



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



In the matter of: )  
)  
) ISCR Case No. 22-01372  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

04/23/2024

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**Decision**

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MURPHY, Braden M., Administrative Judge:

The Government alleged security concerns under the guidelines for criminal conduct, personal conduct, and financial considerations. Applicant has a long history of criminal conduct, going back over 40 years, to as recently as 2020. Most of the personal conduct security concerns relate to a variety of employment terminations between 2011 and 2019. Applicant also has accrued several delinquent debts, but financial considerations security concerns are mitigated since the debts are largely resolved. The employment-related personal conduct security concerns are either not established as disqualifying conduct or are mitigated. However, Applicant’s established history of criminal conduct is too extensive, too long-term, and too recent to be considered mitigated under either the criminal conduct guideline, or, as cross-alleged, under the personal conduct guideline. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 2, 2020, in connection with his employment. On November 18, 2022, the Defense

Counterintelligence and Security Agency Consolidated Adjudication Services (DSCA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct), Guideline E (personal conduct), and Guideline F (financial considerations). The DSCA CAS issued the SOR 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective within DOD on June 8, 2017.

Applicant submitted an undated answer to the SOR, in which he answered all but one of the allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 10, 2023, he completed his SOR response by answering SOR ¶ 3.a. The case was forwarded to the DOHA hearing office on March 1, 2023, and assigned to me on October 31, 2023.

The case was initially scheduled for hearing on December 13, 2023. On December 11, 2023, Applicant requested a continuance, essentially because he was not prepared and wanted time to gather documentation. I granted his request, and the hearing was rescheduled to February 7, 2024, by mutual consent.

That hearing convened briefly but was continued when it became clear that Applicant had moved months before and had not received the Government's proposed exhibits in the mail. (Feb. 7, 2024 Tr. at 1-8) Once he confirmed that he had received those documents, a new date was arranged. On February 13, 2024, DOHA issued a notice scheduling the hearing for February 27, 2024.

Applicant's hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1 through 7, which were all admitted without objection. Applicant testified but did not submit any documents. At the end of the hearing, I held the record open to allow him the opportunity to do so.

After the hearing, Applicant submitted five documents regarding alleged debts (Applicant's Exhibits (AE) A through E) and three other documents: a cover e-mail from Applicant; a screenshot of a text from his ex-girlfriend, B; and a letter from his current girlfriend, P. (AE F through H). They were all admitted without objection. The record closed on March 13, 2024. DOHA received the hearing transcript (Tr.) on March 6, 2024.

### **Findings of Fact**

Applicant admitted all of the Guideline J allegations (SOR ¶¶ 1.a-1.n) but for SOR ¶ 1.i, which he denied. Under Guideline E, he admitted the cross-allegation of his criminal conduct (SOR ¶ 2.a) and the allegations at SOR ¶¶ 2.b-2.i. Under Guideline F, he admitted SOR ¶¶ 3.a-3.c and he denied SOR ¶ 3.d. His admissions are incorporated into the findings of fact. Additional factual findings follow.

Applicant is 58 years old. He has never married. He has no biological children, but he used to be in a relationship with B, a woman who had two sons, and he helped raise them. They are now adults. He has a general equivalency degree (GED). He said he needed a clearance to work at a federal building once but has never had access to classified information. (GE 1; Tr. 10, 20-21, 64)

Applicant began his most recent job in May 2020 and applied for a security clearance in October 2020. He works in a warehouse. (Tr. 19) On his SCA, he reported a variety of other jobs in prior years, some of which led to terminations that are the subject of most of the Guideline E allegations. They are discussed in turn, below. (GE 1)

On his SCA, Applicant reported certain criminal offenses, including an arrest for second degree trespass in February 2019, a domestic violence charge in September 2019, and a January 2020 arrest for driving while intoxicated (DWI). (GE 1 at 44-47) (SOR ¶¶ 1.l, 1.m, 1.n) These offenses, and other, earlier ones, are also discussed in turn, below.

Applicant also disclosed on his SCA that he used cocaine about 12 times between about June 2014 and about August 2019. He said he had not used cocaine since then and did not intend to use it again. (GE 1 at 47-48) (SOR ¶ 2.b) In discussing his financial record, he also disclosed a late-filed tax return and past-due debts to a doctor and to a credit card company. (GE 1 at 50-53)

Applicant had a background interview in June 2021. He discussed his employment history, his arrest record, history of drug use, and his debts. In a September 2022 interrogatory response, he authenticated the summary of his interview as accurate without making any edits. He said his finances were improving and that he had had a chance to reflect on his past. (GE 2)

**Guideline J (SOR ¶¶ 1.a-1.m, 2.a):**

In July 1982, when he was about 16 years old, Applicant was arrested and charged with larceny. (SOR ¶ 1.a) Records indicate that he was found guilty and received probation. (GE 3)

In February 1983, Applicant was arrested and charged with felony larceny and breaking and entering. (SOR ¶ 1.b) (GE 3) He was 17 years old at the time. He and some friends broke into a factory and stole keys to the factory's vending machines to get the money inside. He was sentenced to eight months in jail. (GE 2 at 10) He acknowledged during his hearing that when he was young, he "hung out with the wrong people" and was "running with the wrong crowd." (Tr. 47)

In May 1996 (GE 4), Applicant was charged with assault on a female. (SOR ¶ 1.c) (GE 2 at 12; GE 4 at 3) He did not recall this charge during his interview or at his hearing. This may have involved his ex-girlfriend B, since they were together for a long time. He denied laying hands on her, in this or any other, later incident. The charge was

later dismissed. He testified that he has never had to take a domestic violence prevention class or attend related counseling. (Tr. 46-47, 49-50)

In May 2002, Applicant was arrested with assault on a female. (SOR ¶ 1.d) The charge was later dismissed. (GE 3, GE 4) He denied ever assaulting a female. In 2002, he and his then girlfriend got into an argument. She hit him with a hammer, and he shoved her back, in self-defense, he said. They were both taken to jail for 48 hours. The charges were later dropped. (GE 2 at 11-12; Tr. 50)

As a result of the same incident, Applicant was charged with simple possession of marijuana and possession of drug paraphernalia. (GE 4 at 5) The marijuana was the property of the woman he was involved with at the time. These drug charges were later dismissed after he took a drug education class. (GE 4 at 5; Tr. 45) (The drug charges were not alleged in the SOR).

Applicant does have a history with illegal drugs, as he reported on his SCA. He began using cocaine in 2001. He used it sporadically until about four years ago, before his current job. (SOR ¶ 2.b) He said he had been in rehab twice, about 15 years ago, including 30 days of inpatient treatment. Before that, he has also attended Alcoholics Anonymous. He also used marijuana as a teenager. He has not used illegal drugs in several years, and he does not intend to do so in the future. (GE 1; Tr. 37-40, 53-56)

In February 2003, Applicant was arrested and charged with DWI. (SOR ¶ 1.f) He had been drinking at a bar and was pulled over afterwards. His license was revoked for six to twelve months, and the records indicate that he received 18 months of probation in October 2003, though he denied that at his hearing. (GE 2, GE 4; Tr. 44-45)

In December 2007, Applicant was arrested and charged with driving under a suspended license, and in March 2008, he was arrested and charged with driving while his license was revoked. (SOR ¶¶ 1.g, 1.h) (GE 3; Tr. 43-44)

In December 2009, Applicant was arrested and charged with unauthorized use of a motor vehicle. (SOR ¶ 1.i) (GE 3) He took the car of his then-girlfriend, R for the night, perhaps without permission, since she reported it stolen. The case was resolved through mediation. (GE 3, GE 4; GE 2 at 11; Tr. 43-44)

In August 2012, Applicant was arrested and charged with assault on a female. (SOR ¶ 1.j) (GE 3, GE 4) He did not recall this charge during his interview. The charge was later dismissed. (GE 2 at 12) He was with B, and he said "she got a kick out of sending me to jail." He denied assaulting her. (Tr. 42-43)

In October 2018, a domestic violence protective order was issued against Applicant. (SOR ¶ 1.k) (GE 3 at 17-18) He explained that the complainant was his fiancée, B. He denied hitting, punching, or taking any physical action against her. He believes she sought the protective order because she wanted to end their relationship. B had filed assault charges against him on several prior occasions. (GE 2 at 11)

In February 2019, Applicant was arrested and charged with second degree trespass. (SOR ¶ 1.l) (GE 4) At the time, he was living with his niece (since he was no longer living with B). His niece and her boyfriend borrowed Applicant's truck. He then got into an argument with them over their spending. The boyfriend called police after asking Applicant to leave. The trespass charge was later dismissed. (GE 2 at 11; Tr. 41-42)

In September 2019, Applicant was arrested and charged with violating a domestic violence protective order. (SOR ¶ 1.m) (GE 4) He had moved back in with B, but she caught him texting another woman and a fight ensued. She called police and when they arrived, she told them he was in violation of the protective order (SOR ¶ 1.k). This was technically true, he acknowledged in his interview, even though she had asked him to move back in with her. He was arrested for violating the protective order and jailed for two weeks. As a result, he was terminated by his employer. (SOR ¶ 2.i). B later dropped the charges. (GE 2 at 11)

Applicant said he and B had a toxic relationship. They were together for 24 years, until about 7 years ago. He stayed for the children to keep them in good hands. The relationship was part of the reason for his drug use. He was not in a good place with her, and he "just did things that I shouldn't have been doing." He said all of the domestic violence charges involved B. He was charged but never convicted, and he believed that when he had a chance at a good job, she would ruin it for him. He has no pending charges and is not on probation. He has had no subsequent issues or charges relating to domestic violence or assault. (Tr. 35-36, 49-52) After the hearing, he provided a text message from B, discussed below. (AE H)

In January 2020, Applicant was arrested and charged with DWI. (SOR ¶ 1.n) (GE 4) Records reflect that he received a 120-day suspended jail term and two years of probation. (GE 2 at 8, GE 4) He had several shots of vodka at home after work. He was asked unexpectedly to go to the home of a family friend, about 10 miles away, to help the friend with a household task. He was pulled over for speeding on the way there, and he was arrested for DWI after failing roadside sobriety tests. (GE 2 at 8)

In December 2020, Applicant pled guilty to DWI. His license was suspended for 12 months other than for work. He had to take an alcohol awareness class and perform community service, which he did. He has had no subsequent alcohol-related or other offenses. He has an active driver's license with no restrictions. (GE 4; Tr. 40-41, 54, 57)

When asked what has changed since then, Applicant said he is working to do better. He is no longer in a volatile relationship, so that has helped with his anger issues. He has not been through formal counseling. (Tr. 54-55)

## **Guideline E (employment):**

Under Guideline E, among other criminal and drug issues already discussed, the Government alleged seven employment terminations between April 2011 and September 2019. (SOR ¶¶ 2.b-2.i)

April 2011 – termination from company 1. No reason is alleged. (SOR ¶ 2.c) Applicant was fired for not being at the job site when he was supposed to be there. He explained and testified that he had a personality conflict or miscommunication with a supervisor, a conflict that he said was largely due to a language barrier. He thought the supervisor sent him to the wrong place. He does not believe he did anything wrong. (GE 4 at 6; Tr. 29-30)

June 2015 -- termination from company 2. No reason is alleged. (SOR ¶ 2.d) Applicant said in his background interview that he was fired after observing a co-worker, the son of the owner, using drugs on the work site, and seeing the co-worker coming out of the bathroom looking “blitzed” and unable to function. (GE 2 at 5) He said the son was “a really bad drug addict.” Applicant confronted the owner or a supervisor about it and “that was the end of me.” (Tr. 30)

June 2015 -- termination from company 3. No reason is alleged. (SOR ¶ 2.e) Applicant offered few details in the interview and he did not recall why he was fired. (GE 4 at 6) He said he was there only briefly and said the job did not offer enough pay. (Tr. 30-31)

In December 2017, Applicant resigned in lieu of being terminated by company 4 for misconduct, including, allegedly, inappropriate sexual behavior. (SOR ¶ 2.f) He explained in his background interview and his testimony that he and other employees were on a six-month assignment away from home (during the week) and often went to the hotel restaurant for meals. On one occasion, he ordered a beer from a younger waitress, who then was seen socializing with co-workers instead of providing him prompt service. This led him to yell at her that she should “do her job.” She brought the beer but slammed it on the table. He finished his meal and left. Afterwards, co-workers who were present urged the waitress to file a complaint against him to his company. When she did, he was fired. He was called in to work, but, knowing he would be fired, he chose not to appear. About two weeks later, when he went in to collect his final paycheck, he was told he was a “no call, no show,” so he was not eligible for unemployment compensation. He denied saying anything inappropriate to anyone at the restaurant. (GE 2 at 5-6; Tr. 31-32, 58) As to this employment, I find that, while a termination is established, it is not established on this record that Applicant engaged in “inappropriate sexual behavior” towards the waitress, as alleged.

In June 2019, Applicant was fired from employment with company 5 following complaints from subordinates. (SOR ¶ 2.g) In his interview, he explained that he was supervising about a dozen workers on a job, most of whom spoke little to no English. Applicant became irritated at them when they cut a section out of the parking deck that

they were not supposed to. After Applicant told them all to leave the job, he was called into the office and terminated, having been told that the employer needed the workmen more than the employer needed Applicant. (GE 4 at 5)

At his hearing, Applicant said he asked his supervisor if he could go home and he was allowed to do so, but he drove home in a company truck. When Applicant returned the truck, he was told he was not needed anymore. (Tr. 32-33, 58) (These two explanations appear to concern different circumstances (either different parts of the same incident, or, perhaps, two separate incidents)).

In August 2019, Applicant was fired from company 6 for not reporting to work. (SOR ¶ 2.h) This was true, though he also said he did not like working there and was looking for a better job when he was terminated for being a “no call/no show.” (GE 4 at 6) At his hearing he said he woke up in the yard at home and was feeling ill, so he went to the doctor. He acknowledged that he did not go to work and did not call in, because he was concerned about his health. (Tr. 33-34)

In September 2019, Applicant was fired from employment at company 7 for not reporting to work after he had been arrested and incarcerated. (SOR ¶ 2.i) He had been jailed for the domestic violence charge at SOR ¶ 1.m. He was in jail for about two weeks. After he was terminated, he was unemployed until February 2020. (GE 2 at 7; Tr. 34-35)

## **Guideline F**

The financial allegations in the SOR (¶¶ 1.a-1.d) concern four delinquent debts, totaling about \$9,000. The debts are established by credit reports from December 2019 (GE 5), and October 2020 (GE 6), and by Applicant’s admissions. There is also a more recent credit report in the record, from December 2023. (GE 7)

SOR ¶ 1.a (\$180) is a past-due medical account. (GE 5) Applicant believes it has been paid. (Tr. 21-22, 24) The October 2022 credit report shows a \$145 balance. (GE 6) It does not appear on GE 7.

SOR ¶ 1.b (\$6,339) is a charged-off debt relating to financing of a motorcycle. (GE 5, GE 6, GE 7) He bought the motorcycle about seven years ago. It had transmission trouble, and he had it voluntarily repossessed soon thereafter. This debt remains pending. He has addressed his smaller debts first. He has called the creditor seeking to settle the account and intends to address the debt when he can afford to do so. (Tr. 22-24, 48-49)

SOR ¶ 1.c (\$379) is an account placed for collection. (GE 5) The account has been paid in full. (GE 6, GE 7; AE A; Tr. 24)

SOR ¶ 1.d (\$2,131) is a charged-off debt relating to kitchenware and cooking. (GE 5) The account was settled for \$1,400 and resolved in November 2020. (AE B; Tr. 25-26)

About four years ago, Applicant was in a long-distance relationship with a woman in the Philippines. He sent her several thousand dollars. He acknowledged that this timeframe overlapped with the period when he fell behind on his debts. (Tr. 59) He attributed his debts to periods of unemployment and underemployment. (Tr. 62-63)

Applicant also provided documentation that a debt to a large hardware store has been paid in full. The amount of the debt is not listed on the exhibit and the debt was not alleged in the SOR, but nonetheless shows full resolution of the debt. (AE C) Applicant also documented that a credit-card account with Bank C (also not alleged in the SOR) is being paid through automatic monthly payments of \$85. (AE D) He also provided documentation that his girlfriend B had made the final payments on her car in June 2015. (AE E)

Applicant has an hourly wage of \$26.50. He works full time, 40 hours a week or more. He said he earns about \$2,800 a month in take-home pay. He rents his home. He has no other debts and has about \$3,000 in the bank to fall back on. He is current on his taxes. He does not keep a written budget but divides household expenses with his girlfriend. (Tr. 26-29, 59-61; GE 7)

Applicant said he is a decent person who is trying to do the right thing, “even though I haven’t in the past.” He likes his job in the warehouse and wants to stay there until he retires. He wants to clear up his debts. He said his employment issues were because some of the jobs just didn’t “pan out,” sometimes due to pay issues, and sometimes due to disagreements with supervisors or company owners. (Tr. 47-48, 64)

After the hearing, Applicant submitted a text message from B, sent at his request. Applicant and B remain in touch regarding her sons. B said she would not lie for him and get nothing out of it. She said he never hit her but also said he was abusive. She believes he has mistreated her in the last year and has not taken responsibility for his actions. She does not owe him anything. (AE F, AE G)

Applicant’s current girlfriend, P, submitted a reference letter. She has known him for two years and they have lived together for a year. She said he is thoughtful, giving, hardworking, and supportive. She is happy with him and believes he should be given a chance. (AE H)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).



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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debts of about \$9,000 are established by the record evidence. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable in this case:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant incurred some delinquent debts during periods of unemployment and under employment. Those debts totaled about \$9,000. Most of the SOR debts have been paid or resolved, but for the remainder on the repossessed motorcycle, which he

cannot afford to address at this time. The most recent credit report in the record, from December 2023, shows no new debts of significance. His debts are largely tied to his employment situation, which has not always been stable. He documented good-faith resolution and payment of several of the debts. He has established that his financial issues are unlikely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment. The above mitigating conditions apply.

#### **Guideline J: Criminal Conduct**

AG ¶ 30 details the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant has a long history of criminal offenses, going back to his teenage years, up to 2020. As an adult, he has several charges and arrests for assault on a female, albeit charges that were dismissed, other domestic-related charges (trespassing), violations of domestic violence protection orders, as well as two DWIs, and other driving charges. AG ¶¶ 31(a) and 31(b) apply.

AG ¶ 32 sets forth the potentially applicable mitigating conditions:

(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 has the burden to establish that his criminal conduct is mitigated and will not be repeated. He has a long history of criminal conduct, going back over 40 years, up to as recently as 2020. He has several charges of domestic-related violence, and of violating domestic-violence protective orders. He has two DWIs, one as recent as 2020. His established history of criminal conduct is too extensive, too long-term, and too recent to be considered mitigated under the criminal conduct guideline. He did not establish that his criminal conduct is unlikely to recur or that it does not cast doubt on his reliability, trustworthiness, or good judgment. AG ¶¶ 32(a) and 32(d) do not apply to mitigate the criminal conduct security concerns.

### **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 proceedings. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (2) any disruptive, violent, or other inappropriate behavior; and (3) a pattern of dishonesty or rule violations.

The personal conduct allegations in this case are best addressed in three parts. First, there is SOR ¶ 2.a, which is a cross-allegation under the personal conduct guideline of the criminal conduct allegations addressed above under Guideline J.

Second, there is SOR ¶ 2.b, which concerns Applicant's cocaine use from about 2001 to 2019. And third, there is the matter of Applicant's various employment terminations. (SOR ¶¶ 2.c-2.i)

The cross-alleged criminal conduct (SOR ¶ 2.a) has already been determined to be disqualifying under Guideline J. Thus, AG ¶ 16(c) does not technically apply. However, that conduct can still be considered under the general personal conduct security concern, as conduct involving questionable judgment or unwillingness to comply with rules and regulations. . . ." (AG ¶ 15)

Applicant's cocaine use (SOR ¶ 2.b) was not alleged under either the criminal conduct or drug involvement guidelines, and it is itself rather sporadic and dated. Nevertheless, it may still be considered under Guideline E as further evidence of Applicant's poor judgment and unwillingness to comply with rules and regulations. AG ¶¶ 15 and 16(c) therefore apply to SOR ¶ 2.b.

This leaves Applicant's various employment terminations, between 2011 and 2019. As an initial matter, the security significance of an employment termination is often difficult to adjudicate because there are frequently multiple sides to the story, and only one side is presented in this forum. Many employments are "at will" and end for any number of reasons, not always related to misconduct or poor performance of the employee (the applicant). As here, the record is often without documentation from the employer about what actually happened.

It is difficult to attach security significance to most of the employment terminations alleged here. First, none of the terminations at SOR ¶¶ 2.c, 2.d, and 2.e, are alleged to have occurred due to Applicant's misconduct or poor performance. Nor are those characteristics established by the record evidence, since they appear to relate to disagreements with supervisors or to reasonable miscommunications. SOR ¶ 1.g resulted from a disagreement with subordinates. SOR ¶ 1.h resulted after Applicant failed to call in sick, as he should have, after going to the doctor. I do not regard any of these terminations as establishing a personal conduct security concern. No Guideline E disqualifying conditions apply to those allegations.

This leaves SOR ¶ 2.f, when Applicant was terminated from the job (or quit) after he yelled at a young waitress at the hotel restaurant. He denied saying anything inappropriate and the record does not support that he engaged in "inappropriate sexual behavior" as alleged, or that he otherwise harassed her. He does appear to have acted rudely and inappropriately towards her at best, which is likely why he was terminated.

There is also SOR ¶ 2.i, when Applicant was terminated for not showing up to work in September 2019. This occurred because he was incarcerated after violating the domestic violence protection order (SOR ¶ 1.m).

These two terminations constitute instances of poor judgment, if not poor performance or misconduct. Thus, AG ¶ 16(d)(2) and (3) apply to SOR ¶¶ 2.f and 2.i.

The other employment terminations do not suggest a personal conduct security concern.

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E. Among them is the following:

(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.

The two employment terminations remaining to be mitigated both occurred several years ago (2017 and 2019). Applicant has been employed in his current job since 2020, without incident. AG ¶ 17(c) applies to mitigate SOR ¶ 2.f and 2.i.

However, SOR ¶ 2.a and 2.b are not mitigated. Applicant's numerous instances of criminal conduct are not mitigated under Guideline J, and for the same reasons, the related cross-allegation (SOR ¶ 2.a) is not mitigated under Guideline E. Applicant's cocaine use constitutes additional criminal conduct, even though it was not alleged that way in the SOR. Although he has not used cocaine in several years, his drug use and his long record of criminal conduct are all examples of poor judgment and failure to comply with rules and regulations that goes to the heart of the protection of classified information. Established personal conduct security concerns are not fully mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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 Guidelines J, E, and F in my whole-person analysis.

Applicant has a long history of criminal conduct, going back to his teenage years, to as recently as 2020. While other personal conduct and financial allegations are mitigated, his established history and pattern of criminal conduct is too extensive, too long-term, and too recent to be considered mitigated under either the criminal conduct guideline, or, as cross-alleged, under the personal conduct guideline. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance.

### **Formal Findings**

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a-1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraphs 2.c-2.i:	For Applicant
Paragraph 3: Guideline F:	FOR APPLICANT
Subparagraphs 3.a-3.d:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge