



**DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

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ISCR Case No. 24-02357

Applicant for Security Clearance

Appearances

For Government:

Troy L. Nussbaum, Esq., Department Counsel

For Applicant:

Pro se

06/25/2026

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has a long history of criminal conduct, including drug-related and other serious felony criminal offenses. He spent 16 years in federal prison. He has more recent, though less serious, charges since his release. These security concerns are alleged under Guideline J (Criminal Conduct) and are largely cross-alleged under Guideline E (Personal Conduct), along with other issues. Applicant did not provide sufficient evidence to mitigate established criminal conduct security concerns. Personal conduct security concerns are either sufficiently covered under Guideline J or not established. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 23, 2024. Following a background investigation, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant on July 2, 2025 alleging security concerns under Guidelines J and E. The DCSA issued the SOR under

Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 28, 2025, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to an administrative judge on February 12, 2026. On March 20, 2026, the assigned administrative judge scheduled the case for a hearing on May 14, 2026, via video-teleconference through an online platform.

SOR Amendment

On March 26, 2026, Department Counsel filed an Amendment to the SOR, pursuant to Directive ¶ E3.1.13 (Enclosure 3, Additional Procedural Guidance). Department Counsel added one allegation under paragraph 1 of the SOR, under Guideline J, as follows:

- 1.i: In about December 2023, you broke and entered the dwelling of another when you used your body to break a front door of a dwelling open and subsequently entered the dwelling.

As a proffer, Department Counsel noted in the Amendment that “this amendment is to conform with the evidence previously provided, specifically, Government’s Exhibit 5 and the administrative notice of [State 1] Code, Criminal Law, § 6-205.” (SOR Amendment, Hearing Exhibit (HE) I) (See further discussion below) On March 30, 2026, Applicant answered the Amendment by circling “I Admit” as to SOR ¶ 1.i. (HE II)

Also on March 30, 2026, the case was transferred to me since the assigned administrative judge had a scheduling conflict on the chosen hearing date. The hearing convened on May 14, 2026 as scheduled. Department Counsel offered Government’s Exhibits (GE) 1 through 5, and Applicant offered Applicant’s Exhibits (AE) A through E. Applicant Exhibits A through D were submitted with his Answer to the SOR. All substantive exhibits were admitted without objection. Applicant and one witness also testified. The record closed at the end of the hearing. DOHA received the hearing transcript (Tr.) on May 26, 2026.

Administrative Notice

During the hearing, Department Counsel initially requested that I take administrative notice of State 1 Code Criminal Law, § 6-205 (marked as Administrative Notice (AN) Exhibit I), on the grounds that it was (or might have been) the criminal statute that Applicant purportedly violated when he engaged in the conduct alleged in SOR ¶ 1.i. However, it quickly became clear during the hearing that the conduct alleged in SOR ¶ 1.i

occurred not in State 1, but in a neighboring state, State 4. Accordingly, AN I was marked for the record but then withdrawn, since it was submitted erroneously. (GE 5; Tr. 24-29)

Department Counsel later offered two excerpts from the State 4 Criminal Code, § 18.2-121 and § 18-2-137, as more properly related to Applicant's conduct in SOR ¶ 1.i. These were marked as AN II and AN III, respectively, and accepted. (Tr. 178-182)

Findings of Fact

In responding to the SOR, Applicant admitted SOR ¶¶ 1.a-1.h under Guideline J. Under Guideline E, he admitted the cross-allegation at SOR ¶ 2.a and the allegations at SOR ¶¶ 2.b and 2.c, but he denied SOR ¶ 2.d. He also included a narrative statement. In answering the Amendment to the SOR, Applicant admitted the added SOR ¶ 1.i without further comment. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 55 years old. He has never married. He has one daughter, now an adult. He earned an Information Technology (IT) certification in 2017. Since June 2019, he has worked as an IT technician for a defense contractor, in a job for which he now needs a security clearance. He has never held or applied for a clearance before. He earns \$75,000 annually. (GE 1; Tr. 12, 37-44, 99-100, 138-141)

Applicant submitted his SCA in January 2023. He had a background interview in October 2024. He authenticated the summary of the interview as accurate, while adding some additional narrative information, in a January 2025 interrogatory response. (GE 1, GE 2)

The SOR largely concerns Applicant's long criminal record. By his own admission, Applicant both used and dealt illegal drugs for many years when he was younger.

State 1 Offenses

In August 1989, when he was about 18, Applicant was in an altercation with one or more armed assailants in a residential neighborhood in State 1. He said they were drug dealers who were shooting at him, so he broke into a nearby home to avoid the gunfire. He said when he broke in, he asked the occupants to call the police. He was arrested and charged with breaking and entering. In December 1989, he was found guilty and sentenced to five days in jail, which he served. (GE 2 at 7-8, GE 3 at 11-13; Tr. 62-63) (SOR ¶ 1.a)

In September 1990, Applicant was arrested and charged in State 1 with battery and resisting arrest, both misdemeanors. According to Applicant's background interview, he was in a county police station after a traffic stop. He was interacting with a police officer, and the officer asked him to take his belt off and slapped him. The charges were

later nolle prosequi or dismissed in January 1991. (GE 2 at 7; GE 3 at 13-14; Tr. 59-62) (SOR ¶ 1.b)

State 2 Offenses

In March 1994, Applicant was arrested in State 2 and charged with felony armed robbery, felony burglary, and misdemeanor possession of drug paraphernalia. (SOR ¶ 1.c) He explained that he was both addicted to drugs and selling drugs at the time, and had robbed his mother's house, stealing some appliances. (GE 2 at 7; Tr. 56, 58-59, 64)¹

In May 1998, Applicant was arrested in State 2 and charged with felony possession with intent to distribute (PWID) cocaine, felony maintaining a place for drug trafficking, and misdemeanor possession of drug paraphernalia. (SOR ¶ 1.d) His FBI record also shows an additional charge, for distributing / delivering drugs to certain places. (GE 3 at 19-20)

It appears that Applicant's felony armed robbery and felony burglary charges (SOR ¶ 1.c) were adjudicated in June 1998, along with his May 1998 drug charges (SOR ¶ 1.d) It appears that in June 1998, he was sentenced to five years in jail (concurrent) on the robbery and burglary charges from 1994 and was also sentenced to an additional four years in jail on the PWID cocaine and distribution charges from 1998. The remaining charges were dismissed. (GE 2 at 6-7; GE 3 at 18-21) Applicant appears to have spent about one year in jail, since he was released in late June 1999. (GE 2 at 6; Tr. 64-67)

In January 2000, Applicant was arrested and charged in State 2 with felony first-degree intentional homicide, felony endangering safety – reckless use of a firearm / use of a dangerous weapon, and misdemeanor possession of a controlled substance. (SOR ¶ 1.e) His FBI record contains a reference to “habitual criminality.” (GE 3 at 24; Tr. 51-55)

According to his interview summary, Applicant was dealing drugs and had a pistol. He said he was “set up on what he thought would be a sting operation.” He was shot numerous times. In his interview, he denied either being charged with, or found guilty of, homicide. (GE 2 at 6) Applicant testified that although he had a weapon, he did not discharge it and said no one was shot other than himself. He said he did not go to court on the State 2 homicide charge, and that “nothing” came of it. (Tr. 54, 68-69) He denied getting into a shootout with police, though he said he was shot multiple times. (Tr. 104-106)

¹ In his hearing testimony, Applicant initially confused the timing of these charges with earlier charges in August 1989. (Tr. 56, 58-59) (referencing the events alleged in SOR ¶ 1.a)

Federal Charges and Incarceration

In February 2000, Applicant was charged in Federal court (in State 2) with three felony Federal offenses: (1) distribution and PWID crack cocaine, (2) being a felon in possession of a firearm, and (3) use of a firearm during and in relation to a drug trafficking offense.² (SOR ¶ 1.f) (GE 2 at 5-6; AE A) Applicant explained that these Federal charges were not based on additional conduct. Rather, Applicant's State 2 case (SOR ¶ 1.e) was moved into Federal court and prosecuted there instead. (Tr. 51-54, 70)

In April 2000, Applicant pleaded guilty to Federal counts (1), (2), and (3), above. In October 2000, the Court determined that, based on his prior felony convictions, Applicant qualified for enhanced sentencing under the Federal Armed Career Criminal Act (ACCA). He was sentenced to 188 months (15 years, 8 months), concurrently, on counts 1 and 2, and 84 months (7 years) consecutively, on count 3. (AE A) Applicant spent the next 16 years (2000 to 2016) in federal prison. (GE 2 at 5; Tr. 48-51, 70-76)

In May 2016, the Court granted Applicant's motion to vacate his sentence, finding that he no longer qualified as an armed career criminal under the ACCA. In September 2016, the Court resentenced Applicant to time served, followed by four years of supervised release on counts 1 and 2 and a concurrent three years of supervised release on count 3. In August 2019, the Court granted Applicant's motion for early termination of supervised release. (GE 2 at 5; AE A; Tr. 45-47)

While he was on supervised release, Applicant reentered the workforce. His employment history is detailed on his January 2024 SCA. He began working for his current employer in June 2019, shortly before his supervised release was terminated early. (GE 1; AE A; Tr. 42-46)

Subsequent offenses

One evening in September 2020, Applicant was in City 1, State 3, on his way to meet an acquaintance. He went to an ATM machine to withdraw cash and was approached by a homeless individual who asked him for money. Applicant explained in his interview and in his testimony that the homeless person accosted him physically. Applicant was also attacked by the man's dog. He acknowledged that in the ensuing altercation, he beat the homeless individual unconscious, though Applicant believes he was acting in self-defense. He said the individual was in his 20s. He said he waited at the scene for paramedics and police to arrive. He was taken to the police station but released later that evening. He said he made inquiries with police and the courts but asserted he

² The charging documents from Applicant's Federal case are not in the record, so if there were additional Federal charges beyond what he pleaded guilty to, they are not documented here. AE A is an August 2019 Decision and Order of the Federal U.S. district judge who accepted Applicant's guilty plea, sentenced him and, in August 2019, terminated his period of supervised release. AE A provides clear details of the terms of Applicant's plea and sentence.

was unaware of any subsequent charge and never went to court. Applicant was charged with misdemeanor simple assault, but the charge was later dismissed. (SOR ¶ 1.g) (GE 2 at 5; Tr. 76-81, 113-119, 188-189) He provided a court record that shows the arrest but also that “No Charges Filed.” (AE B) He has had no other subsequent assault charges since being released from prison. (Tr. 135, 137)

Applicant testified that one night in late December 2023, he was visiting the home of his girlfriend, M, in State 4.³ They spent the evening together. At some point, he left to go home before reporting to work. While on his way there, he realized he had left his work badge at M’s house. When he returned to retrieve it, he initially knocked on the door so she could let him in. When she was not responsive, Applicant then broke in through the front door. He was unable to find his badge. (Tr. 81-83, 119-124)

According to the police report, police were called to M’s home at about 2:00 am to investigate a possible burglary. Applicant was seen exiting the house “without police direction.” When challenged, he reentered the house. A few minutes later, he came out, followed police commands, and was detained. The police report indicates that once Applicant returned to the house, he found that the door was locked, and “he admitted to using his body to break the front door open.” Inspection of the door revealed a broken frame. He denied being in a physical altercation with M. (GE 5 at 8; Tr. 138)

In his testimony, Applicant said that when he got to the house around 1:00 am, he tried to get M’s attention by knocking on doors and windows and perhaps by phoning her. When he was unsuccessful, he forced the door open. He said she had given him a key, but he did not have it at the time. He acknowledged it was a bad decision to force his way into her home. (Tr. 127-130)

Applicant was charged with public intoxication after the reporting officer detected “the odor of alcohol coming from his person, his blood shot and glassy eyes, and slurred speech.” (GE 5 at 8-9) (SOR ¶ 1.h) The police report reflects that M declined to cooperate with the prosecution and was unwilling to come to court. (GE 5) The case was later dismissed. Applicant testified that he had to complete an online alcohol or drug course, but the email he provided from his defense counsel does not mention this. (AE C; Tr. 83-85)

Applicant was not charged with or cited for any other offense beyond public intoxication. (GE 5; Tr. 83, 181) Despite this, his actions in breaking and entering into M’s home are the basis for the added Guideline J allegation at SOR ¶ 1.i, which arose from the same events.

Applicant denied that he had been drinking that evening, since he had to go to work and drive to get there. He said M had been drinking and smoking. (Tr. 126) He

³ Applicant and M both testified that they are romantically involved. The term “girlfriend” is used here purely for ease of reference.

believes that M had spilled alcohol on him at some point during the evening. He believes this is what the arresting officer smelled on him that led to the public intoxication charge. (Tr. 130) Applicant did not offer an explanation for the officer's observation that Applicant had bloodshot, glassy eyes.

Applicant testified that on the one hand, he was conscious of protecting M's interests and privacy, but on the other hand, his job is at stake. (Tr. 86-87, 110-111) He believes M was not entirely truthful when she spoke to the police that evening. He believes she tries to put herself in the best light possible. (Tr. 132-134)

M also testified both as a fact witness and a character reference. Applicant and M are romantically involved but do not live together. They met online. On the night in question in December 2023, M said it was she who had been drinking, not Applicant. She said when she went to wake him up to go to work, she "spilled some of the drink that I had on the tray on him." He then got dressed to go to work. She explained that she was dehydrated and feeling unwell, so she went across the street to a neighbor's house for assistance. She was there when she noticed that lights were on at her house and it looked like someone had broken in, so she (or the neighbor) called police. She did not realize that it was Applicant who had entered the home. "And once I saw him I told the police to stop everything because I know this person." She also said Applicant "has the key to my home. I don't know why he didn't use it." (Tr. 161-167)

M acknowledged that her memory of the incident has dimmed, first because she had been dehydrated and "out of sorts" at the time, and because it was three years ago. However, she asserted that she was telling the truth in her testimony. She declined to press charges because she did not want to cause problems for Applicant. She said she feels bad about what happened and was embarrassed that police were called to her home. She reaffirmed that he had not been drinking that night. He does not drink or smoke marijuana. (Tr. 165-166, 169-175; AE D; GE 2 at 9)

As a character witness, M testified that Applicant has many positive attributes. He has helped her in many ways. He helped lift her spirits after she lost her husband and other family members. He is a thoughtful, caring person and a "good guy." (Tr. 167-168)

The Guideline E allegations

Under Guideline E, the SOR alleges three temporary restraining orders (TROs) issued against Applicant: two in July 1994 (SOR ¶¶ 1.b, 1.c) and a third issued in June 2003 (SOR ¶ 1.d). In his Answer to the SOR, Applicant admitted the first two TROs, while acknowledging that he remembered little about them. He denied the 2003 TRO, noting that he had been in federal prison at the time. (Answer)

All three TROs are noted in State 2 family court records. (GE 4) Applicant confirmed in his hearing testimony that the complainant for the first two TROs, M.M., was his mother's husband at the time. It was their house that Applicant had been charged with

burglarizing in March 1994 (SOR ¶ 1.c). (Tr. 55, 58-59) Applicant acknowledged that he had been an addict at the time. He said his mother and M.M. had been in the process of divorcing. He said he told M.M., "if he put his hands on my mother, I would break his neck." M.M. soon moved out. Applicant said he was unaware of a TRO and was never arrested for violating one. He did acknowledge robbing his mother and breaking into her home. (Tr. 88-90) There is no indication in the record that Applicant ever violated either TRO.

Applicant denied any involvement with the third TRO, in 2003. He noted again that he had been in federal prison at the time. He said he did not recognize either the complainant, A.O., or the street address in State 2, both listed on the case summary. Applicant's first name, middle initial, and last name are the same as what is listed in the case summary, but both his first and last names are common. (GE 4 at 3; Tr. 90-97, 111)

Applicant testified that he had been a drug addict for many years, addicted to heroin, cocaine, PCP, and crack. He said he last used illegal drugs in July 1997. He was dealing and trafficking drugs, not using them, at the time of his 1998 or 2000 felony drug and weapons charges. (Tr. 97-98) He attends Narcotics Anonymous (NA) "from time to time." (Tr. 98-99) He consumes alcohol occasionally and drinks moderately. (Tr. 103) He has had no subsequent charges or citations since December 2023. (Tr. 155-156)

Applicant worked in his current position for about four years before his employer requested that he apply for a clearance. He said he disclosed his criminal record when he was interviewed for the job. (Tr. 99-100) He did not disclose any of his criminal record on his SCA, though he discussed it at length in his background interview several months later. (GE 1, GE 2) He also said several of his references were aware of his history. (Tr. 113)

Applicant did not disclose his December 2023 arrest for public intoxication to his employer at the time. He said he was told by his defense attorney that it "would not be something that I would have to deal with." He also said he had not been drinking and was not drunk, since he was due to go to work at the time. (Tr. 101) He said he had a concussion and other serious injuries after a bad bike accident four years ago. He suffers from memory loss as a result. (Tr. 101-102)

When he filled out his SCA and detailed his employment history, Applicant reported that he spent five years (2011-2016) working as an orderly in a federal prison. (GE 1 at 17; Tr. 142) However, in answering questions on the SCA about his Police Record, he did not disclose that he ever had any felony charges, any firearms charges, or any drug charges. In answering questions about his Police Record in the previous seven years, he did not disclose either his 2020 simple assault charge or his December 2023 public intoxication charge. Further, the December 2023 charge was also pending when he filled out his SCA, a month later, in January 2024, and he answered "no" to the question, "Are you currently on trial or awaiting trial on criminal charges?" (GE 1 at 29) These omissions are not alleged in the SOR and are not considered as disqualifying conduct.

When asked about these omissions during his hearing, Applicant said he did not recall being charged with simple assault in 2020, and that he forgot about it. (Tr. 144-145) As to the December 2023 public intoxication charge, records reflect that Applicant's first court date for that charge was February 9, 2024, which was about two weeks after he submitted his SCA, and the case was not dismissed until April 24, 2024. (AE C; Tr. 145-149) Applicant acknowledged that he "failed to recognize the importance of just the arrest," especially when compared with his long history of convictions. (Tr. 149)

Applicant asserted that he asked his criminal defense attorney about the public intoxication charge, and whether the charge would be held against him or would prevent him from getting a clearance. He said he was told "it would not come up." (Tr. 147, 149-150) Despite having said that he was focused on his history of convictions, Applicant also did not disclose any prior convictions on his SCA either. He said he "just missed the question" calling for disclosure of his felony, firearm-related, and drug-related convictions. (Tr. 151-154) He said he was not trying to hide anything, as shown by his disclosure of his time in federal prison in detailing his employment record on his SCA. (GE 1; Tr. 151-155)

During his background interview in October 2024, Applicant was asked if he had ever been convicted of or charged with any offense involving firearms or drugs, and Applicant said yes. He then freely discussed his criminal record and provided detailed recollections. (GE 2; Tr. 153-154)

Applicant testified that he recognized he has been given a second chance to reenter society and be a responsible individual. He has changed his life and has embarked on a career in which he feels he contributes to society and gains value. He is proud of having turned his life around since his struggles with addiction and his time in prison. He is grateful for having been given the chance of being released from prison early and having been granted early termination of his supervised release. (Answer; Tr. 18-19, 109-113, 157-159, 189-190)

Applicant submitted five recommendation letters from character references, all from work. They describe him as possessing integrity, responsibility, professionalism, and discretion, as well as the judgment, trustworthiness, and reliability required of a clearance holder. (AE E)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of several variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are applicable to Applicant's admitted conduct, cross-alleged as criminal conduct (SOR ¶ 2.a).

(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.

Applicant has a long criminal record, including numerous felony, weapons, and drug convictions. By his own admission, he used and was addicted to various illegal drugs for many years. He was also a drug dealer. That part of his life occurred from about 1989 to early 2000. Those charges, all brought under state law, are alleged as SOR ¶¶ 1.a through 1.e, and are established by the record and admitted. They satisfy AG ¶¶ 31(a) and 31(b).

Following time in prison for state offenses in the mid and late 1990s (SOR ¶¶ 1.c and 1.d), Applicant was released but was soon arrested in January 2000 for additional state felony and other charges (including homicide) in January 2000. (SOR ¶ 1.e) Those charges led to subsequent charges in Federal court. (SOR ¶ 1.f)

It is not clear that the state charges in SOR ¶ 1.e were ever adjudicated in state court. They likely were not (even the homicide charge), as the subsequent Federal case clearly took precedence. It is also likely (though, again, not entirely clear) that the state charges in SOR ¶ 1.e and the Federal charges in SOR ¶ 1.f are not only related but stem from the same circumstances. AG ¶¶ 31(a) and 31(b) both apply to both SOR ¶¶ 1.e and 1.f, though I consider that the charges in those two allegations are best considered together.

Applicant then spent 16 years in Federal prison, from 2000 to 2016. He was ultimately released early, both from prison and, in 2019, from the period of supervised release that followed.

Applicant has two subsequent criminal charges. In 2000, he was charged with simple assault following an altercation with another individual on the street. (SOR ¶ 1.g) Applicant asserted that the other person was homeless, and that Applicant acted in self-defense. He also acknowledged rendering the other individual unconscious. He was charged with simple assault, but the case was later dismissed. AG ¶¶ 31(a) and 31(b) both apply.

In December 2023, Applicant was cited for public intoxication after police were called to his girlfriend's house following reports of a possible break-in. The investigating officer cited Applicant for public intoxication after smelling alcohol and observing his glassy and bloodshot eyes. His girlfriend, M, declined to press charges and the case was later dismissed. Nevertheless, AG ¶¶ 31(a) and 31(b) both apply to SOR ¶ 1.h, which Applicant also admitted.

In adding SOR ¶ 1.i to the SOR under Guideline J, Department Counsel seeks to establish additional disqualifying conduct from the fact that Applicant "broke and entered the dwelling of another" by breaking the front door of M's home and entering it. Notwithstanding Applicant's admission to the allegation, and his admission that he engaged in that conduct, there are nonetheless several problems with this allegation, which, in combination, lead to my conclusion that application of any disqualifying conduct under Guideline J is inappropriate and unwarranted.

First, unlike with SOR ¶¶ 1.e and 1.f above, there is no question that the events from which SOR ¶ 1.i arose are the same as the events which led to the public intoxication charge at SOR ¶ 1.h. For that reason alone, SOR ¶ 1.i is not sufficiently separate from SOR ¶ 1.h to warrant a separate allegation.

Second, notwithstanding Department Counsel's supporting assertion that Applicant's conduct was (or at least might have been) a criminal violation of State 4 law (such as the statutes cited in AN II and AN III), there is insufficient evidence that this was actually the case. In fact, it is noteworthy that the investigating officer charged Applicant with one offense -- public intoxication -- and NOT with anything else (such as breaking and entering). There may be many reasons for this, such as the fact that M declined to press charges, or the fact that she apparently had given him a key to the home. But the fact remains Applicant was not charged with breaking and entering into M's home by the state law enforcement authorities who were on scene, and who had professional responsibility and expertise to use in weighing whether to do so. I decline to second guess their decision and apply AG ¶¶ 31(a) or 31(b) to Applicant's conduct here, even though he admitted it.

Third, there is the fact that, notwithstanding the statutes cited in AN II and AN III, those statutes are not cited in the text of SOR ¶ 1.i, so as to put Applicant on sufficient notice that what the allegation sets forth is (or was) a criminal violation of State 4 law. Without that, and without evidence of an actual charge, the allegation fails.

For all of those reasons, neither AG ¶¶ 31(a) or 31(b) apply to SOR ¶ 1.i, and the allegation is found for Applicant under Guideline J.

Under Guideline J, AG ¶ 32 sets forth the potentially applicable mitigating conditions:

(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; 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.

Without question, AG ¶¶ 32(a) and 32(d) have some application, at least to Applicant's older felony and other criminal offenses. Between 1989 and 2000, Applicant committed numerous felonies, including offenses involving firearms and dealing illegal drugs. He was charged with and pled guilty to several federal offenses, and he spent 16 years in federal prison. He nonetheless showed significant evidence of rehabilitation, as he was released early both from prison and from the period of supervised release that followed. Applicant also entered the workforce, and he has been a valued employee with his employer for about the last seven years. He has an excellent work record and strong professional references. These are all factors which weigh in Applicant's favor.

However, several factors weigh against full mitigation. First, there is the simple fact that, no matter how long ago, Applicant was an armed drug dealer who spent 16 years in federal prison, for several federal felonies. A federal judge considered him sufficiently rehabilitated and reformed to warrant release back into society. But that does not mean it's in the national interest that he should be trusted with access to classified information.

There is also the matter of the state homicide charge from January 2000. It was not made part of Applicant's federal case. But very little is known about that charge, or about what led to it. Even though it is quite dated, I am loath to find such a serious charge mitigated when there is little evidence in the record before me about what happened.

Second, Applicant has two subsequent arrests since he was released, one on 2020, and one in 2023. Neither offense is a felony, so neither is as serious as his pre-incarceration offenses. Yet he also acknowledged that he knocked a homeless person unconscious as a result of their altercation. This suggests a troubling lack of impulse control. They are also both relatively recent charges, including one only a month before he filled out his SCA. Lastly, Applicant disclosed none of his criminal offenses and convictions on his SCA. He disclosed no felonies, no firearms offense, and no drug charges. He disclosed neither of his two more recent arrests, both of which occurred in the previous seven years, and one of which was pending a court date.

Even though the Government did not allege a falsification case under Guideline E as a result of these omissions, I can still consider them in weighing Applicant's reform, rehabilitation, and mitigation, as well as his credibility. Given Applicant's long criminal

record, his explanation that he “just missed the question” in failing to disclose any of his prior felony convictions is not credible. And his most recent charge was pending. His explanation for not listing it or disclosing it in any way is not reasonable.

Given Applicant’s record, this evidence weighs heavily against a finding that Applicant has fully reformed and is a suitable candidate to be trusted with eligibility for access to classified information. AG ¶¶ 32(a) and 32(d) do not fully apply to mitigate the criminal conduct security concerns in this case.

Guideline E: Personal Conduct

AG ¶ 15 details the security concern regarding personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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.

Under Guideline E, the SOR alleges three temporary restraining orders (TROs) issued against Applicant: two in July 1994 (SOR ¶¶ 1.b, 1.c) and a third issued in June 2003 (SOR ¶ 1.d). Applicant admitted the first two but denied the third.

The two TROs from 1994 are more than thirty years old. Applicant is not alleged to have violated either of them. They are not a current security concern. Indeed, the very word “temporary” in the term TRO shows its limited effect and timeframe. This is so even if the TROs arose from Applicant’s criminal conduct, as is likely the case here. (SOR ¶ 1.c) No Guideline E disqualifying conditions apply to SOR ¶¶ 1.b and 1.c, and if they did, any established security concern has been mitigated by the passage of time many years ago.

The third TRO, from 2003, is not established. Applicant denied SOR ¶ 1.d, noted he was in federal prison at the time, and he said he did not recognize either the

complainant or the street address in question. That TRO likely involved someone else with the same name.

SOR ¶ 2.a is a cross-allegation of Applicant's conduct under Guideline J, discussed above, as alleged in the original SOR (SOR ¶¶ 1.a-1.h). That conduct is already "sufficient for an adverse determination," under Guideline J, so AG ¶ 16(d) does not apply.

SOR ¶ 1.i under Guideline J, added to the SOR in the amendment, was not cross-alleged under Guideline E as a separate security concern. Even though Applicant exercised poor judgment in breaking and entering into M's house in the middle of the night, his conduct cannot be considered as Guideline E disqualifying conduct since it was not cross-alleged as such.

Since no Guideline E disqualifying conditions apply to any allegation or cross-allegation under SOR ¶ 2, I need not address mitigating conditions.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions given all the facts and circumstances surrounding this case.

I have incorporated my comments under Guidelines J and E in my whole-person analysis. I credit Applicant with improving his life and reintegrating with society after his incarceration. He is also well regarded at work. But the security concerns arising from his conduct are too serious, too long term and too recent to be considered mitigated on this record. Applicant also has two subsequent criminal charges since his release. Though they are both misdemeanors, he has not shown an established track record of staying out

of trouble with the law to warrant a finding that he is fully reformed and rehabilitated and no longer a security risk.

Also troubling is Applicant's lack of candor on his SCA. An applicant with a long felony criminal record and a 16-year prison term has a duty and responsibility to be fully candid about his record in the security clearance process. He did not do that. He had multiple undisclosed felony convictions, and even a pending case, and he disclosed none of them. This, too, is part of his burden of showing not only that he is fit to reenter society but that it is clearly consistent with the national interest to trust him with the country's most precious secrets. It is not a matter of punishment. Applicant has paid his debt to society in that regard for his past crimes. Instead, it is a matter of risk. And Applicant has the burden of showing that the security risk of all of his prior conduct has been mitigated to warrant granting him access to classified information. He has not met his burden of showing that he warrants such access. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant

Conclusion

Considering all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge