



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



In the matter of:)
)
) ISCR Case No. 21-02189
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: Matthew J. Thomas, Esq.

02/28/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the psychological conditions security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 2, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (Personal Conduct) and Guideline I (Psychological Conditions). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on August 2, 2022, and requested a hearing before an administrative judge. The case was assigned to me on June 2, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 30, 2023, scheduling a video teleconference hearing for July 18, 2023. On July 6, 2023, I granted Applicant's request for a continuance of his hearing. DOHA issued an amended

notice of hearing on July 24, 2023, rescheduling the hearing for September 7, 2023. I convened the hearing as rescheduled.

Department Counsel requested that I take administrative notice of information pertaining to Post-Traumatic Stress Disorder (PTSD) contained in excerpts from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), which I marked as Hearing Exhibit (HE) III. Government Exhibits (GE) 1-2 and 4-8 and Applicant's Exhibits (AE) A-S were admitted in evidence without objection. Applicant objected to GE 3, which is a July 2021 summary of psychological evaluation conducted by a licensed psychologist at the referral of the DOD Consolidated Adjudications Facility (CAF). He argued that he did not have an opportunity to cross-examine the psychologist because Department Counsel did not produce her as a witness at the hearing. I overruled Applicant's objection and admitted GE 3 in evidence. Applicant testified. At Applicant's request, I kept the record open until September 25, 2023, to allow him to submit additional documentation. By that date, he submitted documentation that I collectively marked as AE T and admitted without objection. DOHA received the hearing transcript (Tr.) on September 22, 2023. (GE 1-8; AE A-T)

Findings of Fact

In his Answer, Applicant admitted the allegations in SOR ¶¶ 1.b-1.d and denied SOR ¶¶ 1.a-2.a. He is 57 years old. He graduated from high school in 1985, and he earned a bachelor's degree in 1990 and a master's degree in 2018. He married in 1995, divorced in 2020, and remarried in 2022. He has a 25-year-old son from his previous marriage, and he still considers his 31-year-old stepdaughter from his previous marriage his child, despite their limited relationship. He resides in state A. (Tr. 33-35, 37, 73-74, 146-148, 154-157; GE 1-3; AE A, J, M, P, Q)

Applicant commissioned in the U.S. military upon graduating from college. He served honorably from May 1990 to April 2011, to include deployments to Haiti, Bosnia, and Afghanistan, and he retired as a lieutenant colonel. He was subsequently unemployed until November 2011. He has since worked for various DOD contractors, except for additional periods of unemployment from November 2016 to June 2017, September 2018 to December 2018, and since approximately September 2020. As of the date of the hearing, he had an offer of employment with a DOD contractor that was contingent on obtaining a security clearance. He was first granted a clearance when he served in the U.S. military, and his clearance was suspended in September 2020. (Tr. 9-11, 35-37, 42, 50-51, 77-78, 151-152, 157-158; GE 1-3, 5-6; AE J, R, T)

Personal Conduct

In 1995, Applicant was charged with simple assault. On the night of his bachelor party, he got into a physical altercation with a fraternity brother. They resolved their conflict and remained friends. Unbeknownst to them, the charge remained pending in the court system until Applicant's friend requested its dismissal in 2012. (Tr. 37-41; AE L)

Prior to deploying to Bosnia, Applicant had a verbal disagreement with another soldier in 2002. The soldier pushed him, and he choked the soldier to get the soldier out of his way. He reported the incident to his superior, and he was not disciplined for this incident. (Tr. 140-144; AE J)

In August 2002, while deployed to Bosnia, Applicant was the subject of an investigation by the Army Criminal Investigation Division for aggravated assault. He was on patrol with his team as the communications officer when some of the communications failed. He returned to the military base and immediately approached the desk of the civilian contractor, who was the lead communications help desk technician, to try to troubleshoot the issues. He denied pulling his weapon from his holster, pointing it at, and verbally threatening this individual. Because he breached protocol by not properly disarming his weapon upon returning to the base and approaching this individual's desk, he disassembled it on the "help desk ledge." He did so while he was having a heated conversation with this individual wherein profanity was exchanged, and he warned that he would elevate the communications failures to the individual's supervisor. (SOR ¶ 1.d; Tr. 41-50, 131-140, 158-163, 170-172; GE 2-3, 6, 8; AE J)

Applicant testified that he recognized how his act of disassembling his weapon on the help desk technician's ledge while they were having a heated conversation could have been perceived by this individual as an intimidation tactic or threat, but he stated that such was not his intention. He and this individual had previous and reoccurring conflict with each other. He recalled later apologizing to this individual and voluntarily surrendering his weapon during the remaining two to three weeks of his deployment as an act of good faith. He was not court-martialed, he did not receive an Article 15 non-judicial punishment, he was not administratively reprimanded or counseled, and this incident did not have a negative impact on his military career. (Tr. 41-50, 131-140, 158-163, 170-172; GE 2-3, 6, 8; AE J)

In February 2015, Applicant was arrested in state C and charged with felony gun possession on education property, misdemeanor assault by pointing a gun, and misdemeanor communicating threats. Between 2003 and 2005, he had purchased from the military post exchange several firearms for which he had a non-residence conceal and carry permit from state B. The morning of his arrest in 2015, he intended to go to the firing range with one of his firearms, so he disassembled it and put it, along with one magazine, in a case that he then put in the trunk of his car. He also put a separate magazine and ammunition in the trunk of his car, as they would not fit in his case. When he went back inside his home to say good-bye to his then spouse, she was crying on the phone with his stepdaughter, who was attending college in state C. Concerned about reports that his stepdaughter was having loud parties, drinking excessively, and using drugs, he changed his plans at his then spouse's request and drove from state A to state C to bring his stepdaughter home. He mistakenly did not think to remove his firearm from the trunk of his car beforehand. (SOR ¶ 1.c; Tr. 51-62, 78-100, 163-167, 169-170; GE 1-3, 5-6; AE E-H, J)

Applicant's stepdaughter refused to cooperate with him when he arrived at her apartment in state C. He decided to retrieve her things from her car, put them in his car,

and park her car at his friend's house for him to retrieve later. As he was putting her belongings in his car, her girlfriend saw his firearm, which had fallen out of its case that opened during his drive from state A to state C, as he was attempting to put it back in its case. They got into a heated exchange, and he decided to leave and drive to his friend's house. (Tr. 51-62, 78-100, 163-167, 169-170; GE 1-3, 5-6; AE E-H, J)

As Applicant drove to his friend's house, his then spouse called and told him that the police were looking for him. His stepdaughter's girlfriend reported that he "had threatened her by pointing a firearm at her and saying I was going to blow her head off or something to that extent," which he denied. He reacted to this news "very poorly." He did not want to have any issues with the police, and although he had a firearm permit for state B, he did not remember that state C had reciprocity with state B for concealed handguns. He drove into a parking lot that he did not know was on educational property, he loaded his firearm with one of the magazines, and he hid it along with the additional magazine and ammunition under a bush. He stated that he loaded the firearm because he "was just putting it all together just to get all the evidence out of the car." The police pulled him over as he was driving to his friend's house, and when they questioned him about whether he had a firearm, he replied that he did not. They put him in the police car, searched his car, and drove him to his stepdaughter's apartment for identification. There, they asked him where his gun was, and he cooperated and took them to the location where he had it hidden. The police recovered his gun, arrested and charged him, and he was released on bail. The charges were voluntarily dismissed in March 2015 and expunged in February 2016. (Tr. 51-62, 78-100, 163-167, 169-170; GE 1-3, 5-6; AE E-H, J)

In April 2017, Applicant was in a physical altercation with his then spouse. They consumed alcohol at a friend's home earlier that evening and got into an argument upon their arrival at home. When their argument escalated, she struck him across his chest, threw her cell phone at him, and hit him in the back as he walked away. He turned and punched her in the face, causing her to suffer an orbital fracture. No criminal charges were filed against him. (SOR ¶ 1.b; Tr. 62-67, 116-117, 119-126, 149-151, 155, 170-172; GE 2-3, 5-6; AE C, D, J, K, M, T) He testified:

[U]nder no circumstances should a man ever hit a woman, no matter what the situation is. No matter what the situation, you still have the choice to walk away. I did not exercise my choice to do so. I'm extremely remorseful for what I did. (Tr. 64)

This incident led to a two-to-three-week period of separation between Applicant and his then spouse. He voluntarily took a 16-hour anger management class in April 2017, through which he learned coping skills and methods to de-escalate a situation. At his then spouse's request, he surrendered his firearms to the police and sought an evaluation from the U.S. Department of Veterans Affairs (VA) to determine if he suffered from PTSD. He saw a VA doctor once, and he was not given a diagnosis. He also obtained a referral from his general practitioner for a psychiatrist, whom he saw six to seven times over the course of four to five weeks in June or July 2017. This psychiatrist also did not give him a diagnosis. He and his then spouse also attended marriage counseling, which he found

useful. (Tr. 62-67, 71-72, 116-117, 119-126, 149-151, 155, 170-175; GE 2-3, 5-6; AE C, D, J, K, M, T) He testified:

I found out there were tools and things that I could use to understand the situation better and to better approach situations when they do get heated: one, just walk, disengage; everything doesn't need to be resolved right then and there; let cool heads prevail, things of that nature. (Tr. 65)

In approximately 2018, Applicant and his then spouse had multiple occasions where their son was “. . . very disrespectful, using profanity, and . . . yelling,” having removed him from college because of poor grades, alcohol consumption, and drug use. (Tr. 146) Applicant recalled one incident where his son “struck me in the face with a closed fist,” and another incident where his son “pulled knife out on me asking to fight. So, I took him and pushed him against a wall, and I asked him to . . . leave the house.” His then spouse took their son and stayed with him at her daughter's apartment for a couple of days. His son was diagnosed with bipolar disorder in 2021 or 2022. (Tr. 73, 146-147, 155-157)

In July 2019, Applicant engaged in another altercation with his then spouse. In 2018, he replaced the firearms that he had previously surrendered, and on the morning of July 2019, he worked on one of his firearms in his garage. He subsequently placed the firearm on a counter inside the home. When his then spouse finished preparing dinner that evening, he secured the firearm in an upstairs safe. He denied having left the firearm in his garage and stated that his then spouse saw him take the firearm upstairs to secure it. Over dinner, they argued about an invitation to attend a neighbor's cookout. She wanted to attend but he did not, as he no longer desired that kind of environment and did not like that this neighbor had previously made disparaging comments about her. Their argument continued as she followed him when he returned to his garage to work on one of his cars. (SOR ¶ 1.a; Tr. 66-71, 100-119, 122-123, 155-156, 167-172; GE 2-3, 6-7; AE B, J) He testified:

We were in the garage initially. I did break the antenna off of a joint on the car that we both owned, and I threw it out the garage. And I did kick the car tire, the actual rubber that touches the road. Both are very immature actions. (Tr. 69)

Applicant's then spouse called the police and reported that he struck her with an antenna and pointed a firearm at her, which he denied. He was not arrested, and no criminal charges were filed against him. Early the next morning, the sheriff's department served him with a temporary 48-hour restraining order that was subsequently extended for an additional week. He surrendered his firearms as required by the order. His then spouse also filed for divorce, at which point she pressed charges against him for second-degree assault and malicious destruction of property and obtained a one-year protective order against him. He was ordered to pay for the property damage, the charges were dropped, and the records pertaining to this incident were expunged in August 2020. After their requisite one-year period of separation, their divorce was finalized in 2020. (Tr. 66-71, 100-119, 122-123, 155-156, 167-172; GE 2-3, 6-7; AE B, J)

Since 2019, Applicant has not faced any other allegations of misconduct. He is not prohibited from owning firearms. Applicant's son moved in with him during the period in which he and his then spouse were separated and going through divorce proceedings. Applicant helped his son enroll in school, get his driver's license, and attend church. Although his son lived with his ex-spouse as of the date of the hearing, Applicant described his relationship with his son as a healthy one. He has a limited relationship with his stepdaughter, due to her unfounded rape allegations against him during the divorce proceedings. Although Applicant and his spouse have disagreements, he stated that they do not compare to those he had with his ex-spouse, to which he credits his spouse's calm demeanor, their marriage, and his spirituality. (Tr. 74, 146-148, 157, 168-169, 171-172; AE N-O)

Applicant stated:

Simply put, I'm a changed man. I acknowledged the mistakes that I did. I realized that I was in a volatile marriage, didn't want to admit it at the time. Being [a military] officer, we try to fix everything. Everything is repairable. We can always solve every mission, and I put that attitude, looking back, took that same approach into my marriage. It can be repaired. That can be repaired. And I just refused to believe that some things are irreparable. And that applied to my marriage. I found Christ. I found other coping mechanisms. I've changed. I no longer get upset for the things that will -- would normally get me angry or out of character, and I've learned to be better in control of me and everything is truly not that important. (Tr. 72-73)

Psychological Conditions

In December 2010 Applicant was evaluated by the VA in connection with his disability claim. (Tr. 71-72, 125-129, 172-175; GE 2) A VA examiner diagnosed him with adjustment disorder in June 2011, but noted that there was "no evidence of permanent residual or chronic disability shown" and his symptoms were not consistent with PTSD. (AE T) The VA consequently denied his "[s]ervice connection for adjustment disorder (claimed as [PTSD])," but found that he was entitled to treatment because an adjustment disorder was diagnosed within the requisite time. (AE T)

As previously discussed, Applicant sought an evaluation from the VA at his ex-spouse's request after the incident in April 2017, to determine if he suffered from PTSD. He also saw a psychiatrist in June or July 2017. He was not given a diagnosis on either occasion. (Tr. 62-67, 71-72, 116-117, 119-126, 149-151, 172-175; GE 2-3, 5-6; AE C, D, J, K, M, T)

In March 2018, Applicant was again evaluated by the VA, in connection with his claim for increased evaluation. (Tr. 71-72, 125-129, 172-175; GE 2) The VA again denied his "[s]ervice connection for adjustment disorder (claimed as PTSD)," after finding that the treatment records submitted by him in connection with his 2018 claim did not constitute new and material evidence. (AE T) As of the date of the hearing, he has had a

100% disability rating from the VA since 2021, but not on the basis of any mental health condition. (Tr. 126-127, 172-175)

In July 2021, the DOD CAF, renamed the Defense Counterintelligence and Security Agency on June 13, 2022, referred Applicant for evaluation by a licensed psychologist (PSYCH 1) because evidence of a history of mental health conditions requiring treatment was discovered during his security clearance background investigation. (SOR ¶ 2.a; Tr. 148-149; GE 3) PSYCH 1 conducted her evaluation on July 8, 2021, and she reported her findings on July 18, 2021. PSYCH 1 stated, as the basis for her opinion, that “[Applicant] has an extensive history of criminal behavior and legal involvement since the 1990s. Additionally, there is evidence that he has a pattern of brandishing guns and becoming violent [and] aggressive when he is upset.” (GE 3) PSYCH 1 also stated that her evaluation included “review of background information, including medical and mental health treatment records provided by the DOD CAF” and “[a]dditional data was collected via clinical interview, testing observations, and administration of the Personality Assessment Inventory (PAI).” (Tr. 148-149; GE 3)

PSYCH 1 provided the following diagnostic impressions and prognosis:

Based solely on [Applicant’s] self-report, it would seem that he does not currently meet criteria for any diagnosable mental health conditions. However, when considering background information, clinical interview and observations, and objective personality assessment, his diagnostic profile is as follows:

| | |
|--------|---|
| 309.81 | [PTSD] |
| V62.22 | Personal history of Military Deployment |
| V62.5 | Problems Related to Other Legal Circumstances |

While it is challenging to conclusively diagnose PTSD in a one-time evaluation, particularly if there is no supporting medical history, [Applicant’s] background history is noteworthy for extensive criminal conduct and violent behavior. Since the 1990s, he has demonstrated 1) irritable behavior and angry outbursts; 2) reckless behaviors; and 3) dissociative reactions in which he acts as if the traumatic event were recurring. These behaviors are symptomatic of PTSD and have clearly negatively impacted his social and occupational functioning. (GE 3)

PSYCH 1 concluded:

[Applicant’s] behavioral health history suggests several behaviors, which cast doubt on his judgment, reliability and/or trustworthiness. His history of interpersonal volatility and legal involvement is concerning, and his limited insight and pattern of grandiosity (in speech, thought, and behavior) may indicate a poor prognosis. Despite claims that he and his ex-spouse are on amicable terms and a judge awarded him physical custody of their son, these claims could not be independently verified and court records indicate

that his [ex-]wife extended the no-contact protective order through at least July 2020. Given the recent nature of [Applicant's] issues, and the fact that he lacks the requisite insight and treatment to reduce the likelihood of future violent behavior, it may be imprudent to grant him access to classified information. (GE 3)

Applicant was evaluated by another licensed psychologist (PSYCH 2) in January 2023, on the advice of his attorney. PSYCH 2 stated that her evaluation included review of the SOR; PSYCH 1's July 18, 2021 summary of psychological evaluation; Applicant's January 19, 2022 response to interrogatories; and "[m]iscellaneous records from [Applicant's] background investigation." (Tr. 123-131, 134-139, 152-154; AE I-J) PSYCH 2 also stated that additional data was collected via "semi-structured clinical interview, observations, and administration of objective personality measure, the . . . [PAI] , and subjective report of symptoms" (Tr. 123-131, 134-139, 152-154; AE J) Applicant acknowledged that PSYCH 2 did not speak with any of his family or friends, to include his ex-spouse. (Tr. 153-154)

PSYCH 2 stated that Applicant "does not appear to meet diagnostic criteria for any mental health conditions at this time," and she concluded that Applicant does not currently have a mental health diagnosis that could cast doubt on his reliability, trustworthiness, judgment, or ability to safeguard sensitive or classified information. (Tr. 123-131, 134-139; AE J) PSYCH 2 stated:

I did not find evidence to support a diagnosis of [PTSD]. While [Applicant] has a history of military deployment, this does not independently cause a mental health condition. Additionally, although Applicant did endorse a number of individual items within his PAI that elevated a subscale commensurate with traumatic events, upon further evaluation of those items one finds reflection of reactions commensurate with frustration noted above related to his relationship with his ex-wife and the process that led to him losing his security clearance. . . . (AE J)

Applicant's 1995 simple assault charge, 2002 verbal and physical altercation with a soldier, 2011 adjustment disorder diagnosis by the VA, and 2018 physical altercation with his son were not alleged in the SOR, so they may not be an independent basis for revoking Applicant's clearance. However, I may consider them to evaluate his credibility; to evaluate his evidence of extenuation, mitigation, or changed circumstances; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for the whole-person analysis. I have considered these unalleged events for these limited purposes.

Applicant received numerous certificates and medals, to include a Meritorious Service Medal for his service in Bosnia, a Bronze Star Medal for his service in Afghanistan, and a Legion of Merit medal upon his military retirement for exceptionally meritorious service. (Tr. 50-51, 144-146; AE J, R) He volunteers in his community. (AE S) Numerous character references, to include individuals who have known Applicant since their service in the U.S. military and who have remained close friends, vouched for

his judgment, reliability, and trustworthiness. (AE M) His officer evaluation reports reflect outstanding performance in the U.S. military. (Tr. 49-50; AE R)

Policies

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 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 security 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to . . . ;

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

Applicant engaged in personal conduct between 2002 and 2019, as discussed above, which raises questions about his judgment, trustworthiness, and reliability. AG ¶¶ 16(c), 16(d)(1), and 16(d)(2) apply.

AG ¶ 17 describes the following relevant conditions that could mitigate the personal conduct security concerns:

(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; and

(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.

Applicant engaged in problematic conduct between 1995 and 2019. He was in a physical altercation with his fraternity brother in 1995. He choked another soldier in 2002, and he was in a heated exchange with a help desk technician while disassembling his weapon in Bosnia, which he acknowledged could have been perceived as an intimidation tactic or a threat. In 2015, he was in a heated exchange with his stepdaughter's girlfriend after she saw his firearm in the trunk of his car, and he hid his loaded firearm, a separate magazine, and additional ammunition, in a parking lot bush when he learned the police were looking for him. In 2017, he was in a physical altercation with his then spouse and fractured her orbital bone. In 2018, he pushed his son against a wall. In 2019, he was in a verbal altercation with his then spouse when he broke and threw a car's antenna and kicked its tires. His conduct over the past 24 years is not overcome by the fact that he has not engaged in any such similar conduct since 2019, and it continues to raise doubts about his reliability, trustworthiness, and judgment. AG ¶¶ 17(c) and 17(d) do not apply.

Guideline I, Psychological Conditions

The security concern under this guideline is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

AG ¶ 28 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; and

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

In July 2021, PSYCH 1 diagnosed Applicant with PTSD and concluded that his behavioral health history cast doubt on his judgment, reliability, and trustworthiness. AG ¶¶ 28(a) and 28(b) are established.

The following mitigating conditions under AG ¶ 29 are potentially relevant:

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

When the VA evaluated Applicant in 2010 and 2018, he was diagnosed only with an adjustment disorder in 2011. He was not diagnosed with PTSD. Since 2021, his 100% disability rating from the VA has not been based on any mental health condition. In January 2023, when PSYCH 2 evaluated him, she did not find evidence to support a PTSD or other mental health diagnosis that could cast doubt on his judgment, reliability, and trustworthiness. Although she did not speak with any of his family or friends, to include his ex-spouse, her evaluation included a review of the summary of psychological evaluation reported by PSYCH 1 as well as records pertaining to Applicant's background investigation. AG ¶¶ 29(c), 29(d), and 29(e) are established.

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 relevant 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), 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. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E and Guideline I in my whole-person analysis. I considered Applicant's honorable military service and his favorable character references. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the psychological conditions security concerns, but he failed to mitigate the personal conduct 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: Subparagraphs 1.a - 1.d: | AGAINST APPLICANT Against Applicant |
| Paragraph 2, Guideline I: Subparagraph 2.a: | FOR APPLICANT For Applicant |

Conclusion

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

Candace Le'i Garcia
Administrative Judge