticated. He was also notified that if he did not raise an objection to Item 5 in his response to the FORM, he could be considered to have waived any such objection, and that Item 5 could be considered as evidence in his case.

Findings of Fact

Applicant, age 56, is married with two daughters, ages 30 and 23. He earned his high school diploma in 1985. He honorably served the U.S. Navy on active duty from 1986 through 2006. Since his military retirement, he has been employed by two different defense contractors as an aviation mechanic. He has worked for his current sponsor since 2011. He was granted a DOD security clearance in 2014, following the favorable adjudication of his 2013 EQIP. (Items 4, 6; Item 9 at 32)

Applicant was charged with violent criminal offenses three times, in 1989, April 2010, and 2018; and with alcohol-related criminal offenses twice, in 2002 and November 2010. He reported information about the November 2010 incident on his 2013 EQIP, and the 2018 incident on his 2018 EQIP. The SOR allegations raised both criminal and personal conduct concerns under Guidelines J (SOR ¶ 1.a through 1.e) and E (SOR ¶ 2.a) with respect to the five incidents, but not regarding his omission of relevant derogatory information from his 2013 and 2018 EQIPs. In his Answer, he admitted all five Guideline J allegations but did not respond to or otherwise address the Guideline E allegation. Although the allegation incorporated the same facts to which he admitted under Guideline J, I find that he denied SOR ¶ 2.a because it raised a separate security concern. (Items 1, 3, 4, 9)

SOR ¶ 1.a (1989 incident)

In 1989, Applicant was accused of raping and sodomizing a woman for which he was arrested and charged with kidnaping, false imprisonment, rape by force, and oral sex by force. All charges were dismissed on a date not specified in the record. He has consistently denied that he committed any crime against the woman. He has inconsistently both denied and admitted that he was charged with the alleged criminal offenses. The record did not include an arrest report or other official record detailing the specific factual allegations underlying the charges or the reason for the dismissal of charges besides the information that Applicant self-reported during his 2013 and 2020 background investigation interviews. (Items 3; Item 5 at 3-4; Item 7; Item 10 at 23-24; Item 11)

During his 2013 interview, after being confronted, Applicant explained that he did not report information about the incident on his 2013 EQIP because he was not criminally charged. Then, he proffered the following information about the incident: (1) at a fellow sailor's (Sailor A) request, he agreed to give Sailor A and another fellow sailor (Sailor B) a ride to pick up a woman known to Sailor B; (2) he drove Sailors A and B to pick up the woman; (3) he dropped off Sailor B and the woman at a hotel, at which time he told Sailor B that he and Sailor A were going to a concert and would return to pick up Sailor B after the concert; (4) after the concert ended, he returned to the hotel to pick up Sailor B, at which time he observed in the hotel parking lot multiple law enforcement agencies, and the woman and Sailor A in police custody; (5) as he attempted to drive away from the hotel, he was stopped by local police officers who told him that he and his two fellow sailors were being arrested because the woman accused them of raping and sodomizing her; (7) he and his two fellow sailors were initially transported to the hospital for collection of their biological evidence (which Applicant referred to as a rape kit), and then to jail; (8) once in jail, he was booked and remained in custody for three days; (9) upon his release from jail on his own recognizance, he received paperwork stating that all charges against him and Sailor A were dropped due to the negative results of the rape kit; and (10) all charges against Sailor B were dropped after an investigation concluded that he and the woman had consensual intercourse. (Item 10 at 23-24)

During his 2020 interview, Applicant volunteered the following information about the incident: (1) he was arrested for allegations of sexual assault made by an unknown woman against him and Sailor A; (2) he was questioned, fingerprinted, and submitted to the collection of his biological evidence (which he referred to as a DNA sample); (3) he was not charged with any criminal offense; (4) he did not attend a court hearing; and (5) he did not know the woman who made the allegation and has never met her. The summary of his 2020 interview did not indicate whether he addressed his failure to report information about the incident on his 2018 EQIP. (Item 5 at 3-4)

All four criminal charges were documented by FBI reports from 2013 and 2019, and by local police department (LPD) records reviewed by the U.S. Naval Investigative Service (NIS), currently known as the U.S. Naval Criminal Investigative Service, during its investigation in 1989. The NIS report of investigation revealed that: (1) the LPD collected a blood sample from Applicant for the purpose of analyzing evidence of illegal

narcotics because he was accused of allegedly using illegal narcotics during the timeframe of the alleged rape; (2) his blood sample result was negative; and (3) the NIS closed its investigation after the LPD advised that the alleged victim declined to testify. The NIS did not reference any other biological evidence testing results in its report of investigation. (Items 7, 11)

In his Answer, Applicant admitted the facts alleged about the incident, which included that he was charged with kidnaping, false imprisonment, rape by force, and oral sex by force. He also explained, "charge/case was dismissed no charges filed." (Item 3)

SOR ¶ 1.b (2002 incident)

In 2002, Applicant was arrested and charged with driving under the influence (DUI) for which he was convicted. The court ordered him to attend a three-month DUI program and a Mothers Against Drunk Driving's (MADD) class; and pay a $1,800 fine. (Item 3; Item 10 at 21-22)

During his 2013 interview, after being confronted, Applicant proffered the following information about the incident: (1) while driving home from a nightclub, he swerved his vehicle into another lane to avoid an accident after another vehicle cut him off in his lane; (2) during the traffic stop by a law enforcement officer who witnessed the incident, Applicant disclosed that he had consumed one drink earlier; (3) he failed a breathalyzer test, which registered his blood alcohol content (BAC) as 0.16 percent; (4) upon his arrest, he was transported to jail and then released on bail the following morning; (5) the DUI program consisted solely of educational classes and did not involve treatment or counseling; nor was he diagnosed as having a problem with alcohol; and (6) he fully complied with all sentencing requirements. (Item 10 at 21-22)

During his 2013 Interview, Applicant also proffered the following information about his history of alcohol consumption: (1) he began consuming alcohol at age 16, when he drank his first beer; (2) he did not begin regularly consuming alcohol until he enlisted in the Navy at age 19; (3) from age 19 to age 30, he drank 12 beers per week; (4) from age 30 to age 35, due to prioritizing his physical fitness, he consumed a few drinks every three months; (5) since age 35, due to his 2002 DUI charge, he has consumed two drinks per month, and only while at home. At that time, at age 46, he felt that he did not have a problem with alcohol and intended to continue his current pattern of alcohol consumption. He denied that he currently either drove after drinking or drank to intoxication, explaining that he would feel intoxicated after he consumed 12 beers. He opined that the possibility of another DUI incident was minimal due to his past experiences with alcohol. (Item 10 at 21-22)

During Applicant's 2020 Interview, after being asked whether he had ever been charged with any offense related to alcohol or drugs, he disclosed information about the incident that was consistent with his 2013 Interview. He added that the court suspended his driver's license for two months. He explained that he did not report information about the incident on his 2018 EQIP due to an oversight. (Item 5 at 3)

In his Answer, Applicant admitted the facts alleged about the incident. He also proffered a document corroborating that he successfully completed the DUI program in September 2003. (Item 3)

SOR ¶ 1.c (April 2010 incident)

Applicant did not discuss the incident during his 2013 interview. During his 2020 interview, after he discussed the 2018 incident, the investigator asked Applicant whether he had been convicted of a domestic violence (DV) offense on any other occasion. In response, Applicant denied any other DV convictions but volunteered the following information about an incident that he believed occurred sometime in 2012: (1) law enforcement was called to his home by his neighbors to investigate an altercation between him and his wife; (2) he and his wife were arguing in their home; (3) during the argument, his wife attacked him; (4) he then pushed his wife and she fell on the ground; (5) he was neither arrested nor charged with any criminal offense. The investigator then confronted him with information indicating that he was charged with corporal injury to a spouse or cohabitant on April 30, 2010. He acknowledged that the previously described incident may have occurred on April 30, 2010, but denied that he was charged with the alleged offense. (Item 5 at 2-3; Item 10 at 19-26)

In his Answer, Applicant admitted that he was charged with corporal injury to a spouse or cohabitant in about April 2010. Then, he also explained, "charges were dismissed." (Item 3)

SOR ¶ 1.d (November 2010 incident)

In November 2010, Applicant was arrested and charged with DUI to which he pled not guilty. After finding him guilty, the court sentenced him to five years' summary probation; and ordered him to complete 96 hours of community service, attend an 18-month DUI program, and pay a $2,500 fine. (Item 9; Item 10 at 21)

During his 2013 Interview, Applicant volunteered the following information about the incident: (1) between 3:00 p.m. and 8:00 p.m., he consumed six beers and a couple of shots of unspecified alcohol while he was at home, knowing that he had plans to pick up a friend from the airport; (2) while driving to the airport, at a time not indicated in the record, he was pulled over for speeding; (3) during the traffic stop, the officer detected an odor of alcohol emanating from Applicant's breath; (4) he responded "yes" when the officer asked whether he had been drinking; (5) he failed a breathalyzer test, which registered his blood alcohol content (BAC) as 0.14 percent; (6) upon his arrest, he was transported to jail and then released on bail the following morning; (7) the DUI program consisted solely of educational classes and did not involve treatment or counseling; nor was he diagnosed as having a problem with alcohol. (Item 10 at 20-21)

During his 2020 Interview, Applicant volunteered information about the incident that was consistent with his 2013 Interview. He also asserted that: (1) the alcohol present in his system at the time of his arrest was due to his consumption of alcohol the night

before; (2) he fully complied with all sentencing requirements; and (3) he did not report the incident on his 2018 EQIP due to an oversight. (Item 5 at 3)

In his Answer, Applicant admitted the facts alleged about the incident. He also proffered a document corroborating that he successfully completed the DUI program in October 2013. (Item 3)

SOR ¶ 1.e (2018 incident)

On March 5, 2018, Applicant was charged with three felony criminal offenses in connection with an incident that occurred on February 24, 2018: (1) assault with a deadly weapon (involving his wife); (2) assault with a deadly weapon (involving his eldest daughter); and (3) assault by means likely to produce great bodily injury (involving his youngest daughter). On March 6, 2018, the court ordered Applicant to relinquish "all firearms" and issued a three-year DV protective order, which included provisions precluding Applicant from assaulting his wife and two daughters, having any type of contact with his wife and two daughters, and possessing a firearm or ammunition; and ordered him to stay away at least 100 yards from his wife and two daughters, including at the following specific locations: family's home, employment, school, and vehicle. (Item 3; Item 5 at 1-2; Item 8)

On July 17, 2018, Applicant pled guilty to charge (2) and admitted that he "unlawfully committed an assault upon [his eldest daughter] with a deadly weapon to wit a revolver." Charges (1) and (3) were dismissed. The court sentenced him to four years in state prison, three years suspended, to be served via work furlough; three years' formal probation to expire on August 13, 2021; and ordered him to participate in a 52-week counseling program. (Item 8)

During his 2020 interview, Applicant volunteered the following information about the incident: (1) he hosted a barbeque at his home for attendees that included his friend, his wife, and his two daughters; (2) after the barbeque ended and his friend left, he and his eldest daughter (then age 26) engaged in a verbal argument because she was upset by something she overheard his friend say in a conversation with Applicant; (3) as his eldest daughter grew even more upset, she headbutted him; (4) he then pushed his eldest daughter away; (5) after he pushed his eldest daughter, his wife and others held him down and his youngest daughter (then age 18) started hitting him; (6) after observing his eldest daughter holding a kitchen knife, he attempted to leave the home through the garage; (7) he stored a .38 caliber revolver in the garage for personal protection in a location known to his wife and two daughters; (8) while in the garage, he picked up the revolver to move it to a different location in the garage so that his eldest daughter could not use it against him; (9) his wife observed him holding the revolver; (10) after he moved the revolver, he left the home; (11) as he was walking down the street away from the home, he was apprehended by local law enforcement officers; (12) upon his arrest, he was transported to jail where he spent 10 hours before being released on bail with an immediate DV protective order issued against him. (Item 5 at 1-2)

During the 2020 interview, Applicant maintained that he fully complied with all sentencing requirements, had not violated his probation, and had not been arrested on any other occasion in the last seven years. He believed that either his wife or eldest daughter reported to the local law enforcement officers that he pointed the revolver at his eldest daughter, which he denied. He stated that the judge told him that, as long as he did not violate his probation, his conviction would be reduced to a lesser charge at a May 2020 hearing. He acknowledged that he was still subject to a modified DV protective order, which specified no negative contact but allowed him to remain at his home. (Item 5 at 2)

During the 2020 Interview, Applicant explained that the 52-week program consisted of family counseling, alcohol counseling, and anger management education. He maintained that he voluntarily began participating in the program in March 2018, upon the advice of his counsel and before the court's order; and successfully completed the program in March 2019. He asserted that his eldest daughter attended one or more family counseling sessions with him. He also claimed that his eldest daughter admitted to one of his counselors that she was under the influence of illegal drugs during the time of the incident. (Item 5 at 2)

During the 2020 interview, Applicant acknowledged that he consumed several alcoholic drinks during the barbeque but denied that he was intoxicated at the time of the incident. He stated that he underwent alcohol counseling only upon the advice of counsel. While the terms of his probation included restrictions on his consumption of alcohol "if directed by the [probation officer (PO)]," the record did not indicate that Applicant's PO imposed any such restrictions. (Item 5 at 2; Item 8)

The court modified the DV protective order three times: (1) on May 29, 2018, to allow contact with his wife and two daughters "for the purpose of family counseling and telephonic contact;" and to change the stay-away locations to: family's home, school, vehicle; (2) on June 19, 2018, to allow Applicant to go to the family's home "from 6/20/2018 – 6/27/2018 . . . to care for family dogs;" and (3) on August 14, 2018, to remove the no contact and stay-away provisions. The expiration date of the DV protective order was extended to three years from each date the order was modified. (Item 8)

In his Answer, Applicant admitted the facts alleged about the incident. He also explained,

> completed work furlough and probation, attend DV classes, protective order was lifted. Currently have attorney representation to file petition and motion seeking withdrawal of plea and dismissal of the case with reduction of case from a felony to a misdemeanor. (Item 3)

In his response to the FORM, he proffered documents corroborating that, in March 2023, the court issued an order granting Applicant's motion, reduced his felony conviction to a misdemeanor, and fined him $60, which he timely paid. The court's order indicates that Applicant's "wife and victim" addressed the court. (AE C)

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." (*Egan* 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." (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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." (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan* 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. (ISCR Case No. 92-1106 at 3 (App. Bd. Oct. 7, 1993)). 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. (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* at 531; AG ¶ 2(b)).

Analysis

Guideline J: Criminal Conduct

The concern under this guideline is set forth 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 was charged with four violent criminal offenses in 1989, despite his protestations to the contrary. However, there is insufficient record evidence to establish criminal conduct on Applicant's part in connection with the incident. Accordingly, I find SOR ¶ 1.a in Applicant's favor. With respect to the criminal charges alleged in SOR ¶¶ 1.b through 1.e, the record establishes the following disqualifying condition 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.

Having considered all the factors set forth in AG ¶ 32 that could mitigate the concerns under this guideline, I find the following relevant:

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
>
> (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's criminal conduct spanned a period of more than 15 years from age 35 through 50. Although he benefited from dismissals of the 2010 and 2018 DV charges involving his wife, and from a reduction of the 2018 felony assault conviction involving his eldest daughter to a misdemeanor, his underlying criminal conduct remains security significant. He drove his vehicle after consuming an excessive amount of alcohol in 2002 and 2010, pushed his wife in 2010, and assaulted his eldest daughter with a deadly weapon in 2018. Collectively these incidents demonstrate a pattern of questionable

judgment and cast doubt about his ability or willingness to comply with laws, rules, and regulations.

While Applicant has not been charged with a crime since 2018, the nature and extended history of his criminal conduct preclude mitigation. His three convictions involved serious criminal misconduct. Although he demonstrated a pattern of modified alcohol consumption since his 2010 DUI, the eight-year gap between his two DUIs and the high BAC level registered both times undercut mitigation. He has exhibited a troubling pattern of violent behavior toward his family. The fact that the court found sufficient cause to issue a three-year DV protective order protecting not only Applicant's eldest daughter, but also his wife and youngest daughter, from him denotes the severity of his misconduct during the 2018 incident. That he put himself and others in harm's way by driving his vehicle under the influence of an excessive amount of alcohol even once is problematic. Further exacerbating the concern is that he did so a second time, after he was convicted of the same offense; and after his 2013 interview, during which he not only discussed the security significance of his first DUI, but also professed an intent to modify his alcohol consumption and to avoid driving after consuming alcohol.

Although not raised as concerns in the SOR, in evaluating mitigation and the whole-person concept, I have considered Applicant's lack of candor on his 2013 and 2018 EQIPs and during his 2013 and 2020 interviews. Of particular concern is his omission of relevant derogatory information from the 2018 EQIP since similar issues were raised during his prior investigation. Moreover, during the 2020 interview, Applicant denied being charged with any criminal offenses in connection with the 1989 incident or ever having met the alleged victim. He also attributed the alcohol present in his system at the time of his 2010 DUI arrest to alcohol he consumed the night before. I find these statements troubling because they not only raise questions about his credibility, but also suggest an attempt to minimize the scope of misconduct for which he was convicted.

In light of the record as a whole, including the misconduct for which he was not convicted, I do not find a sufficient passage of time, nor a sufficient pattern of modified behavior, for me to conclude that Applicant's questionable judgment and misconduct are unlikely to recur. I have doubts about Applicant's judgment, reliability, and trustworthiness, and his ability or willingness to comply with laws, rules, and regulations. AG ¶¶ 32(a) and 32(d) are not established.

Guideline E: Personal Conduct

The security concern under this guideline, as set out in AG ¶ 15, includes: "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."

Incorporating my comments under Guideline J, I find the personal conduct concerns raised by the facts alleged in SOR ¶ 1.a in Applicant's favor. With respect to the personal conduct concerns raised by the facts alleged in SOR ¶¶ 1.b through 1.e, the record establishes the general concerns involving Applicant's questionable judgment and

unwillingness to comply with rules and regulations and the following specific disqualifying condition forth in 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: . . . (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing . . . .

Having considered all the factors set forth in AG ¶ 17 that could mitigate the concerns under this guideline, I find the following relevant:

> (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.

Incorporating my comments under Guideline J, I conclude that Applicant has not mitigated the personal conduct security concerns raised by his criminal history. Moreover, the nature and extent of his criminal history makes him vulnerable to exploitation, manipulation, and duress. He took steps to reduce or eliminate his vulnerability by disclosing certain derogatory information on his 2013 and 2018 EQIP and during his 2013 and 2020 interviews. Moreover, his 2018 felony conviction was reduced to a misdemeanor. However, his continued attempts to minimize the scope of his misconduct, including by emphasizing legal consequences over accepting full responsibility for his behavior, suggest ongoing concerns about his susceptibility to exploitation, manipulation, or duress; and further undermine confidence in his reliability, trustworthiness, and judgment. AG ¶¶ 17(c), 17(d), and 17(e) are not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, 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 considered the factors in AG ¶ 2(d). 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 that Applicant has not mitigated security concerns raised by his criminal and personal conduct. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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 J:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a (incorporating facts alleged in subparagraph 1.a):	For Applicant
Subparagraph 2.a (incorporating facts alleged in subparagraphs 1.b – 1.e):	Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge