DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-02012
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: William Savarino, Esq.

November 18, 2010

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Decision

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline J, Criminal Conduct, and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines J and E. 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 5, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 11, 2010. DOHA issued a Notice of Hearing on August 25, 2010. I convened the hearing as

scheduled on September 29, 2010. The Government offered Exhibits (GE) 1 through 13. Applicant did not object and they were admitted. Applicant and a witness testified on his behalf. Applicant offered Exhibits (AE) A through D, which were admitted without objections. The record remained open until October 6, 2010, to allow Applicant an opportunity to provide additional documents, which he did. One document was provided and it was marked as AE E. Department Counsel had no objection and it was admitted.[1] DOHA received the hearing transcript (Tr.) on October 7, 2010.

Procedural Issues

Department Counsel advised that he would not proceed on SOR ¶ 1.e and conceded it is not a criminal offense. He concurred that there should be a finding for Applicant on this allegation.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. He denied the allegations in SOR ¶¶ 1.b, 2.a, 2.b, and 2.c. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 45 years old and has been employed by his current employer, a federal contractor, since October 2009. He previously worked for a federal contractor from 2003 until he was laid off in August 2009. He stated he has held a Top Secret security clearance since 1989. Applicant is a college graduate.[2]

In 1989, Applicant met his wife (Y). They began living together and had two daughters in 1993 and 1994. They married in March 1997. They separated in November 2005, and their divorce was final in May 2007.[3]

In January 1997, Applicant was arrested and charged with assault on Y. He stated she filed charges against him because she was upset and angry because he went to visit a female friend over the Christmas holidays. He admitted that he shook Y, but stated she pointed a handgun at him and threatened to kill him. He explained that she later dropped the charges because he believed she thought her actions would be revealed and subsequently jeopardize her security clearance.[4]

In his answer to the SOR Applicant stated:

[1] Department Counsel's Memorandum was marked Hearing Exhibit I.

[2] Tr. 36-38, 104-106.

[3] Tr. 41-43, 106.

[4] Tr. 39-41.

> I admitted I was arrested in about Jan[uary] 1997 and charged with assault by [Y], my future problematic wife. We lived together since 1989. She pointed a loaded gun at me in a jealous rage after I returned from a trip to [State M] that Christmas to visit a friend. I did not call the police to report her assault with a deadly weapon. [Y] continued with verbal abuse in the following days. She called the police in anger after an argument and later dropped the charge.[5]

Applicant provided a sworn affidavit on March 27, 2003. In reference to the January 1997 incident he stated:

> I was living in [State A] and had an argument with my girlfriend. I had grabbed her by the arm and scared her. I let her go and she called the [R] Police Department. They arrived and I was arrested and taken to the police station. I was [finger]printed, photographed and held approximately two hours and I posted bail.[6]

In November 2005, Applicant found a letter from another man to Y revealing their romantic relationship. He confronted Y about the other man and she denied it until he showed her the letter. Applicant contacted the other man's wife and gave her a copy of the letter.[7] Applicant's wife was furious with him. Applicant and Y separated shortly after the extramarital relationship was revealed. He coordinated visitation for his children with Y. They went to family counseling through the divorce court. He had unsupervised visitation of the children.[8]

In February 2006, Applicant went to Y's residence to pick up his daughters. He entered the house to wait for his daughters. He stated Y asked him where he was taking their daughters. He did not respond. She grabbed his wrists and would not release him. He asked her three times to release his wrists and she did not. He struggled to break her grip and broke free. She attempted to grab him again. He got behind her and held both of her arms behind her. He stated that after she calmed down, he released her and she stumbled and fell. He left the house with one of his daughters. The other daughter was upset by the incident and decided to stay home.[9]

Applicant stated during direct examination, that later that night he heard a knock on his door from someone saying it was the police. He did not answer the door because he did not see a reason for the police to be there. He also said he thought it could be a process server. In his statement to the Office of Personnel Management (OPM)

[5] Answer to SOR.

[6] GE 13.

[7] AE D.

[8] Tr. 44-52.

[9] Tr. 52-54.

investigator on October 13, 2008, he stated that he was aware that Y had called the police because they came by his house that night and he did not answer the door because he did not want to deal with the police. During cross examination, he denied he knew it was the police knocking at his door. He stated he did not know that night that it was the police, but said he learned who it was later.[10]

During his interview with the OPM investigator, Applicant stated that Y had filed a restraining order against him the day before the incident in February 2006. He was unaware of the restraining order when he went to pick up his daughters. He indicated that he believed she filed the restraining order based on emails he had sent her regarding how he felt about what she had done, and she wanted to stop any form of contact with him. He explained that when Y let him in the house she then grabbed him. He believed she was trying to set him up. He also told the OPM investigator that he was told by a detective, who was investigating the incident, during a telephone conversation with Applicant, that a felony charge of criminal assault was filed against him based upon bruises his wife had on her elbow. At his hearing, Applicant stated that he was never informed by the detective that there were charges pending against him. Applicant's testimony is inconsistent with the information he provided the investigator. Applicant was provided an opportunity to review his statements to the OPM investigator and make any changes necessary to ensure their accuracy. He did not make any additions or deletions, and he adopted the investigative summaries as accurately reflecting his interviews. He then swore that he read the statements and they were accurate. At his hearing he disputes what the OPM investigator recorded as his statement. Applicant's testimony is not credible.[11]

In his answer to the SOR Applicant stated:

> I deny that I was arrested in about February 2006 in [City X]. I deny that I am guilty of battery on my spouse during the post separation child exchange.
>
> I had a phone interview the following month with a detective regarding the event, which was recorded and later conveniently lost by the police department by trial time. At the time of that phone interview in March of 2006, I was unaware of any warrant or charge against me until months later in October 2006 during divorce court. The detective I spoke with made no mention of a warrant or charge against me during the March 2006 phone interview.

In October 2006, Applicant was advised by a family court judge, presiding over his divorce, that there was a warrant for his arrest and he needed to take care of it before he returned to family court. Applicant was ordered to attend Domestic Violence

[10] Tr. 55-58, 109-113; GE 3, 4.

[11] Tr. 57-58, 62; GE 3, 4.

Rehabilitation Program (DVRP) by the family court judge due to the February 2006 altercation. Applicant was asked by his attorney, at his hearing, the following questions:[12]

> Q: And was there something that bothered you about the format of the [Q] counseling sessions that struck you as not in comportment with what you had expected?
>
> A: Well, at that point I had no expectations. I knew nothing about those programs. So I thought they were all the same at that point.
>
> Q: So what did they require? Were there any criteria that they required of you to be participating---to participate in that program?
>
> A: Yes, They required me to talk, to speak to the incident that occurred, the incident of violence that was committed.
>
> Q: Did they require you to admit that you had committed violence?
>
> A: That was an underlying requirement that they did not state, but yes.
>
> Q: And did they ask you to admit that?
>
> A: Not directly, no.[13]

Applicant's further testified as follows: he attended a DVRP session and explained to the counselor that he had acted in self-defense and his wife was the aggressor; he was advised by the counselor that if did not perpetrate the assault, he would not benefit from the class; the counselor told him he did not have to return to the class; he later advised the family court judge, and the judge did not require him to continue the class. He attended one class.[14]

In his answer to the SOR Applicant stated:

> I deny that I was terminated from [Q] Family Counseling on the sole basis of excessive absence in about August 2006. I was ordered by the family court judge to attend the class after my wife cited her allegation for the Feb[ruary] 2006 incident. I was instructed to talk of the Feb[ruary] 2006 incident. I told the Q [counselor] that I was assaulted by my wife and defended myself. The instructor told me I should not be in the class given

[12] Tr. 59-60, 67-68. There is no corroborating evidence that a family court judge ordered Applicant to attend a DVRP.

[13] Tr. 68-69.

[14] Tr. 69-73.

> what occurred. The instructor informed me he did not see a need for my return if that was the case, as there was nothing he could do for that situation. The family court judge that issued the order did not have a problem with that when I returned to divorce court and did not order me to return.
>
> The [Q counselor] and I agreed at the end of the first session that I would not return for further counseling as there is no crime in self-defense and thus no benefit he could provide me. Alleging that I was terminated due to excessive absence implies that I ignored the guidance of the counselor and simply blew it off. This is not the case regardless of what the final write up was submitted to by the [counselor] to remain in the graces of the court.[15]
>
> The report from the DVRP counselor stated the following:
>
> Client stated he had not done anything that merit[s] being in a domestic violence program. Client would not admit doing any issues on the power and control wheel. Because of this denial it was suggested to transfer to another program before terminated for insufficient progress. Client was terminated for excessive absences.[16]

There is no evidence that Applicant took action to transfer to a different program, so he could complete the court order. There is no evidence that Applicant was told he did not have to return to the program and was released from the program.

The police report of the February 2006 incidents included summaries of statements made by Applicant's daughters. Both daughters stated that Applicant refused to tell their mother where he was taking them. They noted that their mother blocked Applicant from leaving until he told her where he was taking them. Daughter #1 saw their mother put her hands on Applicant's chest. She then saw Applicant grab her mother's arm and put her into a control hold and then push her away. She does not know if her mother fell. Daughter #2 witnessed her mother attempting to block Applicant from leaving because he would not tell her where he was taking the daughters. Daughter #2 saw her mother take hold of Applicant's wrists. She then saw Applicant push her mother and she fell.[17] Daughter # 1 also described a previous incident, about a year earlier, where she observed Applicant hit her mother in the face and chip her tooth.[18]

[15] Answer to SOR.

[16] GE 11 at 49.

[17] GE 11 at 5.

[18] *Id*. I have not considered this information for disqualifying purposes, but have considered it when analyzing Applicant's credibility and in my "whole-person" analysis.

Applicant did not heed the family court judge's warning to address his warrant. When he returned to family court in November 2006, he was arrested on the outstanding warrant. He was charged with Corporal Injury to Spouse and/or Roommate for the incident that occurred in February 2006. In March 2007, Applicant's case went to trial. He was represented by an attorney and pleaded not guilty. He had a jury trial and was found guilty of a misdemeanor offense of Battery on Spouse. He was sentenced to 180 days custody, suspended three years, fined, order to attend 52 weeks of DVRP, attend 12 sessions of an anger management program, and to have no contact with the victim, under a Criminal Protective Order. Applicant continues to contend he acted in self-defense. He contends there was jury misconduct in his trial, but he decided not to move for a mistrial or appeal the verdict because he did not want to put his daughters through a second trial. He also stated: "I believe that race may have played a factor as well at trial with an all white jury in City X."[19] He paid the fine and completed the 12-sessions of an anger management program.[20]

Applicant was ordered as part of his sentence for his battery conviction, to complete a 52-week DVRP. He testified that he chose to go back to the same counseling service that he previously attended for one session. He chose this facility because it was close to where he lived and he thought they were all the same. He attended eight sessions.[21] In his answer to the SOR he stated:

> I deny that I was terminated from [Q] Family Counseling in 2007 solely for lack of progress. This second order was issued by criminal court judge [W] for the same Feb[ruary] 2006 incident as the earlier family court order. Being terminated as such implies that I refused to talk about the situation that occurred in Feb[ruary] 2006 when in fact my so called "lack of progress" was attributed only to my statements of self-defense within the legal limitation of the law.
>
> The structure of the [Q] class is suited only for people who aggressively commit assault to successfully complete the class by telling about the violence they perpetrated. [Q] counselors want to hear only admissions of guilt and violence and not self-defense. Self-defense would mean that the court system failed and no one in the system wants to hear that. If you can't give them what they want to hear, then you do not progress by their criteria and can't complete the course. I maintained that I was assaulted by my wife and defended myself and that is the only way I could convey the occurrence of that Feb[ruary] 2006 day.
> During the initial interview, the second [Q counselor] informed me that he would keep me in his class for 8 weeks and then terminate me based upon my statements of self-defense. This agreement was set forth by the

[19] Answer to SOR.

[20] Tr. 59-61-67.

[21] Tr. 73-74.

> [counselor] and [me] prior to the first class. He warned that the criminal court would not like it, but I had nothing to speak of other than the facts of what happened that day. Yes, I knew it would be a problem for the criminal court, but I would not back down in the fact of adversary when I'm right! Was that contempt of court? No, it's a failed system in my opinion.[22]

The counselor's notes on June 11, 2007, state the following:

> Client has only attended six classes and it is too early to rate progress. However, client maintains that he is not guilty of Domestic Violence. Client is aware that such assertions will result in termination.[23]

The counselor's termination notes on July 11, 2007, state the following: "Client denies guilt. Client reports that all actions he took were in self-defense and claimed to be inappropriate for this class."[24] The counselor further noted: "Client denies responsibility."[25] The notes further state his degree of participation was "poor" as was his attitude.[26] His last date of attendance was June 25, 2007, and the counselor noted the following: "client terminated 7/11/[2007] for lack of progress. Client admitted to no domestic violence."[27]

In Applicant's answer to the SOR, he confirms he was aware of the court's order to attend the 52-week DVRP, and he was aware that by not attending it, he was violating it. He understood there could be potential consequences. He made a conscious decision to violate the court order. I did not believe Applicant's testimony that the counselor believed Applicant's version of the facts, after Applicant was convicted of battery. I did not believe the counselor told Applicant that he did not belong in the program because his ex-wife was the aggressor and that they then made a special agreement to dismiss him from the program, and he would later provide the court a letter. Based on the counselor's notes, I find Applicant was terminated for both his lack of progress in the program because of his poor participation and poor attitude, and also because he did not admit his guilt. His failure to admit his guilt is not a violation of a court order. Applicant noted that as it turned out the counselor did not have that authority. I did not find Applicant's testimony credible.[28]

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[22] Answer to SOR.

[23] GE 11 at 68.

[24] GE 11 at 70.

[25] *Id.*

[26] GE 12 at 29.

[27] *Id.*

[28] Tr. 131-135; GE 3.

Applicant's answer to the SOR states:

> The 8 week termination period was agreed upon prior [to] the beginning of the first class how this was presented by the counselor or interpreted by the court was out of my control. I did not receive a copy of the [counselor's] letter submitted to the court after the 8 weeks had passed.[29]

There is no corroboration regarding Applicant's assertions that he had special agreements and arrangements with the counselor that he would complete only eight sessions and then his counseling would be terminated. Applicant did not seek permission from the court to modify the order to complete 52 weeks of the program. Applicant knew he was violating the court order. I find Applicant intentionally falsified material facts when he stated to the government investigator that his counselor dismissed him from the program after eight weeks because he did not belong in the domestic violence program since it appeared that his ex-spouse was the aggressor.[30]

In August 2007, Applicant went to pick up his daughters at his ex-wife's home. He contacted the police because he was having difficulty with his ex-wife. When the police arrived they learned he had an outstanding contempt of court warrant regarding his failure to complete the court ordered DVRP course. He was arrested and his car was searched. A collapsible baton was found in it. This device is illegal in the state where he was arrested. Applicant was charged with (1) threaten crime with intent to terrorize, a felony; (2) possession/manufacture/sell dangerous weapons/explosives; (3) contempt of court: disobey court. He pled guilty to possession of a dangerous weapon. He stated he had forgotten he had the baton in his car and that he had purchased it years before in a state where it is legal. He was sentenced to 45 days in jail, a fine, was ordered to enroll and complete a 52 week DVRP, and to remain away from his ex-wife. The jail time was deferred allowing him to complete a 23-day work furlough, 12 days credit was awarded. In addition, his probation was extended to October 22, 2010.[31]

Applicant's answer to the SOR states:

> It was later when the criminal court forced me to complete the DV program that I was made aware of different program formats by the second [Q] counselor, who I had the 8 week termination agreement.
>
> * * *
>
> At that time the counselor referred me to the [Z] DV program, which has no such witch hunt requirement for confessions of violent assault to progress. The [Z] class was a different format that focused on human

[29] Answer to SOR.

[30] Tr. 74-80, 93-95.

[31] Tr. 80-87, 122-130; GE 10 at 10; 11, 12.

> behavior/interactions and not specific events of crimes committed. As a result, I was finally able to successfully complete the DV program to satisfy the criminal court order resulting from the trial that I did not seek a mistrial for.[32]

Applicant completed the terms of his sentence and the court-ordered 52-week domestic violence program at a different facility in November 2008.[33]

Applicant moved in October 2009 and lives cross country from his ex-wife and children. He provided character letters from three women he has dated in the past who state they have not observed Applicant being physically aggressive or violent, or verbally mean or abusive. They have not felt threatened when with him. He is considered sweet, kind, and gentle. He is considered respectful and trustworthy.[34]

Applicant's supervisor testified on his behalf. He has known Applicant since January 2010. He has contact with him once or twice a week and they correspond by email. They do not work in the same building. He considers Applicant an excellent performer who receives great reviews from customers. He has not observed Applicant to have any kind of anger or violence issues. He does not socialize outside of work with Applicant. He has no reason not to trust Applicant.[35]

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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

[32] Answer to SOR.

[33] Tr. 87-92.

[34] Tr. 95-99; AE A, B, C.

[35] Tr. 25-35.

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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

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

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

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 30 and especially considered:

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

(d) individual is currently on parole or probation; and

(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant was arrested in 1997 for assault. The charges were later dropped. He was arrested again in February 2006, for assault on his spouse. He was advised in October 2006, by the family court judge that he had an outstanding warrant that he needed to address before he returned to family court. He failed to heed the order. In November 2006, when he returned to family court and had not addressed the warrant, he was arrested. The assault incident that occurred in February 2006 went to trial in March 2007. He was found guilty of battery on a spouse. He was sentenced to 180 days custody, suspended for three years, fined, ordered to attend a 52-week DVRP, attend 12 sessions of anger management, and a Criminal Protective Order was imposed to have no contact with the victim. He was arrested again in August 2007, on an outstanding contempt of court warrant. He was additionally charged with threaten crime with intent to terrorize, a felony, possession/manufacture/sell dangerous weapons/explosives, and contempt of court, disobey court. He pled guilty to possession/manufacture/sell dangerous weapon. He was sentenced to 45 days in jail, deferred after completing a 23-day work furlough, 12 days credit, a fine and was ordered to enroll and complete a 52-week DVRP and stay away from the victim. He was on probation at the time of his hearing. It was to terminate on October 22, 2010.

Applicant failed to complete his DVRP, when initially ordered to do so. His explanation that he had special arrangements with the counselors is not supported by the evidence. A bench warrant was issued due to criminal charges against him. He was made aware of it by the family court judge and he chose to not address the warrant. He was arrested when he returned to family court. Applicant failed to obey the family court judge's order to address the warrant. He failed to obey the criminal court judge's order to complete a 52-week domestic violence program. He eventually completed a program after he was arrested on the warrant. Although, AG ¶ 31(e) does not technically apply, the facts around his repeated noncompliance are relevant. I find AG ¶¶ 32 (a), (c) and (d) apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and especially considered the following:

(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;

(c) evidence that the person did not commit the offense; 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 had a series of altercations with Y. I did not find his testimony credible. He contradicted previous statements he made to investigators. He failed to comply with court orders. He minimized his involvement in the offenses. He was told by a family court judge that he had an outstanding warrant, yet he did not address it until he was arrested. He repeatedly demonstrated his unwillingness to comply with rules and regulations. Applicant has developed a pattern of noncompliance with orders, which he rationalizes for his own purposes. His criminal behavior is recent, because his probation was in effect at the time of his hearing and he only recently completed the terms of his sentence. His past criminal behavior is a cause of concern, because of his unwillingness to comply with orders. He intentionally chose not to obey the criminal court's order to complete 52 weeks of a domestic violence program. His inconsistent and contradictory statements also raise issues. There is no credible evidence that Applicant did not commit the offenses. I cannot find that his conduct is unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment. His failures to comply with court orders lead me to conclude there is insufficient evidence of successful rehabilitation. I find AG ¶¶ 32(a), (c) and (d) do not apply.

Guideline E, Personal Conduct

> AG ¶ 15 expresses the security concern pertaining to personal conduct:
> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified 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. I have specifically considered the following:

> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
>
> (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole. Supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and
> (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such

as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant was twice terminated from court-ordered domestic violence programs. His statements that his counselor dismissed him from the domestic violence programs because his wife was the aggressor were not credible. Documentary evidence supports that Applicant was terminated due to lack of progress. Applicant admitted in his answer that he knew when he failed to complete the 52-week domestic violence program, and that it would be a problem with criminal court. He also knew he might be in contempt of court. He decided he was right and the system was wrong. Applicant intentionally provided false information to the government investigator when he stated that the counselor said he did not belong in the program because his ex-wife as the aggressor. I find these disqualifying conditions apply.

The guideline notes several conditions that could mitigate security concerns. I have considered all of them under AG ¶ 17 and especially considered the following:

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

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

(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; and

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

Applicant's unwillingness to comply with court orders is a concern. He was required to complete a 52-week domestic violence program and he twice failed to do so. His explanations were not credible and not supported by the evidence. He eventually completed the program. He intentionally chose to defy a criminal court order and understood he might be held in contempt of court. Applicant provided false information to the government investigator and did not correct it. His behavior and falsification are a serious concern and casts doubts about Applicant's reliability, trustworthiness, and good judgment. I am not convinced he has taken positive steps to change his behavior or to reduce his vulnerability to exploitation, manipulation, or duress. I find none of the above mitigating conditions apply.

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 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. 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. Applicant had a volatile relationship with his wife. He contested his criminal charges at a trial and was found guilty of battery. He was ordered to attend a domestic violence program twice. Each time he failed to complete the court-ordered program. He knowingly made a decision that he was not going to comply with the criminal court's order. Despite his conviction, he did not believe he belonged in the program. His testimony was inconsistent with previous statements he made. Applicant's unwillingness to comply with court orders is a security concern. His criminal behavior and unwillingness to follow rules is also a security concern. His actions show a lack of respect for the law. He was unwilling to accept a guilty verdict, yet instead of addressing it through the appeal process, he chose to ignore it, and not comply with the court's orders. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Criminal Conduct and Personal Conduct.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs: 2.a-2.c:	Against Applicant

Conclusion

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

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Carol G. Ricciardello
Administrative Judge