DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 06-22727
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicole Noel, Esquire, Department Counsel
For Applicant: Chester Morgan, II Esquire

September 26, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be denied.

Applicant submitted his Security Clearance Application (SF 86), on December 19, 2005. On January 30, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E for Applicant. The action was taken under Executive Order 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on February 6, 2007. He answered the SOR in writing through counsel on February 26, 2007, and requested a hearing

before an administrative judge. DOHA received the request on March 5, 2007. Department Counsel was prepared to proceed on January 3, 2008, and I received the case assignment on January 7, 2008. DOHA issued a notice of hearing on January 9, 2008, for a one-day hearing on January 31, 2008. Following several telephone conferences with counsel, I cancelled the hearing and rescheduled this case for a two-day hearing on a mutually agreed upon date. DOHA issued an amended notice of hearing on February 21, 2008, and I convened the hearing as scheduled on March 11, 2008.[1] The government offered 18 exhibits (GE) 1 through 18, which were received and admitted into evidence without objection. Four witnesses testified on behalf of the government. Applicant and four witnesses testified on his behalf. He submitted one exhibit (AE), which was received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 20, 2008. I held the record open until April 11, 2008, for the submission of additional matters by both parties. On April 9, 2008, Applicant submitted his response, including attachments 1 through 7. The government submitted one additional document and its response to Applicant's submission on April 10, 2008. The government submitted a copy of the requested 2001 court order as did Applicant (as attachment 1 to his submission). I marked this exhibit as Joint Exhibit 1. Applicant timely submitted six additional documents, which I have marked as Applicant Exhibits (AE) B through G.[2] The government objects to the admission of AE E, AE F, and AE G as beyond the scope of the post-hearing order for submissions and as not relevant to the case.[3] AE B, AE C, and AE D are admitted into evidence without objection. The record closed on May 8, 2008.

Procedural and Evidentiary Rulings

Motion to Amend SOR

On October 18, 2007, Department Counsel moved to amend the SOR. On November 12, 2007, Applicant responded to the motion to amend through counsel. Applicant objected only to new allegation 1.k. At the hearing, I reviewed each and every request to modify existing allegations and to add four new allegations under Guideline E. After hearing argument on each proposed amendment and new allegation, I granted

[1]Because counsel mutually agreed, I actually convened the hearing late on Monday, March 10, 2008 to resolve preliminary issues.

[2]In its memorandum for post hearing submissions, the government listed these exhibits as 2 through 7, and in a later response, Applicant's attorney references these exhibits as Attachments 2 through 7. The cover letter from counsel is listed by the government as exhibit 8.

[3]AE E (Copy Notice of Termination of Spousal Maintenance or in the Alternative a Motion to Modify Spousal Maintenance filed by attorney-witness in the other highly contested divorce case he handled around the same time he represented Applicant's wife); AE F (Order submitted in this same case by attorney-witness); AE G (Article published on the internet regarding the wife in the other highly contested case and her conduct related to her efforts to take custody of her son from a prior marriage). The government objected to Applicant's submission of these exhibits, marked by Applicant's counsel as Attachments 5 through 7. On April 18, 2008, I issued an Order, requesting Applicant to brief the reasons for the submissions of these exhibits and gave the government an opportunity to respond.

the government's request to amend allegations 1.a, 1.c, 1.e, and 1.g. (Tr. 12-13, 15, 20) I also granted the government's request to add allegations 1.l, 1.m and 1.n. and to omit allegation 1.d as duplicative. (Tr. 13, 32, 33) I denied the government's request to add allegation 1.k. (Tr. 25) For due process reasons, I also denied the government's request to allege under Guideline I the issue raised in proposed allegation 1.k. (Tr. 26-28)

As a result of the above rulings, the original SOR is amended as follows:

Allegation 1.a now reads: "You were charged with Third Degree Criminal Trespassing on or about [. . .] 2000 in [. . . .], based on a complaint filed by your ex-wife's divorce attorney. On or about [. . .] 2000, the charge was dismissed."

Allegation 1.c now reads: "On or about . . . ., 2001, shots were fired into the house of your ex-wife's attorney. You are considered a suspect in this case."

Allegation 1.e now reads: "On or about . . . . ., 2002, your ex-wife's attorney was shot through his office window. You are considered a suspect in this case."

Allegation 1.g now reads: "On or about . . . ., 2002, your ex-wife's attorney filed for a Temporary Restraining Order against you in the [county courthouse in State]. On or about . . . . . , 2002, the court issued a Permanent Restraining Order against you."

The new SOR allegations are as follows:

Allegation 1.l reads: "On or about . . . . ., 2000, the Court issued a Temporary Restraining Order against you prohibiting you from contacting your ex-wife's commanding officer or other military officers or the press concerning issues surrounding this case or any other matter collateral to the marriage."

Allegation 1.m reads: "On or about . . . ., 2002, you or someone on your behalf wedged two pleadings signed by you and bearing your handwritten notes in the front door of the home of Judge #2,[4] who presided over your divorce hearings. On [. . .] 2002, Judge #2 recused himself from your divorce action."

Allegation 1.n reads: "On or about . . . . , 2002, you called Judge #3 who presided over your divorce proceedings, at his home. On or about . . . ., 2002, Judge #3 issued an Order prohibiting you from directly or indirectly communicating with him other than in formal courtroom proceedings or pleadings."

[4]Three judges heard aspects of Applicant's divorce case. The judges are referenced as Judge #1, Judge #2 and Judge #3, the order in which they appeared as the presiding judge.

Denial of allegation 1.k and addition of Guideline I

At the hearing, Department Counsel sought to add the following allegation to the SOR under Guideline E, AG ¶ 16(d):

> 1.k: On or about . . . ., 2000, you underwent a psychological evaluation by Dr. Smith, Psy.D [not actual name] as part of Parenting Time Evaluation ordered by the Court in connection with your divorce proceedings. Dr. Smith's diagnostic impression was that you have an Axis I Adjustment Disorder with Mixed Emotional Features and Axis II Mixed Personality Disorder with traits of narcissism, perfectionism, and a tendency to decompensate to regressive defenses or behaviors when experiencing strong emotion.[5]

At the hearing, Department Counsel agreed that this allegation concerned psychological conditions and argued that the allegation was proper because it showed how he responded to stress. (Tr. 23) AG ¶ 16 (d) specifically states that any "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, 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 person may not properly safeguard protected information . . ." [emphasis supplied]. I denied this request on the grounds that this new allegation raised issues properly raised under Guideline I (Psychological Conditions). Guideline I notes that a security concern may arise because certain emotional, mental and personality conditions can impair judgment, reliability or trustworthiness. AG ¶ 27. Allegation 1.k specifically sets forth a diagnostic impression about certain personality traits of Applicant, which could raise a security concern and disqualify Applicant for a security clearance. This allegation, however, does not address any specific conduct by Applicant in response to stress or any type of conduct.[6] The allegation specifically focuses on his personality traits. *See* AG ¶ 28(b). Given that Guideline I provides explicit coverage for this adverse information, it was improperly raised under Guideline E, AG ¶ 16(d). Thus, the addition of allegation 1.k is denied.[7] Applicant's psychological evaluation is not pertinent to this decision and I have not drawn any adverse inferences against Applicant based upon this evaluation.

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[5]As part of the custody evaluation in the divorce proceedings, both Applicant and his wife had to undergo a psychological evaluation. GE 2 (Signed affidavit, 2000) at 1-2.

[6]Applicant's counsel correctly notes that allegation 1.k does not identify any specific conduct by Applicant.

[7]Subsequent to my decision, the Appeal Board addressed the issue of whether failure to file tax returns and the financial issues related to unpaid taxes could be raised under Guideline F and as conduct under Guideline E, AG ¶¶ 16(c) and 16 (d). ISCR No. 06-20964 (App. BD. April 10, 2008). The Appeal Board held that the failure to file a tax return is conduct which can be considered under AG ¶¶ 16(c) and 16 (d). The Appeal Board decision is distinguishable from the facts in this case because allegation 1.k does not raise any conduct issues, only personality traits.

In light of my denial, Department Counsel sought to add a new Guideline I allegation. Due process requires that an Applicant be given fair notice of the allegations against him. To add a new guideline containing a new allegation which often requires additional psychological evaluations and expert witness testimony violates Applicant's rights to fair notice and the opportunity to respond to the allegations against him. Thus, the government's motion to amend the SOR to add a Guideline I is denied.

Evidentiary Issues and rulings

Counsel for Applicant objected on hearsay grounds to testimony from the attorney-witness regarding statements by the attorney-witness that Applicant shot him, shot at his wife, and shot at Judge #1. I sustained this objection, but allowed the witness to testify regarding his opinion about who he considered responsible for the shootings. *See* Fed. R. Evid. 701, 801. (Federal Rules of Evidence do not control admissibility of evidence at security clearance hearings, but do provide persuasive guidance.)

At the conclusion of Applicant's case, Department Counsel sought to enter the psychological reports as rebuttal evidence. Applicant objected to the admission of this evidence. Following an *in camera* review, I denied the government's request to admit the psychological reports as rebuttal character evidence. The reports do not address Applicant's credibility or his character. The reports review the results of a psychological evaluation conducted eight years ago. The reports identify personality traits and potential behavior resulting from these personality traits. Personality traits are not the same as character. Thus, to allow these reports as rebuttal evidence would be highly prejudicial and confuse his personality traits with his character. Since these reports lack probative value on the issue of Applicant's character and credibility, these reports are inappropriate rebuttal evidence. *See* Fed. R. Evid. 403.

I have reviewed the arguments of both parties regarding AE E, AE F, and AE G.[8] On cross-examination, the attorney-witness acknowledge that at the same time he represented Applicant's wife, he represented a husband in another contentious and notorious divorce proceeding. Otherwise, the attorney-witness had no recall about this notorious case except that the wife had been arrested for kidnaping her son and for assault. AE E and AE F have no relevance to the case before me, except to show that the attorney-witness represented the husband in this contentious and notorious case. Likewise, AE G has little relevance to the facts of this case, other than to show at least one of the parties in the other case acted inappropriately and illegally in another situation and may have a connection to the 2002 shooting of attorney-witness. AE E, AE F and AE G are admitted into evidence for the limited purposes just described.

[8]Contrary to the implied argument in Applicant's brief, beyond a reasonable doubt is not the standard of proof in a security clearance case.

Findings of Fact

In his Answer to the SOR, dated February 26, 2007, Applicant admitted the specific factual allegations in ¶¶ 1.a through 1.j of the SOR. He denied the underlying conduct implied in the allegations in ¶¶ 1.a, 1.b, 1.c, 1.g, and 1.l with explanations. For example, he agreed that shots were fired into the house of attorney-witness. He, however, denied he did the shooting or that he is a suspect. As to the remaining allegations, he denied that the factual allegations are properly raised under Guideline E. He also provided additional information to support his request for eligibility for a security clearance.[9]

Applicant is 47 years old and works as a systems engineer for a Department of Defense contractor. He received a master's degree in business administration in 1997 and a bachelor's degree in computer science earlier. He served on active duty in the United States Air Force for five years and for seven years in the Air Force Reserve at the rank of Captain. He has held a security clearance since 1983, without any violations.[10]

Applicant married in 1986. His two daughters from this marriage are now 20 and 15. He and his wife separated in 1999 after he learned about her infidelity.[11] Both Applicant and his former wife obtained counsel in 1999. His former wife's first attorney withdrew from representation on October 8, 1999. Applicant also changed attorneys twice between October 1999 and February 2000.[12]

Applicant's former wife's second attorney testified on behalf of the government and will be identified as attorney-witness throughout this decision. Applicant and attorney-witness disliked each other. Between October 1999 and the summer of 2002, the attorney-witness filed motions for contempt or restraining orders against Applicant. He also filed criminal charges and made allegations of serious criminal misconduct. Applicant filed a grievance and numerous motions for sanctions against the attorney-witness. The actions taken by each during the divorce proceedings reflect the animosity towards the other. The court issued a final divorce decree in May 2000, reserving jurisdiction over issues of child custody and property, including real property and financial property.[13]

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[9]Response to SOR, date February 26, 2007; Response to proposed amendment to SOR, dated November 12, 2007.

[10]GE 1 (Applicant's security clearance application (SF-86)) at 1-2, 5, 8; Tr. 278, 335.

[11]GE 1, *supra* note 10, at 3-4; GE 2, *supra* note 5, at 1-2.

[12]GE 6 (State Court docket sheet for Applicant's divorce) at 6-7.

[13]*Id*.

On October 19, 1999, the attorney-witness filed a Motion for Contempt. Thereafter, the attorney-witness contacted Applicant's attorney demanding the return of marital property Applicant had supposedly disposed of improperly.[14] The "marital property" consisted of children's outgrown toys, which Applicant had donated to his daughters' school. Attorney-witness viewed the removal of the toys as a violation of the automatic restraining order attached to the petition for divorce prohibiting the disposal of marital property.[15]

In February 2000, Applicant and his former wife sold their home. Just before closing on the house, Applicant's attorney received a telephone call from attorney-witness, demanding that the proceeds of the sale of the house be placed in an escrow account, as it was marital property. If not, he would request the court to stop the sale of the house.[16]

Applicant proceeded to the office of attorney-witness to sign the escrow papers for the proceeds from the sale of the house. He took with him the toys requested by attorney-witness. When he entered the office, attorney-witness became upset with the toys and told Applicant to leave with the toys. Applicant left the office without the toys. He returned 45 minutes later and retrieved the toys upon the advice of his attorney. During this interval, attorney-witness called the police. He then filed a criminal trespass charge against Applicant. Within a few days of the filing, Applicant appeared at the police station and signed for the summons on this charge. Five months later, the prosecutor dismissed the charges indicating that there was no prima facie case and no likelihood of success at trial. Based on the decision of the prosecutor, I find that the attorney-witness had no basis for these allegations.[17]

In April 2000, the court conducted a lengthy hearing on the October 1999 contempt citation and a Motion to Compel filed by Applicant. The court dismissed the 1999 contempt motion, finding that Applicant had substantially complied with the restraining order. The court also found in favor of Applicant on his motion to compel. In light of the court's rulings, I find that Applicant substantially complied with the initial

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[14] *Id*. at 3. Under state law, when a summons is attached to a petition for divorce and served, a mandatory restraining order automatically enters that prohibits either party from hiding, concealing, encumbering or otherwise disposing of marital property without permission of the other party or order of court. State Code - 1410-107. Tr. 50.

[15] GE 2, *supra* note 5, at 3-4; Tr. 50-54. A search of state law on marital property did not find any cases which supports this position of the attorney-witness on the status of the toys. Because they are minors, children cannot own toys. Thus, a court could view the children's toys as marital property or the parents as custodians of the toys for the children.

[16] GE 2, *supra* note 5, at 3-4; Tr. 237-241.

[17] GE 2, *supra* note 5, at 3-4; GE 7 (Criminal complaint and dismissal notice) at 1-3; Tr. 50-54, 238-241, 244.

restraining order. By filing the contempt motion and the criminal trespass charge, the attorney-witness sought to gain an advantage in the divorce case.[18]

In the summer of 2000, acting upon his understanding from talks with his attorney and based on the criminal charges, Applicant filed a grievance against the attorney-witness with the state attorney grievance authority, which is the legally appropriate venue. Applicant continued to raise additional issues during the processing of this grievance. The state grievance authority ultimately concluded that attorney-witness had not violated the state's legal ethical rules.[19]

During this same period of time, while represented by counsel, Applicant filed numerous motions for sanctions in his divorce proceedings, alleging unethical conduct by the attorney-witness. The court dismissed all his motions. In November 2000, the court allowed Applicant's then counsel to withdraw as his representative and Applicant to represent himself. Thereafter, Applicant re-filed his motions for sanctions as allowed by the court. The court again dismissed all his motions. In filing these motions, Applicant violated no rules or laws; rather, he used a legitimate legal process to raise his complaints about the attorney-witness.[20]

In late 2000, the court issued a restraining order against Applicant. The order directed that he not contact his former wife's commanding officer or any other military officers regarding issues or matters collateral to their marriage. The record contains no evidence Applicant violated this Order. The court docket sheet does not show a motion for contempt alleging violation of this restraining order has been filed. I find that Applicant's testimony that he has complied with this order credible.[21]

In the summer of 2001, an unknown person fired a bullet through the dining room window of attorney-witness's home. At the time, his wife was sitting in the room. She was not injured. Although the attorney-witness believes that Applicant is the shooter, the police have never arrested or charged Applicant or anyone else with this shooting. Applicant denies any involvement in this shooting. The detective testifying at the hearing did not provide any information on this incident. There is no evidence of record which indicates that Applicant committed this crime or was in any way responsible for this shooting.[22]

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[18]GE 6, *supra* note 12, at 3-5.

[19]GE 8 (Letter); Tr. 61, 242. The state grievance authority's finding that the attorney-witness had grounds to file a criminal trespass charge is given little weight in light of the prosecutor's decision.

[20]GE 6, *supra* note 12.

[21]*Id.*; Tr. 267-268.

[22]Tr. 65-66, 218-226, 245-245.

Judge #1 issued an Order in the summer of 2001, restricting Applicant's ability to file future motions in his divorce case. Based on Applicant's numerous motions, objections and petitions, Judge #1 ordered Applicant to obtain leave of court to file a motion. Judge #1 also instructed that the motion must be related to the welfare of Applicant's minor children. Judge #1 restricted Applicant's ability to continue filing frivolous motions. He did not prohibit Applicant from filing necessary motions.[23]

In the fall of 2001, Judge #1 recused himself from Applicant's divorce case. The docket sheet contains no information as to why the judge recused himself. The SOR alleges that the recusal came after an unidentified person shot at Judge #1's home prior to his recusal. The director of court security confirmed that an incident occurred at Judge #1's home. The record contains no additional documentation or testimony which explains the reasons for Judge #1's recusal from Applicant's divorce case. I decline to find that Judge #1 recused himself from Applicant's divorce case on the grounds Applicant shot at Judge #1 as there is simply no evidence that Applicant is responsible for this shooting. The police did not interview Applicant and do not consider him a suspect in this case, although the director of court security does. No formal charges have ever been brought against Applicant regarding this incident and he denies he had any responsibility for this incident.[24]

Shortly after he recused himself from Applicant's divorce case, Judge #1 gave a verbal directive to the then director of court security that Applicant was to be escorted while in the courthouse. Judge #1 did not conduct any formal hearings nor did he issue a restraining order directing that Applicant was to be escorted when in the courthouse. Court security and the sheriff's office clearly understood that Applicant was to be escorted while in the courthouse. However, the record contains no evidence that Applicant was told about Judge #1's verbal directive. Applicant learned through a friend that his picture had been posted in the courthouse shortly after Judge #1 gave the oral directive.[25]

In early 2002, a sniper shot the attorney-witness in the head while he sat in his office chair. He did not see who shot him. The police investigated this shooting and have not arrested anyone. The police, however, still consider Applicant a suspect based solely on the opinion of the attorney-witness that Applicant shot him.[26] The investigating detective provided no other basis for suspecting Applicant. At the hearing, Applicant acknowledged that he should have been a suspect, but denies that he shot the attorney

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[23]Joint Exhibit 1 (Order).

[24]GE 6, *supra* note 12, at 32; GE 14 (Petition for Temporary Restraining Order in 2002) at 1; Tr. 81, 161, 218-226, 246.

[25]Tr. 148.

[26]Based on information from his criminal attorney, Applicant understands that the district attorney does not consider him a suspect in this shooting as there is insufficient evidence to meet a probable cause standard. Tr. 297-300.

witness. The attorney-witness believes Applicant shot him because Applicant filed a grievance against him and filed motions for sanctions against him.[27]

In the spring of 2002, Judge #2 found wedged in the front door of his residence two pleadings signed by Applicant, which Judge #2 believed Applicant or his representative delivered. Applicant acknowledges that he put these documents in Judge #2's front door. Judge #2 viewed the action as an act of trespass and attempt at an ex-parte communication with him by Applicant, in violation of Judge #2's previous instructions to file all papers related to the divorce proceeding at the courthouse. Judge #2 reported Applicant's action to the police because he was the subject of an investigation for criminal activity (the shooting of attorney-witness). Judge #2 recused himself from Applicant's divorce case in an Order issued the next day.[28]

On a Friday in the summer of 2002, the attorney-witness filed a "verified complaint for restraining order" against Applicant, stating that Applicant was in the alley behind his office. The attorney-witness noted the 2000 restraining order against contacting Applicant's former wife's supervisors and listed the following past incidents of violence or threats in the sworn complaint:

1) [. . .] trespass at his office [without noting that the district attorney found this criminal allegation baseless].

2) [. . .] shot at my wife.

3) [. . .] shot at Judge #1.

4) [. . .] shot me in the head.

5) Threatened Judge #2 in 2002.

6) June 6 received letter threatening my office staff.

As previously noted, there is insufficient evidence in this record that Applicant shot the attorney-witness or to warrant an arrest or trial. Likewise, there is insufficient evidence Applicant shot at the attorney-witness's his wife or Judge #1. The police do not consider Applicant a suspect in these shootings. The statements of the attorney-witness in this complaint do not reflect that he witnessed two of the shootings and that

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[27]GE 4 (Applicant's 2004 signed statement) at 2; GE 14, *supra* note 24, at 1; Tr. 91-96, 218-221, 225, 246-248. A few days prior to the 2002 shooting, the attorney-witness deposed the wife of a client in another contentious case. In August 2002, this woman, who is a paranoid schizophrenic, was arrested for kidnaping, assault and battery after she hired three men to kidnap her son from the residence of an ex-husband, the father of the son. Her ex-husband was beaten by these men. All the individuals involved, except the former husband and child, are in jail serving the sentences imposed by a court. The attorney-witness never mentioned this woman to the police. AE G, *supra* note 3; Tr. 137-139, 221.

[28]GE 12 (2002 Order); Tr. 268-269.

he saw who shot him. He did not provide testimony about a threat to Judge #2 nor is there any evidence of such a threat in the record. The attorney-witness alleged fear of harm by Applicant when he filled out this complaint even though the first four events occurred between five and 16 months prior to the filing of the complaint. The letter to his staff, if one exists, was not attached to the complaint and is not of record. The court issued a temporary restraining order the same day, ordering Applicant to have no contact with the plaintiffs, to stay away from certain places, and be escorted for court appearances involving the attorney-witness.[29] The next Monday, the attorney-witness filed a Petition for Removal of the minor children on behalf of his client, Applicant's former wife.[30]

In the summer of 2002, Judge #3 issued an Order prohibiting Applicant from contacting or directly or indirectly communicating with him other than in formal courtroom proceedings, following Applicant's telephone call to Judge #3 at home three days earlier. In his response to the SOR, Applicant attached a document showing that he also faxed documents to Judge #3 around the time of the telephone call. Applicant acknowledged this conduct at the hearing. In the same Order, Judge #3 struck all filings from the record because Applicant had violated the summer of 2001 Order.[31] From the docket sheet, I am unable to determine the basis for Judge #3's ruling. Judge #3 also indicated he was going to issue a separate contempt order, but such an Order is not listed in the docket sheet.[32]

Without deciding the underlying issues, the court entered a permanent restraining order in September 2002, which given the animosity between Applicant and the attorney-witness was a proper exercise of judicial authority to prohibit future problems between the two. There is no evidence Applicant violated this order. The attorney-witness's vague and generalized statement, without concrete evidence that Applicant violated this order or others, does not constitute reliable evidence of a violation.[33]

In early September 2005, Applicant entered the local courthouse to file papers. He walked through the security procedures, then to the clerk's office. He filed his papers then delivered a copy of the papers to an office in the building. Thereafter, he

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[29]GE 14, *supra* note 24, at 1, 3; Tr. 136, 140-142.

[30]During the custody issue battles, Applicant obtained an Order from the court, which would not allow Applicant's ex-wife to remove their minor children from the state, even if her job transferred her.

[31]At the hearing, Applicant testified that he challenged this Order because Judge #1's Order of 2001 did not prevent him from filing any pleadings in the file.

[32]I note that the court docket sheet contains a reference to an affidavit for citation for contempt of court filed on July 2001, which is after the order limiting Applicant's ability to file motions. Applicant filed an objection on July 2001. The docket sheet also reflects certain contempt motions had been filed in early June. GE 6, *supra* note 12, at 28-44; GE 16 (Order); Tr. 269-271.

[33]GE 13 (Petition for Removal, 2002); Tr. 136, 140-142.

proceeded to leave the building. While delivering the papers, a staff person observed Applicant in the hallway. Just after Applicant deposited his papers outside the office and returned down the hall, a sheriff deputy exited a nearby room. The staffer spoke to the deputy and both reviewed the papers delivered by Applicant. At this time, the deputy began to follow the Applicant as he left the building. The deputy's supervisor testified that as Applicant was preparing to exit the building, the deputy asked Applicant his name and Applicant did not respond. The supervisor considered this resisting. The CD video-tape, without audio, provided by Applicant, which showed his actions during his stay in the courthouse, reveals that as Applicant walked by the security gate, the deputy was following him. Applicant stopped and spoke to the deputy a few steps from the exit door. The video-tape does not show any misconduct towards the deputy at this point. The video-tape only shows the lower body and feet of Applicant and the deputy as Applicant stepped out the door. As Applicant attempts to exit the courthouse, the deputy pulled Applicant back into the building. What happened as Applicant started to go out the door and for the three minutes sheriff deputies talked with him is not visible on the video-tape. The deputy's supervisor testified that Applicant took quick steps towards the deputy who put his hands up. Applicant took another step and a quick step towards another deputy. The deputies considered these moves as acts of aggression and detained Applicant. The video-tape does not show any of these moves by Applicant. The video-tape reflects that three minutes after Applicant attempted to exit the courthouse, the deputies had handcuffed him and were walking him to the security office. Applicant sat in the security office handcuffed for 12 minutes, ignored by the deputies. The officers then escorted him out of the building.[34]

Applicant returned to the courthouse to file a complaint with Internal Affairs about his treatment by the sheriff's deputies two days earlier. Applicant met with the supervisor (who testified at the hearing). The supervisor took Applicant's complaint and investigated the incident. He found no wrongdoing by his deputies after talking with them and reviewing their reports. As Applicant left the courthouse that day, the supervisor handed Applicant a restraining order signed by Judge #1. Applicant acknowledged receiving this restraining order, which prohibits him from entering the courthouse unless escorted.[35]

The court services supervisor, who is responsible for the sheriff deputies assigned to the courthouse, testified that his office co-exists with the county security office, which oversees the security at all county buildings. The supervisor advised that a sheriff would escort Applicant when called by the security office. His office acted as backup for escorting the Applicant when the security office needed assistance. He had no recollection of any encounter with the Applicant in the courthouse between October 2001 and September 2005.[36]

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[34]GE 17 (Sheriff's office report of September 2005 incident); AE A (video-tape); Tr 187-194, 259-262.

[35]GE 17, *supra* note 34; GE 18 (Restraining Order, September 2005); Tr. 189-194, 263.

[36]Tr. 184-187, 215.

The director of county security acknowledged that when Applicant was in the courthouse, he never exhibited any threatening behavior. He also acknowledged that he did not see any aggression on the video-tape, which is part of the evidence. Following the issuance of the restraining order in September 2005, the director recalled one time when Applicant entered the courthouse and failed to obtain an escort. When he pressed for enforcement of the restraining order, Judge #1 declined.[37]

The record contains no evidence of any criminal charges filed against Applicant prior to or after the criminal trespass charge. Applicant acknowledged he had been charged with criminal misconduct as a juvenile. There is no evidence that Applicant's former wife ever filed domestic violence charges against him.[38]

The court awarded Applicant's former wife over $30,000 in attorney fees on February 26, 2002. Applicant appealed. The appellate court affirmed the fee award on June 13, 2003. Applicant declined to pay his wife the attorney fees for several years. As part of the property distribution in his divorce, the State court awarded Applicant a percentage of his former wife's military retirement benefit. In the fall of 2007, his former wife requested the court to review this award. Recently, he agreed to forego his $1,150 a month payment from his wife's retirement benefit to pay these fees. It is unclear whether he has given up his right to this benefit forever or until these fees are paid.[39]

During the criminal investigation of the shooting of attorney-witness, the police searched Applicant's home after obtaining a search warrant in criminal court. The police seized 29 items from his home, including a number of guns. The police ran a ballistic test on two guns, which were found not to be the caliber of the gun used in the shooting of the attorney-witness. Based on this information I find that the remaining guns not tested were not the caliber of the weapon used in the shooting. In addition, because the police filed no criminal charges against the Applicant, I find that all the seized guns were properly registered to Applicant, a gun collector. The police eventually returned the seized guns to Applicant.[40]

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[37] *Id*. at 172, 178-179, 195-196.

[38] GE 3 (Signed affidavit, 2004) at 5. In 1999, his wife called the police, alleging that he was beating her. He left the house and drove to the home of a friend, a police officer. His friend called his house and found out that the investigating police did not believe her. No charges were ever filed. GE 2, *supra* note 5, at 5. The attorney-witness attempted to testify about supposed acts of violence by Applicant. Given that the SOR contained no allegations of domestic violence, I granted Applicant's objection to this unsupported testimony.

[39] At the hearing, Applicant testified that he made his former wife an offer to resolve the attorney fee issue, which she rejected. He then testified that he had given up his right to any retirement benefit in the future, but he has not provided the documentation which supports this testimony. Tr. 230, 250 He has provided documentation which reflects that the government stopped its payments to him in October 2007, pending a final computation of his benefit. AE E, *supra* note 3. No other evidence has been submitted.

[40] Response to SOR, February 26, 2007, at 2-3; GE 6, *supra* note 12, at 40; Tr. 219, 225-226, 298-299.

Applicant worked with a female co-worker, whom he described as difficult and less than competent. At the hearing, another co-worker testified to the same view of this particular female co-worker. Because of problems with the female co-worker, management requested Applicant to avoid all direct and indirect contact with her. He complied with this request, until she left him a threatening voice-mail message on July 28, 2005. Applicant asked a co-worker to listen to the voice-mail. The co-worker agreed with Applicant's view of the message. Applicant prepared an e–mail response, which his co-worker reviewed. His co-worker agreed the response was appropriate. Management did not agree and issued Applicant a notice of discipline. Applicant responded to the discipline by finding another job in another area of the company.[41]

Two co-workers and two friends testified on his behalf. All recommend him for a clearance. Two testified that they never heard him express any anger or animosity against any judges or the attorney-witness, and one witness indicated Applicant never expressed any desire to punish or for vengeance against the female co-worker who caused him problems. One long-time friend was aware that he was a suspect in the shooting of the attorney-witness. He was confident that Applicant did not shoot the attorney-witness. Two witnesses describe a very good relationship with his children.[42]

Applicant admits that he did things in his divorce which were wrong. He understands now that some of his behavior and actions were "crazy" as he was always on the defensive. He is afraid to go into the courthouse and avoids entering the courthouse. He does not want to be arrested and go to jail. His friends file his court papers. He likes his current job and is good at it. He also acknowledges that it was wrong to call Judge #3 in 2002. He did not understand the impropriety of his conduct at that time. He thought he needed to be pro-active in solving the child custody issue.[43]

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as

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[41]GE 15 (Employee notice performance, dated July 29, 2005) at 1; Tr. 254-258, 311-314, 346-348.

[42]*Id*. 327-330, 334-335, 338-341, 348-350.

[43]Tr. 248-249, 266, 269-272, 319-320.

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 access to classified information will be resolved in favor of 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 avoided drawing 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

The government seeks to deny Applicant his security clearance based on his personal conduct during his divorce proceedings. Under Guideline E, a security concern pertaining to personal conduct arises when:

> 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. *See* AG ¶ 15

The government argues that Applicant's personal conduct raises a security concern under the following disqualifying conditions:

> AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;
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> AG ¶ 16(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 person may not properly safeguard protected information. This includes but is not limited to consideration of:
>
> (3) a pattern of dishonesty or rule violations

To establish its case under this guideline, the government must show that Applicant was the actor in the alleged conduct. The government established that the police charged and arrested Applicant for third degree criminal trespass in early 2000. (SOR ¶1.a) Applicant's arrest occurred, not because he decided to illegally enter the office of the attorney-witness, but because in response to a demand from the attorney-witness, he appeared at the office of the attorney-witness to sign documents creating an escrow account. When he arrived, Applicant had also brought with him children's toys, which the attorney-witness had demanded be returned. The attorney-witness became very upset about the toys and called the police, alleging criminal trespass when Applicant did not remove the toys. Five months later, the prosecutor dismissed the charges against Applicant because he could not prove the elements of a *prima facie* case of criminal trespass and had no hope of succeeding at trial on the charges. In light of the prosecutor's decision, Applicant did not violate any rules of law or society. He appeared at the attorney-witness's office at the direction of his own counsel and the request of the attorney-witness. The implied criminal conduct and rules violation in this allegation are not established under AG ¶¶ 16(c) and 16(d)(3). Even is the allegation is established, Applicant has mitigated the government's concerns under AG ¶ 17(f) because the government has not substantiated that the Applicant violated any rules.

Under SOR ¶1.b, the government has established that in the fall of 2001, someone fired shots into Judge #1's home, and that subsequent to this incident Judge

#1 recused himself from Applicant's divorce case. The only evidence of record which indicates that Applicant may have been the shooter is the unsupported opinion of the Director of Security Services. Given that there is no direct, circumstantial or forensic evidence substantiating this opinion, I find Director of Security Services's opinion insufficient to establish Applicant's culpability. Because of the lack of any evidence that Applicant was involved in this shooting and in an exercise of my discretion, I decline to infer that Applicant is responsible for this shooting. The government has not established the criminal conduct implied in this allegation under AG ¶ 16(c) and (d)(3), and thus, a violation of the rules of society. Should these facts be deemed sufficient to establish this allegation, Applicant has mitigated the security concerns under AG ¶ 17(f) because the government has not substantiated that Applicant fired shots at Judge #1.

In the summer of 2001, someone fired a shot through the dining room window of the attorney-witness's home. Although the police interviewed Applicant about this incident, the record contains no evidence that the police consider Applicant a suspect in this shooting. The police detective, who testified at the hearing, never mentioned that Applicant was a suspect in this incident. The attorney-witness believes that Applicant is responsible for this shooting, but no one saw Applicant commit this crime. I decline to infer misconduct on the part of Applicant based on the unsupported belief of the attorney-witness. Although the government has established that this shooting took place, it has not established that Applicant is the shooter in SOR ¶1.c., and thus, its case under AG ¶¶ 16(c) and 16(d)(3). *See also* AG ¶ 17(f).

Likewise, the government has not established the implication that Applicant shot the attorney-witness, although it has established the fact that the attorney-witness was shot and Applicant is a suspect. (SOR ¶1.e) The attorney-witness sustained a serious head injury in early 2002 when an unidentified individual shot him while he was sitting in his office. He did not see the shooter. Subsequent to the shooting, the police interviewed Applicant and confiscated a number of guns from his house pursuant to a search warrant. The police submitted only two guns for ballistic testing, which indicates that the remaining guns were not the correct caliber. The two guns tested did not match the bullet used in the shooting. In the six and one-half years since this incident, the police have not arrested anyone for this shooting. The police still consider the Applicant a suspect based solely on the unsupported opinion of the attorney-witness, who believes that Applicant shot him. The attorney-witness reached this conclusion by reasoning that when Applicant failed to succeed through legal methods, such as the filing of a grievance and motions for sanctions to inflict harm on the attorney-witness's career, he resorted to the use of a gun, even though Applicant had no prior history of criminal conduct outside of the Attorney-witness's baseless allegation of criminal trespass. Allegations of misconduct require more than speculation, insinuation, and innuendo. Although the facts alleged are proven, the underlying inference that Applicant shot the attorney-witness is not. This allegation is found in favor of Applicant because the allegation is unsubstantiated under AG ¶ 17(f).

The court directed Applicant to pay his former wife more than $30,000 in attorney fees connected with their divorce. Applicant appealed this award. The appellate court

affirmed the $30,000 fee award. Applicant has not paid his former wife this money. Until recently, Applicant has made no effort to pay this award because he had no intent to pay the fees. Under state law, the court awarded Applicant a percentage of his former wife's military retirement. Following his former wife's request to the court to review this award, Applicant agreed to forego his spousal benefit until the attorney fee award and judgment is paid. Payment of this debt resulted from actions taken by his former wife to force him to pay this judgment, not actions of the Applicant. The government has established its case under SOR ¶1.f.

The government established that the state court issued a temporary restraining order against Applicant in the summer of 2002 and a permanent restraining order against Applicant a few months later. Both orders directed him to stay away from the attorney-witness and his family members. The record contains no reliable evidence that Applicant violated this Order. The attorney-witness's gratuitous statements that Applicant violated this order are considered unreliable given the absence of direct evidence of any violation. In issuing these orders, the court made no findings on the validity of the underlying facts, all of which are unproven. More troublesome is the fact that when filing for the initial temporary restraining order, the attorney-witness listed six factual allegations as if each allegation was a proven fact, when none of the allegations are proven. The attorney-witness failed to convince me that he filed for a restraining order because he feared harm from the Applicant. He waited nearly five months after he was shot to file for a restraining order against Applicant. This is a long time to wait if one fears injury from another person, particularly if he believes the person shot him. Four other cited events occurred even further back in time.[44] He filed for this restraining order one work day before he filed a petition on behalf of Applicant's former wife to remove their children from the state. The attorney-witness's decision to file for this restraining order came not out of fear, but to gain an advantage in the latest custody issues in the Applicant's divorce. The government has established that the court issued the restraining orders set forth in SOR ¶1.g.

Applicant received an Employee Performance Notice on July 29, 2005 because he failed to follow his manager's direction not to communicate with a female co-worker. He received a threatening telephone call from this co-worker and responded by e-mail asking her not to make any threats to him. The government has established the allegation in SOR ¶1.h.

As to SOR ¶1.i, the government has established the facts alleged. However, this entire situation raises concerns because throughout his entire time in the courthouse, Applicant acted appropriately. He did nothing out of the ordinary. As he attempted to leave the courthouse, for reasons which are unclear, a sheriff's deputy decided to detain him to determine his name. The need for this information as Applicant is leaving the building is puzzling. The deputies contend that Applicant exhibited aggressive behavior

[44]The assertion of a threatening letter in the summer of 2002 is not supported by any documentation.

towards them, but no such behavior is shown on the video-clips of record.[45] The hearsay testimony of the supervisor as well as the written reports are given little weight. Although the deputies handcuffed him and took him to their office, where they detained him for a period of time, they did not arrest or charge him with any misconduct. In fact, they ignored him. I find that the government has not established any misconduct by the Applicant in September 2005.

Two days after the above incident, the court issued another restraining order against Applicant because of supposed threatening behavior, which required him to be escorted anytime he was in the courthouse. On at least one occasion subsequent to the receipt of the restraining order, Applicant failed to notify security that he was in the courthouse and would wait for his escort. The government has established SOR ¶1.j.

The court issued its first restraining order against Applicant in late 2000, which prohibited Applicant from contacting his former wife's commanding officer or other military officers or the press, facts which the government has established under SOR ¶1.l.

Applicant acknowledges that he left court pleadings related to his divorce proceedings at the home of Judge #2. As a result, Judge #2 recused himself from Applicant's divorce case. The government has established the conduct in SOR ¶1.m.

In addition, the government established that in August 2002, Applicant called Judge #3 at his home, in violation of previously established procedures for conducting Applicant's divorce case. Three days later, Judge #3 issued an order prohibiting Applicant from directly or indirectly communicating with him other than in formal courtroom proceedings or pleadings. I find SOR ¶1.n. is established.

In light of my findings under SOR ¶¶ 1.f, 1.g, 1.h, 1.j, 1.l., 1.m, and 1.n, I will consider if Applicant has mitigated the government's security concerns. Under AG ¶ 17, security concerns may be mitigated by:

> (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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

[45]The sheriff deputies provided the video clips in evidence to Applicant. If other incriminating evidence exists, the Sheriff's deputies did not produce it.

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

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

Most of the incidents raised in the SOR occurred during Applicant's divorce. There is no question that serious issues arose in Applicant's divorce. Some of the issues directly relate to Applicant's conduct during the course of his divorce; however, many of the issues are not directly related to him or established as his conduct.

The court issued three restraining orders against Applicant. There is evidence of only one violation of these restraining orders. Because his wife retired from the military, there is little likelihood that he will contact her military superiors in the future, and since he did not violate this restraining order in the past, he is not likely to do so in the future. He has mitigated the security concerns as to allegation 1.l. Applicant has shown that he did not violate the rules, and has, thus, mitigated the government's concerns under AG ¶¶ 17 (c) and (f).

The restraining order against the attorney-witness and his family remains in effect. There is no evidence Applicant has violated this restraining order. Since Applicant has complied with the conditions of the restraining order, the government has not substantiated its claim that Applicant violated the rules. He has mitigated the security concerns as to allegation 1.g under AG ¶ 17(f).

Applicant violated the September 2005 restraining order on one occasion. Given that Judge #1 refused to enforce an alleged violation of the September 2005 restraining order and the director of security testified that he is no longer requiring Applicant to be escorted when in the courthouse, I find that this restraining order is no longer in effect, and thus, the potential for a future violation is nonexistent. However, a concern continues about Applicant's judgment because he failed to comply with the terms of the restraining order. In so doing, he showed a willingness to ignore court orders. He has not mitigated the government's security concerns as to allegation 1.j.

Although Applicant has little direct contact with his former wife, who is not represented by the attorney-witness anymore, and there is little likelihood that he will have contact with either in the future, his attitude towards the payment of the court ordered fees has not changed. He does not want to pay the fees, but has been forced by his former wife to do so. His continuous refusal to comply with the court order reflects poor judgment. He has not mitigated the government's security concerns as to allegation 1.f.

Applicant, however, has mitigated the government's security concerns about his only on-the-job disciplinary action. He changed jobs to avoid any further problems with the female co-worker. This decision indicates an exercise of good judgment in his employment. He has mitigated the government's security concerns about SOR ¶1.h.

Applicant's contacts with Judge #2 and Judge #3 outside of the courthouse shows a lack of judgment and a failure on his part to make sure, as a *pro se* litigant, he understood and followed the conduct rules inherent in all court systems. His conduct also raises a concern about judicial intimidation. Throughout his divorce proceedings, Applicant's emotions drove his decision making. He failed to listen to his attorneys and to always follow the orders of the court. His conduct reflects poor judgment. He has not mitigated the government's concerns about his judgment. After considering his conduct and the above conditions for mitigation, I find that Applicant has not mitigated the government's concerns regarding SOR ¶¶1.f, 1.j, 1.m, and 1.n.

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(a):

> (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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The issues in this case began when Applicant's former wife retained the attorney-witness to represent her in their divorce. The attorney-witness immediately filed a motion for contempt with the court and created an issue over $80 worth of children's toys. When Applicant returned the toys as demanded, the attorney-witness filed a criminal trespass charge, which changed Applicant's and his former wife's approach to their divorce. The prosecutor dismissed the charges because he could not prove a *prima facie* case of any wrongdoing by Applicant.

During the course of his divorce proceedings, Applicant responded to the criminal charges by filing an allegation of ethical violations against the attorney-witness. At the same time and despite having legal counsel, he personally filed numerous motions for sanctions against the attorney-witness with the court. While legal, Applicant's actions offended the attorney-witness and led to a very intense dislike of each other. The relationship between these two individuals can still be characterized as adversarial.

The allegations that Applicant shot at two individuals and shot the attorney-witness are serious. However, the record lacks direct, circumstantial or forensic evidence that Applicant is responsible for these incidents. Under the United States Constitution and the criminal law system, mere speculation, innuendo, and suspicion are insufficient to prosecute any individual for a crime. An individual is innocent until proven guilty by the state after a trial by a jury of peers, a right guaranteed by the Sixth Amendment to the Constitution. Imbedded in this precept is the Sixth Amendment Constitutional Right to confront one's accusers. Applicant has not been arrested as the police lack any probable cause, meaning any relevant evidence, to arrest him for these incidents. He has not been tried by a jury of his peers and convicted. The opinion of the attorney-witness is insufficient to establish that Applicant committed these crimes. His opinion is based on the adversarial nature of his relationship with Applicant during the time he represented Applicant's former wife. I decline to find that Applicant committed the criminal conduct inferred in the SOR ¶¶ 1.b, 1.c, and 1.e.

The first restraining order resulted from Applicant's conduct during the course of his divorce proceedings. While the underpinnings to the second restraining order have never been proven, Applicant's conduct in the court proceedings and his adversarial relationship with the attorney-witness contributed to the decision of the court to enter a permanent restraining order against him. The video-tape evidence fails to show any aggressive behavior by the Applicant while in the courthouse in September 2005. Even so, the sheriff's office sought the third restraining order, based on their claims of threatening conduct by Applicant. The court granted the order, in part it appears, because of past behavior in the courthouse. Given that lack of enforcement of this restraining order following an allegation that Applicant violated and the decision of the security director not to require an escort for Applicant, I find that this Order is no longer being enforced. To Applicant's credit, he has complied with the restraining orders, except on one occasion.

The antagonistic relationship between Applicant and the attorney-witness still exists. There is no evidence that Applicant has obtained any counseling to train him on how to handle similar situations in the future.

Applicant readily admits that his conduct during the course of his divorce proceedings was at times "crazy" and that he did things that were wrong. An overall view of his conduct during the period covering 1999 through 2005 shows that Applicant behaved improperly on many occasions during his divorce. He responded negatively and without much thought to the events taking place around him. At times, the behavior of the attorney-witness spurred Applicant to make inappropriate decisions without thinking or listening to his attorneys or using common sense. He contacted two judges outside of the courtroom in violation of specific instructions on how to proceed in court. He steadfastly refused to pay his wife the attorney fees owed, until she took action to obtain payment. In this time of extreme emotional stress, Applicant showed a lack of good judgement on many occasions. In a security clearance case, such actions reveal something about how a person may act in the future when under great stress. Although not an accurate predictor of future behavior in all situations, Applicant's behavior during

this period of time raises concerns about how he will act in the future if he is again under extreme emotional stress.

During his long and contentious divorce proceedings, Applicant held a security clearance and never violated security procedures, a fact I must consider, but is not conclusive as to future actions. Since Applicant has demonstrated that he does not think clearly when under extreme stress, the security concern arises as to how Applicant may respond if pressured or coerced by those seeking classified information and he is under extreme stress. Having reviewed all the evidence as a whole, my findings against the government on many issues, and my findings against Applicant, I find that Applicant has not mitigated the government's concern that his past conduct and poor judgment in a highly stressful situation will not reoccur if highly stressed again.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Denied
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge