



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



In the matter of: )  
)  
) ISCR Case No. 14-01763  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

08/31/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines J (criminal conduct) and E (personal conduct). Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) on May 1, 2013. On June 18, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) detailing security concerns under Guidelines J and E. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

On July 21, 2014, Applicant answered the SOR and requested a decision based on the administrative record. On December 1, 2014, Department Counsel submitted a request for a hearing. The case was assigned to me on April 8, 2015. The Defense

Office of Hearings and Appeals (DOHA) issued the Notice of Hearing on April 24, 2015. The hearing was held as scheduled on May 11, 2015. At the hearing, Department Counsel offered exhibits (GE) 1 through 16. Applicant testified and offered exhibits (AE) A through D. All exhibits were admitted into evidence without objection. DOHA received the transcript (Tr.) of the hearing on May 19, 2015.

## Findings of Fact

### Background

a. Applicant is a 50-year-old employee of a defense contractor. He has worked as an information assurance security analyst for that employer since September 2014. He graduated from high school in 1983, served in the Army from 1983 to 2005, and retired with an honorable discharge. He earned a bachelor's degree in 2006 and a master's degree in 2011. He has been married three times. His first marriage began in January 1986 and ended in divorce in August 2002. His second marriage began in September 2002 and ended in divorce in May 2005. He married his current wife in August 2010. He has two children, ages 17 and 29. He has held a security clearance since 1987.<sup>1</sup>

b. Under Guideline J, the SOR alleged that Applicant was charged with assault-related offenses on seven occasions. One incident involved felony charges. Six of those charges were dismissed, and the disposition of the remaining allegation was not alleged. The SOR cross-alleged the seven assault-related charges into one Guideline E allegation and separately alleged that Applicant falsified his security clearance application by failing to disclose that he was charged with felony offenses. In his Answer to the SOR, he admitted the Guideline J allegations, did not respond to the cross-alleged Guideline E allegation, and denied the falsification allegation. His admissions are incorporated as findings of fact.<sup>2</sup>

SOR ¶ 1.a - 1987 criminal charge. On March 26, 1987, Applicant was charged with simple battery, a misdemeanor. Applicant's first wife was the purported victim. Law enforcement records did not reflect the disposition of the charge. In his Answer to the SOR, Applicant indicated he was not convicted of that charge. At the hearing, Applicant testified that he did not hit his wife during this incident.<sup>3</sup>

1990 Incident. A Commander's Report of Disciplinary or Administrative Action dated July 3, 1990, revealed that Applicant was administratively reprimanded in writing

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<sup>1</sup> Tr. 6-8, 92-93, 103; GE 1.

<sup>2</sup> SOR and Applicant's Answer to the SOR. There was a typographical error in SOR ¶ 1.b. It alleged that Applicant was charged with offenses in "2205." Applicant had no objection to amending that year to "2005." See Tr. 12.

<sup>3</sup> Tr. 66-68; GE 4, 13, 14; Applicant's Answer to the SOR.

for a simple assault consummated by a battery (domestic disturbance) incident. The report indicated that a verbal altercation between Applicant and his first wife escalated into a physical confrontation when he struck her several times in the chest, neck, and head with a closed fist. She received a bloody lip, but declined medical treatment. When questioned by the military police, he admitted that he and his wife argued, but denied striking her. This incident was not alleged in the SOR.<sup>4</sup>

1992 sworn statement. In this statement, Applicant indicated that his mother was an alcoholic and beat him as a child. He further stated:

Although I have never experienced any psychiatric or psychological treatment as a result of my mother's abuse, I do believe it has affected my interpersonal relationships, especially with my wife. There have been times when I have hit my wife and I believe being abused myself makes it easier for me to strike another. In late 1988, my wife and I saw a marriage counselor for 20 plus weeks at a [military hospital]. This counseling helped me to see things in a different perspective.<sup>5</sup>

2003 Incident. In an affidavit, Applicant related that his second wife suffered from depression and attacked him while he was driving a car in April 2003. He stated that he hit her in the process of defending himself. The following day, she attacked him again. She was charged with assault and eventually sentenced to probation and participation in spouse abuse classes. She was referred to the military family advocacy program (FAP). During a FAP interview, she told a counselor that Applicant hit her and gave her a black eye during the April incident. A FAP investigation substantiated that Applicant hit her. He appealed that FAP finding. The Case Review Committee declined to consider his appeal because of his unwillingness to participate in a reassessment. As a result of the FAP finding, he attended Anger Control Training for about a month. This incident was not alleged in the SOR.<sup>6</sup>

#### SOR ¶ 1.b - 2005 criminal charges

a. On January 12, 2005, Applicant was charged with cruelty to children - 1<sup>st</sup> degree, a felony; battery, a misdemeanor; obstructing or hindering persons making

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<sup>4</sup> GE 12. Conduct not alleged in the SOR will not be considering in applying the disqualifying conditions, but "may be considered (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular adjudicative guideline is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3 . . . ISCR Case No. 00-0633 at 3 (App. Bd. Oct 24, 2003)." ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006).

<sup>5</sup> GE 11.

<sup>6</sup> GE 9, 10. See note 4, above, concerning the consideration of non-alleged conduct.

emergency telephone call, a misdemeanor; and false imprisonment, a felony. These charges were dismissed on June 17, 2005.<sup>7</sup>

b. In a personal subject interview (PSI) dated February 7, 2008, Applicant described this incident by stating he had an argument with his second wife that escalated into a physical confrontation. His wife was throwing around his clothing. They became involved in a scuffle. She scratched him and he pushed her back. He left the apartment to cool down. She barricaded the door. He pushed his way through the barricade, and she called the police. She apparently told the police that he locked her in a closet.<sup>8</sup>

c. At the hearing, Applicant initially testified that he did not recall what happened during this incident. He later testified that this incident involved him swearing around his children. He also noted that false imprisonment allegation was shown to be false when authorities saw there a swinging door on the closet where his wife claimed she was locked.<sup>9</sup>

SOR ¶ 1.c - 2006 criminal charge. On March 16, 2006, Applicant was charged with battery domestic violence - 1<sup>st</sup> degree, a misdemeanor. This charge was dismissed on July 18, 2007. In a PSI dated February 7, 2008, Applicant indicated that he learned the victim incurred a cracked rib and dislocated her shoulder during this incident. At the hearing, Applicant testified that this incident involved a female roommate. He stated that she had been drinking and an argument between them started. While he was in the bathroom, she opened the door. He pushed her back from the door and closed it. She claimed she fell from being pushed. He stated she never fell. As a result of this incident, he had to attend an anger management course.<sup>10</sup>

SOR ¶ 1.d - 2008 criminal charge. On July 9, 2008, Applicant was charged with assault on family member. In a PSI dated May 16, 2013, he indicated that he believed this charge was dismissed. At the hearing, Applicant testified that this incident involved a different female roommate than the one in the SOR ¶ 1.c incident. He claimed this complainant was an alcoholic. He denied having assaulted her and claimed he did nothing wrong.<sup>11</sup>

SOR ¶ 1.e - 2009 criminal charge. On June 6, 2009, Applicant was charged with assault on family member. In a PSI dated September 6, 2013, an investigator noted this

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<sup>7</sup> Tr. 67-69, 104-105; GE 4, 8, 14.

<sup>8</sup> GE 8.

<sup>9</sup> Tr. 67-69, 104-105; GE 4, 8, 14.

<sup>10</sup> Tr. 69-75; GE 2, 4, 8, 14.

<sup>11</sup> Tr. 75-77; GE 3, 14.

charge was dismissed. Applicant testified that this incident involved his current wife. He claimed she is an alcoholic and gets violent when she drinks. He acknowledged that there was probably some pushing and shoving during this incident. He indicated that both of them were arrested.<sup>12</sup>

SOR ¶ 1.f - 2011 criminal charge

a. On November 5, 2011, Applicant was charged with assault – 2<sup>nd</sup> degree, a misdemeanor. A police report reflected that Applicant and his wife got into an argument in a pub in a resort town. She left the pub. He followed her. The argument continued outside. She indicated that he threw her to the ground. She fought with him, got away, and returned to the hotel in which they were staying. They began to argue again in the hotel. She claimed, when she grabbed the telephone to call the police, he threw her down on the bed and eventually to the floor. She indicated that he punched and kicked her several times in the back and abdomen while she was on the bed and the floor. When she was able to get away from Applicant, she called the police. The police stopped him as he was driving away from the hotel. He told a police officer that she assaulted him and he had scratches on his neck, chest, and forearms. She responded by saying she did grab him in an attempt to stop him from assaulting her. The police report noted that she was bleeding from a pierced ring above her left eyebrow and had redness and scratches on her neck. Children were present during their confrontation in the hotel room. Applicant's then 14-year-old son, corroborated her version of the events by stating that Applicant took the phone from her, threw her onto the bed, choked her by putting his hands on her throat, and punched her in the back several times. The charge against Applicant was dismissed on December 16, 2011.<sup>13</sup>

b. At the hearing, Applicant testified that he did not physically assault his wife during the November 2011 incident. He indicated that she became very aggressive after consuming alcohol. When she attacked him, he tried to restrain her, which he claimed led to him being considered the aggressor. He denied choking her, throwing her to the ground, punching or kicking her, and causing her to bleed near the ring piercing.<sup>14</sup>

SOR ¶ 1.g - 2013 criminal charge. On June 18, 2013, Applicant was charged with battery. The sheriff's report reflected that Applicant and his wife had an argument over each other's marital fidelity. She claimed he grabbed her by the arm and held her down on the bed. He purportedly dragged her to the living room and bent her wrist. The sheriff noted no signs of injury to her. He claimed his wife went "crazy" and threw his cell phone on the floor, breaking it. He also stated that they had no physical contact. At the hearing, he denied assaulting her during this incident and claimed she falsified allegations against him to have him removed from the house. A court record reflects

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<sup>12</sup> Tr. 77-78; GE 5, 13.

<sup>13</sup> GE 4, 14, 15.

<sup>14</sup> Tr. 78-81; GE 4.

that this charge was dismissed on July 17, 2013, because the victim filled out a “drop charge” affidavit and indicated she did not want to pursue the charge.<sup>15</sup>

Recent incidents not alleged in the SOR<sup>16</sup>

a. On October 9, 2013, Applicant was charged with domestic battery by strangulation, a felony. The sheriff’s report reflected that Applicant and his wife had an argument. She claimed he slapped her with an open hand in the face and head ten or more times, kicked her in the thighs and buttocks five or more times, and struck her back against the floor five or more times. She also claimed he choked her around the neck to the point she almost lost consciousness. He was held in police custody for two days. A court record reflected that this charge was dismissed on February 14, 2014, because the victim did not wish to cooperate.<sup>17</sup>

b. On May 29, 2014, Applicant was charged with battery domestic violence. The sheriff’s report reflected that Applicant claimed his wife was drunk, started an argument, and threw a phone in the house. The sheriff noted Applicant’s wife smelled of alcohol, but was not intoxicated. She claimed Applicant pulled her out of a bedroom by her wrists and pushed her with both hands to the chest, which caused her to hit the floor. She reportedly stated that she did not want Applicant arrested because he is the one who provides income for the household. Her sister, who was present in the house, stated Applicant pushed his wife onto the living room floor. At the hearing, he denied assaulting her during this incident.<sup>18</sup>

c. On July 24, 2014, a sheriff went to Applicant’s house for a suspected battery domestic violence offense. Applicant’s wife told the sheriff that Applicant grabbed her upper left arm and shoved her to the ground. She also claimed he struck her with a vacuum that caused her thumb to blister with blood and grabbed her by the neck and hair and dragged her. The sheriff reported that she had no marks or redness on her neck, but apparently several photos were taken of other unspecified injuries. Applicant indicated that his wife was drunk, and he did not know how she sustained her injuries. The sheriff’s report did not indicate any charges were filed for this incident. At the hearing, he denied assaulting her during this incident.<sup>19</sup>

d. At the hearing, Applicant testified that all of the recent charges had been dismissed. He also indicated, after his May 2014 arrest, a judge issued him an order to

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<sup>15</sup> Tr. 81-82; GE 2, 3, 6.

<sup>16</sup> See note 4, above, concerning the consideration of non-alleged conduct.

<sup>17</sup> Tr. 82-95; GE 2, 3, 16.

<sup>18</sup> Tr. 85-86; GE 2, 16.

<sup>19</sup> Tr. 86-87; GE 16.

not have any contact with his wife. At that time, his wife began living with her sister, and she was later arrested for assaulting her sister. When he returned home on one occasion, his wife was present in their house and was intoxicated. The police were called. Even though Applicant explained to the police that she was not living there at the time, the officer arrested Applicant for violating the no contact order. The next day, a judge held him in contempt of court and placed him in jail overnight for violating the order. He stated he was arrested twice for violating the no contact order.<sup>20</sup>

Counseling. Besides attending anger management classes as noted above, Applicant consulted with a psychiatrist for about six weeks during his present marriage. These counseling sessions addressed marital issues. He noted that his wife refused to attend the counseling sessions. His wife consulted a chemical addiction center in July 2014 and had a follow-up appointment in August 2014, but any benefits derived from those consultations appear to have been limited. He testified that his wife continues to consume alcohol and indicated that, when she does so, he now departs their residence to avoid being arrested.<sup>21</sup>

#### Falsification allegation

a. Applicant submitted an e-QIP on May 1, 2013. In the police record section of the e-QIP, he responded “No” to the question that asked whether he was ever charged with a felony offense. In response to other questions in that section, he did disclose that he was charged with criminal offenses on three occasions between 2006 and 2011, including twice for assault-related charges. In January 2008, he submitted an e-QIP in which he did disclose the felony false imprisonment charge alleged in SOR ¶ 1.b.<sup>22</sup>

b. In his Answer to the SOR, Applicant indicated that he misunderstood the word “charged” to mean convicted or sentenced and stated he had never been found guilty of any crime. He also noted the charges in question were beyond the seven year reporting requirement. At the hearing, he testified that his security officer told him to go back only seven years in reporting charges. He further stated that he now realizes that he misinterpreted the question and should have reported the felony charges on his latest e-QIP.<sup>23</sup>

Character Evidence. Applicant presented letters of reference from coworkers that indicated he is trustworthy and a man of integrity. They also stated he was dedicated to protecting the interests of the U.S. Government.<sup>24</sup>

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<sup>20</sup> Tr. 82-91, 98-100, 102-103.

<sup>21</sup> Tr. 91-94, 98, 103-104; GE 4, 8; AE D.

<sup>22</sup> GE 1, 7.

<sup>23</sup> Tr. 94-98, 100-102; Applicant’s Answer to the SOR.

<sup>24</sup> AE A-C.

## Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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



Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline J, Criminal Conduct**

AG ¶ 30 sets out the security concern relating to 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.

Two disqualifying conditions under AG ¶ 31 are potentially applicable in this case:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has been charged with domestic violence offenses on numerous occasions. He has not been convicted of any of those charges. In domestic violence cases, however, the reluctance of victims to pursue charges against the household’s primary income earner is not surprising. In this case, sufficient evidence was presented to establish that he has assaulted ex-wives, cohabitants, and his current wife on several occasions. Some of these incidents were corroborated by third-party witnesses or by the complainant’s injuries. I did not find his denials of the alleged domestic violence incidents to be credible. The above disqualifying conditions apply.

Mitigating conditions for this guideline are set forth in AG ¶ 32. In this case, the potential mitigating conditions are:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person’s life;

(c) evidence that the person did not commit the offenses; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's history of domestic violence spans from 1987 to 2014. In many of these incidents, the complainants most likely were not innocent victims and may have been co-combatants. While he may have been provoked in certain instances, he also was not an innocent party, but appears to have been a willing participant. These incidents involved at least five separate female complainants and did not occur under unusual circumstances. The evidence is sufficient to establish that Applicant engaged in a pattern of domestic violence.

Although Applicant has sought marital counseling, insufficient evidence was presented to conclude the incidents of domestic violence are unlikely to recur. He testified that his current wife becomes aggressive when she consumes alcohol. She continues to drink and had refused to participate in counseling. Stressors that led to the incidents of domestic violence in the past continue to exist. While he stated that he now leaves the house when she is drinking, I am not convinced his strategy for avoiding further incidents will be successful. The likelihood of him becoming involved in future incidents of domestic violence is high.

Some of the incidents of domestic violence are recent. Based on the evidence presented, I cannot find that Applicant's criminal behavior does not cast doubt on his reliability, trustworthiness, and good judgment. There is insufficient evidence of reform or rehabilitation. None of mitigating conditions apply.

### **Guideline E, Personal Conduct**

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

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

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

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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; and

(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 evidence 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:

(1) untrustworthy or unreliable behavior. . .; and

\* \* \*

(3) a pattern of dishonesty or rule violations.

AG ¶ 16(c) and 16(d) apply to Applicant's domestic violence as discussed above.

In submitting his e-QIP in May 2013, Applicant disclosed that he had been charged with assault-related offenses. He stated that he did not disclose the felony charges because he misinterpreted the question and was told by his security officer to report charges only occurring in the past seven years. He reported the felony charges on a previous e-QIP. His explanation is plausible. I find that Applicant did not intentionally falsify his most recent e-QIP when he failed to disclose that he previously had felony charges filed against him. I find in favor of Applicant on SOR ¶ 2.b.

AG ¶ 17 lists four personal conduct mitigating conditions that are potentially applicable:

(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;

(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.

For the reasons set forth in the Analysis section under Guideline J, the Guideline E security concerns have not been mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant 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 commonsense 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 and examined all of Applicant's alleged wrongdoing as a whole. I have incorporated my comments under Guidelines J and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. I have taken into account Applicant's military service as well as his civilian employment. Insufficient evidence was presented to conclude that Applicant has reformed and rehabilitated himself and is unlikely to engage in domestic violence in the future. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the security concerns under the criminal conduct and personal conduct guidelines.

## Formal Findings

Formal findings 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.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

## Decision

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

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James F. Duffy  
Administrative Judge