



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



In the matter of:)
)
) ISCR Case No. 23-00673
)
Applicant for Security Clearance)

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2025

Decision

HALE, Charles C., Administrative Judge:

Applicant did not mitigate security concerns raised under Guidelines E (personal conduct), J (criminal conduct), G (alcohol consumption), F (financial considerations), and B (foreign influence). Eligibility for access to classified information is denied.

Statement of the Case

On October 30, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing 66 security concerns under Guidelines E, J, G, F, and B. Applicant responded to the SOR on December 6, 2023, and requested a decision on the written record without a hearing before an administrative judge. On December 18, 2023, the Government requested a hearing pursuant to Department of Defense Directive 5220.6. The case was assigned to me on August 5, 2024.

The hearing was convened as scheduled on October 9, 2024, via video teleconference. However, due to technical difficulties the hearing was recessed and reconvened on October 10, 2024, as an in-person hearing. Government Exhibits (GE) 1 through 13 were admitted in evidence without objection. Applicant testified and while the

record was open Applicant offered Applicant Exhibits (AE) A-C. AE A and B were admitted without objection. A proposed AE C was identified on the record but was not submitted by Applicant. The Government requested Administrative Notice (AN) of the conditions in El Salvador (AN I) and of five legal authorities (AN II): State Z's definition of "a *nolle prosequi*" discharge; State Y's definition of "a *nolle prosequi*" and what State Y is precluded from pursuing; State Z's statutory definition of expungement; State Z's caselaw on its application of its driving under the influence (DUI) statute; and State Z's caselaw on purposes of its public intoxication statute. There was no objection from Applicant, and I have taken administrative notice of conditions in El Salvador and these legal notices. The Defense Office of Hearings and Appeals (DOHA) received the initial transcript and final transcript (Tr.) on October 25, 2024.

The Government's Proof Table was marked as Hearing Exhibit (HE) I. HE I is essential for correlating the GEs with the over 60 SOR allegations. (Tr. 146.) The record was held open until November 7, 2024. After the hearing, Applicant timely submitted five job "offer letters," which were marked as AE C and admitted without objection. (Tr. 18.)

Findings of Fact

The Government alleged 66 SOR allegations under the aforementioned Guidelines. In his Answer, Applicant formally denied three allegations (SOR ¶¶ 1.g, 1.o, 1.p) and admitted the remaining 63 allegations, with brief explanations for his conduct. For SOR ¶¶ 1.ll through 1.zz alleged under Guideline E, Applicant stated, "I admit. I deny to falsify material facts and I miss-interpreted the question" and then offered further explanation. SOR ¶¶ 1.ll through 1.zz will be treated as denials. In HE I, the Government also interpreted Applicant's answers to these allegations as denials.

Applicant was advised of his responsibility for producing evidence that he wanted in the record and that it was the Government's obligation to present evidence to establish any controverted facts but that the Government had no such obligation as to any facts to which the Applicant had admitted. His admissions are incorporated in my findings of fact. (Initial Tr. 9.)

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since September 2022. He has worked as financial analyst for over 20 years. He briefly was self-employed as an accountant between August 2011 and December 2014. In 2000 he earned a bachelor of science degree in accounting. In 2011 he earned a master's degree in business management accounting. He submitted his first security clearance application (SCA) in 2004. He completed an SCA on August 13, 2019. He completed his most recent SCA on September 23, 2022. (GE 1, GE 2; AE A, AE B.)

During the course of the hearing Applicant repeatedly pointed out he was not asking for a top-secret clearance. He was formally advised during the hearing that the hearing would address the SOR allegations and decide whether it was in the national interest to grant or deny him access to classified information. (Tr. 21, 22, 104, 137, 141, 145, 153, 192, 203.)

Guideline F

SOR ¶¶ 4.a through 4.i. Applicant admitted all of the allegations. For SOR ¶¶ 4.b and 4.c, which involved delinquent student loans he stated:

I do realize I have some student loans. I do realize some student loan forgiveness has taken into effect. I don't know how this has affected me. Once I am gainfully employed, without experiencing any financial hardship my intention is to get back on a timely payment schedule. I met with DoD investigating officer and answered all the concerning issues, my interim secret was approved since no other issues or concerns have been found. (Answer.)

Applicant was aware he needed to resolve his delinquent student loans because they had been in collection for several years. He last made a payment in 2018. He stated his intention to call the Department of Education to resolve his student loan debt and get on a deferment plan. He was not sure why they were currently showing as in good standing. (GE 4; Tr. 25, 106, 119-120.) He testified he was advised during the security clearance application process to:

[P]lease make sure you call the student loans, get a number. Let me know when you can start making payments on it. Let them know that you're interested in payment. It was really a fair and just process. Right now, sir, and Judge, I'm not asking you to give me a top-secret clearance with a polygraph. I'm asking you to give me a secret clearance with a caveat that only give me a secret clearance where I do need access to information to perform my job based on my education of accounting and my previous work experience. (Tr. 103-104.)

For the debts that did not involve student loans (SOR ¶¶ 4.a, and 4.d-4.i) Applicant stated in his Answer: "I admit. This information may be too old or inaccurate to be on my credit record. I dispute the age or the validity of it to be on my credit report." (Answer.) He offered no supporting documentation for his claim of inaccuracy or a basis for disputing the debt.

Applicant testified he lived within his means and that he operated on a "cash basis," which he explained meant:

[I]f I have \$5,000, I don't spend more than that. If I have ... \$50 on my debit card from Starbucks, I don't spend more than that. I use, like, a cash basis accounting. (Tr. 24.)

Applicant did not explain how his debts became delinquent. Aside from his testimony, Applicant offered no supporting evidence of his efforts to resolve his debts. His resume and 2022 SCA show he has worked in the financial field for over 20 years and

holds a master's degree in business management accounting. His resume shows from 2002 until September 2018 he was continuously employed. After September 2018, he listed he was employed for nine months in 2019 in his field. In 2020, he listed ten months of employment in his field. He showed a four-month gap in employment and then assumed a position in February 2021 for seven months. He had a seven-month gap in employment and then took another position in April 2022 for three months. He took his next position in September 2022, which he held until March 2023, when his interim clearance was suspended. He testified when he was not employed in his field, he took various other jobs ranging from auto dealerships, car wash, and other "blue-collar" work. He was last employed in his field in March 2023. He estimated he is currently making \$23,000 a year. (Tr. 28-29, 89-90 125; GE 1; AE B.) In response to whether he paid off any of the debts alleged he stated:

It's immaterial debt, sir. With my financial problems, I haven't been able to pay them. Sometimes, with my financial problems, I haven't even been able to go to the dentist, to go to the doctor, and to do other things. Once I am up and running with a professional job, that's not an issue. (Tr. 120.)

Applicant testified he typically returns to El Salvador twice a year to check on his family's wellbeing. He sends money back as often as he can to support them, typically \$300 every two weeks. (Tr. 25, 39-40, 121-125.) He testified his airplane tickets cost around \$300. He stated in 2024 he was going back to El Salvador twice a month. His rent, whether living with a friend or with his mother, was \$300 a month. He stated his mother would work with him if he was in financial distress on any rent payments. (Tr. 28-30, 39-40, 150-151.)

Guideline B

Applicant admitted SOR ¶¶ 5.a-5.c, that his girlfriend (now wife), five children (now six), and grandmother were residents of El Salvador. The sixth child was born after the SOR was issued and he married his girlfriend approximately a month prior to the hearing. He has a seventh child, age 24, who has always lived in the United States. He testified his children were all American citizens and were residing with his wife. His wife has never travelled to the United States. His family resides in a small community and his wife sells cheese to make a living. He typically returns to El Salvador twice a year to check on their wellbeing but acknowledged traveling back more in 2024. (GE 1; Tr. 25, 37, 39-40, 121-125, 150-151, 158.) He noted his wife would soon be an American citizen:

[S]he will soon be American citizen because we just married. So having foreign influencer doesn't affect me. I've been in this country since 1986. And my loyalty is to the United States of America. (Tr. 25.)

The Government provided evidence to associate Applicant with La Mara Salvatrucha ("MS-13"). The Department of Justice has identified MS-13 as a violent street gang that operates as a transnational criminal organization ("TCO") and has been designated as such by federal agencies, including the U.S. Department of Justice and

U.S. Department of the Treasury. MS-13 operates in the United States, El Salvador, Honduras, Guatemala, Mexico, and other countries. Each year, MS-13 is responsible for violent crimes in the United States, including murders, extortion, arms and drug trafficking, assaults, rapes, human trafficking, robberies, and kidnappings. For decades, MS-13 has exploited weaknesses in U.S. immigration enforcement policies to move its members in and out of the United States and to recruit new members who have arrived in the United States illegally. Moreover, MS-13 has infiltrated both cities and suburbs of the United States and established cliques in California, New York, New Jersey, Maryland, and Virginia. (AN I.)

Applicant denied any gang association and denied once claiming to be MS-13 during a confrontation (SOR ¶ 1.d) when he was arrested and charged with disorderly conduct in May 2021. He denied making a gang symbol and denied pointing to his El Salvador soccer jersey and telling the homeowner he was MS-13. He acknowledged wearing his Salvadorian jersey with pride. (Tr. 72.) He came to the United States when he 10 years old. He became a naturalized citizen in October 1995. His mother resides in the United States, as does his oldest child from a prior relationship. (GE 1, GE 2, GE 3; Tr. 37, 58.)

Guideline E

Of the 52 Guideline E allegations Applicant formally denied SOR ¶¶ 1.g, 1.o, and 1.p which involved personal conduct not involving falsification. He admitted SOR ¶¶ 1.a-1.f, 1.h-1.n, and 1.q-1.ii, which involved personal conduct not involving falsification. (Answer.) As stated above, Applicant's answers to the personal conduct falsification allegations, SOR ¶¶ 1.jj through 1.zz, are being treated as denials despite his response in his Answer stating, "I admit..."

Guideline E (non-falsification personal conduct)

The court documents in GE 4, along with his admissions in his Answer, support the criminal (SOR ¶¶ 1.a-1.d, 1.h, 1.i, 1.k-1.n, 1.q, 1.r, and 1.ii) personal conduct and other personal conduct (SOR ¶¶ 1.e, 1.f, 1.j, 1.s-1.hh) alleged in SOR ¶¶ 1.a-1.f, 1.h-1.n, and 1.q-1.ii. (HE I.)

In Applicant's denial to SOR ¶ 1.g, he stated:

I have never looked for a minor to help me with providing government contracting services. I asked someone to do data entry work with-out knowing they were a minor, however I never employed them, asked them to provide assistance with government contracting services or they never even touched my government computer. (Answer.)

In his testimony concerning SOR ¶ 1.g, Applicant admitted that in July 2017, he asked a juvenile if she would like to assist him with data entry work for his employer, a government contractor. He described the juvenile as his employee and not an employee

of the company. He stated he asked her in front of a lot of people. He admitted the juvenile's mother was upset because her child was a minor and he had not asked her for permission. In his 2019 and 2022 SCAs he stated he left the company in September 2018 to "better myself." In his response to the Government's interrogatories in 2023, he stated he left the company in 2018 due to a motorcycle accident in El Salvador and he could not return within the prescribed period set by the company. (GE 1, GE 2, GE 3 at 7, 39, Tr. 77, 143, 147, 149.)

Applicant denied SOR ¶ 1.o, stating he never threatened to kill a co-worker. The police incident report describes Applicant and a co-worker getting in a heated exchange. Applicant stated the co-worker then assaulted him, with punches to the face. His co-worker told the police Applicant got into his face and screamed that he was going to kill him. The co-worker admitted he punched Applicant a couple of times but stated he did so to get Applicant away from him and that Applicant had not struck him back. A witness confirmed Applicant's version of events, and the co-worker was charged with assault and battery. SOR. ¶ 1.o is rebutted. (HE I-GE 4 67-70.)

Applicant denied SOR ¶ 1.p, which alleged that in November 2014, he helped another person steal heat pumps and compressors and sell them as scrap. Applicant's vehicle was identified by the police as being in the vicinity of a scrap yard where the thefts occurred. The passenger in Applicant's vehicle was consistent with the white male passenger in the surveillance videos and that the height difference between the two subjects was consistent with the height difference between Applicant and the primary suspect, the passenger. The police did not have enough evidence to issue a warrant for the "driver." The passenger in Applicant's vehicle was arrested in May 2015. Applicant testified he let someone use his car for a moving job. He denied knowing the person charged. When the police sought to interview him, his attorney declined the interview on his behalf. SOR ¶ 1.p is not substantiated. (HE I-GE 4 71-93 Tr. 89-90.)

Guideline E (falsification allegations)

Applicant denied he falsified material facts regarding his financial record or civil court actions, SOR ¶¶ 1.jj through 1.zz. He completed SCAs in 2019 and 2022 and was interviewed in 2019 as part of his 2019 SCA. He completed Government interrogatories in 2023. (GE 1, GE 2, GE 3, HE I.) In his Answer he denied he intentionally falsified his answers to the questions on an SCA or in an interview stating, "I deny [falsifying] material facts and I miss-interpreted the question. I inadvertently miss-interpreted this question..." with additional explanation for each question.

Applicant testified to each allegation that the SCA was "very convoluted," and he became confused by the SCA and did not include the necessary information. He justified his omissions based on his belief the matters had been dismissed or expunged. Expungement in State Z is a formal process governed by statute. He cited that his arrests had been *nolle prosequi*, which means the charge is otherwise dismissed, but the statute provides he must file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge. No

expungement documents were provided. Applicant was generally nonresponsive and evasive in responding to Government questions about these matters. (Tr. 23, 98-99, 100-104, 105; AN II.)

Applicant stated he had filled out SCAs in 2019, 2022, 2023, and 2024. In the 2019 personal security interview, the investigator discussed his debts with him at length. The investigator indicated Applicant's 2016 arrest for DUI (SOR ¶ 1.m) should be included, which Applicant acknowledged under questioning by the Government. He denied saying in the personal security interview that the reason he gave for omitting his 2016 DUI was misreading the question, and testified the reason for omitting it was because it had been expunged. In his Answer he stated he "overlooked it" on his 2022 SCA. (GE 1; GE 2; GE 3; Tr. 100-104, 105, 107-108.)

I may have misinterpreted the question, but the correct answer is this. So at that point in time, the secret clearance was approved. And then the same instance happened [on] August 13th, 2019, e-QIP form that I completed. That was working for the same company, and this time was for an interim secret. An investigator contacted me to clarify any e-QIP questions, confusions on the completed form. I met with the investigator in person, answered all questions and concerns with evidence, and my interim secret was approved as early as 2019. Both times, I made myself available, and I met with the investigator, answer -- and clarified all the confusion with evidence, and clearance was approved and granted. I have always, Your Honor, [Department Counsel], made myself available to answer any questions, clarify any confusions or concerns on the e-QIP form. The e-QIP form is a very complicated form. I am not an attorney. (Tr. 9-10.)

Applicant's testimony regarding the alleged falsifications on his SCAs can be summarized as, he was confused by the form and did not put the information in there because it was a very convoluted form. (Tr. 105.)

Later in the hearing Applicant explained his negative answers to SCA questions dealing with court proceedings and other law enforcement encounters. He explained:

Okay. The reason for that, sir, is every time I've been convicted of a crime, which is a DWI, a custody visit, a violation, or everything like that, I have always gone to court. And if it's a criminal case, drunk in public, driving while drunk, I have always, number one, gotten an attorney and had the case dismissed. Secondly, I go through a state process and get those records expunged. The reason I said no, I wouldn't expect that to have appeared here. You're having appear here stuff from 2015, 2002. And it's just amazing to me that you'll be looking back that far. I came into this country when I was 10 years old, and I -- I'm an American. I'm an American U.S. Citizen, and I've been working for this country throughout the time. I know, and I realize that I'm not a perfect human, but I am a person that can be an asset to you and to the judge in providing good services to the government community.

(Tr. 97.)

Applicant in his 2019 personal security interview stated he missed the “ever” and as a result misunderstood the question pertaining to being charged with an alcohol-related offense. He also cited misreading the question pertaining to his arrests. As a result of the omissions, the investigator asked him about a number of other undisclosed incidents. (GE 3 11-12.)

Applicant also admitted he answered Government interrogatories wrong, SOR ¶¶ 1.jj and 1.kk. In his Answer he stated to both allegations that he did not intend to “falsify material facts.” Both questions on the interrogatories dealt with alcohol consumption. His answer to both questions were based on him interpreting the questions to mean when he was last intoxicated, which he defined as that he did not know what was going on. At the hearing he stated his negative response to the question “the date of the last time you consumed an alcoholic beverage” was based on his interpretation that “because of all my alcoholic beverages charges had been dismissed, I felt that I hadn’t consumed anything.” He believes being drunk and being intoxicated are two different things. “Being drunk, you know what you’re doing. Intoxicated, you can’t even get up.” He acknowledged being drunk but denied driving drunk. (Tr. 93-96; GE 3; HE I.)

Guideline J

Applicant’s criminal personal conduct was alleged under Guideline E and cross alleged under Guideline J (SOR ¶ 2.a). SOR ¶ 2.a alleged: That information set forth in subparagraphs 1.a-1.d, 1.h, 1.i, 1.k-1.n, 1.q, 1.r, and 1.ii

Applicant admitted the allegation and stated in his Answer:

I admit. I realize I am not perfect. However, I am a seasoned professional who works very hard to provide an honest living for my family. Please consider my efforts in obtaining a bachelor’s degree and an advanced education by obtaining a master’s degree in business management accounting. I have over 20 years of professional experience providing financial analyst services to DoD agencies, and I only seek to become a better professional every day. In reference to criminal activity all cases related to alcohol related charges have been dismissed. In reference to my traffic tickets, they have been because I have bought old cars that may have prior issues, and I have been granted the tickets. Other instances have been items that I inadvertently overlooked, and I have been cited or issued a traffic ticket. My intention is to always comply and follow the law and I have been a law obeying citizen since the time I was born.

Applicant testified he had been arrested within the “past year for four or five times.” (Tr. 117.) Earlier in the hearing he denied ever being charged with a crime or receiving a traffic ticket since 2021. (Tr. 45.) The most recent criminal conduct alleged in the SOR occurred in 2021. I have considered these new arrests and admissions as whole-person

evidence. Applicant's explanation was that he was being harassed by the police. He argued his drunkenness occurred on private property and that he should not have been arrested for being drunk in public. His mother called the police multiple times due to his drunkenness and he was removed from her home, but the incidents ended in the case being *nolle prosequi*. (Tr. 50-51, 53-55.)

Guideline G

Some of Applicant's criminal conduct was alleged under Guideline E and cross-alleged under Guideline G (SOR ¶ 3.a). SOR ¶ 3.a alleged: That information as set forth in subparagraphs 1.a-1.c, 1.m, 1.q, and 1.ii.

Applicant admitted the allegation and stated in his Answer:

I admit that there seems alcohol consumption based on the charges. All alcohol related arrest and charges have been dismissed. My intention is to always comply with and follow applicable laws and regulations. I am reliable because I have worked for over 20 years in DoD and the government contracting industry. I am [trustworthy] because through-out my career I been assigned to manage projects with higher and higher responsibility that require a greater level of trust worthiness. I have spent significant amount of time working for [Federal contractors]. I have also set specifically working at client cite for the [military services] and thus I feel that through my many continuous years of veteran services to the DoD should be consider in granting me the security clearance.

Applicant admitted he had numerous alcohol-related incidents away from work involving DUI, fighting, disturbing the peace, and domestic arguments. He has never had alcohol counseling. He stated that after the various incidents he never had to attend any classes to have the matters *nolle prosequi*. He acknowledged calling the police when he was feeling stressed and the police would take him in and, "they gave me an hour of therapy, and then I'm out." He described how his mother had to call the police because of his drinking. (GE 11; HE I; Tr. 53, 67-68, 90-91,113-118, 128.)

Whole Person

Applicant was evasive during his testimony. While admitting most of the allegations he did not accept accountability for his actions and argued extenuating circumstances for each SOR allegation he was questioned about during the hearing citing: weather (Tr. 12, 75, 84-85), another person's attitude (Tr. 75, 145), police harassment (Tr. 75, 116-119), emergency (Tr. 81), confusing form (Tr. 100, 103, 105), or his interpretation of expungement and *nolle prosequi* (Tr. 23, 56-57, 98, 102, 103). He also testified to being arrested four to five times in the past year, which was not alleged in the SOR. (Tr. 117.)

Applicant noted his 20 years of work with the Department of Defense. He stated he had not had any ethical issues or any other types of violations of the laws of where his

work as a professional had been affected. He asserted he is an “educated person with ethics and who earns an honest living by providing an honest living to [his] family.” (Tr. 11.) He offered his academic achievements and five job offer letters, which were contingent on him obtaining a security clearance. (AE A, AE B, AE C.)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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.

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.”

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

Analysis

Guideline E, Personal Conduct

The 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 conditions are 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 individual may not properly safeguard classified or sensitive information;

(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:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information,

- unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
 - (3) a pattern of dishonesty or rule violations; and
 - (4) evidence of significant misuse of Government or other employer's time or resources; and
- (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:
- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;
 - (2) while in another country, engaging in any activity that is illegal in that country;
 - (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

Applicant admitted the non-falsification personal conduct alleged in SOR ¶¶ 1.a-1.f, 1.h-1.n, and 1.q-1.ii, which is supported by documentary evidence. AG ¶¶ 16(c), 16(d), and 16(e) are applicable to these allegations. AG ¶ 16(d) are applicable based Applicant's testimony concerning SOR ¶ 1.g.

Applicant acknowledged the omissions on his SCAs and interrogatories but denied he deliberately failed to disclose the required information on his SCAs and interrogatories. Applicant's testimony regarding the falsifications was not credible, and the record supports that he deliberately failed to disclose or concealed his arrests and financial delinquencies as alleged in SOR ¶¶ 1.jj through 1.zz. AG ¶ 16(a) is applicable to SOR ¶¶ 1.jj through 1.zz.

The following mitigating conditions under AG ¶ 17 are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual

cooperated fully and truthfully;

(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; and

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

AG ¶ 17(a) is not established for SOR ¶¶ 1.jj through 1.rr, which involve Applicant's 2022 SCA and his responses to the 2023 Government interrogatories. He was interviewed in 2019 and acknowledged in his testimony he was aware of his omissions after this 2019 interview. Applicant is a well-educated person. His excuses or explanations for his omissions concerning his 2022 SCA or his responses to the 2023 Government interrogatories are not credible. In 2022 and 2023 he deliberately failed to disclose the information described in SOR ¶¶ 1.jj through 1.rr. The evidence does support a good-faith effort to correct any omission or falsification. SOR ¶¶ 1.ss through 1.zz, his 2019 SCA omissions, are mitigated based on his disclosures during his 2019 personal security interview.

AG ¶ 17(c) is not established for SOR ¶¶ 1.a-1.f, 1.h-1.n, and 1.q-1.ii. While some of Applicant's offenses are minor there is a pattern of behavior resulting in him being arrested or charged with "offenses" almost every year since 2001. There is a gap between July 2017 and February 2021 where no incidents are alleged. However, Applicant disclosed being arrested four or five times in the past year. The most recent SOR allegation is September 2021. None of the circumstances are unique and his explanations for his arrest history are not credible. His decision to use a minor to perform work for his employer casts doubt on his reliability, trustworthiness, and good judgment.

Applicant focused on the fact he is an educated person and stated he had ethics and was making an honest living by providing for his family. He has not shown that he has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress based on his personal conduct. Applicant's testimony and the length of time since the last incident are insufficient to establish AG ¶ 17(c) or 17(e).

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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

The following disqualifying conditions under AG ¶ 31 are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be

unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Based on Applicant's admissions and the evidence in the record, the above disqualifying conditions apply.

The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

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

AG ¶¶ 32(a) and (d) do not apply. Applicant's criminal conduct is serious and voluminous. His criminal conduct is part of a pattern from 2001 to June 2021. He has not demonstrated rehabilitative potential and the frequency of his interaction with law enforcement has not deterred him from further criminal acts. Any recent rehabilitative steps are insufficient given the record evidence. He has provided insufficient evidence to find that his criminal conduct is unlikely to recur, and his conduct casts doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations.

Guideline G, Alcohol Consumption

The security concern under this guideline is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant's admissions and the documentary evidence establish two disqualifying conditions:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the

peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The following mitigating conditions are potentially relevant:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

AG ¶ 23 (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant testified he never had to complete a treatment program along with any required aftercare or attend any classes after his alcohol-related arrests. He has not demonstrated a clear and established pattern of modified consumption or abstinence.

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

Applicant's admissions, testimony, and the evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a): inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

Applicant accrued the debt in question after periods of unemployment and underemployment. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(a), 20(b) and 20(d) do not apply. Applicant's financial delinquency is ongoing and unresolved. While he has experienced periods of unemployment in his field, he still has taken numerous international trips while the debts in question remain delinquent. Applicant's Answer reflects he intends to let his debts age and fall off his credit report. Considering his financial background and education, his inaction since 2018 and lack of knowledge regarding his student loans cast doubt on his current reliability, trustworthiness, and good judgment. To receive credit under AG ¶ 20(d), an applicant must initiate and adhere "to a goodfaith effort to repay overdue creditors or otherwise resolve debts." He provided no documentation of any actions to resolve these debts. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). Applicant did not establish that he incurred these debts under circumstances unlikely to recur, that he acted responsibly under the circumstances, or that he has made a good-faith effort to pay or resolve his debts.

Guideline B, Foreign Influence

The SOR alleges that Applicant's girlfriend (now wife), five children (now six), and his grandmother are citizens and residents of El Salvador (SOR ¶¶ 5.a-5.c).

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317 (App. Bd. Mar. 29, 2002).

The following disqualifying condition under this guideline is potentially applicable:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant admits his wife, children, and grandmother all reside in El Salvador. He travels frequently to be with his wife and children. There is a rebuttable presumption that a person has ties of affection for, or obligation to, immediate family members. See ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). The potential for terrorist and other violence against U.S. interests and citizens remains high in El Salvador, and it continues to have human rights problems. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure,

and coercion. When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. See ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). The above disqualifying condition has been established.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

I considered the totality of Applicant's ties to El Salvador and the frequency of his travel to El Salvador. Although Applicant is a U.S. citizen and has worked for the defense industry, and has previously held a security clearance, I find that his ties to El Salvador outweigh his connection to the United States. Given the majority of immediate family members in El Salvador and the frequency of his travel to El Salvador to be with his family, these things create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, which raises a concern as to whether he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a), 8(b), and 8(c) are not applicable.

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 factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E, Guideline J, Guideline G, Guideline F, and Guideline B in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate personal conduct, criminal conduct, alcohol consumption , foreign influence and financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a.-1.n, 1.q.-1.rr:	Against Applicant
Subparagraphs 1.ss-1.zz:	For Applicant
Subparagraphs 1.o and 1.p:	For Applicant
Paragraph 2: Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3: Guideline G:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4: Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a-4.i:	Against Applicant
Paragraph 5: Guideline B:	AGAINST APPLICANT
Subparagraphs 5.a-5.c:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge