DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 21-01308
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Benjamin Flam, Esq.

05/31/2024

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Decision

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HYAMS, Ross D., Administrative Judge:

Applicant provided sufficient information to mitigate the handling protected information, personal conduct, and use of information technology security concerns. The psychological conditions security concerns were not established. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 5, 2019. On March 2, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines: K (handling protected information); E (personal conduct); M (use of information technology); and I (psychological conditions). Applicant answered the SOR on June 30, 2022, with a narrative and documentation, and requested a hearing before an administrative judge. The case was assigned to me on June 15, 2023.

The hearing convened on October 25, 2023. Department Counsel submitted Government Exhibits (GE) 1-3. GE 1 and 2 were admitted without objection. Applicant objected to GE 3 because he did not have the opportunity to cross examine the author of the record, which he argued is required by DOD Directive 5220.6 §4.3.3. The Government

argued that GE 3 is a business record and did not require a witness to admit it into evidence. I found that GE 3 is a business record and contained the type of information that was required to be turned over to the government by the National Industrial Security Program Operating Manual (DoD 5220.22-M). I overruled Applicant's objection to GE 3 and admitted it into the record. However, the first page of GE 3 is a summary that was not sourced or attributed to any author, and it contains inaccurate and unsupported information. While this page was admitted as part of the exhibit, I do not give it any weight. In addition to the records contained in his SOR Answer, Applicant submitted Applicant Exhibits (AE) A-B, which were admitted without objection. (Tr. 11-13, 17-19; HE 4-6; GE 3)

Findings of Fact

In his answer, Applicant admitted SOR ¶¶ 2.e and 4.a, and denied the rest of the SOR allegations. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 55 years old. Since 2019, he has worked for his current employer, Defense Contractor C, as a senior director for business development. He earned a bachelor's degree in 1990, and a master's degree in 2000. He married in 1990 and divorced in 2012. He remarried in 2016 and divorced in 2020. He has one adult child from his first marriage, and two minor children from his second marriage. (Tr. 20-22; GE 1)

Applicant served on active duty in the Army from 1990-2012 and retired as a Colonel. During his service, he had six combat deployments and was awarded two Bronze Stars, the Legion of Merit medal, as well as many other medals and accomplishments. The record shows that he was consistently recognized for excellence during his military career. He retired as 100% disabled. After leaving the military, he continued to serve in his professional area of expertise by working for defense contractors in overseas locations promoting U.S. interests abroad. He has been recognized for excellence in these positions as well. (Tr. 22-72; Answer at exhibit 3, 5; GE 1)

When Applicant left the Army in 2012, he took a position with Defense Contractor A as a senior manager for business development in his professional area of expertise. In 2013, he went to work for Defense Contractor B as the director of the office managing this business area in Country A, in the Middle East. In 2014, his boss left the company and Applicant was promoted to his position, where he was responsible for 150 employees and 300 family members in Country A. (Tr. 22-72; GE 1)

In 2016, Defense Contractor B housed personnel from other international offices in Applicant's office space in Country A. During that time, Applicant reported an ethics violation he witnessed by a senior company executive. The ethics violation concerned a sensitive issue that impacted worldwide business operations. In Country A, Applicant was threatened by the senior company executive and told that he would be fired if did not withdraw the complaint. At the time, Applicant left Country A because it had become a hostile work environment for him. (Tr. 22-72)

Applicant returned to work in the United States, and he was assigned to work on European business matters in his professional area of expertise. His work in the U.S. was intended to be temporary, and he was given several assignments for transfer to Europe, however the senior company executive, with which he had a conflict, denied those transfers. In about 2017, he made another ethics complaint against the senior company executive that he was being specifically targeted for retribution for his previous ethics complaint in Country A. Before he made the second complaint, there were no concerns raised about him during his employment with Defense Contractor B. (Tr. 22-72)

After Applicant made the second ethics complaint, a company investigator started looking at Applicant's expenses. Applicant traveled extensively for over four years and had filed over $600,000 in travel expenses during that time without problem. The investigator started examining Applicant's expenses after returning to the U.S., and then examined how he traveled with company documents for international briefings. Applicant discovered during the investigation the company investigator was a domestic employee who had no knowledge of or experience in Applicant's professional area of expertise, the practices and procedures employed in international business, or long-term international travel for work. The investigator did not inform Applicant's supervisor (Witness One) about any of the allegations or ask him for expertise or clarification on any issue investigated. Applicant asserted this investigation was retaliation from the senior company executive and was an attempt to find a reason to fire him for cause. This effort was unsuccessful, and he was given a substantial severance agreement to leave his employment with Defense Contractor B, and not make any claims against them for what had occurred. (Tr. 22-131)

The SOR alleges the following:

Under Guideline K, SOR ¶ 1.a alleges while working overseas in 2014, Applicant was given a written warning for sending an email containing classified information through an unclassified system. This allegation was cross-alleged under Guideline E in ¶ 2.a and Guideline M in ¶ 3.a. GE 3, a nine-page memoranda dated May 6, 2014, reported the findings about the email incident. The email at issue contained some information the company identified as classified "confidential." The memo stated that it was a first-time violation by Applicant, and it was accidental. The memorandum stated the spill was quickly cleaned up, and Applicant was issued a written warning. (GE 3 at pages 9-17).

In 2014, at the time of the email incident, Applicant was working for Defense Contractor B in the Middle East as a senior manager for business development. One of his duties was to serve as a point of contact and liaison for officials from the host country on issues related to his professional area of expertise. A host-nation official asked a technical question based on an unclassified picture on the internet. Applicant relayed the question to his counterparts in Washington DC, and the question was flagged as classified "confidential" using a classification guide. Afterwards, Applicant discussed the matter with his boss, but said he was never counseled or warned. He stated that he took full responsibility for the incident, however, he does not think the question was classified and pointed out that the picture is still posted on the internet. (Tr. 72-151; GE 3)

SOR ¶ 1.b alleges while traveling overseas in November 2018, Applicant violated his employer's IT security polices by using foreign-owned computer assets to access sensitive, controlled, or proprietary information stored on a thumb drive. This allegation was cross-alleged under Guideline E in ¶ 2.a and Guideline M in ¶ 3.a. GE 3 contains two internal memorandum for the record from January 2019 written by the company investigator. The memorandum dated January 22, 2019, states in November 2018, Applicant added corporate information to his thumb drive before international travel, which raised concerns about International Traffic In Arms Regulations (ITAR) violations. Applicant told investigators that he needed to have the information on the thumb drives for his international briefings to corporate and foreign partners. Applicant provided his business thumb drive and personal thumb drives to the investigator for review. The investigation found there was no indication that ITAR information had been accessed internationally. The memorandum states that his thumb drive use was a violation of IT security policies. (GE 3 at pages 2-3, 6-7)

In GE 3, the memorandum dated January 24, 2019, is a one-and-a-half-page summary of a meeting with Applicant. It states a review of Applicant's thumb drive shows there were no ITAR violations and the data he accessed was only company documentation. The memorandum states that using the documentation violated several internal IT security policies. It also states that Applicant did not have a clear understanding of how to access the data in an international environment and was unclear on how to handle the data overseas. (GE 3 at pages 2-3, 6-7)

In 2016, after leaving his assignment in the Middle East, Applicant worked in business development with European nations in his professional area of expertise. His job was to travel to various European countries and brief the host nation and NATO officials on the status of certain programs. In these briefings, Applicant would be accompanied by a Vice President of the company, who was responsible for all business operations in that country. Applicant explained that while DoD banned the use of thumb drives in 2008, defense contractors used them as the primary means to travel overseas with protected unclassified data. He stated that laptops and phones were seen as a greater security risk. He had a thumb drive with a biometric lock, which he used to carry the briefings he gave to foreign and NATO officials. He was given this thumb drive by his employer. He also carried a thumb drive with personal records on it. Since he was traveling for about half the year, he needed to be able to access personal records so that he could assist his wife in resolving problems with their home, creditors, and related personal matters. (Tr. 22-151)

The November 2018 event identified in the memorandum occurred in Country B, which is a NATO ally that hosts U.S. military facilities. Applicant's employer partnered with a company from Country B and opened a joint office to offer their services to the host nation. This kind of partnership was common practice in NATO countries. Applicant and the company Vice President, who was responsible for all business operations in Country B, were briefing host nation officials the following day. Applicant and the Vice President had both determined that it was appropriate to access the briefing on the thumb drive in the joint office, for a legitimate business purpose, so it could be prepared for the

presentation. The materials he accessed were specifically created to present to foreign audiences. Giving these presentations was his job and reason for his frequent overseas travel. He did not access any ITAR or confidential company information. This issue was only raised once the investigation began and the company investigator saw the thumb drive in his computer bag. There were no allegations of mishandling information on that trip or during any other times of travel. Thumb drives are no longer used by the defense industry, and Applicant follows the current regulations for handling protected information. (Tr. 72-151; GE 3)

Under Guideline E, SOR ¶ 2.a cross-alleges allegations from Guidelines K, M and I, and the relevant facts are considered in those sections.

SOR ¶ 2.b alleges in 2018, Applicant misused a business credit card by making unauthorized personal charges. SOR ¶ 2.c alleges from May 2018 to July 2018, Applicant violated his employer's polices by seeking reimbursement for erroneous or unsupported expenses on his travel expense reports. These issues are directly related and are considered together.

GE 3 contains an internal memorandum for the record from January 2019, written by the company investigator. The memorandum dated January 22, 2019, is a four-and-a-half-page summary which includes information about a financial investigation of Applicant's expense reports and a short summary of the corporate investigator's interactions with Applicant. In August 2018, the investigator flagged Applicant's expense reports going back to 2013 for out-of-pocket expenses. Over about five years, Applicant had $36,000 in out-of-pocket expenses. The memorandum stated that most of the expenses came from international travel and the investigators did not have enough information in the report to draw negative conclusions, so they shifted their review to domestic business travel. They found that Applicant used out-of-pocket expenses in the same manner domestically as internationally. Some of the expenses were specifically identified as appropriate. They speculated about times there were taxi expenses and personal vehicle expenses on the same day. They also looked at days where hotel rooms were not charged, laundry expenses, fast food receipts, local area travel, and personal travel. The memorandum stated that questions to Applicant about expense reports were limited because the investigator was more interested in his thumb drive. The investigator speculated in the memo whether Applicant had been making inaccurate out-of-pocket expenses for personal gain. (GE 3 at pages 4-8)

Applicant explained that he spent hours on several occasions with the investigator explaining his expense reports and charges, and none of it was captured in the memorandum. He stated that he was unable to use his company credit card at times because the stripe was worn out, and he had to replace it. Some locations or service providers overseas did not take credit cards or did not have an efficient method for using them. He stated that he had about $600,000 of travel expenses during the timeframe they reviewed, and only 5% of that was out-of-pocket expenses. He reported there were simple explanations for the expenses questioned. He repeatedly told the investigator that he used his personal vehicle to travel with his pregnant wife and left her with family members

while traveling overseas on business, and he stayed with family before leaving on these trips. On one occasion, his child had a medical emergency in another state, and he had to leave work and attend to her. Applicant said that these and other events explained the items questioned by investigators. However, the corporate investigator did not record the explanations in his memorandum, and no further information or meetings were requested by the investigator. (Tr. 22-151)

From 2013-2018, Applicant was earning between $400,000 and $900,000 yearly, and had filed about $600,000 in travel expenses. The investigator only identified $1,630 of expenses that he thought was not unallowable. Applicant had an executive assistant that handled his travel vouchers and expense reports until about early 2018, and he had a clerk that assisted him while in the Army. There were no inquiries about his travel expenses until this investigation started. Applicant's wife, who was a Certified Public Accountant, worked for a firm that handled Applicant's employer's portfolio, and knew the travel voucher regulations and requirements. He stated that she repeatedly chided him for not asking for more expense reimbursement while traveling, to which he was entitled. (Tr. 72-151; Answer at exhibit 5; AE B at page 4)

SOR ¶ 2.d alleges in March 2019, Applicant was fired for violation of company rules. This allegation was based on the summary on page one of GE 3, which I do not give any weight for the reasons discussed above. Applicant obtained a draft memorandum (AE B) in which the corporate investigator outlined reasons for termination, but there was no evidence that any of his findings or conclusions were ever adopted. Applicant provided evidence of a severance agreement (AE A), where he was paid a substantial sum for separating from his employer. Testimony from Applicant and his witnesses established that he was an excellent employee and worked in a profitable business area. His ethics complaints and resulting conflict with the senior company executive were the reasons that he was removed from his employment. The evidence shows the investigation of the travel-related expenses and thumb drives was an effort to justify terminating him for cause, but that effort failed. No evidence established that he was fired for a violation of company rules, and it is unlikely he would have received any severance if he was terminated for cause. This allegation is unfounded. (Tr. 22-157; GE 3; AE A, B)

SOR ¶ 2.e alleges in July 2020, Applicant was charged with domestic violence-harassment. In May 2021, the case was Nolle Prosequi after successful completion of psychotherapy/counseling. Applicant denied ever being involved in domestic violence or harassment with his second wife. He was about 15 years her senior and they had a tumultuous relationship from the start of their marriage. They met when she worked as a tax preparer, and she showed romantic interest after learning about his income and assets. Early in the marriage he realized that she had a drinking problem. She refused to get help and he told her in January 2018 that he was divorcing her. Later that month, she told him that she was pregnant, and they remained married. He reported that she stopped drinking during her pregnancy but was abusing prescription medication. She was denied access to the babies after birth, because of her drug abuse, and she restarted drinking in 2019. In late 2019, he held an intervention, but she continued to drink. In January 2020,

he told her that he was going to divorce her and take custody of their children if she did not stop drinking. When the COVID-19 pandemic started, he was living on the third floor of their home, while she resided on the second. He reported that being locked down made their relationship worse, as she was drinking more, and they were stuck together in close quarters with their young children. He reported that she was a black belt martial artist and got physical when she became agitated. He reported in February 2020 she punched him in the face and gave him black eye, and in April 2020, she told him that she would stab him while he was sleeping. He filed for divorce in June 2020, but his attorney told him to remain living at their home for legal reasons. (Tr. 22-151; Answer at exhibit 6; GE 2)

On May 25, 2020, Memorial Day weekend, his wife became drunk and combative. He bathed the children to get them away from her, and she burst into the bathroom looking for a fight and crashed right into him and his child. He had no other physical contact with her that night. On June 1st, he filed for divorce and emergency custody of the children. On June 5th, he withdrew both filings after she promised to start alcohol treatment and counseling. They started marriage counseling mid-June. She attended four sessions but did not come to the fifth session on July 7th. Earlier that day she had filed for divorce and made a domestic violence complaint for the May 25th incident, claiming that he headbutted her. He was arrested on July 8th. On July 10th she sent an email asking for $1.5 million and assets for the divorce, to allow him visitation with their children, and withdrawal of the domestic violence complaint. After he was arrested, he was required to move out of their home, and she continued to live there expense free until April 2023. (Tr. 22-151; Answer at exhibit 6, 7; GE 2)

After his arrest, Applicant's supervisor at work came and bailed him out. Applicant stated that he was not part of a diversionary program, and the county prosecutor agreed to Nolle Prosequi his case because they lacked evidence that he had committed domestic violence. His attorney told him that meeting with the counselor allowed them to easily move the case for dismissal. Applicant reported that his relationship with his ex-wife is still difficult, and they exchange the children in a public parking lot with surveillance cameras for this reason. Applicant's first wife submitted a character letter in the record in which she asserts that he did not show inappropriate levels of anger or any concerning behavior in 22 years of marriage. (Tr. 22-151; Answer at exhibit 8, 11; GE 2 at page 40)

Under Guideline I, SOR ¶ 4.a alleges from November 2020 to January 2021, Applicant was treated by a psychologist and diagnosed with adjustment disorder with anxiety. This allegation was cross-alleged under Guideline E in SOR ¶ 2.a. Applicant attended psychotherapy as part of his effort to have the domestic violence case dismissed. Applicant stated that after he was arrested and falsely accused of domestic violence, he had anxiety. In his meetings with the psychologist, he discussed his anxiety and issues associated with the dissolution of his marriage and separation from his children. The psychologist's evaluation (GE 2 at pages 35-36) found that Applicant had no significant mental health problems and found his anxiety and concerns to be temporary and in response to the circumstances with his ex-wife (adjustment disorder). After six sessions, the psychologist felt that no further treatment was warranted or necessary. (Tr. 22-151; Answer at exhibit 8; GE 2)

Witness One was Applicant's supervisor in the Army and while working at Defense Contractor B from 2017-2019. He submitted a character letter for Applicant in the record. He is a Vice President of a business area for Defense Contractor B. After Applicant left his position in Country A, he started working on his team in the U.S. Witness One knew of Applicant's work in Country A, and the issues with the senior company executive. Despite being his supervisor, he was unaware of any ethics violations or complaints against Applicant. He believed Applicant to be an excellent employee, and stated that he is reliable, trustworthy, and possesses good judgement. In 2018, Witness One was only given a brief notification about the investigation. He reported that an expense report inquiry is not unusual for employees who travel often, but these questions are worked out at the lowest levels. He was not informed that Applicant was being separated from the company until immediately before it happened. He was not consulted, nor was his input requested, which he stated was highly unusual. He has seen employees terminated for cause, but asserted they were not offered severance. He knew that Applicant had a troubled second marriage and he had socialized with them on many occasions. He reported that Applicant's second wife was exceptionally emotional and had mood swings. He does not believe the allegation that Applicant headbutted her in May 2020. He strongly recommends Applicant be granted a security clearance. (Tr. 161-175; Answer at exhibit 10)

Witness Two works with Applicant at his current employer, Defense Contractor C. She submitted a character letter for Applicant in the record. She serves as a Vice President of a business area of the company. In her prior job, she was a senior executive in the federal government service. Applicant worked with her from 2019-2023, and he was promoted into her position when she was transferred into another leadership role. She reported that he is reliable, trustworthy, and possesses good judgement. She stated he is an excellent employee and thinks he should be granted a security clearance. He was working for her when he was arrested in July 2020, and reported the issue to her immediately after the arrest. (Tr. 176-183; Answer at exhibit 9)

There are eight character statements in the record that praise Applicant's character, patriotism, service to the nation, professionalism, reliability, trustworthiness, and good judgment. (Answer at exhibits 9-16)

Policies

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

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.(GE 3 at pages 2-3)

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

Analysis

Guideline K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

> Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

The security concerns applicable in this case under AG ¶ 34 are:

(b) collecting or storing protected information in any unauthorized location;

(c) loading, drafting, editing, modifying, storing, transmitting, or otherwise handling protected information, including images, on any unauthorized equipment or medium; and

(g) any failure to comply with rules for the protection of classified or sensitive Information.

Conditions that could mitigate the handling protected information security concerns are provided under AG ¶ 35. The following are potentially applicable:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment:

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) the security violations were due to improper or inadequate training or unclear instructions; and

(d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

AG ¶ 35 (a), (b), (c), and (d) apply. Applicant provided sufficient evidence to mitigate the security concerns raised in SOR ¶¶ 1.a and 1.b. The email incident happened over ten years ago, and the record shows it was inadvertent and a first-time violation. Applicant had a reasonable belief that the information was not classified. He worked with his supervisor at the time on ways to address such issues in the future. Applicant provided sufficient evidence to mitigate the concerns about his thumb drive use in overseas travel. The drive was provided by his employer. He was properly carrying and handling information for a legitimate business purpose overseas. The issue was not raised until a retaliatory investigation started against him in 2018. Thumb drives are no longer used by defense industry, and there is no other evidence that he has improperly handled protected information. The handling protected information security concerns are mitigated.

Guideline E, Personal Conduct

AG ¶ 15 details the personal conduct security concern:

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…

The SOR cross-alleges all the SOR allegations in ¶ 2.a and four Guideline E specific allegations in ¶¶ 2.b-2.e. The security concern applicable in this case under AG ¶ 16 is:

> (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.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 17. The following are potentially applicable:

> (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
>
> (f) the information was unsubstantiated or from a source of questionable reliability.

AG ¶¶ 17(c) and (f) apply to SOR ¶¶ 2.a-2.e.

SOR ¶ 2.a cross-alleges SOR ¶¶ 1.a, 1.b, 3.a, and 4.a. SOR ¶¶ 1.a, 1.b, and 3.a were mitigated under Guidelines K and M, and are also mitigated by AG ¶ 17(c) and (f), for the same reasons explained in those analysis sections. SOR ¶ 4.a did not have sufficient evidence to establish the psychological conditions security concerns, and there is insufficient evidence to establish it as a personal conduct security concern.

SOR ¶¶ 2.b and 2.c concern Applicant's use of his company credit card and expense reports. These issues were raised in the 2018 retaliatory investigation against Applicant, after he made two ethics complaints against a senior company executive. Between 2013-2018, Applicant had claimed about $600,000 in travel expenses. He established there was only a question about $1,630 total of these expenses. He was earning between $400,000 and $900,000 yearly during this timeframe, and it is not reasonable to believe that he would have tried to steal $1,630 in unallowable expenses from his employer to enrich himself. He reported that he had an executive assistant that helped him with expenses prior to returning to work in the U.S., and his expense reports were never questioned. The investigation tried numerous ways to find violations in five years of expense reports, but could only identify a few minor issues that Applicant

asserted were explained and appropriate. His explanation about his company credit card use and the expenses questioned is credible and reasonable. He has not had any issues with these matters prior to 2018, or since then. These security concerns are mitigated by AG ¶¶ 17(c) and (f).

There was insufficient evidence to establish SOR ¶ 2.d. Applicant provided evidence of a substantial severance agreement, which undercuts a finding that he was terminated for cause. He provided sufficient evidence to establish that the 2018 investigation was retaliation for two ethics complaints against a senior company executive. He also provided a draft memorandum which outlines the investigators reasoning for termination, but no evidence in the record shows that any of these findings were ever adopted. Even if he was terminated in early 2019, the security concerns are mitigated by AG ¶¶ 17(c) and (f).

SOR ¶ 2.e is mitigated by AG ¶¶ 17(c) and (f). Applicant and his second wife had a troublesome marriage. She abused alcohol and prescription medication, and she was violent and emotionally unstable. The relationship severely degraded during the lockdown phase at the start of the COVID-19 pandemic. His explanation about the incident that occurred on May 25, 2020, is credible and is not rebutted by other evidence in the record. He provided sufficient evidence showing that he filed for divorce and emergency custody of the children twice prior to her allegations. He withdrew the filings both times because she promised to stop substance abuse and get counseling. The timing of her domestic violence complaint, divorce filing, and request for $1.5 million to allow him visitation with their children, and withdrawal of the domestic violence charges supports his narrative about these events. The psychologist's report and the decision by the county prosecutor to Nolle Prosequi the case also supports Applicant's narrative.

The personal conduct security concerns are mitigated.

Guideline M, Use of Information Technology

The security concern for financial considerations is set out in AG ¶ 39:

> Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

SOR ¶ 3.a cross-alleges the security concerns in SOR ¶¶ 1.a and 1.b, which were mitigated under Guideline K. The use of information technology security concern applicable in this case under AG ¶ 40 is:

(d) downloading, storing, or transmitting classified, sensitive, proprietary, or other protected information on or to any unauthorized information technology system.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 41. The following are potentially applicable:

(a) so much time has elapsed since the 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

(c) the conduct was unintentional or inadvertent and was followed by a prompt, good faith effort to correct the situation and by notification to appropriate personnel.

AG ¶¶ 41(a) and (c) apply. Applicant provided sufficient evidence to mitigate the security concerns. The email incident happened over ten years ago, and the record shows it was inadvertent and a first-time violation. Applicant had a reasonable belief that the information was not classified. He worked with his supervisor at the time on ways to address such issues in the future. Applicant provided sufficient evidence to mitigate the concerns about his thumb drive use in overseas travel. The drive was provided by his employer. He was properly carrying and handling information for a legitimate business purpose overseas. The issue was not raised until a retaliatory investigation started against him in 2018. Thumb drives are no longer used by defense industry, and there is no other evidence that he has improperly handled protected information. The use of information technology security concern is mitigated.

Guideline I, Psychological Conditions

AG ¶ 27 articulates the security concern for psychological conditions:

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.

The security concerns potentially applicable in this case under AG ¶ 28 are:

(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;

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

The government failed to establish this allegation. There is insufficient evidence to find that Applicant has or had an emotional, mental, or personality condition that impairs his judgment, stability, reliability, or trustworthiness. SOR ¶ 4.a states that Applicant had adjustment order with anxiety, which is not a disqualifying condition. After Applicant was arrested and falsely accused of domestic violence, he had anxiety, which was appropriate in the circumstance. He discussed this anxiety and issues associated with the dissolution of his marriage and separation from his children with a psychologist. The psychologist found that Applicant had no significant mental health problems, and his anxiety and concerns were temporary and in response to the circumstances with his ex-wife. After six sessions, the psychologist felt that no further treatment was warranted or necessary.

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 his military service, service as a government contractor, his awards, medals, and recognitions, and the character letters. 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 K, E, M, and I in my whole-person analysis.

I had the chance to observe Applicant's demeanor and asses his credibility. He adequately explained the circumstances surrounding the SOR allegations, and I found his testimony and explanations to be credible and substantially corroborated by witness testimony and documentary evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility for a security clearance. I conclude that Applicant mitigated the handling protected information, personal conduct, and use of information technology security concerns. The psychological conditions security concerns were not established.

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 K:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.e:	For Applicant
Paragraph 3, Guideline M:	FOR APPLICANT
Subparagraphs 3.a:	For Applicant
Paragraph 4, Guideline I:	FOR APPLICANT
Subparagraphs 4.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Ross D. Hyams
Administrative Judge