



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



In the matter of:

)
)
)
)
)

ISCR Case No. 24-00844

Applicant for Security Clearance

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

09/05/2025

Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guidelines J (criminal conduct) and E (personal conduct) are mitigated; however, security concerns under Guideline I (psychological conditions) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 20, 2015, and March 31, 2022, Applicant completed and signed Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance applications (SCAs). (Government Exhibit (GE) 1; GE 2) On August 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines E, I, and J. (HE 2) On August 28, 2024, Applicant provided a response to the SOR and requested a hearing. (HE 3) On December 26, 2024, Department Counsel was ready to proceed.

On May 27, 2025, the case was assigned to me. On June 4, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for July 3, 2025. (HE 1) The hearing was held as scheduled.

Department Counsel offered nine exhibits into evidence and requested administrative notice of pages 87-122 from the *Diagnostic and Statistical Manual of Mental Disorders* (Fifth Edition) (*DSM-5*); Applicant did not offer any exhibits into evidence; there were no objections; and I admitted the proffered exhibits into evidence. (Transcript (Tr.) 16-19; GE 1-GE 9; HE 4) I also took administrative notice of pages 87-122 of *DSM-5*. (HE 4) On July 14, 2025, DOHA received a transcript of the hearing. No post-hearing documents were received.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 2.a, 3.c, and 3.e. (HE 3) He denied the SOR allegations in ¶¶ 1.a, 1.b, 1.c, 3.a, 3.b, and 3.d. He also provided clarifying, and mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 47-year-old access control and patrol armed security officer. (Tr. 7, 9) In 1995, he graduated from high school. (Tr. 7) He has about 35 college credits. (Tr. 7) He has not served in the military. (Tr. 7) He has never married. (Tr. 7) His two sons are ages 10 and 26. (Tr. 8) He has worked for his current employer for about 42 months. (Tr. 9) Applicant said the absence of a security clearance has delayed his employer's promotion of him at work. (Tr. 49) He has 20 years of experience in security. (Tr. 9)

Psychological Conditions

SOR ¶ 1.a alleges around "June 2020, [Applicant's] family member filed a petition for an emergency mental health evaluation due to [his] behavior that included delusions, false beliefs, aggressive talking, mood swings, unwarranted suspicion, irrational thoughts, and [his] belief that [he] had special powers." Applicant's mother filed the petition for an emergency mental health evaluation. (Tr. 24; GE 4)

Paragraph 9 of Applicant's mother's petition for an emergency mental health evaluation asserts Applicant has "delusions, false beliefs, aggressive talking, mood swings, unwarranted suspicion, says he has special powers, irrational thoughts." (Tr. 24; GE 4) Applicant disagreed with his mother's description of his beliefs. (Tr. 25) In July of

2020, he was hospitalized for mental-health treatment for depression for seven days. (Tr. 29; GE 5 at 1) Applicant said in June of 2020 he was in a “very, very sad state of mind” because he was unable to see his son. (Tr. 30)

SOR ¶ 1.b alleges around August 2021, Applicant was involuntarily hospitalized for mental-health treatment. He was “reported to be delusional, paranoid and responding to internal stimuli. [He] threw away [his] belongings and gave away [his] automobile to a stranger. [He was] diagnosed with Schizophrenia. [He] refused medications.” His mother filed the 2021 petition for an emergency evaluation alleging the facts in SOR ¶ 1.b. (Tr. 25-26; GE 4 at 5-7 and ¶ 9)

Applicant said he received about \$1,200 from his mother to help him purchase a car. (Tr. 26) He went to a gas station, and he was witnessing to people, that is, sharing the word of God with them. (Tr. 27-28) He said he left the car key on the seat of the car, and the car was stolen. (Tr. 28) An August 18, 2021, mental-health note indicates Applicant “admitted to giving [his] car to a stranger because [he] wanted to help because the individual needed a ride.” (Tr. 32) He told a woman at a bus stop that if it was beneficial to her and some others at the bus stop, they could have the car. (Tr. 32) He said:

It doesn’t mean I gave the car away. It’s just at the time I looked at it from a different perspective. Instead of looking at it as, something that was taken from me, I looked at it that maybe, you know, God saw fit that it would be beneficial to them, but I knew at some point that I would see it again, like my father told me. (Tr. 32-33)

Applicant’s mother was upset about the loss of the vehicle. (Tr. 26-27) Applicant was upset about a custody dispute concerning his son; he said he turned his life to Christ; and he considered matters such as a vehicle to be superficial. (Tr. 27) At that time, he was unemployed, drinking alcohol, and smoking marijuana. (Tr. 27)

Applicant’s next-door neighbor had young children, and Applicant believed his laptop computer would be beneficial to the children. (Tr. 27) Also, he wanted to cut the neighbor’s grass. (Tr. 27) He put his television, a laptop computer, and a mattress on his front porch and invited his neighbor, who was a minister and mentor to Applicant, to take the items on his porch. (Tr. 31) He did some sinful things on the mattress, and he did not want his son to sleep on it. (Tr. 31-32)

In August 2021, Applicant was involuntarily admitted for inpatient mental-health treatment for about nine days. (Tr. 28) An August 18, 2021 medical note states:

[Applicant] was brought in by court order petition by mom due to [his] manic and bizarre behavior. [He] is extremely delusional, paranoid and loud in the ER. [He] bursts out crying because what the police and ER doctors and nurses [are] doing to him is demonic. [He] said the whole world is demonic. [Patient] per court order has a [history] of bipolar and depression. . . . [He] said by the way he is “allergic to sinners and uncompassionate people like us.” [He] is noncompliant with [medications]. [He] said he takes no

[medications] because the [B]ible and herbs [are] all we need. [He] rambles on and said Dr. Fauci done mess up the whole world with this vaccination, and [patient] needs to save people. [He] is confuse[d], his speech is disorganized and nonsensical. [He] denies any other medical condition, screams at this assessor that he is fine and looks fine. . . . [He] says he is eating and sleeping and he does not take drugs. The petition says he is not eating and that he is on drugs. . . . (GE 5 at 2)

Applicant said that he projects or speaks his thoughts or talks to himself. (Tr. 29) He denied that he refused to take prescribed medications. (Tr. 31) His diagnosis on discharge from his inpatient mental-health treatment was schizophrenia, and he was prescribed “benztropine, olanzapine, and risperidone.” (Tr. 33; GE 5 at 3) He refused to take the medications and stated, “man does not have a solution for godly problems, only God does.” (Tr. 33-34)

In his March 31, 2022 SCA, Applicant disclosed his inpatient treatment in August 2021, and he said, “My mother assumed something was wrong with me. When I decided to give my t.v. and laptop and mattress away as I didn’t want anything from past negative behavior around me or my son. . . . **The doctor’s ruled there was nothing wrong with me [and] gave me a clean bill of health.**” (GE 1 at 26 (emphasis added)) In response to the question, “Have you EVER been diagnosed by a physician or other health professional (for example, a psychiatrist, psychologist, licensed clinical social worker, or nurse practitioner) with . . . schizophrenia . . . or bipolar . . . ?” he answered, “No.” (GE 1 at 27)

SOR ¶ 1.c alleges around February 2024, Dr. G, a licensed psychologist, evaluated Applicant. The psychologist based his opinion “on background information, clinical interview and observations, and [an] objective personality assessment.” Dr. G’s report said:

CONCLUSIONS AND DIAGNOSTIC IMPRESSION: Results of the clinical interview and psychological assessment reflect concerns related to [Applicant’s] insight and awareness regarding his mental health history and occupational problems. [He] stated that he had no issues with his employment prior to the termination [in 2020]. However, when we reviewed his entire occupational history, to include the reasons for leaving each position, it is evident he has a longstanding pattern of performance and interpersonal problems leading to challenges maintaining employment. Additionally, he was not open or insightful regarding his mental health symptoms, diagnoses or treatment history. He is not endorsing current symptoms; however, he is also not considered a reliable or insightful informant. His hospital admission records reported a prior diagnosis of Bipolar Disorder and medication non-adherence. His mother was so concerned for his safety and behavior on two occurrences, she had an emergency order of protection to have him involuntarily hospitalized. . . . His behavior at the time of his second admission was concerning due to “erratic, irrational and agitated” behavior which he blames on the medications

administered to him by the hospital. The second hospitalization in August 2021 listed "Schizophrenia; with severe symptoms" as his discharge diagnosis. He does not agree he has Bipolar Disorder or Schizophrenia, and has never been compliant with medication/psychiatric recommendations. During the interview, he was also observed to be talking to himself during both breaks taken during the evaluation, which could either be due to anxiety or more concerningly, possibly responding to internal stimuli.

While it is positive that [Applicant] has not been re-hospitalized since 2021, there is not enough data to substantiate that his functioning is stable, outside of his mother's report. It is also favorable that his supervisor of one year provided a favorable opinion; however, it is unclear how closely this individual works with [Applicant] on a daily basis. Due to various concerns related to his lack of insight, lack of willingness to recognize mental health symptoms and participate in mental health treatment should he need it, history of poor judgement and reliability, and his challenging occupational history (with lack of insight regarding the circumstances leading to his recurrent terminations), he has more risk factors than protective factors which were identified.

SUMMARY AND PROGNOSIS: Results of this assessment suggest concern for a psychiatric disorder. Applicant's prior diagnosis from 2021 . . . stated Schizophrenia as his diagnosis, and prescribed two antipsychotic medications, with which he has never been adherent. He noted, "man does not have a solution to Godly problems." This is concerning from a judgment, safety and reliability perspective. As such, it is the undersigned evaluator's opinion that [his] judgement, reliability, and trustworthiness are not reasonably intact. In sum, there is an indication that his current psychological condition impairs his judgment, reliability, trustworthiness, or his ability to safeguard classified or sensitive information. (GE 6 at 6-7)

As indicated previously, Applicant told Dr. G about preaching to homeless people and about the female taking his car. (Tr. 35-36) He believed the court decision to permit him to have unsupervised custody of his son was an indication that there was no safety risk to his son. (Tr. 36) Moreover, there were no safety or security-related incidents during his employment for 20 years. (Tr. 37) He has not received any mental-health treatment since Dr. G's evaluation. (Tr. 37) He is not taking any prescribed mental-health medications. (Tr. 37)

Criminal Conduct

SOR ¶ 1.b alleges around "July 2020, a petition for a peace order was filed against [Applicant] for entering a neighbor's property, breaking a yard statue, and front door, and pushing over a motorcycle located on the property. This petition was dismissed due to lack of service." Applicant admitted that he received this peace order. (Tr. 37-38)

Applicant smoked marijuana “pretty regularly” for about three months before the July 2020 incident. (Tr. 46-47) He most recently used marijuana in August 2020. (Tr. 47)

Applicant said he was “in a very sad state of mind” because he was unable to see his son during the COVID 19 pandemic, and he decided to be productive and mow his neighbor’s yards with his lawn mower. (Tr. 38) He knocked over a yard statute and motorcycle with his mower because the area was compact, and it was difficult to turn the push mower. (Tr. 39-42) He went to the front storm door and knocked because he wanted to disclose what he had accidentally done. (Tr. 39, 41) The storm was cracked, and his knocking damaged it further. (Tr. 41) No one answered the door. (Tr. 39) He said his intentions were “pure.” (Tr. 39) He was willing to pay compensation for the damage. (Tr. 40) He did not personally know the neighbor. (Tr. 40) However, they had been neighbors for about a year. (Tr. 41)

According to his neighbor’s petition, Applicant entered and broke the yard statue, and then about “three and a half hours later [he] returned and hit the front door with an enormous cement tile and broke both the door and the windows on the door.” (Tr. 43; GE 7) Applicant said he went home, drank some alcohol, and smoked marijuana. (Tr. 43-45) He said he was upset and threw a rock at the door. (Tr. 43) He disagreed with the statement that said he came back to the neighbor’s residence the next morning and pushed over the motorcycle. (Tr. 43) Applicant said he threw the rock at the door because the neighbor was sitting on the porch earlier in the day and had “a bad look on his face.” (Tr. 44) He was frustrated because the neighbor did not answer the door when he knocked. (Tr. 44)

Personal Conduct

SOR ¶ 3.a alleges around January 2020, Applicant’s employer terminated his employment. In his March 31, 2022 SCA, Applicant disclosed that his employer laid him off and put him on leave without pay. (Tr. 52; GE 1 at 12) In his SOR response, he denied that he was terminated from this employment; however, he said he was “wrongfully discharged . . . due to falsified statements given by a senior employee.” (Tr. 53) He said he was moved to a different work location; however, he was never terminated. (Tr. 53) He talked to another employee about biblical matters, and she was uncomfortable with his comments. (Tr. 55)

SOR ¶ 3.b alleges around March 2017, Applicant’s employer terminated his employment because of multiple instances of aggressive and intimidating comments and gestures to government employees and others. He was not recommended for rehire. In his March 31, 2022 SCA, Applicant disclosed his employer terminated him for “unspecified reasons.” (GE 1 at 15) In his SOR response, he denied SOR ¶ 3.b; however, he explained his termination was the result of falsified statements by a former coworker and friend. (Tr. 57) He received a letter, which stated he violated “standards of conduct as a result of threatening, intimidating, coercing, using abusive or vulgar language, or interfering with the performance of other employees.” (Tr. 58-59; AE 8)

SOR ¶ 3.c alleges around July 2012, Applicant's employer terminated his employment for tardiness. Applicant admitted that he was terminated by this employer for two incidents of tardiness. (Tr. 60-61)

SOR ¶ 3.d alleges around July 2009, Applicant's employer terminated his employment for use of a telephone on duty. In Applicant's February 2015 SCA, and during his follow-up Office of Personnel Management (OPM) interview, he said he was fired for use of a government phone for a personal call. (Tr. 61-62; GE 2; GE 3 at 5) Applicant objected to his employer's failure to provide evidence that he used a government telephone for a personal call and because a supervisor threatened him. (Tr. 62-63) He suggested he was terminated possibly due to "a vendetta about that or what, because I had actually beat a previous accusation to where, ironically, like, I was threatened on camera by a supervisor who was armed at the time to where I was terminated and the company brought me back."

SOR ¶ 3.e cross alleges the same information in SOR ¶ 2.a, *supra*.

Applicant's March 31, 2022 SCA asks "In the last seven (7) years, have you illegally used any drugs or controlled substances?" and he answered, "No" even though he used marijuana two years before he completed this SCA. (Tr. 51) He explained he may have been rushing to complete his SCA. (Tr. 51) He denied that he used marijuana after August 2020. (Tr. 52) Department Counsel moved to amend the SOR to add an allegation of false statement on this SCA; Applicant objected; and I denied the motion. (Tr. 68-69) His inaccurate statement in his SCA about his history of illegal drug use will be considered in the credibility assessment and under the whole-person concept. (Tr. 69)

Character Evidence

Applicant said he is very serious about his employment and duties. (Tr. 65) His most recent incident was in 2021. (Tr. 65) He said he has not had any incidents at his current employment, and he received excellent performance evaluations. (Tr. 65) He disagreed with the diagnosis of schizophrenia because it should have been apparent when he was a child. (Tr. 65-66)

Dr. G interviewed Applicant's supervisor. At the time of the interview, his supervisor advised Dr. G that he had known Applicant for about one year. Dr. G said Applicant's supervisor described Applicant as follows:

[Applicant] is "outstanding and trained new officers on how to run the post." He identified him as being "stable and willing to help others." He denied any issues or concerns related to his interpersonal functioning or performance. He reported that he has demonstrated reliability and good judgement in the past year. His supervisor had no other concerns. (GE 6 at 3)

Policies

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

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, this decision should not be construed to suggest that it is based on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

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

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it

is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Psychological Conditions

AG ¶ 27 articulates the security concern for psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

AG ¶ 28 provides psychological conditions that could raise a security concern and may be disqualifying in this case:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;
- (c) voluntary or involuntary inpatient hospitalization; and
- (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

The record establishes AG ¶¶ 28(a), 28(b), 28(c), and 28(d). Further details will be discussed in the mitigation analysis, *infra*.

AG ¶ 29 lists psychological conditions mitigating conditions which are potentially applicable:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

In June 2020 and August 2021, Applicant was an inpatient for mental-health treatment. He was reported to be delusional, paranoid and responding to internal stimuli. He engaged in bizarre behaviors such as giving his vehicle to a stranger and his laptop computer and television to a neighbor. He damaged a statue in a neighbor's yard, and he threw a rock against his neighbor's door because the neighbor had a bad look on his face. He behaved in a bizarre manner at the emergency room in August 2021. He screamed at the medical assessor and expressed concerns about demons. He was noncompliant with medical recommendations that he take prescribed medications. Dr. G indicated Applicant's "judgement, reliability, and trustworthiness are not reasonably intact. In sum, there is an indication that his current psychological condition impairs his judgment, reliability, trustworthiness, or his ability to safeguard classified or sensitive information." (GE 6 at 7) These facts are sufficient to establish AG ¶¶ 28(a), 28(b), 28(c), and 28(d).

None of the mitigating conditions apply. Applicant is unlikely to voluntarily seek mental-health treatment and to comply with treatment recommendations. Dr. G said:

Due to various concerns related to his lack of insight, lack of willingness to recognize mental health symptoms and participate in mental health treatment should he need it, history of poor judgement and reliability, and his challenging occupational history (with lack of insight regarding the circumstances leading to his recurrent terminations), he has more risk factors than protective factors which were identified. (GE 6 at 7)

Applicant did not provide accurate information in his March 31, 2022 SCA. As to his August 2021, inpatient mental-health treatment, he said, "The doctor's ruled there was nothing wrong with me [and] gave me a clean bill of health." The doctor diagnosed him with schizophrenia and prescribed medications for him. He also falsely denied that he used marijuana in the previous seven years. These issues were not alleged in the SOR. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These non-SOR allegations (false information on his SCA) will be considered in the credibility assessment and under the whole-person concept. They will not be considered for disqualification purposes.

Applicant is not currently receiving mental-health treatment. There is no favorable prognosis. There is no statement from a mental-health professional indicating an absence of a current problem or that his mental-health issues are in remission. Applicant has not accepted that he has a mental-health issue. Based on all the facts and circumstances, especially Dr. G's report, the mental-health treatment records, and his behavior with his neighbor, the mental, psychological conditions security concerns are not mitigated.

Criminal Conduct

AG ¶ 30 describes the security concern about 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."

AG ¶ 31 describes one criminal conduct condition that could raise a security concern and may be disqualifying in this case:

- (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.

The record evidence establishes AG ¶ 31(b). Further details will be discussed in the mitigation analysis, *infra*.

AG ¶ 32 lists conditions that could mitigate criminal conduct security concerns:

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

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

In about July 2020, Applicant entered a neighbor's yard and damaged a statue. He believed the neighbor looked at him in a bad or unfriendly way, and he threw a rock through the screen and window of the neighbor's front door. The next morning, he pushed over the neighbor's motorcycle. This criminal conduct is not recent; it has not recurred; and it is unlikely to recur. The criminal behavior is relevant under the psychological conditions guideline, and it provides part of the basis to establish AG ¶ 28(a). AG ¶ 32(a) applies, and personal conduct security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 lists personal conduct one disqualifying condition that is potentially relevant in this case as follows:

(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.

The record establishes AG ¶ 16(d). Further details will be discussed in the mitigation analysis, *infra*.

AG ¶ 17 lists personal conduct mitigating conditions which 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;
- (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;

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

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

Applicant was terminated from four employments because of his behavior or decisions. Three of the terminations were for minor reasons; the specific reasons did not recur; and the terminations are not recent. He reported that he was terminated for making biblical references to a coworker in 2020 (SOR ¶ 3.a), two incidents of tardiness in 2012 (SOR ¶ 3.c), and use of a government telephone for a personal call in 2009 (SOR ¶ 3.d). AG ¶ 17(c) applies to these three terminations, and SOR ¶¶ 3.a, 3.c, and 3.d are mitigated.

SOR ¶ 3.b alleges around March 2017, Applicant's employer terminated his employment because of multiple instances of aggressive and intimidating comments and gestures to government employees and others. The aggressive, inappropriate comments and gestures in SOR ¶ 3.b are part of the basis for the psychological conditions security concern. Applicant's behavior resulted from his mental-health condition. SOR ¶ 3.e cross alleges the same criminal conduct information in SOR ¶ 2.a. The conduct in SOR ¶¶ 3.b and 3.e are relevant under the psychological conditions guideline, and they provide part of the basis for AG ¶ 28(a). As a duplication specifically addressed under Guidelines I and J, the personal conduct security concern is mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines E, I,

and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 47-year-old access control and patrol armed security officer. In 1995, he graduated from high school. He has about 35 college credits. He has worked for his current employer for about 42 months. He has 20 years of experience in security. He has never been accused of a security violation. His current supervisor described his work as outstanding.

The disqualifying and mitigating information is discussed in the psychological conditions, criminal conduct, and personal conduct analysis sections, *supra*. The reasons for denial of Applicant's access to classified information are more persuasive at this time.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated criminal conduct and personal conduct security concerns; however, psychological conditions security concerns are not mitigated.

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 I:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, and 1.c:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a through 3.e:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge