



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



In the matter of: )  
)  
) ISCR Case No. 23-02335  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Cynthia Ruckno, Esq., Department Counsel  
For Applicant: *Pro se*

06/03/2025

**Decision**

HARVEY, Mark, Administrative Judge:

Guideline J (criminal conduct) security concerns are mitigated; however, Guideline E (personal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case.**

On May 10, 2022, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On December 28, 2023, 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 J and E. (HE

2) On January 9, 2024, Applicant provided a response to the SOR and requested a hearing. (HE 3) On February 21, 2024, Department Counsel was ready to proceed.

On November 7, 2024, the case was assigned to another administrative judge. On January 27, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice, scheduling the hearing for February 26, 2025. (HE 1A) On February 3, 2025, the case was transferred to me for administrative reasons. On February 4, 2025, DOHA issued an amended notice scheduling the hearing for March 18, 2025. (HE 1B) The hearing was held as scheduled on March 18, 2025.

Department Counsel offered 10 exhibits into evidence; Applicant offered one exhibit into evidence; there were no objections; and I admitted all proffered exhibits into evidence, except for GE 3, which Department Counsel withdrew. (Transcript (Tr.) 19-21; GE 1-GE 2; GE 4-GE 11; Applicant Exhibit (AE) A) On March 28, 2025, DOHA received a transcript of the hearing. No post-hearing exhibits were offered into evidence. (Tr. 75)

### **Legal Issue**

Department Counsel moved to withdraw SOR ¶ 1.b, an allegation of criminal conduct in 1997, and the part of SOR ¶ 2.a cross-alleging SOR ¶ 1.b. (Tr. 18) There was no objection, and I granted the motion. (Tr. 19) I have indicated “withdrawn” for SOR ¶ 1.b on page 12, and will not discuss this allegation in this decision.

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

### **Findings of Fact**

Applicant admitted the allegations alleged in SOR ¶¶ 1.c through 1.k and 2.a. He denied the allegation in SOR ¶ 1.a. He also provided mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 49-year-old heating, ventilation, and air conditioning (HVAC) technician, who has been an employee of a defense contractor since May 2022. (Tr. 7, 9, 16) In 1994, he graduated from high school. (Tr. 7) In 2007, he received a diploma in HVAC and refrigeration. (Tr. 8) He has been married three times, and he married his current spouse in 2015. (Tr. 8-9) Three children currently live with him, and they are ages 8, 9, and 18. (Tr. 9)

### **Personal Conduct and Criminal Conduct**

SOR ¶ 1.c alleges Applicant was arrested in about September 1999 and charged with theft by taking and two counts of simple battery. He pleaded guilty, and he was sentenced to 12 months of probation, 40 hours of community service, and fines and fees of \$375.

Applicant was accused of taking one or two video games without paying for them from a retail establishment. He blamed the cashier for failing to scan the games. (Tr. 22)

After he paid for the other items, loss prevention or security escorted him into a room, where they insisted that he received too much money from the cashier. (Tr. 22-23) Security attempted to search his pockets, and a brief scuffle ensued. (Tr. 23) Applicant pleaded guilty to battery, and the other charges were dismissed. (Tr. 23) He admitted he received the sentence in SOR ¶ 1.c. (Tr. 24-25; GE 2; GE 4)

SOR ¶ 1.d alleges Applicant was arrested in about July 2000 and charged with one count of battery, two counts of simple battery and one count of disorderly conduct. In about March 2001, the court entered an order of nolle prosequi. SOR ¶ 1.f alleges Applicant was arrested in about August 2001 and charged with one count of battery family violence, one count of battery, and two counts of simple battery. In about November 2002, the court entered an order of nolle prosequi. SOR ¶ 1.g alleges Applicant was arrested in about October 2001 and charged with one count of battery family violence, two counts of simple battery, and one count of battery. In about November 2002, the court entered an order of nolle prosequi.

Applicant was in several physical altercations with his first spouse. (Tr. 26; GE 5 at 6) There was pushing and shoving. (Tr. 30) She was the aggressor. He may have tried to restrain her. (Tr. 31) She accused him of putting his hands on her. (Tr. 36) When there was a physical altercation, both participants were arrested. (Tr. 35) He did not remember the events because he “kind of erased everything that happened with it.” (Tr. 30) On one occasion, his spouse tried to stab Applicant, and they were both arrested. (Tr. 25-26) She was charged with aggravated assault, and she went to jail. (Tr. 26) She was convicted of assault for the stabbing incident. (Tr. 32) Applicant’s charge was dismissed. (Tr. 26) He attended family counseling for eight weeks. (Tr. 33) He and his spouse attended together for the first four weeks. (Tr. 33) He has not seen his first spouse since their divorce in 2002. (Tr. 39)

SOR ¶ 1.e alleges Applicant was arrested in about September 2000 for probation violation. He was on probation from his guilty plea relating to the assault in the retail establishment. (Tr. 36) The probation violation occurred because he was in a domestic-violence incident with his spouse. (Tr. 36) He did not receive any adverse action for the probation violation. (Tr. 37)

SOR ¶ 1.h alleges in about August 2003, Applicant was charged with felony criminal interference of government property and felony obstruction of a police officer. He negotiated a guilty plea to a misdemeanor obstruction of a police officer in exchange for 12 months of probation and a \$250 fine.

Applicant was standing outside an apartment complex. (Tr. 41) A police officer stopped Applicant and told him he matched the description of a person who just committed a robbery. (Tr. 40; GE 8) Applicant denied involvement, and Applicant attempted to prevent the police officer from placing handcuffs on him. (Tr. 40) The witness to the robbery said Applicant was not the robbery suspect. (Tr. 40) Applicant pleaded guilty and was sentenced as indicated in SOR ¶ 1.h. (Tr. 40)

SOR ¶ 1.i alleges in about September 2005, Applicant was charged with simple battery and theft by taking. In about December 2005, the charges were dismissed.

Applicant provided HVAC services to a customer who was disgruntled about the amount he charged for the services. (Tr. 42) The customer said Applicant went to his house at 3:00 am, assaulted him, and robbed him. (Tr. 42) The customer did not show up for court, and the charge was dismissed. (Tr. 42) Applicant said he had a "little tussle" with the customer because he took Applicant's baseball cap. (Tr. 42) The "little tussle" was unrelated to the charged offenses. Applicant said the allegations of theft and assault were false. (Tr. 43)

SOR ¶ 1.j alleges Applicant was arrested in about October 2005 and charged with possession of cocaine with the intent to distribute, possession of firearm during the commission of a crime, and possession of marijuana. He pleaded guilty to possession of cocaine with intent to distribute. He was sentenced to five years of probation, 150 hours of community service, and a \$2,000 fine. SOR ¶ 1.k alleges in about April 2006, Applicant was charged with felony possession of cocaine, felony possession of a firearm during commission of a felony, possession of marijuana, carrying a concealed weapon, and speeding. In exchange for a guilty plea to possession of cocaine, he was sentenced to 2 years' probation.

The court docket indicates for the 2006 offenses in SOR ¶ 1.k that he was charged with two felonies and two misdemeanors. In April 2008, the charges were resolved as follows: possession of cocaine charge-negotiated guilty plea; possession of firearm during commission of a felony charge-dismissed; possession of marijuana charge-negotiated guilty plea to less than one ounce; and carrying concealed weapon-negotiated guilty plea. (GE 10 at 2-3) He received "first offender" final disposition. (GE 10 at 8) The court's term "negotiated guilty plea" may mean the charge was dismissed as part of a plea agreement.

Applicant said he started selling drugs in 1999. (Tr. 44) He made his living by selling drugs. (Tr. 44-45) He mostly sold cocaine and occasionally sold marijuana. (Tr. 45) He said he was "not ashamed of it." (Tr. 44) He did not use illegal drugs. (Tr. 45) In 2005, he had just picked up a load of marijuana and cocaine, and the police stopped his vehicle. (Tr. 46) He had a registered firearm in his vehicle. (Tr. 46) He stored his drugs in a "trap house" that he rented. (Tr. 48) He estimated that he made about \$2,000 a week selling drugs. (Tr. 48) He was not on probation when he had his second arrest for the offenses listed in SOR ¶ 1.k because he had not been sentenced on the 2005 offense. (Tr. 49, 51) He had to pay about \$6,500 in restitution and fines and completed about 350 hours of community service. (Tr. 50)

Applicant included his income from his legitimate business or pay from employers on his federal income tax returns; however, he did not include the profits from his sales of illegal drugs on his tax returns. (Tr. 69)

Applicant said he ended his involvement with illegal drugs after the arrest in 2006. (Tr. 52) He completed all court-ordered requirements. He has an HVAC business, which provides a good income. (Tr. 53) He does not have an economic need to engage in criminal conduct. He is involved with his church and community. (Tr. 73-74) He described himself as a reformed, law-abiding citizen. (Tr. 74)

SOR ¶ 2.a cross-alleges the information alleged in SOR ¶¶ 1.c through 1.k under the criminal conduct guideline.

### **Personal Conduct—Falsification of SCA**

SOR ¶ 1.a alleges Applicant falsified material facts on his May 10, 2022 SCA in his responses to the following questions in “Section 22 – Police Record (**EVER**) Other than those offenses already listed, have you **EVER** had the following happen to you?” He did not list any offenses in Section 22.

“Have you **EVER** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses)”

“Have you **EVER** been charged with an offense involving firearms or explosives?”

“Have you **EVER** been charged with an offense involving alcohol or drugs?” (emphasis in original)

Applicant answered, “No” and thereby deliberately failed to disclose that information as set forth in SOR ¶¶ 1.h, 1.j, and 1.k, *infra*.

SOR ¶¶ 1.h, 1.j and 1.k involved felony charges, including charges of illegal possession of a firearm and illegal possession of drugs.

On June 14, 2022, an Office of Personnel Management (OPM) investigator interviewed Applicant. (GE 2) The OPM investigator asked Applicant if he ever had any arrests involving felonies, firearms, or drugs. (GE 2) Applicant answered no, and then the OPM investigator confronted him with the charges in the SOR. (GE 2)

Applicant said he answered no to the three relevant criminal charges questions in his SCA, and he gave three reasons for his answer. He believed the question required a felony conviction, and he said he was not convicted of a felony. (Tr. 54-55) He also said the questions were misleading. (Tr. 56) For example the answer to, “Have you **EVER** been charged with an offense involving alcohol or drugs?” would be no to “alcohol” offenses and yes to offenses relating to “drugs.” (Tr. 56) He noted that only one answer is permitted on the SCA after a series of questions about criminal history, and he elected to answer no to everything. He also said he believed that the offenses were adjudicated, and that “means that it never happened.” (Tr. 57)

### **Character Evidence**

Applicant’s supervisor for his employment as a government contractor and an Army employee have known him since 2022. (Tr. 61, 65, 67) They described him as reliable, trustworthy, diligent, honest, and responsible. (Tr. 61-62, 66) He is a valuable asset to the government. (Tr. 61-62, 66-67) Their statements support approval of his security clearance. (Tr. 61-62, 66-67)

## 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 an applicant 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

### Personal Conduct and Criminal 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 ¶ 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 ¶ 16 lists personal conduct disqualifying conditions that are potentially relevant in this case as follows:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with

rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to 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.

AG ¶ 31 describes criminal conduct 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 establishes AG ¶¶ 16(a); 16(c), 16(e), 31(a), and 31(b). AG ¶ 16(d) is not established because Applicant's criminal conduct alleged under the Personal Conduct Guideline is cross-alleged and addressed under Guideline J. Further details will be discussed in the mitigation analysis, *infra*.

AG ¶ 17 lists conditions that could mitigate personal conduct security concerns:

(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;

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

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

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.

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).

AG ¶¶ 17(c), 17(e), 32(a), and 32(d) are established for the crimes Applicant committed between 1999 and 2006. He completed all court-ordered requirements. There is no evidence of criminal activity after 2006. The offenses are part of the public record, and he cannot be successfully coerced to disclose classified information. He completed his HVAC-refrigeration training and received a diploma. His supervisor praised his work performance. A friend lauded his good character. Criminal conduct security concerns alleged in SOR ¶ 2.a, and personal conduct security concerns alleged in SOR ¶¶ 1.c through 1.k are mitigated.

### **Personal Conduct—Falsification of SCA**

Applicant falsely answered no to three SCA questions: (1) "Have you **EVER** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses)"; (2) "Have you **EVER** been charged with an offense involving firearms or explosives?"; and (3) "Have you **EVER** been charged with an offense involving alcohol or drugs?" (emphasis in original)

"Applicant's statements about his intent and state of mind when he executed his [SCA] were relevant evidence, but they [are] not binding on the Administrative Judge." ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

Applicant falsely denied to the OPM investigator in an interview 35 days after he completed his SCA that he had felony charges, drug charges, and weapons charges. Applicant failed to pay federal income taxes on his profits from sales of illegal drugs from 2019 to 2006. These issues were not alleged in the SOR. In ISCR Case No. 03-20327 at

4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility;
- (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances;
- (c) to consider whether an applicant has demonstrated successful rehabilitation;
- (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or
- (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These non-SOR allegations (lie to the OPM investigator and understatement of income on federal income tax returns) will not be considered except for the five purposes listed above.

Applicant's explanations at his hearing for not disclosing his felony charges, drug charges, and firearms charges on his SCA are not credible. He is intelligent. The questions are clear and easy to understand. Applicant has experience in the criminal justice process. He knows what charges are, and he knew he should have disclosed the required information about the existence of charges related to felonies, drugs, and firearms. He is aware that a history of criminal charges does not disappear when a sentence is completed.

No mitigating conditions apply to the falsification of Applicant's May 10, 2022 SCA. His failure to accept full responsibility for falsification of his SCA at his hearing casts doubt on his rehabilitation, 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 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 49-year-old HVAC technician, who has been an employee of a defense contractor since May 2022. In 1994, he graduated from high school. In 2007, he received a diploma in HVAC and refrigeration. Applicant contributes to his church, family, and community.

Applicant’s supervisor and a colleague provided support for approval of his security clearance. The general sense of their statements is that Applicant is dependable, honest, diligent, 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. Falsification of an SCA and a false statement to an OPM investigator strike at the heart of the security clearance process. The personal conduct-falsification of SCA section, *supra*, explains why the security concerns are not mitigated.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c through 1.k:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

Considering 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.

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Mark Harvey  
Administrative Judge