



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



In the matter of:)
)
) ISCR Case No. 24-00583
)
Applicant for Security Clearance)

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

03/26/2026

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines I (Psychological Conditions), K (Handling Protected Information), and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 2, 2022. On September 6, 2024, the Department of War (DoW) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines I, K, and E. The DoW acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant answered the SOR through his attorney on October 24, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 3, 2025, and the case was assigned to me on August 5, 2025. On August

21, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 15, 2025, and then rescheduled when all Administrative Judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. The hearing was convened as rescheduled on January 14, 2026. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through L, which were admitted in evidence without objection. DOHA received the transcript (Tr.) on February 9, 2026. The record was held open until January 28, 2026, and neither party offered any additional evidence.

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, with exception of SOR ¶ 3.c, denied the allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is 50 years old. He is single and has no children. He moved to the United States with his family in 1988 and became a naturalized U.S. citizen in 2005. He earned an engineering degree in 2012. He started a master's program in engineering in 2018 and received a master's degree in 2024. He started working on a government installation in 2016 as a project engineer. (Tr. 16-22; GE 1; AE H; AE K.)

During the hearing, the Government's motion to amend SOR ¶¶ 2.a and 2.b to conform to the evidence was granted without objection. Subparagraph 2.a was amended by striking "and" and inserting "to" in the first sentence and subparagraph 2.b was amended by striking 2017 and inserting 2018. (Tr. 59-60.)

Guideline I

SOR ¶ 1.a: You were evaluated by a licensed psychologist in June 2023. The psychologist diagnosed you with Other specified personality disorder, Cluster A & B traits. The psychologist found that you struggle with managing appropriate relationships, engaged in exaggerated tactics to gain approval (lie, brag, poor financial decision) and questionable tactics to deal with conflict; you did not exhibit a level of personal insight into how your action or behavior could be a contributing factor to your negative situation; and your candor to discuss topics was highly suspect and displayed a high level of defensiveness and well-timed memory loss to avoid in-depth exploration. The psychologist concluded that your judgment, reliability, and trustworthiness are negatively affected by the personality characteristics discussed during your medical evaluation and could not give a favorable recommendation. SOR ¶ 1.a was cross alleged under Guideline E, SOR ¶ 3.a. In his Answer, Applicant denies that any mental health concerns rise to the level of presenting legitimate concerns over his suitability to access classified information. He

notes the psychologist found Applicant's impulse control to be intact with no evidence of paranoia, ideas of references, or active delusions as stated in the mental status examination portion of the report. The Government psychologist opined there was:

[N]o clear diagnosis which fully or accurately captures [Applicant's] interpersonal issues. It is likely that he has developed personality traits which are enduring and not amenable to clinical intervention. These types of characteristics are best understood under the category of personality disorders, which are difficult to accurately assign during a single evaluation. (GE 2 at 7.)

The psychologist's diagnosis was:

It is the belief of this Evaluator that [Applicant's] judgment, reliability, and trustworthiness are negatively affected by the personality characteristics discussed in the previous section. [Applicant] does not appear to be a malicious person. However, he seems to struggle with developing and managing appropriate relationships. He appears to engage in exaggerated tactics to gain approval (lie/bragging, poor financial decisions) and questionable tactics to deal with conflict. His candor to discuss these topics is highly suspect as he displayed a high level of defensiveness and well-timed memory loss to avoid in-depth exploration by the Evaluator. Additionally, [Applicant] does not exhibit a level of personal insight into how his actions or behaviors could be contributing factors to his negative situations. The Evaluator does not believe that [Applicant's] testimony was convincing or substantial enough to mitigate the various concerns that were presented in his referral and thus, cannot provide a favorable recommendation. (GE 2 at 7.)

During the hearing Applicant accused a colleague, [employee X], of having sexual relations with a minor. He said the colleague was discussing the relationship in the workplace. Applicant acknowledged he did not report the incident, stating he wanted to keep his distance. This was a colleague he specifically discussed with the psychologist. (Tr. 62-63; GE 2 at 3.) The psychologist described Applicant as uncomfortable with lines of questioning about his colleagues. He also found several discrepancies between Applicant's interview and case paperwork, which he listed as follows:

- Applicant was asked several times about other incidents with people at work to which he denied. When the Evaluator then specifically named [employee X] and talked about a dispute over a rental vehicle while they were at a conference.
- Applicant was asked multiple times if he was confronted by anyone when he returned to his office on the Friday before exercise. He denied it and stated that he went in, grabbed his items, and left. Which was contradicted by case paperwork which stated that he was approached by the lead tester who questioned why Applicant was onsite, to return the company grill, and was subsequently instructed

to leave immediately, which he did. The Evaluator questioned [Applicant] as to why he had the company grill and why he chose to return it that day. [Applicant] denied that he ever had the grill and denied taking it home, "why would I take the grill? That makes no sense. I was only there for my toothpicks." (SOR ¶¶ 2.b and 3.b.)

- Concurrent with his employment at the [government installation], [Applicant] was involved in some personal issues regarding people he knew outside of work (see below). However, the topic became work related after he started asking very specific questions about GPS tracking to his co-workers. They became concerned about his level of interest and inquired why he wanted to know. [Applicant] admitted that he disclosed to them that he had intentions of tracking an individual that he suspected of being involved in illegal activities. This caused his co-workers to have even more concern, and they reported him to the leadership. [Applicant] initially failed to disclose any details of this being an issue, despite him being required to speak with an investigator to clarify his statements. The Evaluator was required to ask him very specific, leading questions in order to get [Applicant] to admit that he had engaged in several conversations with his co-workers about the GPS tracking. He was also warned that it was not a good idea to secretly plant a tracker on someone as this could constitute illegal activity. Despite this warning, [Applicant] followed through with his plan and tracked the person ([SOR ¶ 3.c [Mr. G]]). [Applicant] also solicited some of his co-workers to file complaints with immigration against [SOR ¶ 3.c [Mr. G]] despite them having no knowledge or interaction with him.
- [Applicant] attempted to explain the circumstances leading up to him being charged, but the details of the story were either unclear or changed after subsequent questioning. (GE 2.)

The psychologist concluded the mental status examination with:

[B]ased upon his presentation and recent history, his impulse control is deemed to be intact. He denied current symptoms of psychosis, auditory or visual hallucinations. There is no current evidence of paranoia, ideas of references, or an active delusional system. [Applicant] denied any current suicidal or homicidal ideations, intentions, or plans of self-harm. (GE 2 at 5.)

Guideline K

SOR ¶ 2.a: From about April 2017 to June 2018, while working at [installation], there were multiple reports that you asked questions about sensitive work projects that you were not assigned or had no need to know. SOR ¶ 2.a was cross alleged under Guideline E, SOR ¶ 3.b. In his Answer, Applicant denies the allegation without explanation. He testified his questions were related to a field he was interested in for his master's degree. He explained, "I needed some more knowledge regarding [radio frequency] measurements." He acknowledged he asked around and

looked at manuals, but he noted he was also working in this area and “needed some more knowledge regarding [radio frequency] measurements.” He stated, “I asked questions, but I wasn't aware of the importance of, you know, staying away from classified information. I didn't mean it.” He did not have a clearance at the time he was asking these questions. He knew he was working at an installation which dealt with sensitive areas. (Tr. 18-19; 44-47 GE 6 at 1, 15-19.)

Applicant acknowledged he asked questions, but he was not trying to cause anyone to give him classified information. (Tr. 41.) He stated:

Yes. I was asking about -- I knew it was classified. I didn't ask about any details. I was asking them whether -- when it will be held and things like that but not ask them about any detail or what it -- what the testing entailed. I didn't ask about that. (Tr. 41.)

SOR ¶ 2.b: In about April 2018, while working at [Installation] you were advised of the restricted access to the worksite over the weekend and instructed to stay away during a secure exercise that was being conducted on the worksite. You failed to comply with the instructions and entered the worksite during the test event. SOR ¶ 2.b was cross alleged under Guideline E, SOR ¶ 3.b. In his Answer, Applicant denies the allegation without explanation. He stated he had heard roads were going to be blocked and that there would be security and not to come into work Saturday and Sunday. He denied reports of him being there on the weekend. (Tr. 21; GE 8 at 12, 25-26.) He did acknowledge that he had come into work on Friday before leaving for a trip to a major city located a few hours from his installation. He explained he had to go into the office because:

It was all Friday, and I was about to head up to [major city], and I just realized that I forgot this box which contained special toothpicks, I say, because I needed them because my -- one of my [teeth] was cracked and food getting -- food keep getting stuck. So if I travel to [major city] without the special toothpick, that would bother me throughout the weekend. So that's why I decided to go to the site and pick up that toothpick case, which I left on my cubicle. (Tr 22; GE 8 at 13.)

Applicant explained he had been told the testing would be on weekends, and since it was Friday morning, he did not see any reason not to go into the office. He denied a report that he claimed to have been on the installation to return a grill. (GE 2; GE 6 at 3; GE 7 at 13.) He offered a gas receipt for the time in question, which he explained showed he was driving to a major city. (GE 8 at 12.) He stated he knew it was a Friday because his work schedule had every other Friday off, and he would not have gone to [major city] on a Saturday. (Tr. 23-24; 48-56; GE 7 at 13; GE 8 at 12, 25-26.) Applicant testified he did not get along with his colleagues at the installation where these allegations were alleged. (Tr. 25-26.)

Guideline E

SOR ¶ 3.c: In about April 2018, you were arrested and charged by [criminal court], with Harassment-2nd, physical contact; Stalking 4th, cause fear; and aggressive harassment 2 Threat by Phone. On October [day], 2018, the case was dismissed. In his Answer, Applicant admitted the allegation and emphasized “that the charges were dropped, and the matter was previously found mitigated in an earlier security clearance application.” He was arrested in April 2018 and his security manager was made aware by law enforcement in August 2018 of the incident and began tracking it. The security manager reported the incident as dismissed in November 2018. (Answer at 6; GE 2 at 39; GE 6 at 18.)

Applicant testified that the psychologist accurately recorded the relationship with people there in [major city] and what led up to this arrest. He did not feel he was stalking because he understood this to be a “constant thing,” and he only faced the person in question “just for that one instant.” He stated he “wasn't really following them or trying to intimidate them. [He] just wanted to get [his] my point across to [Mr. G]. He stated he used the GPS device only on [Mr. G]'s vehicle.” (GE 2; GE 6 at 1; Tr. 30-32, 63-64.) Applicant believed Mr. G was involved in human trafficking. He relied on the statements of one person to form this belief. (Tr. 70.)

SOR ¶ 3.d: In about April 2018, while working at [installation] you engaged in multiple discussions with co-workers regarding use of GPS devices and anti-jamming; and you reported to co-workers that you were tracking a [state] resident you believed was possibly involved in human trafficking. In his Answer, Applicant denied the allegation and noted the concern was previously reported and adjudicated. He included the “Final” incident report dated June 5, 2018, which states the witness statements would be uploaded in “DISS” but does not address any determination. (Answer at 7.)

Applicant testified he was just showing off stating:

Well, since it was the facility that deals with [capabilities], I was trying to maybe show them off -- I mean, show off that I was into [this] technology, you know, GPS signals, and receiving them and geolocating the person. So that's -- I was just trying to be close to them by showing them what I was involved, and what I have -- what I'm interested in. (Tr. 33-34.)

Applicant explained he only targeted one person. He said he “talked to several coworkers” at his facility suggesting that they make anonymous tips about the person he was accused of stalking. He acknowledged this allegation was “true.” (GE 2; Tr. 31, 35, 42.)

SOR ¶ 3.e: From about May 2018 to June 2018, while working at [Government Installation], you solicited employees to make anonymous false reports regarding the immigration status of a [state] resident. In his Answer, Applicant denied the allegation without explanation. Applicant testified he only targeted one person. He said

he “talked to several coworkers” at his facility and suggested that they make anonymous tips. Because of his nationality, he thought involving “Real Americans,” would, improve the likelihood the reports would be investigated. He agreed that if the word “false” was removed from the allegation it was a true statement. (Answer; Tr. 31, 35-36, 42-43.)

SOR ¶ 3.f: In about April 2018, while working at [Government Installation], you solicited a coworker to use false identification to intimidate an individual who failed to repay a loan to your business partner. In his Answer, Applicant denied the allegation without explanation. When asked if he was asking a coworker to intimidate his business partner he responded, “intimidate is not the right -- might not be the right choice. But in [a] sense, yes.” He explained he could not get anyone to travel with him to intimidate the coworker so that plan stopped there and did not proceed any further. He agreed this was a true statement and that the badge he possessed for this plan was false identification. (Tr. 37, 42, 43, 71; GE 8 at 15.)

SOR ¶ 3.g: You falsified material facts during an interview with a Department of Defense authorized investigator on July 8, 2021, when you stated you only used your GPS tracking device on your own vehicle. After additional questioning from the investigator and being reminded that false statements were punishable by fines or imprisonment, you admitted to placing your GPS tracking device on another individual’s vehicle on two occasions in 2018. In his Answer, Applicant denied the allegation without explanation. Applicant acknowledged he knew during his interview in 2021, that his denial about placing a GPS tracker on another person’s vehicle was false. (Tr. 77.)

SOR ¶ 3.h: You falsified materials facts in a typed statement written by you sometime prior to October 2018, provided to your Security Specialist [Government Installation], when you stated, “I do not know about the details on how the tracking operation was carried out...” In truth, you admitted during an interview with a Department of Defense authorized investigator on July 8, 2021, that you used your GPS tracking device on the individual’s car, and therefore, you did know the specific details of how the “tracking operation was carried out.” In his Answer, Applicant denies the allegation without explanation. Applicant acknowledged he knew that his written statement in 2018, was false at that time. (GE 8 at 8-13; Tr. 77.) He acknowledged his Security Specialist called him to her office and stated she gave him a warning but no penalty and that he was given a hard copy of all the reports. (Tr. 37-38.)

Applicant explained how his SOR Answer was prepared for him by the law firm representing him and that he had reviewed the Answer before its submission. He stated some of the information came in too late to change his Answer that had been prepared for SOR ¶¶ 3.g and 3.h. (Tr. 78, 87-89.)

Whole Person

Applicant submitted two character letters. His landlady wrote that “[Applicant] has demonstrated to be a man with integrity, who is kind, respectful, empathic, friendly,

humble, loyal, compassionate, reliable, and very punctual in his payments. So [Applicant] is a very good guy that I can recommend anybody to deal with.” (AE J.)

A colleague and now mentor at Applicant’s current employer submitted a character letter and also testified on his behalf. Applicant’s colleague is a security clearance holder and has known Applicant for almost four years. He wrote:

I have enjoyed the time I had with [Applicant] on my team, and I would gladly work with him again. I thoroughly enjoy our mentoring relationship and look forward to continuing it in the new year. Thank you for taking the time to consider my perspective, and I hope that it helps give a clearer picture of [Applicant’s] character and relationship to his work. (AE I.)

Applicant’s colleague explained he had observed Applicant since Applicant was brought in as a junior engineer, where they worked together on a project for approximately six months. Since that time, he has been Applicant’s mentor. In this mentor capacity he meets with Applicant every two weeks for about a half an hour, where they discuss professional and technical development. He stated he had not observed any interpersonal issues with Applicant at work. He noted where Applicant had disagreements with his lead engineers that with a “little bit of guidance” they were able “to figure out the best path forward because it was generally confusing.” He described Applicant as “hardworking” and “really capable on the engineering front, he ... worked hard to learn new skills and to learn how to use tools” so he would be a valuable asset for their company. Based on his observations he felt Applicant handled the proprietary information of the company correctly. (Tr. 100-111.)

Applicant submitted a written statement with his Answer. He wrote:

[W]e didn’t really assimilate into the community and even felt some animosity from the people of the community. When I got old enough to be I realized that the people in the [redacted] American community were mainly made up of those who fled from pro-US, anti-communism right wing dictatorship [redacted] governments in the 70s and the 80s. And most of them were of [redacted] province descent, the area known for being rebellious throughout the history of [redacted]. During the [redacted] war, they supported [redacted]. In recent years they become Anti-US and pro-China as they were responsible for the impeachment of pro-US right wing president [redacted] and, they are repeating the same thing, trying to impeach the current president [redacted] who is also pro-US anti-China.

Growing up among such people and seeing my family oppressed, I have become [an] anti-communism right wing conservative. It also made me take interest in TSCM (technical surveillance countermeasures) for fighting communism. Later I majored in electrical engineering in college but didn’t get an interview. However, I got a job as a project engineer at [Government Installation], a [Government] installation. During my stay at [Government

Installation], I have my become familiar with the work environment in government agencies and how government project is managed after being award to defense contractors. From there I moved on to work for [my sponsor] for I was interested doing actual design. Currently I am working as [technology] design engineer responsible for designing [redacted]. I recently received a master's degree from [University], an online program which provide courses for those who work in defense industry.

By nature, and also by the surrounding, I have been pressed to become a right-wing conservative. I think it is my destiny to fight communism and make sure justice established in the world so that it may look good on God's eye. It can be assured that I will not be compromised when it comes to the security of the nation. (AE K.)

Policies

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline I, Psychological Conditions

AG ¶ 27 articulates the security concern for psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

I have considered the disqualifying conditions for psychological conditions under AG ¶ 28 and the following are potentially applicable 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; and

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

The record establishes the concern that Applicant's behavior and diagnosed conditions could impair his judgment, stability, reliability, and trustworthiness. AG ¶¶ 28(a) and (b) apply. AG ¶ 28(a) is not applicable because all his alleged behavior under Guideline I is addressed under Guideline E.

I have considered the mitigating conditions under AG ¶ 29:

(c) 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.

AG ¶ 29 (e) applies. The psychologist stated, "there's no clear diagnosis which fully or accurately captures [Applicant's] interpersonal issues," while a formal diagnosis of a disorder is not required for there to be a concern under this guideline. The diagnosis by the U.S. Government psychologist was that Applicant's condition was "other specified personality disorder, Cluster A & B traits" without further specificity. The record reflects Applicant's struggles were in 2017 and 2018 and were the focus of the June 2023 evaluation. There is no indication of any employment problems since 2018, when Applicant left for a new position. The evidence reflects he is thriving working for his current employer. Applicant did not receive inpatient mental health treatment, and he has not received outpatient mental health counseling or treatment. He was not prescribed mental-health medications. Applicant engaged in behavior that demonstrated poor judgment. The evaluating psychologist described him as "defensive, minimized, and rationalized his behavior," and said his "candor to discuss topics was highly suspect and displayed a high level of defensiveness and well-timed memory loss to avoid in depth exploration."

Applicant was not fully honest during his mental health evaluation, and this inability to be frank, candid, and honest precluded a determination that psychological conditions were or were not a security concern. Under all the circumstances the evidence is insufficient to establish a current mental-health problem.

Guideline K: Handling Protected Information

AG ¶ 33 expresses the security concern for handling protected information:

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

The following disqualifying conditions under AG ¶ 34 are potentially applicable:

- (d) inappropriate efforts to obtain or view protected information outside one's need to know; and
- (g) any failure to comply with rules for the protection of classified or sensitive information.

Based on Applicant's admissions and the evidence in the record, the above disqualifying conditions apply.

The following mitigating conditions under AG ¶ 35 are potentially applicable:

- (a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (c) the security violations were due to improper or inadequate training or unclear instructions; and
- (d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

AG ¶ 35(a) applies. Applicant acknowledges the conduct in question and has not had further handling protected information issues in almost eight years. Given the issues he had with his coworkers because of his odd behavior regarding surveilling people and the personality issues identified under Guidelines E and I, his questionable conduct regarding handling protected information issues happened under circumstances that are unlikely to recur. While it is clear he was on the installation around the time of the testing, which raises a concern, Applicant's work history over the past eight years has established evidence of successful rehabilitation through the passage of time without recurrence of issues with handling protected information. His employment and education record reflect his maturity. His mentor attested to his proper handling of their company's proprietary information. The security concerns relating to his conduct and judgment are best addressed under the personal conduct guideline, *infra*. The handling protected information concerns are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are applicable based on the record evidence:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(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;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

The following mitigating conditions under AG ¶ 17 are potentially applicable:

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

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

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

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) 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 ¶ 2(b).

SOR ¶ 3.a cross alleges the information set forth in subparagraph 1.a. Applicant psychological condition is properly addressed by Guideline I. Any personal conduct

addressed in his psychological evaluation is addressed in other allegations under subparagraph 3.

SOR ¶ 3.b alleges the information set forth in subparagraphs 2.a and 2.b. Applicant conduct is mitigated by the passage of time and his employment and education accomplishments. AG ¶¶ 17(c) and 17(e) are established for SOR ¶ 3.b.

¶¶ 17(c) and 17(e) are established for SOR ¶¶ 3.c-3.f. Applicant's arrest in 2018 and the other alleged conduct associated with his behavior in 2018, are mitigated by the passage of time and his employment and education accomplishments. This conduct is unlikely to recur and does not cast doubt on Applicant's reliability, trustworthiness, or good judgment.

AG ¶¶ 17(a), 17(c), and 17(e) are not established for SOR ¶¶ 3.g and 3.h. Applicant would not disclose the details unless confronted. His decision to falsify material facts to an investigator and in a written statement to his security officer casts doubt on his reliability, trustworthiness, and good judgment. The concerns raised by the psychologist about his willingness to discuss his past conduct are relevant to the conduct alleged in SOR ¶¶ 3.g and 3.h. Applicant's testimony, other evidence, and the length of time since the last incident are insufficient to establish AG ¶¶ 17(a), 17(c), or 17(e).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. His mentor and colleague testified credibly concerning Applicant's work performance and reliability. I have incorporated my comments under Guidelines I, K, and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the Guideline E security concerns, while mitigating the Guidelines I and K security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline I:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2: Guideline K:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3: Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.f:	For Applicant
Subparagraphs 3.g-3.h:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge