DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 17-02492
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: Frank A. Manfredi, Esq.

07/24/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was arrested on five separate occasions between April 2009 and June 2016 on criminal charges stemming from domestic disputes. He has completed anger management and is remarried, but doubts persist about his reform in light of his minimization of his culpability. Clearance is denied.

Statement of the Case

On September 11, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline J, criminal conduct, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for*

Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on October 4, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 8, 2018, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 11, 2018, I scheduled a hearing for February 8, 2018.

At the hearing, seven Government exhibits (GEs 1-7) were admitted in evidence, GE 5 over Applicant's hearsay objections. An October 30, 2017 letter forwarding discovery of the GEs to Applicant's counsel was marked as a hearing exhibit (HE 1) but not admitted as an evidentiary exhibit. Sixteen Applicant exhibits (AEs A-P) were admitted in evidence. Applicant and his brother testified, as reflected in a transcript (Tr.) received on February 20, 2018.

Summary of SOR Allegations

The SOR alleges under Guideline J and cross-alleges under Guideline E (SOR ¶ 2.a) that Applicant was arrested in April 2009 for felony terroristic threats and acts (SOR ¶ 1.a); in September 2014 for risk of injury to a child, disorderly conduct, and reckless endangerment (SOR ¶ 1.b); in February 2015 for criminal possession of a firearm while subject to a protective order and for interfering with a police officer (SOR ¶ 1.c); in November 2015 for risk of injury to a child and disorderly conduct (SOR ¶ 1.d); and in June 2016 for violating a restraining order and a protective order (SOR ¶ 1.e). Additionally, Applicant is alleged to have pleaded guilty to disorderly conduct and reckless endangerment in May 2017 for which he was sentenced to nine months in jail, suspended, and to probation until May 22, 2018 (SOR ¶ 1.f).

Applicant provided a detailed response to the SOR allegations in which he denied engaging in the criminal conduct alleged. He admitted that he had yelled at his then wife's boyfriend in April 2009, but he denied making any threats. He asserted with regard to the September 2014 incident that he was only taking his younger daughter to the store when he was assaulted by his daughter's step-grandfather and the charges were dismissed. Regarding his criminal possession of a firearm in February 2015, Applicant explained that he had transferred custody of a rifle to a friend, who refused to turn it in to the police for him, but the charges were dismissed after his brother turned over the firearm to the police. In November 2015, Applicant indicated that his then cohabitant girlfriend became upset after their daughter became sick. He was arrested after he pushed open the door to his older daughter's room "to check on her and something fell and broke." He admitted that a restraining order was issued against him prohibiting him from any contact with his ex-girlfriend. He denied any intentional violation of the order in June 2016, asserting that he had returned a telephone call to an unknown number and his younger daughter answered the phone. Applicant explained that he did not believe that he had committed any criminal offenses, but he wanted to get on with his life so he pleaded guilty under the Alfred

Doctrine to disorderly conduct and reckless endangerment charges for the November 2015 incident.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 37-year-old pipefitter supervisor with a defense contractor. After graduating from high school, he served on active duty as an electronics technician in a branch of the U.S. military for 15 years. He was honorably discharged at the rank of chief petty officer in August 2012, and he began his present employment in December 2012. (GE 1; AEs A, H; Tr. 33-38.) Applicant held a security clearance for his military duties up to the level of top secret with sensitive compartmented information (SCI) access. (Tr. 37-38.)

Applicant was married to his first wife from November 1999 to September 2009. They had a daughter and a son, now ages 14 and 10. He and his ex-wife experienced marital discord near the end of their marriage. After an incident in August or September 2006 involving a loud verbal altercation with his then wife, Applicant voluntarily attended a ten-week anger management class. In December 2007, the police were called to his home for a domestic disturbance which occurred while his then wife was moving out of their home with their children. They reconciled in January 2008, and Applicant underwent marriage counseling. On October 17, 2008, Applicant was determined eligible for a top secret clearance and SCI access conditioned on him refraining from any future behavior that would reflect adversely on his judgment, reliability, and trustworthiness. (GE 2; Tr. 38.)

On April 22, 2009, Applicant was arrested on a felony charge of making terroristic threats and acts against his first wife's boyfriend. Applicant asserts, with no evidence to the contrary, that he returned from a three-month deployment to find that his spouse was involved in a cohabitant, adulterous relationship. Applicant became emotionally distraught on finding his spouse's boyfriend in the marital home with his children, and he told his spouse's boyfriend that he would "rip his head off" if he did not leave the property. Applicant's spouse contacted the police, and Applicant was arrested despite his denials of making any terroristic threats. At his bond hearing, he was ordered to complete an anger-management class. The threat charge was dismissed on June 17, 2010, after he showed that he had successfully completed the anger management class and had no further similar incidents. (GEs 3-4, 7; Tr. 40-43.) Applicant filed a timely report of his arrest to his command. His duty station was transferred in early 2010 to resolve personal issues that impacted his performance. (GEs 4, 7.)

As part of the employment application process for his current employer, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on November 19, 2012. Applicant disclosed his arrest for "verbal threat" in April 2009 and indicated that he was acquitted of the charge. (GE 1.) Applicant's security clearance was renewed for his defense-contractor employment. (Tr. 39.)

Applicant and a now ex-girlfriend began a cohabitant relationship in his home in January 2012. (GE 1.) They had a daughter in 2012. (Tr. 44.) The eleven-year difference in age between Applicant and his then girlfriend and their incompatible work schedules led them to pursue their own activities and friendships. On September 17, 2014, they were in the process of what Applicant characterized as an amicable break from each other. While his ex-girlfriend was removing her belongings from his house with the help of her family members, he decided to take their daughter, then two years old, to the store. He asserts that his ex-girlfriend "seemed fine with it." As he was exiting his driveway with their daughter, Applicant's ex-girlfriend's sister began yelling that he was kidnapping his daughter. Applicant explained that his ex-girlfriend's stepfather jumped into the bed of his truck, began pounding on the roof, punched out his back window, and began choking him. Applicant drove down the roadway as this was occurring before pulling into a nearby fire/police safety complex for assistance. (Tr. 44-50.)

The police report indicates that Applicant acknowledged that he had become upset when he learned that his ex-girlfriend was going to take all of their daughter's belongings to her stepfather's residence. He admitted to the police that he drove down the road with his ex-girlfriend's stepfather in his truck bed, and, as he approached the safety complex, his ex-girlfriend's stepfather punched in the rear window, causing it to shatter. His ex-girlfriend's stepfather then entered the cab and wrapped his hands around Applicant's neck while Applicant's daughter was in the backseat crying. The stepfather told the police that he and other family members believed Applicant did not have permission to take his daughter; that he observed Applicant place his daughter in the backseat without being properly restrained; and that Applicant shifted his vehicle in reverse toward him and his grandson as he exited the driveway. He related that he had to jump in the truck bed to avoid being struck by Applicant, and that Applicant operated his truck erratically on the road. After Applicant failed to respond to his pleas to stop, he punched out the back window in an attempt to shift the vehicle in park. An uninvolved witness to the incident provided a sworn statement attesting to observing the stepfather in the truck bed pounding on its roof as the truck sped away with tires spinning. Applicant's ex-girlfriend told the police that Applicant had been physically and mentally abusive to her over the past two years and that she had decided to move out to avoid further abuse. Applicant and his ex-girlfriend's stepfather were both arrested for risk of injury to a child, disorderly conduct, and reckless endangerment in the second degree. The charges against Applicant were dismissed on his completion of a family-education program in September 2015. (GE 7; Tr. 44-50.)

As a result of the arrest, a protective order was issued against Applicant in September 2014 prohibiting him from harassing, threatening, or stalking his ex-girlfriend or their daughter. Applicant was also required to surrender any firearms in his possession. Applicant owned a .22-caliber rifle that he inherited from his grandfather. (Tr. 50.) Applicant transferred custody of the firearm to a friend (Mr. X). On December 19, 2014, court officials informed the police that they had information that Applicant was still in possession of the rifle and asked them to investigate. Applicant told the police that he had transferred the firearm to Mr. X, and in the presence of the officers, Applicant contacted Mr. X and told him that the firearm had to be turned over to the police. Applicant told the police that he would

be at the station that afternoon with the firearm. As of December 26, 2014, Applicant had not surrendered it to the police. When contacted, Applicant explained that he had completed the paperwork for the firearm transfer to Mr. X. After being advised by the police that he had to turn in the weapon to either the state police or a federally-licensed firearms dealer, of which Mr. X was neither, Applicant argued that Mr. X could legally possess his firearm for safekeeping. On December 27, 2014, Mr. X confirmed that he had the firearm but not at his residence, and he indicated that he would bring it to the police on December 28, 2014. The next day, he told the police that he had given the firearm to Applicant's brother. The police report indicates that Applicant evasively indicated, on January 3, 2015, that he could not recall the last name of Mr. X. Applicant told the police that the firearm had been given to his brother legally under the new gun laws because his brother is a "federal employee." The next day, Applicant's brother, who is in the U.S. military, contacted the police and confirmed that he had the firearm. He turned over the firearm to the police. On February 6, 2015, Applicant was arrested for criminal possession of a firearm while subject to a protective order and for interfering with a police officer. (GE 5.)

Applicant asserts that he thought he was in full compliance with the protective order by transferring possession of the rifle to Mr. X. Applicant's latest account of the incident differs somewhat from the police report in that, when the police first confronted him about the gun, he signed a form for the firearm transfer but was told that it was the wrong form, and that he was required to surrender the firearm to the police immediately. He called his friend, who promised to turn in the firearm but did not do so. Applicant indicated that at his request, his brother obtained the firearm from Mr. X and turned it in to the police. (Tr. 50-55.) Applicant denies that he interfered with a police officer and asserts that all he did was tell his friend that he had to turn in the firearm. (Tr. 56.) The charges were dismissed.

By November 2015, Applicant and his ex-girlfriend were again cohabitants, but they had not been sharing much time together. He had his two children from his first marriage at his house the night before the Thanksgiving holiday, and they were planning dinner at home. Applicant explained that there was some tension between him and his ex-girlfriend after their daughter vomited, and his ex-girlfriend became "very distraught" thinking it was blood. Applicant claims that he tried to explain to her that it was not blood by using his pocket knife to prick for blood to test with peroxide, but she accused him of not caring about their daughter. He opined that "she was just really embarrassed that she as wrong and that she overreacted." He then went to comfort his older daughter who had gone to her room and had barricaded her door by pushing a dresser against it. When he pushed open the door, a glass bowl on the dresser fell over and broke. While Applicant had "moved on to the point of trying to comfort [his] daughter," his ex-girlfriend intruded on his daughter's space and was "really aggressive." Applicant denies that he did anything wrong, but his ex-girlfriend called the police. (Tr. 58-66.)

The police report indicates that on their arrival, they met with Applicant's ex-girlfriend who informed them that Applicant was throwing things around the house and breaking items. She complained that Applicant started to get out of control and had thrown a glass of water at her before going upstairs and breaking through the door of his daughter's bedroom. Applicant's daughter, then 11 years old, was hiding in her bedroom. Applicant's

ex-girlfriend complained that Applicant started to push her, but she ran into the bathroom and called 9-1-1 before he broke into that door also. When Applicant was interviewed by the police, he admitted that he and his ex-girlfriend argued, and he threw water from a glass at her thinking that it would calm her down. His older daughter was crying upstairs in her bedroom. He told the police that when he went to calm his daughter, he discovered that the bedroom door was locked. He pushed the door open, and it caused a glass dish to fall from the dresser and break. He denied that he touched either his ex-girlfriend or his daughter. The police arrested him for risk of injury to a child and disorderly conduct. (GE 5.)

Applicant had a psychiatric evaluation in December 2015. He explained that preparations for dinner were underway in his home when his two-year-old daughter coughed up a red substance that the girl's mother believed was blood. He indicated that his ex-girlfriend was inappropriately overprotective of their daughter. When she refused to listen to his reasoning, he attempted to demonstrate by drawing some blood from his own arm, but she called the police and conveyed that he had threatened her with violence in the children's presence. The psychiatrist opined that Applicant had a consistently rational approach, although he may have used poor judgment by using a knife to prove his point when his ex-girlfriend was already upset. He was assessed as not being a danger to himself or others, but he could benefit from counseling for the next three months to facilitate reunion with his family. (AE C.)

Applicant asserts that his ex-girlfriend "completely lied" to the police. He explained that damage to his bathroom door was committed by a former tenant (Tr. 66-67) and that the door to his older daughter's bedroom was unlocked ("I just turned—the door wasn't locked, she just closed it and pushed the dresser in front of it."). (Tr. 77.) As to why his daughter would block her door with her dresser, Applicant responded, "I just thought that maybe she was disturbed or freaked out because of the blood." Applicant denied he had done anything that day that could be perceived as threatening by his then 11-year-old daughter. (Tr. 81.) Available court checks show that, at final disposition on May 22, 2017, Applicant pleaded guilty to misdemeanor disorderly conduct and to misdemeanor reckless endangerment. He was sentenced on the disorderly conduct charge to three months in jail, execution suspended, and to one year of probation, and for reckless endangerment to six months in jail, execution suspended, and to one year of probation. (GE 6.) Applicant testified about the disposition as follows:

> Most of the case in all the cases were dropped and disposed of. I did plead no contest under the Alford Doctrine as a part to resolve my cases and take some responsibility. I was physically there and involved in each one of these circumstances. I'm a man and I'm responsible for my actions. I'm responsible for my name. And I wanted to resolve the cases so it wouldn't continue drawing on through court and take my own personal responsibility for everything that happened. (Tr. 68.)

On November 27, 2015, a protective order was issued against Applicant prohibiting him from contacting his ex-girlfriend in any manner, including in writing, by telephone, or

electronically, either at home, workplace, or through others with whom the contact would likely cause annoyance or alarm to his ex-girlfriend. On December 15, 2015, a restraining order was issued against Applicant. By then, Applicant was involved in a custody battle with his ex-girlfriend over their daughter. Applicant obtained a civil court order granting him visitation with their daughter, but only through a third party of his ex-girlfriend's choosing. (GE 6; Tr. 69-70.)

On March 31, 2016, Applicant's ex-girlfriend filed a domestic-violence report with the police at the direction of her domestic-violence victim's advocate who told her to report messages that she had been receiving indirectly, through a third party, in violation of the protective and restraining orders. Among the messages reviewed by the police was a text message sent to her old phone number proposing that she drop the restraining order and her petition for sole custody. In return, Applicant indicated that he would pay her $400 a month in child support. Applicant's ex-girlfriend informed the police that she had changed her phone number because of the annoying messages. The police contacted the third party, who confirmed he had relayed the messages at Applicant's request. On April 1, 2016, the police contacted Applicant, who acknowledged the outstanding protective and restraining orders, and that he had relayed some messages through the third party (his daughter's godfather). He admitted that a message about dropping the restraining order sounded like something he asked the third party to send, but he did not know what messages were exchanged. During an interview with the police on April 12, 2016, Applicant related that he did not contact his ex-girlfriend directly. He admitted that he had sent approximately six to eight messages to the third party to relay to his ex-girlfriend, but he claimed they were in response to his ex-girlfriend's inquiries, and he did not believe they would annoy or alarm her. On April 14, 2016, the protective order was renewed against Applicant, which prohibited him from having any contact with his ex-girlfriend. Applicant was allowed to speak to their daughter. (GE 6.) Pursuant to a family court order, Applicant completed a parenting education class on April 16, 2016.[1] (AE O.) He completed a four-hour anger-management class on November 6, 2016. (AE P.)

On May 7, 2016, Applicant's ex-girlfriend called him so that he could speak to their daughter. She received a call from Applicant's work cell phone in response that lasted five minutes. On May 24, 2016, she complained to the police that Applicant had violated the protective and restraining orders. On May 7, 2016, he had "played dumb" and said he was calling about a contracting job. After she "called him out," he indicated that he wanted her to drop the protective and restraining orders against him and that he wanted to see their daughter. When queried by the police, Applicant denied that he had called his ex-girlfriend and claimed that he frequently received random phone calls. Applicant then denied that he had spoken to his ex-girlfriend outside of court. On June 9, 2016, Applicant was arrested for violating a protective order and violating a restraining order on May 7, 2016. (GE 5.)

[1] Applicant testified that he had to complete an anger management class, a parenting class, and a 26-week program as conditions of his probation for the November 2015 incident. (Tr. 73, 78.) He admitted on cross-examination that he had taken other classes as required by the civil court related to custody proceedings involving his daughter. *See* AEs O-P.

Applicant recalls the telephone contact as being unintentional. He claims that he returned a missed call who he thought was from "a husband of a family friend." He denied knowing that his ex-girlfriend had changed her telephone number, but as soon as his ex-girlfriend answered the phone, she put their daughter on the phone, and he spoke to her for a couple of minutes. According to Applicant, he proved his side in court and the charges were dismissed. (Tr. 71-72.)

On November 9, 2016, Applicant's ex-girlfriend was awarded full custody of their daughter. On November 17, 2016, his ex-girlfriend complained to the police that Applicant had sent emails to their daughter's daycare asking when she picked up their daughter. She expressed concern that he would use the information to follow them to see where they live or to hurt them. She stated to the police that Applicant could only see their daughter in a locked facility with a psychiatrist present because he is mentally unstable. The protective order covered Applicant's ex-girlfriend and their daughter, while the restraining order covered only his ex-girlfriend, but both orders included a no-contact provision. The police confirmed with the daycare that Applicant sent two emails inquiring about his daughter's attendance and the dates and times she was there. Applicant admitted to the police that he sent the emails but that he needed to confirm his daughter's attendance because he was obligated to pay a portion of her daycare expenses under a civil court order. The police declined to obtain a warrant for his arrest because he is required to pay for daycare and needed the information. (GE 5.)

Applicant was on supervised probation for the November 2015 misdemeanors until May 22, 2018. As of October 2017, Applicant was in compliance with his probation. Urine screens were negative for all substances, and he was attending a 26-week domestic-violence program in good standing. (AE M.) Applicant had no incidents while on probation as of February 8, 2018. He was in week 25 of his domestic-violence program, which he described as a "family re-entry program." (Tr. 73.)

Applicant remarried in May 2017. (AE B.) He has contact with his ex-wife only through a dedicated email address. (Tr. 74-75.) He has not seen his older daughter since the incident in November 2015. He sees their son once or twice a month. Applicant testified that he had once weekly contact by telephone with his daughter after November 2015 until February 2017, when his ex-wife "heard something that she didn't want to hear," and hung up the phone. He has had no contact with his daughter since then. He was told by his ex-wife that it is his daughter's choice. He testified to his belief that his ex-wife has some influence on their daughter and that their daughter "actually says she wants a relationship" with him. He denies that he ever struck or threatened his daughter. He is working through a family court to possibly arrange to see his daughter with a therapist present. (Tr. 84-87.) Applicant has visitation rights with his younger daughter by court order. When he picks up his younger daughter from his ex-girlfriend for weekend visits, his new wife is always with him. (Tr. 75.)

Character References

Applicant's brother testified and submitted a character reference letter (AE H) for Applicant. As of February 2018, he had been on active duty in the U.S. military for the past 16 ½ years. He served together with Applicant from approximately October 2002 until Applicant transferred in the summer of 2005. They held the same occupational specialty and handled classified information almost daily. He considers Applicant a patriot and not a security risk. Applicant's brother testified that he is aware of the incidents involving Applicant's ex-wife and ex-girlfriend, but he later acknowledged that he has heard "little bits here and little bits there, but nothing—not like the total information . . . on it." He also testified that he believes every word that Applicant tells him. He has no issue with leaving his 10-year-old son with Applicant. In his observation, Applicant "loves his children very much." (AE H; Tr. 90-97.)

Applicant's current spouse provided a character reference letter in which she attested to Applicant having been open with her about his arrests. She indicates that she had her own "run ins" with Applicant's ex-girlfriend and that she observed "her hostility and aggressiveness." Applicant has become a father figure to her own daughters from a previous relationship. He has exhibited pride in his former military service and current defense-contractor employment, and she wholeheartedly endorses him for continued security clearance eligibility. (AE L.)

Managers and co-workers attest to Applicant's dedication, professionalism, and reliability on the job since he was hired in December 2012. Applicant supervises the work of 8 to 15 employees depending on the workload. He works overtime when needed to get the work completed correctly. Applicant is considered to be a valuable asset to his team. He has been trustworthy in handling classified and sensitive information and thorough in briefing personnel to ensure that material is handled at the appropriate classification level. (AEs E-G, I-K.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 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

The criminal conduct and personal conduct guidelines will be discussed together, given that the same conduct is alleged under both guidelines. Criminal conduct security concerns are articulated in AG ¶ 30 under Guideline J, which states:

> 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.

Personal conduct security concerns are articulated in AG ¶ 15 under Guideline E, which states:

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

Applicant was arrested for terroristic acts and threats in April 2009 (SOR ¶ 1.a); for risk of injury to a child, disorderly conduct, and reckless endangerment in the second degree in September 2014 (SOR ¶ 1.b); for criminal possession of a firearm while subject of a protective order and for interfering with a police officer in February 2015 (SOR ¶ 1.c); for risk of injury to a child and disorderly conduct in November 2015 (SOR ¶ 1.d); and for violating restraining and protective orders in June 2016 (SOR ¶ 1.e). SOR ¶ 1.f alleges the disposition of the November 2015 charges and does not represent an additional incident that could give rise to security concerns under Guideline J or Guideline E.

Applicant does not dispute that he was arrested as alleged, but he denies any validity to the charges. The charges were dismissed except with respect to the November 2015 incident where Applicant maintains that he pleaded guilty to one count each of misdemeanor disorderly conduct and reckless endangerment under the Alford Doctrine to dispose of the charges and get on with his life.

Security concerns may arise even in the absence of a formal prosecution or conviction under AG ¶ 31(b), "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." Yet the AGs contemplate mitigation for unfounded allegations under ¶ 32(e) of Guideline J, "no reliable evidence to support that the individual committed the offense," and AG ¶ 17(f), "the information was unsubstantiated or from a source of questionable reliability." Under ¶ E3.1.19 of the Directive, the evidentiary rules are relaxed. Even so, Applicant's concerns about the hearsay nature of the claims of his ex-girlfriend to the police have some merit. Under ¶ 3.1.22 of the Directive, statements adverse to an applicant on a controverted issue may be considered without an opportunity at cross-examination only in limited circumstances, none of which were not established in this case.

At the same time, police reports are admissible under ¶ E3.1.20. In determining whether credible evidence of criminal conduct or personal conduct exists, I note that Applicant's present account of some of the incidents varies in several significant aspects from his more contemporaneous statements to the police, who are presumed to have acted within the scope of their duties. There is no evidence of any apparent motive on the part of the police to fabricate their report of what Applicant told them. As discussed below, Applicant made admissions to the police or at his security clearance hearing that are alone sufficient to establish criminal conduct and personal conduct security concerns.

There is no police report of the April 2009 incident in the record. Applicant admits that he yelled at his now ex-wife's boyfriend and "made a statement to him that if [he] didn't get off [his] property [he'd] rip his head off." That statement that could reasonably be considered threatening. Regarding the September 2014 charges of risk of injury to a child, disorderly conduct, and reckless endangerment, Applicant told the police that he became upset at discovering that his ex-girlfriend planned to take all of their daughter's belongings. He asserts that he had his daughter properly restrained in his truck, although a disinterested witness heard someone yell that the girl was not restrained. Applicant does not dispute that he drove his truck down the road with his daughter in the backseat and his

ex-girlfriend's stepfather in the truck bed pounding on the roof. Even assuming that he had permission from his ex-girlfriend to take their daughter to the store, his operation of his truck under the circumstances was reckless, and he risked potentially serious injury to his young daughter.

As a result of that incident, Applicant's ex-girlfriend obtained a protective order against him. As a condition of that protective order, he was required to surrender any firearms in his possession. He maintains that he thought he was in compliance by turning over his firearm, a family heirloom, to his friend Mr. X. However, the police report indicates that, before the gun was turned over, Applicant argued with the police about the gun laws, claimed to the police that he could not recall the surname of Mr. X, and had Mr. X give the firearm to his brother because he was a "federal employee." Applicant recounted the incident on direct examination at his security clearance hearing as follows:

> I told them I didn't have my firearm. I told them who I turned my firearm over to. I gave them the contact information of the friend that I turned it over and then I signed a form that was provided to me so I can make a statement of who I turned the firearm over to. (Tr. 52.)

His account of the incident was incomplete and disingenuous. The firearm was eventually turned in by Applicant's brother, but only after Applicant had been given several opportunities to comply.

Applicant submits that the November 2015 charges were disposed of by Alford plea. The judicial court record shows that he entered a guilty plea. Assuming that he entered an Alford plea, an Alford plea enables a defendant to enter a guilty plea while maintaining his or her innocence. However, before a court can accept an Alford plea, the defendant must admit that there is sufficient evidence to prove his or her guilt, and the court, in turn, must satisfy itself that the plea is supported by facts sufficient to sustain a conviction. *See North Carolina v. Alford*, *supra*, 400 U.S., at 37-39; ISCR Case No. 07-03307 at 7-8 (App. Bd. Sept. 26, 2008).[2] A conviction based on an *Alford* plea has the same collateral estoppel effect as a conviction based on a guilty plea. *Blohm v. Commissioner of Internal Revenue*, 994 F.2d 1542, 1553-55 (11th Cir. 1993). *See* ISCR Case No. 96-0525 (App. Bd. June 17, 1997). Applicant's plea to disorderly conduct and reckless endangerment is sufficient to raise criminal conduct and personal conduct security concerns. Moreover, while his ex-girlfriend may have been unreasonably distraught, Applicant has not persuaded me that he was completely without blame in the incident. He told the police that he threw water at his ex-girlfriend in an attempt to calm her down. He then went upstairs to calm his older daughter and found the door locked. He pushed the door open, which caused the glass dish to fall from the dresser. At his security clearance hearing, he claimed discrepantly that the door to his daughter's room was unlocked. He maintains that his ex-girlfriend over-

[2] In ruling on the court's acceptance of an Alford plea, the appeals court in *Crowfoot v. U.S. Government Printing Office*, 761 F.2d 661 at 665, at n. 1 (Fed. Cir. 1985) stressed that a court that receives an Alford plea "must independently determine that the plea has a factual basis." Alford pleas differ slightly from a nolo contendere plea, in which the defendant agrees to accept the court's findings and sentence without admitting guilt, and the evidence is sufficient to establish guilt.

reacted, and he had moved on and was only comforting his daughter. He admitted, however, that he and his ex-girlfriend then argued in front of his daughter and his son. His explanation for why his daughter barricaded her door if she did not fear him, that his daughter "always had an adverse reaction when anybody says the word blood," is not persuasive.

After the November 2015 incident, Applicant's ex-girlfriend obtained protective and restraining orders against him. He was arrested in June 2016 for violating the orders. He had replied to a telephone call of May 7, 2016, from a number he claimed not to recognize as belonging to his ex-girlfriend. When asked about the incident by the police, Applicant denied calling her. He later claimed that he had not spoken to her out of court, but the police had a screen shot from Applicant's ex-girlfriend's telephone showing a phone call from his number lasting more than five minutes. He denies any intentional violation of the protective and restraining orders, claiming that he thought he was returning a call from the husband of a family friend. He testified that he talked to his daughter for a couple of minutes and that he proved his case in court so the charges were dismissed. If Applicant had talked to his daughter, which was apparently permitted by family court order, it stands to reason that he would have told the police that he had spoken to his daughter if he did so.

The evidence is sufficient to establish AG ¶ 31(a) through AG ¶ 31(c) under Guideline J, which provide:

> (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
>
> (b) evidence (including, but not limited to, a credible allegation, or admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
>
> (c) individual is currently on parole or probation.

AG ¶ 31(c) was applicable as of the close of the evidentiary record. Applicant was still on supervised probation for the November 2015 disorderly conduct and reckless endangerment offenses.

Under the personal conduct guideline, the Government argued for the applicability of AG ¶ 16(d)(3), which provides:

> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not

> properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:
>
> (3) a pattern of dishonesty or rule violations.

AG ¶ 16(d)(3) does not strictly apply because the conduct of security concern is explicitly covered under Guideline J. However, Applicant repeatedly exhibited very poor judgment to trigger the concerns under AG ¶ 15.

The criminal conduct and personal conduct guidelines similarly provide for mitigation when the offense occurred so long ago or under usual circumstances that it is no longer of security concern. AG ¶ 32(a) under Guideline J states:

> (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.

AG ¶ 17(c) under Guideline E states:

> (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.

Applicant's criminal behavior is too recurrent and recent for mitigation under either AG ¶ 32(a) or AG ¶ 17(c), even though he and the women (first wife and ex-girlfriend) involved in the domestic disputes are no longer in his life other than as mothers to his children. Applicant has remarried, but he was still on probation for the November 2015 offenses as of the close of the evidentiary record.

AG ¶ 32(d) under Guideline J and AG ¶ 17(d) under Guideline E address rehabilitation. AG ¶ 32(d) has some applicability in that there has been no recurrence of the criminal conduct since 2016; he has shown dedication, reliability, and trustworthiness in his defense-contractor employment; and he was in compliance with the terms of his probation. AG ¶ 32(d) provides:

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

Applicant's remarriage is a positive step that minimizes the risk of recurrence under AG ¶ 17(d), which provides:

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant has moved on from the relationships in which the criminal conduct occurred. He has completed anger management classes, a parenting class, and, as of the close of the evidentiary record, 25 of 26 sessions of a domestic violence class mandated by the court. Nonetheless, his reform is undermined by his persistent efforts to minimize his culpability even to the extent of now contradicting statements previously made to the police. The criminal conduct and personal conduct security concerns are not fully mitigated.

Whole-Person Concept

In the whole-person evaluation, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).[3] Some of the factors in AG ¶ 2(d) were addressed under Guidelines J and E, but some warrant additional comment.

Applicant's military service weighs in his favor as does his unassailable dedication to his defense-contractor employment. However, he has a history of domestic incidents with both his first wife and an ex-girlfriend. He completed anger management in the military but it was not successful in preventing subsequent incidents with his ex-girlfriend. He did not allow the domestic discord at home to adversely affect his job performance with his defense-contractor employer. Yet it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant has exhibited an unacceptable tendency to minimize his culpability, causing doubts about whether his representations are reliable. He has not fully mitigated the doubts about his security worthiness.

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

[3] The factors under AG ¶ 2(d) are as follows:

(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.

Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant[4]
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Elizabeth M. Matchinski
Administrative Judge

[4] A formal finding is made for Applicant because SOR ¶ 1.f alleges the disposition for the offense in SOR ¶ 1.d and is not another instance of criminal conduct.