



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 24-00073
)
)

Appearances

For Government: Cassie L. Ford, Esq., Department Counsel

For Applicant: Sean D. Rogers, Esq.

04/23/2025

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guideline J (criminal conduct) are mitigated. However, Guidelines I (psychological conditions) and E (personal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 26, 2024, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On April 12, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines I, J, and E. (HE

2) On August 26, 2024, Applicant provided a response to the SOR and requested a hearing. (HE 3) On November 8, 2024, Department Counsel was ready to proceed.

On December 11, 2024, the case was assigned to me. On December 13, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice, scheduling the hearing for February 11, 2025. (HE 1) The hearing was held as scheduled.

Department Counsel offered eight exhibits into evidence; Applicant offered 18 exhibits into evidence; there were no objections; and I admitted all proffered exhibits into evidence. (Transcript (Tr.) 6, 13-15; GE 1-GE 8; Applicant Exhibits (AE) A-AE R) On February 24, 2025, DOHA received a transcript of the hearing. Applicant provided one exhibit after his hearing, which was admitted into evidence without objection. (AE S) The record closed on February 25, 2025. (Tr. 155-156)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

The allegations are alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 2.a, 2.b, 3.a, 3.b, and 3.c. (HE 3) In Applicant's SOR response, he admitted, partially admitted, partially denied, and denied the SOR allegations in whole or in part. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is 40 years old. (Tr. 50) In 2011, he received an associate degree in computer information systems-network administration. (AE K) In 2015, he received a bachelor's degree in computer networking, and he has completed 75 percent of the credits on a master's degree in information technology management. (Tr. 29, 50; AE K; AE S) He has a 3.945 grade point average in his master's degree program. (AE S) He expects to complete his master's degree in the summer of 2025. (Tr. 29) He plans to continue his education and complete a Ph.D. in technology and a master's degree in business administration. (Tr. 29) He has multiple IT certifications. (AE L) His resume provides additional details about his professional background. (AE M) He has never had a work-related security infraction or incident. (Tr. 39) In 2003, he married. (Tr. 50, 124) He has an adult son and a 17-year-old daughter. (Tr. 51, 124)

Applicant served in the Army from 2002 to 2006. (Tr. 16) His military occupational specialty (MOS) was cannon crewmember (13B). (Tr. 16) He also served as a chemical, biological, radiological, and nuclear (CBRN) noncommissioned officer (NCO). (Tr. 17) In April 2004, a coworker was killed in a vehicle accident; in June 2004, Applicant was injured by incoming mortar fire; and he received a Purple Heart medal. (Tr. 17-18) A piece of shrapnel was embedded in his forehead, and his eardrum was perforated. (Tr. 94) Applicant was traumatized by his tour in Iraq. (Tr. 18) He received an end of tour award of an Army Commendation Medal (ARCOM). (Tr. 94) He said his DD Form 214 does not include the ARCOM and an Army Good Conduct Medal. (Tr. 94; AE J)

Applicant received nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice. (Tr. 51) He said it was due to "forgetting to set an alarm clock for a

specified time for a major, and which raised a slew of issues.” (Tr. 51) He was punished for missing movement. (Tr. 95) He received a reduction from specialist to private first class, forfeiture of half a month’s pay for two months (suspended), and 15 days of extra duty. (Tr. 95) In early 2006, he received another Article 15 for failure to be at appointed place of duty. (Tr. 96) He received a reduction from private first class to private (E-2). (Tr. 96) He also had financial problems due to the loss pay associated with the reductions in rank. (Tr. 96) His discharge also related to financial issues. (Tr. 51) He received a general discharge under honorable conditions for pattern of misconduct. (Tr. 51; AE J) He has a 100 percent disability rating from the Department of Veterans Affairs (VA). (Tr. 52; AE I) Seventy percent of his disability rating is for post-traumatic stress disorder (PTSD). (Tr. 124) He initially received a VA disability rating in 2006. (Tr. 52)

Psychological Conditions

SOR ¶ 1.a alleges from about 2009 through 2012, Applicant received treatment at a VA clinic for anxiety and anger issues. He was diagnosed with PTSD and prescribed the medication Sertraline as part his treatment. He stopped attending treatment due to his work schedule.

Applicant admitted SOR ¶ 1.a was accurate. (Tr. 52) He did not receive treatment from about 2012 to 2014 because he was busy attending college and due to his employment. (Tr. 22-23) He attended a mental health appointment every three months to continue his prescription, and he said he was unable to go to his appointments in 2012 due to his work schedule. (Tr. 53) He stopped taking his prescription medication. (Tr. 53)

SOR ¶ 1.b alleges from about 2014 through 2015, Applicant received treatment at a VA clinic for anxiety, anger, and PTSD issues. He was prescribed Sertraline. He stopped attending treatment in 2015.

In 2014, Applicant was employed at the VA, and this enabled him to resume mental health treatment. (Tr. 23, 53-54) The VA prescribed Sertraline for him for symptoms related to PTSD. (Tr. 24) He stopped receiving treatment at the VA because he was transferred to a different city, and he did not like the VA services in the new city. (Tr. 25) He stopped taking Sertraline when he stopped treatment in 2015. (Tr. 55-56) He did not receive medical advice to stop taking Sertraline. (Tr. 56)

SOR ¶ 1.c alleges in about 2020, related to Applicant’s court matter referenced in SOR ¶ 2.a, Applicant began treatment for anxiety and anger issues at a non-VA health care clinic. He was diagnosed with PTSD. He failed to consistently follow his medical provider’s recommended treatment plan when he stopped taking his prescribed medication.

Applicant received treatments at the non-VA clinic to treat his symptoms from 2020 to present. (Tr. 26-27) He voluntarily resumed treatment before the court ordered him to receive treatment. (Tr. 57) At first, he was prescribed medications. (Tr. 27) A medication side effect of drowsiness was a problem for him. (Tr. 27) He said his psychiatrist agreed with Applicant that he could proceed with treatment without medications. (Tr. 28)

SOR ¶ 1.d alleges in October 2023, a licensed psychologist evaluated his mental health and diagnosed Applicant with PTSD, which he said is a condition that inherently presents a threat to his judgment and reliability. The psychologist wrote that his history is marked by several adverse situations where negative behaviors were triggered by symptoms inherent within his diagnosis. Applicant's engagement in mental health treatment has produced some positive results with the most benefit coming from his compliance with psychiatric medications. However, he has not been using medications since 2022 despite his own admission that he received significant relief of his symptoms and that his most recent arrest likely would not have occurred if he had been taking his psychiatric medications. The evaluator concluded that based upon the available evidence and his own reporting, Applicant met the criteria for PTSD and his judgement and reliability are vulnerable when he experienced the inherent symptoms.

In 2021, Applicant engaged in some altercations with his daughter. (Tr. 63-64; GE 4 at 55) She is on the autism spectrum. (Tr. 64) His spouse was unemployed, and his daughter's medical bills caused family stress. (Tr. 65) He also experienced stress from holding three jobs. (Tr. 64; GE 4 at 48) Currently, he continues to have problems with his daughter yelling and being oppositional to authority and his attempts to calm her. (Tr. 72)

In March 2022, Applicant was struggling with treatment. (Tr. 62; GE 4 at 48) He attributed his difficulties with a failure to "mesh" with his therapist. (Tr. 62) In May of 2024, he transitioned from that therapist to his current therapist. (Tr. 63) Applicant received some benefit from medications, and he believed he took the medications as prescribed. (Tr. 22) In 2023 and 2024, Applicant received treatment at a non-VA clinic. (Tr. 21) Applicant believed his most recent treatment regimen was more effective than medications. (Tr. 20) He did not believe his PTSD has been a barrier to his successful employment. (Tr. 31) He admitted that he was inconsistent in his use of his prescribed medications. (Tr. 61) When he was taking medications, his lapses from taking medications were about two or three days. (Tr. 69) He believed his mental health improved due to behavioral therapy. (Tr. 62)

Applicant disagreed with SOR ¶ 1.d because he does not believe he is a security risk, and his current treatment program without medication is better for him. (Tr. 66) He started his current treatment in May of 2024. (Tr. 67) Currently, he sees a licensed clinical social worker once a week for an hour, and he attends a 90-minute group session. (Tr. 68-69) The focus is on talk and knowledge therapy. (Tr. 69) He does not take any medications. (Tr. 69) In 2023 and 2024, he went to numerous appointments at a community mental health center with a licensed master's degree-level social worker. (AE E; AE S) Typically, he went to three or four appointments per month. (Tr. 69-70; AE E; AE S)

On October 30, 2023, Dr. S, a psychologist evaluated Applicant's mental health at the request of DCSA. The report's prognosis states:

Applicant carries a diagnosis of PTSD, which is a condition that inherently presents a threat to his judgment and reliability. His history is marked by several adverse situations where negative behaviors were triggered by symptoms inherent within his diagnosis. This is evidenced as early as the

warning period in his Army enlistment when he acted in ways that were detrimental to his service and resulted in him being released on a “pattern of misconduct”. Both of his prior arrests occurred after he experienced anger and reacted in an excessive manner. His engagement in mental health treatment has produced some positive results with the most benefit coming from his compliance with psychiatric medications. However, [Applicant] has not been using medications since 2022 despite his own admission that he receives significant relief of his symptoms and that his most recent arrest likely would not have occurred if he had been using his psychiatric medications. Based upon the available evidence and [Applicant’s] own reporting, it is apparent that [Applicant] meets criteria for the diagnosis listed above and that his judgement and reliability are vulnerable when he experiences the inherent symptoms. (GE 3 at 5)

In April 2024, a mental health evaluator completed a report discussing Applicant’s mental health status. (AE F) The evaluator interviewed Applicant and conducted psychological testing. The report states:

Summary

There appears to be evidence of trauma, evidence of relationship discord, evidence of poor distress tolerance, evidence of rigidity of thinking and a tendency to be reactive, along with evidence of some personality dysfunction, particularly some narcissistic tendencies. There does not appear to be a lot of evidence of significant mental health diagnoses related to mood, behavior, or thought dysfunction.

Diagnosis(es):

F43.10 Post-traumatic Stress Disorder

F60.9 Unspecified Personality Disorder (Turbulent) Style

Recommendations:

1. It is highly recommended that [Applicant continue] to participate in individual and/or group therapy. It appears that [he] could benefit from continued focus on building skills in coping with distress, managing impulses, improving interpersonal skills, improving personal insight, processing past experiences, and addressing current stressors.
2. DST-focused interventions may be helpful for [him]. (AE F at 4)

Applicant had difficulty controlling his anger and handling stress. For example, on August 2, 2024, his therapist noted, “Client reporting 4/5 x 3 days for urges to hurt the dog. Engaged in this behavior x 3 days this week.” (AE S at 21) “Completed BCA for hitting the dog. Identified prompting event, vulnerability factors, and outcomes.” *Id.* On August 22, 2024, his therapist noted, “Reporting 4/5 for urges to hit the dog x 2 days this week. Engaged in this behavior.” *Id.* at 30. “Completed BCA for hitting the dog. Identified prompting event, vulnerability factors, outcomes.” *Id.* On September 20, 2024, a note indicates, “Reporting 3/5 for urges towards physical and verbal aggression x 1 day this week. Engaged in this behx by disciplining the dog.” *Id.* at 39. On October 11, 2024, the therapist counseling Applicant said:

The client discussed his ongoing frustration with his dog not obeying commands, indicating a pattern of the client's goals being blocked leading to increased agitation. The client discussed frustration with his dog disobeying, which leads to increased stress and occasional outbursts of anger. The client reported concerns about his daughter's chronic pain symptoms and his difficulty getting her tested for a possible genetic condition or disorder. His search for answers has been complicated by health system bureaucracy and his daughter's school absences. The client mentioned he and his wife's occasional disagreement about how to handle their daughter's reluctance to move due to her chronic pain symptoms. This is causing strain on his relationship. (AE S at 46)

The two objectives repeatedly noted for his therapy were:

I want to learn at least 3 distress tolerance skills in order to lower urges towards anger impulses from 3/5 to 1/5 over the next 3 months.

I will learn at least 3 mindfulness strategies in order to focus on practicing how to observe body sensations when in higher states of stress in order to decrease urges towards anger impulses. (See, e.g., AE S at 75, 78, 81, 84, 87, 90, 93, 96)

At some sessions, the therapist noted "Moderate Improvement" for the two goals. (See, e.g., AE S at 75, 78, 84, 90, 93, 96) At other sessions, the therapist noted "No Change" or "Slight Improvement." (See, e.g., AE S at 81, 87)

Applicant has gotten physical towards his spouse and daughter. (Tr. 74; AE F) He believed in corporal punishment of his daughter; however, his spouse opposed corporal punishment. (Tr. 75) He uses a different approach for discipline of his daughter now. (Tr. 76) The main stressor in his life is his daughter. (Tr. 77)

Criminal Conduct

SOR ¶ 2.a alleges in about January 2021, Applicant pleaded *nolo contendere* to misdemeanor endangering a child, and two counts of misdemeanor battery. He was sentenced to 12 months of jail on the endangerment charge and six months on each battery charge to run consecutively for a 24-month sentence. His jail sentence was suspended in lieu of 12 months of supervised probation. Applicant was ordered to complete a mental health evaluation, parenting class, and anger management class.

In October 2020, Applicant was unemployed. (Tr. 37) A noncommissioned officer he knew in Iraq committed suicide. (Tr. 37) Applicant was distraught and overwhelmed. (Tr. 38) He told his 14-year-old son to mow the yard. (Tr. 31, 99-100) His son started complaining, and Applicant thought his son was being insubordinate. (Tr. 99) His son went to his bedroom. (Tr. 100) Applicant went to his son's bedroom and told him to mow the yard again. (Tr. 100) His son refused, and he hit his son with his belt twice. (Tr. 32, 100) His son punched Applicant in the face, knocking him to the floor. (Tr. 32, 100)

Applicant got up and hit his son again. (Tr. 100) However, his February 8, 2021 Office of Personnel Management (OPM) personal subject interview states that Applicant hit his son four or five times. (GE 2 at 17) His son ran to a neighbor's house and called the police. (Tr. 32, 73, 100) Applicant believed the assault and battery upon his son was separate from and unrelated to his assault in 2011 upon his wife's aunt. (Tr. 58) In April 2021, he completed an "Anger Management/Emotional Regulation" course. (Tr. 100; AE G) In June 2021, he completed a "Healthy Dads Program." (AE H)

Applicant agreed with the content of SOR ¶ 2.a. (Tr. 33, 100) He completed the required classes and one year of probation without incident. (Tr. 32-33) Applicant received a no-contact order relating to his son, and his son was moved out of his home and lived with her aunt in another state. (Tr. 34)

SOR ¶ 2.b alleges in about April 2011, Applicant pleaded guilty to a misdemeanor domestic violence charge and was sentenced to six months of probation. Applicant agreed with the factual content of SOR ¶ 2.b. (Tr. 34-37, 74) Applicant and his wife were living with her aunt in April 2011. (Tr. 35-36) His wife's aunt criticized Applicant for not being a good provider because he was unemployed at that time. (Tr. 36, 97) Applicant became upset and struck her aunt with his fist. (Tr. 36-37, 98) She fell after he hit her. (Tr. 97-98) She did not need to go to the hospital. (Tr. 98-99) She called the police. (Tr. 98) He was found guilty of domestic violence, and he was sentenced to six months of probation and a fine. (Tr. 99)

Personal Conduct

SOR ¶ 3.a alleges Applicant was employed with CS from about July 2021 to about July 2022 as an administrator. He was terminated in about July 2022 because he failed to disclose that he had concurrent employment with another company in violation of CS's Conflict of Interest policy and their Legal and Ethical Conduct policy.

SOR ¶ 3.b alleges Applicant was employed with A from about January 2021 to about January 2022 as a Senior Systems Administrator. He did not disclose that he had concurrent employment by A in violation of AB's Code of Conduct and Outside Employment policies.

SOR ¶ 3.c alleges Applicant is currently employed with GD starting about January 2022 as a Senior Systems Administrator. As of about March 5, 2024, he has not disclosed that he had outside employment as required by company policy.

Applicant said he performed the same services with a commercial entity when he worked for CS, AB, and GD. (Tr. 43) He supported a non-DOD federal government agency when he worked for CS, and a DOD agency when he worked for AB and GD. (Tr. 43) He needed to apply different skills for each employer. (Tr. 44) He worked for AB from January 2021 to January 2022. (Tr. 81) In January of 2022, Applicant was transitioning from working for AB to GD. (Tr. 41, 81) He said AB was a subcontractor for GD. (Tr. 40, 81) Applicant said he performed the same roles in his employment for AB and GD, and they did not have any objection to his transfer to GD. (Tr. 40-41, 81)

Applicant said AB and GD were aware of his employment arrangement with AB and GD. (Tr. 81) However, he does not have any documentation showing they were aware of this arrangement. (Tr. 82) AB and GD were not aware that he was working for CS. (Tr. 81-82; GE 7 at 1) AB and GD paid him with separate checks. (Tr. 82)

AB's code of conduct states, "If you are considering outside employment, you should discuss [conflict of interest] issues with your [AB] Manager and receive written authorization." (Tr. 82, GE 7 at 34) He believed his dual employment met the AB's criteria for dual employment. (Tr. 90) Applicant conceded he did not receive written authorization for dual employment from AB. (Tr. 92) AB's conflict of interest booklet includes the following provision:

No employee shall have a financial interest in or receive benefits from a transaction between [A] and any individual or business firm, as described below, except with prior written approval from the Managing Members:

1. from which [AB] purchases supplies, materials, or property;
 2. which renders any service to [AB];
 3. which enters into leases or assignments to or from [AB];
 4. to which [AB] sells any of its products, materials, facilities or properties;
 5. which has any other contractual relations or business dealings with [AB].
- (GE 7)

In January 2022, Applicant started working for GD, and he is not currently employed at GD. (Tr. 83) When he went to work for GD, he did not disclose his employment with CS. (Tr. 83) He reiterated that GD was already aware of his AB employment. (Tr. 83) He said he did not disclose his CS employment to GD because CS worked for a different agency, and he was employing a different skill set. (Tr. 83)

Applicant did not list CS on his resume because he wanted to emphasize that he wanted to develop or advertise to prospective employers that he had a different IT skill set. (Tr. 84) He did not indicate it had anything to do with concealing his employment with multiple employers at the same time. (Tr. 84-86)

CS gave Applicant a letter of termination for conflicts of interest and violations of legal policies. (Tr. 44, 77; GE 6) The letter is unclear about the specific conflict of interest, and Applicant said he did not understand how there was a conflict between his employments at CS, AB, and GD. (Tr. 45)

CS's conflict of interest policy states:

A conflict of interest can arise in dealings with anyone with whom [CS] transacts business:

- Customers, clients, owners, buyers, suppliers, banks, insurance companies, and people in other organizations with whom we contact and make agreements.

Conflicts of interest will be avoided and include the following examples:

- Working for any of the groups mentioned above for personal gain;
- Engaging in part-time activity for profit or gain in any field in which the Company [is] engaged[.] (GE 6 at 11)

Applicant signed a conflict of interest policy disclosure when he began work for CS in July of 2021. (Tr. 78, 92) His CS Employment Confidential Information and Invention Assignment Agreement said:

I agree that during the term of my employment with this Company, I will not engage in any other employment, occupation, consulting, or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of my employment, nor will I engage in any other activities that conflict with my obligations to the company. (Tr. 78-79; GE 6 at 1)

Applicant said that due to the nature of his work, he did not believe he had violated the terms of the agreement. (Tr. 79-80, 88-89; GE 6 at 13) Applicant's July of 2021 employment agreement with CS states, "If, in the future, any situation involving a possible conflict of interest should arise, I shall notify my immediate supervisor before taking any action, which, without the required approval from management, might be incompatible with the outlined policy in the Employee Handbook under the Section 'Conflicts of Interest.'" (GE 6 at 15) He signed for a copy of CS's employee handbook.

Applicant refused to acknowledge that he was aware of the requirement to report outside employment. (Tr. 80-81) He said he did not violate the requirement that he have written authorization for outside employment because the handbook states "'You should discuss these issues,' not that I must." (Tr. 92)

Applicant was terminated from CS but not from AB. (Tr. 101) When he worked for AB and GD, he was primarily doing research and testing and solving problems. (Tr. 101-102) One of the concerns may have been that he was receiving double pay. (Tr. 102) He is unaware of whether CS learned he submitted timecards to CS and AB to be paid for the same time period. (Tr. 102) In IT, it is not uncommon for IT professionals to have two jobs. (Tr. 103)

The GD ethics booklet states:

ORGANIZATIONAL RELATIONSHIPS

If you or an immediate family member serve as a director, officer or consultant for any company that does business with us, you must disclose these obligations to your business unit ethics officer even if this service is unpaid.

OUTSIDE EMPLOYMENT

Before you accept outside employment, consider if this second job could create a conflict of interest with your work here or negatively impact your

ability to do your job. Taking a second job can be tricky because you may not always see clearly where your loyalties should lie. Do not accept outside employment with our competitors, suppliers, or customers. (GE 8 at 17)

Applicant's employers did not tell Applicant that he was inadequately performing his duties while working for more than one employer. (Tr. 47) They did not advise him that he was unavailable when required to work for any employer. (Tr. 47) Applicant was working remote from his employment. (Tr. 47) He said he was working about 80 hours a week for about one year. (Tr. 47) He said he kept his duties separate. (Tr. 47) He used different computers for each employment. (Tr. 47-48) He said he was unaware of any specific requirement to inform his employers that he had full-time employment with another company. (Tr. 48) He held two jobs because he wanted to provide more money for his family. (Tr. 49) He was not aware of the specifics of his companies' rules on conflicts of interest. (Tr. 77)

Character Evidence

Applicant's DD Form 214 reflects the following awards: Purple Heart; Army Good Conduct Medal; National Defense Service Medal; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; and Army Service Ribbon. (AE J)

Applicant's neighbor for four years described Applicant as friendly, calm, personable, dependable, reliable, decent, trustworthy, and honest. (Tr. 108-112) He recommended reinstatement of Applicant's security clearance. (Tr. 112) A former coworker who has known Applicant for four years described him as diligent, dependable, honest, professional, polite, helpful, and responsible. (Tr. 116-122) He noted that any IT professional who has more than one job needs to report the employment to his or her employer to ensure there is no conflict of interest. (Tr. 121) He recommended reinstatement of Applicant's security clearance. (Tr. 121)

A friend who volunteers with Applicant at their church said Applicant is always eager to give of his knowledge and time, is well qualified to do many tasks, works well with others, and is an excellent person, volunteer, and team member. (AE N) Applicant's coworker for three years and Applicant's colleague for three years lauded his good character, diligence, professionalism, dedication, reliability, ethics, and integrity. One colleague noted that Applicant "is known for his great professional behavior and consistently demonstrates a high level of dedication to his work. [His] ability to manage complex tasks with precision and his commitment to excellence are truly commendable." (AE P) Another colleague said, "[Applicant's] professional demeanor is outstanding, and he consistently shows a profound commitment to his duties. [His] precision in handling complex tasks and his dedication to achieving excellence are truly noteworthy." (AE O) In sum, they have full confidence in Applicant's character, and their statements support his continued access to classified information. (AE O; AE P)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing,

“no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-

31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Psychological Conditions and Criminal Conduct

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.

AG ¶ 30 describes the security concern about 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 ¶ 28 provides psychological conditions that could raise a security concern and may be disqualifying in this case:

- (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;
- (c) voluntary or involuntary inpatient hospitalization; and
- (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

AG ¶ 31 describes 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 establishes AG ¶¶ 28(a), 28(b), 28(d), 31(a), and 31(b). Further details will be discussed in the mitigation analysis, *infra*.

AG ¶ 32 lists conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

AG ¶ 29 lists psychological conditions mitigating conditions which are potentially applicable:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

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

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

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

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

On October 30, 2023, Dr. S evaluated Applicant's mental health and concluded:

Applicant carries a diagnosis of PTSD, which is a condition that inherently presents a threat to his judgment and reliability. His history is marked by several adverse situations where negative behaviors were triggered by symptoms inherent within his diagnosis. . . . His engagement in mental health treatment has produced some positive results with the most benefit coming from his compliance with psychiatric medications. However, [Applicant] has not been using medications since 2022 despite his own admission that he receives significant relief of his symptoms and that his most recent arrest likely would not have occurred if he had been using his psychiatric medications. Based upon the available evidence and [Applicant's] own reporting, it is apparent that [Applicant] meets criteria for the diagnosis listed above and that his judgement and reliability are vulnerable when he experiences the inherent symptoms. (GE 3 at 5)

In ISCR Case No. 19-00151 at 8 (App. Bd. Dec. 10, 2019) the Appeal Board denied a government appeal and addressed the administrative judge's weighing of conflicting expert psychological opinions as follows:

A Judge is required to weigh conflicting evidence and to resolve such conflicts based upon a careful evaluation of factors such as the comparative reliability, plausibility, and ultimate truthfulness of conflicting pieces of evidence. See, e.g., ISCR Case No.05-06723 at 4 (App. Bd. Nov. 4, 2007). A Judge is neither compelled to accept a DoD-required psychologist's diagnosis of an applicant nor bound by any expert's testimony or report. Rather, the Judge has to consider the record evidence as a whole in

deciding what weight to give conflicting expert opinions. See, e.g., ISCR Case No. 98-0265 at 4 (App. Bd. Mar. 17, 1999) and ISCR Case No. 99-0288 at 3 (App. Bd. Sep. 18, 2000).

Dr. S's opinion is supported by multiple incidents. Applicant admitted he was discharged from the Army for misconduct. He became angry at her aunt and son, and he assaulted them. The assaults resulted in misdemeanor-level convictions. Various mental-health professionals diagnosed him with PTSD, and the VA has given him a 70 percent disability rating for PTSD. For several years, he stopped receiving therapy, did not attend appointment to renew his prescriptions, and did not take his mental health medications.

AG ¶¶ 32(a) and 32(d) are established. Applicant completed 75 percent of his courses for his master's degree. Several employers have hired him for sensitive IT duties. Applicant has not committed any crimes since the assault upon his son in October 2020., He completed an Anger Management/Emotional Regulation course and a parenting program. He has gone to numerous therapy sessions in the past two or three years. He successfully completed probation. Several character witnesses praised his good behavior.

The evidence against mitigation of psychological condition security concerns is more persuasive. AG ¶ 29(a) is not established because Applicant did not provide a statement that his rather severe level of PTSD "is readily controllable with treatment." He is credited with being compliant with current treatment plans. However, it is unclear whether the current treatment plans will be successful in controlling his PTSD. If he is in stressful situations, he may become angry and frustrated and make poor decisions. AG ¶ 29(b) is not established because he did not provide "a favorable prognosis by a duly qualified mental health professional." AG ¶ 29(c) is not established because he did not provide a "recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that [his PTSD] is under control or in remission, and has a low probability of recurrence or exacerbation." AG ¶ 29(d) does not apply because his PTSD is not temporary. He has suffered from PTSD since at least 2006. Dr. S's opinion is credible, supported by the facts, and there is no contrary opinion discussing the relationship of Applicant's PTSD with his ability to protect classified information. Criminal conduct security concerns stemming from the assaults upon his son in 2020, and his wife's aunt in 2011 are mitigated. Psychological conditions security concerns are not mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 lists personal conduct disqualifying conditions that are potentially relevant in this case as follows:

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

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

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

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(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 establishes AG ¶¶ 16(d)(3) and 16(e). Discussion is in the mitigation section, *infra*.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

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

Applicant was employed with CS from about July 2021 to about July 2022. CS said he was terminated in about July 2022 because he failed to disclose that he had concurrent employment with another company in violation of CS's Conflict of Interest policy and their Legal and Ethical Conduct policy.

Applicant was employed with AB from about January 2021 to about January 2022. He did not disclose that he had concurrent employment with both CS and AB in violation of AB's Code of Conduct and Outside Employment policies. He did not provide a statement from AB that he was in compliance with their employment and ethics policies.

Applicant is currently employed with GD starting about January 2022. As of about March 5, 2024, he had not disclosed that he had outside employment as required by company policy. At his hearing, he said GD was aware of his outside employment and did not object to it. At the time of his hearing, he had left employment with GD. There is no evidence that GD terminated him from working for GD for violating GD's conflicts of interest or ethics policies. SOR ¶ 3.c is refuted.

Applicant contended that the wording of the ethics policies used "should" disclose outside employment, as opposed to "must" disclose outside employment. Thus, reporting was optional. His decision not to disclose his outside employment showed poor judgment. He did not establish that CS incorrectly fired him for conflict of interest. Applicant was working from home in IT full time for two companies. He did not credibly explain how he was able to manage these two employments. If he was working diligently to fix a problem for AB, he was unavailable to fix a problem for CS. The allegations in SOR ¶¶ 3.a and 3.b are substantiated, and Applicant's failure to accept full responsibility for these poor decisions continues to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not 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 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 a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines I, 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 40 years old. In 2011, he received an associate degree in computer information systems-network administration. In 2015, he received a bachelor's degree in computer networking, and in May of 2024, he has completed 75 percent of the credits on a master's degree in information technology management. He has a 3.945 grade point average in his master's degree program. He has multiple IT certifications. He has never had a work-related security infraction or incident.

Applicant served in the Army from 2002 to 2006. In April 2004, a Soldier was killed in a vehicle accident; in June 2004, Applicant was injured by incoming mortar fire; and he received a Purple Heart medal. A piece of shrapnel was embedded in his forehead and his eardrum was perforated. Applicant was traumatized from his tour in Iraq. He also received an end of tour award of an ARCOM. Applicant's DD Form 214 reflects the following awards: Purple Heart; Army Good Conduct Medal; National Defense Service Medal; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; and Army Service Ribbon.

Applicant received a general discharge under honorable conditions for a pattern of misconduct. He has a 100 percent disability rating from the VA. Seventy percent of his disability rating is for PTSD.

Applicant's neighbor and several colleagues made statements, which provide support for reinstatement of his security clearance. The general sense of their statements is that Applicant is friendly, personable, dependable, reliable, decent, trustworthy, honest, diligent, professional, polite, helpful, and responsible. Criminal conduct security concerns are mitigated for the reasons stated in the criminal conduct analysis section, *supra*.

The reasons for revocation of his security clearance are more persuasive at this time. The psychological conditions and personal conduct sections explain why the security concerns are not mitigated.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With continued treatment for his PTSD, a favorable prognosis, better decisions, and

taking full responsibility for making errors in judgment, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, 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.

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 I:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a and 2.b:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant
Subparagraph 3.c:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge