



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



In the matter of:)
)
) ISCR Case No. 22-00761
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Daniel S. Conway, Esq.

02/25/2025

Remand Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns under Guidelines J (criminal conduct) and E (personal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On April 20, 2020, Applicant submitted a Questionnaire for National Security Positions (SF-86). On August 8, 2022, the Department of Defense (DOD) Consolidated Adjudication Services (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J and E. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On September 7, 2022, Applicant submitted his Answer to the SOR, and requested a decision based on the administrative (written) record, without a hearing before an Administrative Judge. Pursuant to ¶¶ E.3.1.7 and E.3.1.8 of the Additional Procedural Guidance in Enclosure 3 of DOD Directive 5220.6, Department Counsel requested that a hearing before an Administrative Judge be held in this case. On December 5, 2022, Department Counsel was ready to proceed.

On December 13, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On January 6, 2023, DOHA issued a Notice of Microsoft Teams Video Teleconference Hearing scheduling the hearing for February 1, 2023. On January 26, 2023, DOHA issued an Amended Notice of Microsoft Teams Video Teleconference Hearing rescheduling the hearing for February 28, 2023. The hearing was convened as rescheduled. Department Counsel offered Government Exhibits (GE) 1 through 8, which I admitted without objection. Applicant testified, and offered Applicant Exhibits (AE) A through I, which I admitted without objection. On March 8, 2023, DOHA received the hearing transcript (Tr.).

On June 13, 2024, the DOHA Appeal Board remanded Applicant's case to correct "harmful errors and for further processing consistent with the Directive." ISCR Case No. 22-00761 (App. Bd. June 13, 2024). The Appeal Board provided binding instruction on required additional analysis of the facts presented in support of or contrary to the Applicant's version of events compared to the two women who separately accused him of assault.

Findings of Fact

Background Information

Applicant is a 35-year-old cyber operations lead analyst who has been employed by a defense contractor since September 2022. He seeks to retain his Top Secret/Sensitive Compartmented Information (TS/SCI) clearance, which is a requirement of his continued employment. (Tr. 17-18, 83, 96-99) Applicant successfully held Secret and Top Secret clearances while he was on active duty in the U.S. Army, discussed below. (Tr. 97)

Applicant graduated from high school in May 2009. He was awarded a Bachelor of Science Degree in Criminal Justice and Cyber Security in August 2018; and a Master's Degree in Organizational Leadership in August 2019. At the time of his hearing, Applicant was pursuing a Ph.D. in Cyber Security. (Tr. 19-20; 22-25) Applicant has been married two times. His first marriage was from August 2012 to December 2017, and his second marriage was from March 2019 to May 2022. Both marriages ended by divorce. Applicant does not have any children. (Tr. 25-26, 32-38, 44-45, 55-57, 61-73, 84-87; AE H, AE I)

Applicant's first wife was an active duty Army soldier, who he met on post. She has since separated from the Army. Applicant's second wife was a Japanese flight attendant, who he met online. When Applicant and his second wife divorced, she was working in a Japanese restaurant. (Tr. 74-76, 78-79, 83) Applicant initiated divorce proceedings to end both of his marriages. He said neither of his wives wanted a divorce. (Tr. 101) [I think it is important to note in the decision in some instances the source of the information]

Applicant served in the Army from November 2009 to January 2017, and in the Army Reserve from January 2017 to January 2020. He was honorably discharged as a

sergeant (pay grade E-5). He was subsequently awarded a Veterans Affairs (VA) 100% disability rating as a result of injuries he sustained on active duty. (Tr. 26-29) Since his release from active duty, he has worked exclusively for defense contractors. (Tr. 97-98)

Criminal Conduct/Personal Conduct

The concerns identified under these Guidelines are listed as three separate allegations and are discussed in order as listed in the SOR. Applicant admitted that the three arrests discussed below occurred but denied committing the underlying conduct. A summary of the record evidence follows. Applicant testified on his own behalf, and I found his testimony to be credible.

SOR ¶ 1.a – On May 17, 2017, Applicant was arrested and charged with abuse of a family member and household members, a misdemeanor offense. The complainant was Applicant's first wife. On May 18, 2017, a temporary restraining order (TRO) was entered against him on behalf of his then-wife. Her petition for a TRO claimed physical and verbal abuse, all of which occurred on May 17, 2017. On May 31, 2017, Applicant's then-wife moved the court to dissolve the TRO and the court granted her request. On August 21, 2017, the criminal case against Applicant was dismissed without prejudice because the complaining spouse failed to appear at the hearing. The case was later dismissed on September 20, 2017, with prejudice. (Tr. 39-43; GE 2, GE 5, GE 7, GE 8; AE A, AE F) Applicant was not required to attend domestic violence counseling following this arrest. (Tr. 79-80) Applicant subsequently initiated divorce proceedings against his first wife and their divorce was final on December 26, 2017. (AE I)

The case file does not contain a police report describing Applicant's May 17, 2017 arrest or medical records. Such a report completed by the arresting officers would have been helpful in corroborating or refuting the wife's or Applicant's versions of events. Medical records would have also been helpful in corroborating her injuries, if any.

SOR ¶ 1.b – In July 2019, Applicant was arrested and charged with abuse of family and household members, a misdemeanor offense. The complainant was Applicant's second wife. (Tr. 50-51, 57-59; GE 8) The only source document contained in the case file describing this incident is an Office of Personnel Management (OPM) Personal Subject Interview (PSI) of the Applicant conducted under oath on November 3, 2020. The case file does not contain a police report describing Applicant's July 2019 arrest. Such a report could have corroborated or refuted either parties' versions of events. Applicant's stated charge was dismissed with prejudice for lack of evidence. (Tr. 103; GE 8; AE A) Presumably, the prosecutor had access to the police report(s) and all available evidence.

The following extract, a Government Exhibit, was taken under oath from the November 3, 2020 OPM PSI, a summary of the investigator's notes, which provides the only details in the case file pertaining to Applicant's July 2019 arrest. It is Applicant's description of events leading to his arrest. It is unclear what source documents, if any, the OPM investigator used when compiling his/her report.

In 07/2019, Subject (Applicant) was arrested for domestic violence against his Spouse. Subject got into a verbal altercation with his Spouse regarding Subject's dating history, his past financial debts, and how he does not spend more money on her. During the verbal altercation, his Spouse kept swinging her arm at Subject in an attempt to hit him. Subject protected himself by grabbing her arms to avoid her from hitting him. Subject's Spouse fell on the bed while still trying to attack Subject. Subject removed himself from the situation and left the house to go to work. He returned home without any problems until 07/06/2019. [Local Police] arrived at his residence and questioned his marital situation. Subject was then arrested. He was informed the reason was for domestic violence, due to an arrest warrant that was issued by [state of residence]. Subject was confused by the situation and he was taken to the [local police] substation located in [local police station city]. While there, Subject overheard an officer's conversation saying Subject was arrested for a misdemeanor charge of abuse of a household member. He could not find anyone to post his bail and Subject remained in jail until 07/08/2019. On 07/08/2019, Subject was released from jail because the prosecutor wanted to drop all charges due to not enough evidence to support the charge. Subject advised he signed a stay away order lasting until 07/09/2019. Subject's case was eventually expunged from [local police] records. He was not required to go to court for this incident. Subject advised he never hit his Spouse, and he was not certain of what his Spouse told their neighbor or the police. He believes his neighbor was the person who called [local police] based on the accusation his Spouse told their neighbor. Subject's supervisor, project manager, [name of project manager], and coworkers were aware of this incident. (GE 8)

SOR ¶ 1.c – On February 8, 2020, Applicant was arrested and charged with a domestic violence crime and a TRO was entered against him. Again, the complainant was Applicant's second wife. (Tr. 52, 59; GE 6; AE E). The case file does not contain a police report describing the February 8, 2020 arrest. Such a report and/or medical records could have corroborated or refuted respective parties' version of events. The charge was dismissed with prejudice, as in the two previous cases, because his former spouse failed to appear. (Tr. 60, 101; AE A)

The following extract, a Government Exhibit, was taken under oath from the November 3, 2020 OPM PSI, a summary of the investigator's notes, which provides details in the case pertaining to Applicant's February 2020 arrest. It is Applicant's description of events leading to his arrest. It is unclear what source documents, if any, the OPM investigator used when compiling his/her report.

In 02/2020, Subject's Spouse started a verbal altercation with Subject for various reasons such as accusing him of cheating on her, his dating history, and about the amount of money he gives her. At the end of the argument, Subject's Spouse left and went to their neighbor's residence.

Subject also left his residence but not before locking his Spouse's bag in his safe. After Subject left, he received a call from [local police] informing he needed to return his Spouse's bag. Subject complied and he retrieved her bag and provided it to the [local police] officer with no action taken against him. At approximately 1 am, an hour and twenty minutes after the police left, Subject heard a knock at his front door. [The local police] returned because he believed the neighbor or Spouse called the police and his Spouse accused him of physically hitting her. Subject was arrested for domestic violence and taken to the [local police] substation located in [local police station city]. Subject advised just like the previous incident, [the local police] released him because the prosecutor did not want to pursue the case due to insufficient evidence. Subject signed an acknowledgement that he was being released and there were no charges filed against him. This resulted in Subject not having to go to court. About a week later, Subject submitted an application to request that his three [local police] arrest records be expunged. He requested this because he did not abuse any of his Spouses and they were only accusations. Subject advised his request was granted and it resulted in all three [local police] arrest records being expunged, date of expungement not recalled. Subject later found out from his Spouse that she admitted lying to [local police] by telling them Subject hit her, even though he did not. His Spouse also admitted to him that she told the police that Subject hit her because during their verbal argument, Subject raised his voice to her and she got scared. Subject's supervisor, security manager, project manager, his sister and [name of project manager] are aware of this incident. (GE 8)

On February 26, 2020, Applicant's second wife with the help of a Japanese interpreter filed a TRO application against the Applicant. In her application, she cited six instances of abuse, the first being in February/March 2019 and the last being on February 8, 2020. Following the June 10, 2019 instance of abuse, she said that she "went to the hospital" because the left side of her body was numb, and following the July 2, 2019 instance of abuse, she claimed that she "had to go to EMS" due to "many bruises and bumps." (GE 6, GE 6a; AE A) No medical records or photographs of injuries documenting these injuries are contained in the record.

Following his TRO hearing in February 2020, Applicant volunteered to attend domestic violence classes. He did so for the duration of the active restraining order. These classes were online and consisted of sharing experiences with other people and teaching different approaches to communicating with one's spouse. In August 2020, Applicant's TRO was dismissed, discussed below, and he stopped taking the online classes. (Tr. 49-50, 79-83, 101-102; GE 1, GE 8)

The case file does contain court documents pertaining to the TRO hearing. A summary of the hearings related to the February 26, 2020 TRO application, is as follows: On March 10, 2020, a hearing was held regarding the TRO. The petitioner (Applicant's second wife) was present along with her Domestic Violence Advocate Center (DVAC) advocate and Japanese interpreter. Applicant was not present. The petitioner requested

to dissolve the TRO. The judge (RAC) denied petitioner's request, and she continued the case until May 26, 2020. (GE 3)

On May 26, 2020, the petitioner was present along with her DVAC advocate and Japanese interpreter. Applicant was present. Applicant agreed to participate in DVI classes and provide proof of same before the next hearing, provide financial support to petitioner, and stay away from her residence. The petitioner requested a second time to dissolve the TRO. The judge (RAC) denied petitioner's request, and she continued the hearing until June 29, 2020. (GE 3; AE E)

On June 29, 2020, the petitioner was present along with her Japanese interpreter. Applicant was present. After receiving testimony from both parties, the judge (RAC) took judicial notice of the records and files. Applicant was to provide the court with documentation related to DVI services and individual or marriage therapy. She also ordered all other provisions of the TRO to remain in effect and continued the hearing until August 24, 2020. (GE 3; AE E)

On August 24, 2020, the petitioner was present along with her Japanese interpreter. Applicant was not present. The judge (RAC) took judicial notice of the record and case file as well as the related cases. She also received sworn testimony from the petitioner. The judge ordered that the TRO granted on February 26, 2020 be dissolved and vacated without prejudice as requested by the petitioner. On that same day at a later hearing, the petitioner was present along with her DVAC Advocate and Japanese interpreter. Applicant was also present. The judge (RAC) continued the hearing until September 8, 2021. (GE 3, GE 4; AE E)

On September 8, 2021, the petitioner was present along with her DVAC Advocate. Japanese interpreter, and her lawyer. Applicant was present along with his lawyers. The judge (RAC) held three off the record pretrial conferences with counsel. She took judicial notice of records and the file. Petitioner's lawyer represented that the parties had a divorce hearing with a divorce judge (JBC) scheduled in the afternoon and would request a mutual no-contact order be in place if the divorce judge is willing to call the divorce case. The parties subsequently appeared before the divorce judge (JBC) and based on the parties mutual agreement that a no-contact order be in place and the petitioner's request to dissolve this matter, the divorce judge (JBC) ordered that the TRO entered on August 11, 2021 be dissolved with prejudice with it being effective until signed and filed by the judge (RAC) at a hearing scheduled for September 22, 2021. (GE 4)

On September 22, 2021, the judge (RAC) who had been assigned to the case from the onset ordered the TRO dissolved with prejudice. (GE 4)

On November 30, 2021, Applicant filed an order for protection against his second wife. In his petition, he alleged two instances in which his second wife had violated the September 8, 2021 mutual no-contact order, and two instances of physical violence she had committed against him in 2019. On December 13, 2021, Applicant as petitioner, appeared before the same judge (RAC) who had conducted all the hearings involving the TRO filed by his second wife. His wife failed to appear at the hearing. After hearing

testimony from the Applicant, the judge (RAC) granted him an order of protection against his wife for eight years to expire on December 13, 2029. (GE 4; AE B)

Applicant subsequently initiated divorce proceedings against his second wife and their divorce was final on June 20, 2022. (AE H) Since Applicant's appearance in divorce court in May 2021, he has had no contact with his second spouse and has no idea where she is. (Tr. 70-74, 76-78; AE C, AE B)

As noted, all three arrests were subsequently expunged, and the records of arrests were annulled. The State's Attorney General issued Applicant expungement certificates. The certificates authorized Applicant to state in response to any question or inquiry, whether or not under oath, that he had no record regarding these arrests. Applicant testified that his case was dismissed because his former spouses failed to appear and added, "[y]es, [a]nd I just didn't do the crime." (Tr. 43-44, 49-50, 79-83, 101-102, 103; GE 1, GE 8; AE A, AE C, AE D)

Applicant reiterated the reason the domestic violence charges/TRO petitions were dismissed was because neither of his wives appeared in court because "there wasn't any proof that [he] actually did these (offenses)." He added that he was never abusive to either of his wives. (Tr. 101)

During the timeframe of August 2017 to December 2017, Applicant consulted a psychiatrist at the VA for stress related to his 2017 divorce. Applicant does not recall being given a diagnosis but was provided medication to help him sleep that he no longer takes. At the time of his hearing, Applicant was seeing a psychologist on an as-needed basis to help him cope with depression following his divorces. (Tr. 47-49, 101; GE 1)

Applicant stated that he is a law-abiding citizen who respects the law. He added that he is a ten-year Army veteran who lived by Army core values of loyalty, duty, selfless service, honor, integrity, and personal courage. He acknowledges making poor choices in his personal life but is not a threat to national security. He considers himself a patriot and loves his country. (Tr. 102; AE A)

Law and 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.

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 AG ¶ 2 describing 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

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to 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 two conditions that could raise a security concern and may be disqualifying in this case:

(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.

The record evidence fails to establish concerns under AG ¶¶ 31(a) and 31(b).

As a starting point, the TROs and arrest records present probable cause that Applicant committed multiple assaults on two different women two to three years apart. Applicant's evidence refuted the allegations of the two women.

In the May 2017 case involving Applicant's first wife, she moved the court to dissolve her TRO 13 days after she submitted her petition. The court granted her request to dissolve her TRO and did so without prejudice, and then later dismissed it with prejudice. The court also dismissed the criminal case against Applicant after the complaining spouse failed to appear.

Applicant admitted that the arrest occurred but denied the underlying conduct at every phase of his background investigation, to include during his OPM interview, in his SOR response, and during his hearing testimony. Appellant's former spouse did not provide her rationale for why she requested that her TRO against Applicant be dissolved, and her subsequent failure to appear at the criminal case hearing.

Given Applicant's repeated denials of the underlying conduct surrounding this incident, coupled with his first spouse's request to dissolve the TRO and her non-participation in subsequent criminal proceedings, doubts regarding the veracity of her allegations were raised. It became incumbent on the Applicant to present evidence to establish controverted facts to this allegation. Such corroborating evidence could have been in the form of but not limited to police reports, medical records, testimony or statements from witnesses familiar with incident or the credibility of his former spouse or Applicant, or both.

In the July 2019 case, this is the first of two incidents involving Applicant's second wife. The case file does not contain any primary source documents regarding this incident, but rather contains a PSI taken under oath by an OPM investigator on November 3, 2020. The evidence that Applicant provided to the investigator clearly does not support the allegation contained in SOR ¶ 1.b. If believed, it exonerates Applicant and refutes her allegations.

As noted in the May 2017 incident, Applicant admitted that the arrest occurred, but denied the underlying conduct at every phase of his background investigation, to include during his OPM interview, in his SOR response, and during his hearing testimony. Given Applicant's repeated denials of the underlying conduct surrounding this incident and the fact that the prosecutor did not choose to proceed with the case, it

was incumbent on the Applicant to present evidence to establish controverted facts to this allegation. Such corroborating evidence could have been in the form of but not limited to police reports, medical records, testimony or statements from witnesses familiar with incident, or the credibility of his former spouse or Applicant, or both.

In the February 2020 incident (this is the second of the two incidents involving Applicant's second wife), she moved the court to dissolve her TRO 13 days (February 2020 was a leap year) after she submitted her petition. The court denied her request to dissolve her TRO. She requested the court to dissolve her TRO a second time during the May 2020 hearing and on her third attempt to dissolve her TRO during the August 2020 hearing, the judge granted her request without prejudice. The judge later dissolved the TRO with prejudice during a September 2021 hearing.

As noted in the May 2017 and July 2019 incidents, Applicant admitted that the arrest occurred, but denied the underlying conduct at every phase of his background investigation, to include during his OPM interview, in his SOR response, and during his hearing testimony. Given Applicant's repeated denials of the underlying conduct surrounding this incident and the fact local prosecutor did not proceed with the case, it was incumbent on the Applicant to present evidence to establish controverted facts to this allegation. Such corroborating evidence could have been in the form of but not limited to police reports, medical records, testimony or statements from witnesses familiar with incident, or the credibility of his former spouse or Applicant, or both.

In a turn of events, Applicant filed for an order of protection against his second wife in November 2021 based on his statement that she violated their September 2021 mutual no-contact order. The same judge (RAC) who conducted the five hearings involving his then-wife's TRO hearing presided over Applicant's request for an order of protection in December 2021. Applicant's then-wife failed to appear. After receiving testimony from the Applicant, the judge (RAC) granted him an order of protection against his second wife for eight years.

In short, the record evidence is insufficient to establish the allegations that Applicant committed the offenses alleged in the SOR. Both spouses requested to have the TROs dissolved 13 days after they submitted them. Applicant's first wife succeeded in having her TRO dissolved on her first attempt and his second wife succeeded in having her TRO dissolved on her third attempt. Additionally, Applicant's first wife failed to appear on the date the criminal case was called, and his second wife failed to appear at the hearing for an order of protection the Applicant filed against her. While both wives submitted TRO applications under penalty of perjury, they ultimately did not pursue them. The only party who succeeded in having an order of protection granted was the Applicant and that was against his second wife for a period of eight years.

It is noteworthy that the judge who granted Applicant an order of protection was the same judge (RAC) who presided over the five hearings involving the TRO his second wife filed against him. After having had an opportunity to observe the Applicant over the course of those hearings, she would have had an opportunity to assess his credibility and would have not issued an eight-year order of protection had she not

found him credible. Lastly, as previously stated, I found the Applicant to be credible. He was forthright when answering questions posed to him during his hearing. If I formed a favorable impression regarding his credibility, it was based on the cumulative facts contained in the record presented as well as making an assessment of his in-person testimony. Apart from these allegations, there is no record evidence that Applicant has engaged in violence or is a violent person. Absent corroboration beyond what is available in the record, there is no other reliable evidence to support a finding that the allegations occurred as alleged. In short, Applicant refuted the allegations.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be potentially applicable in this case:

(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 person may not properly safeguard protected information.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The record evidence does not establish concerns under AG ¶¶ (16(c) and 16(e). AG ¶¶ 16(c) and 16(e) are refuted for the reasons stated in the criminal conduct section, *infra*.

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 the 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), “[t]he ultimate determination” of whether to grant national security eligibility “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines J and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 35-year-old cyber operations lead analyst employed by a defense contractor since September 2022. He enlisted in the U.S. Army right after graduating from high school. He honorably served on active duty from 2009 to 2017, and in the Army Reserve from 2017 to 2020. He was subsequently awarded a 100% VA disability rating as a result of injuries sustained on active duty. Since his release from active duty, he has worked exclusively for defense contractors. He successfully held Secret and Top Secret clearances while he was in the Army, and he currently holds a TS/SCI Clearance as a defense contractor. He has diligently pursued higher education as discussed, *supra*, and was working to complete his Ph.D. at the time of his hearing.

Apart from his professional development and accomplishments, Applicant encountered significant disappointments in his personal life, notably his two divorces. His first spouse leveled a domestic violence charge against him in 2017, and his second spouse leveled domestic violence charges against him in 2019 and 2020. Both spouses failed to appear at critical points during their judicial proceedings. The TROs were dismissed with prejudice, and Applicant received judicial expungement orders for all three of those charges. Applicant stated that his spouses failed to appear because they were unable to prove the charges they filed against him.

As noted, I found Applicant to be credible. He was consistent in his recollection of events and did not waiver or hedge in his testimony. I did not have the opportunity to evaluate any of the complainants' testimony. As such, I was limited in reaching my decision based on the record evidence. Following Applicant's denials, corroboration of the complaining parties may have proven helpful had it been offered. A substantial evidence standard of proof is required, and the statements of the former spouses met this low standard. In my review of the evidence, Applicant's credible assertions of innocence were sufficient to refute the allegations against him.

Although not dispositive, Applicant's conduct was consistent with someone trying to establish his innocence such as denying conduct alleged at every phase of these proceedings and applying for and receiving an expungement of his arrests. He received an eight-year order of protection against his second spouse from the same judge who presided over his TRO hearings. I also note that Applicant initiated divorce proceedings against both of his spouses, versus the other way around. He said neither spouse wanted a divorce. Applicant is also credited with seeking counseling on his own volition to cope with the disappointment from his two failed marriages. I have also considered Applicant's military service, his service-connected disabilities, and his successful employment as a defense contractor and for having kept his employer informed of these events.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant's evidence was sufficient to overcome the *Dorfmont* presumption with respect to the security concerns alleged in the SOR.

I have carefully applied the law, as set forth in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated the Guidelines J and E security concerns.

Formal Findings

The formal findings on the SOR allegations are:

| | |
|---------------------------|---------------|
| Paragraph 1, Guideline J: | For Applicant |
| Subparagraphs 1.a – 1.c: | For Applicant |
| Paragraph 2, Guideline E: | For Applicant |
| Subparagraph 2.a: | For Applicant |

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility is granted.

Robert Tuiider
Administrative Judge