



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



In the matter of:)
)
 ---) ADP Case No. 17-03039
)
 Applicant for Public Trust Position)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

12/31/2018

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the trustworthiness concerns regarding criminal conduct and personal conduct. Eligibility to occupy a public trust position is granted.

Statement of the Case

On May 31, 2016, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to those interrogatories on January 29, 2018. On February 6, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); DOD Manual 5200.02, *Procedures for the DOD Personnel Security Program (PSP)* (April 5, 2017) (Manual); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who

require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged trustworthiness concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant received the SOR on February 17, 2018. In a sworn statement, dated March 1, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on April 5, 2018. The case was assigned to me on June 18, 2018. A Notice of Hearing was issued on June 29, 2018, scheduling the hearing for July 25, 2018. I convened the hearing as scheduled.

During the hearing, Government exhibits (GE) 1 through GE 7 and Applicant exhibit (AE) A were admitted into evidence without objection. Applicant and one witness testified. The transcript (Tr.) was received on August 6, 2018. The record closed on July 25, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, all of the factual allegations pertaining to criminal conduct in the SOR (SOR ¶¶ 1.a. through 1.d.). Applicant did not admit or deny the allegations pertaining to personal conduct (SOR ¶ 2.a.), so a denial was registered as to that allegation. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 49-year-old employee of a defense contractor. He has been serving as a solution-delivery designer with his current employer since April 2016. He completed his high school education through the General Educational Development (GED) Program in 1987. He also earned some college credits, but no degree. Applicant enlisted in the Army National Guard in February 1987, and he remained with the National Guard until he was transferred to the U.S. Army Reserve in October 1987. In August 1988, after receiving administrative disciplinary punishment by written counseling or under Article 15, Uniform Code of Military Justice (UCMJ) on three separate occasions for (1) "bouncing" several checks, (2) having long hair, and (3) being under the influence of alcohol, he was administratively discharged and issued an uncharacterized discharge while training. Applicant was granted a confidential clearance in 1988, and he held a secret clearance from 2007 until 2008. Applicant was married in 1993 and separated in 2011. He has been cohabiting since April 2013. He has two children, born in 1996 and 1999.

Criminal Conduct and Personal Conduct

Applicant's relationship with his wife has been rather toxic and volatile. He noted that his wife has mental-health issues, and that she has been hospitalized and institutionalized on several occasions. Because of a variety of issues created by his wife's erratic behavior, and her refusal to take her medication, Applicant and his wife have been involved in a series of incidents that have escalated to alleged mutual domestic violence, as well as police and court interventions:

(SOR ¶.1.a.): In September 2006, Applicant sustained a head injury because of a motorcycle accident, and the result was equilibrium problems and extreme dizziness that left him temporarily unable to stand up. On November 26, 2006, he and his wife were arguing about reasons he could not recall. Applicant's wife ordered him out of the house and started kicking and pushing him, and even attempted to push him down the stairs. He did not strike her, but he did grab her as he was falling. She eventually went outside to talk on the telephone, and when she did, Applicant locked the door behind her and called the sheriff. The sheriff interviewed both parties, and issued citations for harassment to both Applicant and his wife. Applicant was permitted to remain in the house with his son that night, while his wife was persuaded to leave with her father and brother.¹ The following day, she returned home while he was packing for a job interview in another state. Once again, an argument ensued, and again it involved her kicking and pushing Applicant. He did not strike her. When she went outside to talk on the telephone, Applicant again locked the door and called the sheriff. The sheriff remained in the residence to enable Applicant to complete his packing and leave. Neither party was arrested.²

As a result of the harassment citations, Applicant and his wife were offered accelerated rehabilitative disposition (ARD), a special pre-trial intervention program in the state for non-violent offenders with no prior or limited record. The primary purpose of the program is the rehabilitation of the offender and secondarily the prompt disposition of charges, eliminating the need for costly and time-consuming trials or other court proceedings. They both successfully completed the program on December 19, 2006.³

(SOR ¶.1.b.): On November 27, 2006, the date of the second incident, Applicant's wife filed an emergency protection from abuse order (PFA) - a civil order of the court available to victims of domestic violence, sexual assault and stalking, that prohibits the offender from abusing, stalking, harassing, threatening or attempting to use physical force that would reasonably cause bodily injury to the victim – following the advice of a woman's support group, claiming Applicant beat their children.⁴ Applicant offered two separate

¹ GE 2 (Personal Subject Interview, dated November 28, 2007), at 2; GE 2 (Personal Subject Interview, dated April 2, 2012), at 2-3; GE 3 (Non-Traffic Docket (Applicant), dated December 19, 2006); GE 4 (Non-Traffic Docket (Wife), dated December 19, 2006).

² GE 2 (2012), *supra* note 1, at 3; Tr. at 34-35.

³ GE 3, *supra* note 1; GE 4, *supra* note 1.

⁴ GE 2 (Personal Subject Interview, dated November 28, 2007), at 1; GE 2 (2012), *supra* note 1, at 3; GE 2 (Personal Subject Interview, dated May 18, 2017), at 7; Tr. at 38.

accounts regarding the PFA, initially claiming that he was unaware of it, but later acknowledging that it was served on him. He was told not to have contact with his wife. Several months later, during a period of reconciliation, Applicant and his wife were seen together, and someone not identified reported the PFA violation to the sheriff. On March 29, 2007, the sheriff came to the family residence and arrested Applicant for contempt for violating the PFA. Unable to obtain \$10,000 bail, Applicant remained in jail until April 5, 2007.⁵ Applicant's wife made several attempts to have the PFA rescinded, and on that date, the district attorney's motion to withdraw the violation was granted and the matter was dismissed.⁶

In April 2013, Applicant went to visit his sons for a week and work on the mediation papers for an amicable divorce. Somehow, Applicant's wife obtained control of his telephone and found text messages from his at that point, future cohabitant. She became enraged and they got into an argument. She tore up the divorce paperwork. She also attempted to remove the clothing he had in his vehicle and tried to take the vehicle. They struggled at the doorway to the vehicle. Applicant called the police who arrived and observed her screaming and yelling, and attempting to throw his belongings out of the vehicle. No one was arrested, and Applicant returned home without further incident.⁷

(SOR ¶.1.c.): On June 24, 2013, Applicant's wife filed a criminal complaint against him for grabbing her arm and pushing her. When the police arrived, they interviewed Applicant's wife and children. She claimed that Applicant grabbed her arm during a confrontation identical to the one that occurred in April 2013. The two sons – then approximately 17 and 14 years of age – denied that Applicant touched her. She then requested a person the police described as her “friend,” but actually her brother, to confirm that Applicant grabbed her arm while she was removing items from the vehicle that her brother had “doctored” so the engine would not start. A warrant of arrest was issued, and Applicant's wife obtained her own warrant. She also filed a request for an emergency protective order – family abuse (EPO).⁸ The following day, while attending a

⁵ GE 2 (2012), *supra* note 1, at 4; GE 6 (Miscellaneous Docket – Indirect Criminal Contempt), dated April 12, 2007).

⁶ GE 2 (2012), *supra* note 1, at 4; GE 6, *supra* note 4, at 2; GE 5 (Miscellaneous Docket – PFA Cost Collection, dated July 13, 2007).

⁷ GE 2 (2017), *supra* note 4, at 6; Tr. at 44.

⁸ AE A (Reporting Officer Narrative, dated June 24, 2013); AE A (Criminal Complaint, dated June 24, 2013); AE A (Warrant of Arrest – Misdemeanor, dated June 24, 2013); AE A (EPO, dated June 24, 2013); AE A (Summons, dated July 15, 2013); GE 7 (Federal Bureau of Investigation (FBI) Identification Record, dated June 23, 2016); Tr. at 46-47. Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (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. April 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)). Applicant's unalleged EPO will be considered only for the five purposes listed above.

custody hearing at the family courthouse, Applicant was arrested for assault and battery against a family or household member, a class 1 misdemeanor. After spending several hours in jail, he was released and allowed to return to his out-of-state home until the eventual hearing date.⁹ On September 26, 2013, after hearing the conflicting testimony from the police officers, Applicant's wife, and her brother, the charges were *nolle prossed*, and the EPO was dismissed, with the judge admonishing Applicant's wife for abusing the system.¹⁰ Applicant contends that his wife leverages the system, and that the charges and EPO were intended to prevent him from visiting his children and recovering his personal property.

Applicant's relationship with his cohabitant – now referred to as his fiancée - has also been at times somewhat volatile. She has had anger and psychiatric issues that required medication, and because of those issues, they have separated periodically. However, now that she is back on her medication, her issues have been successfully modified.¹¹

(SOR ¶.1.d.): Applicant and his fiancée reunited in February 2017, after a three-month separation, and they were still having difficulties over their relationship. On April 22, 2017, although Applicant tried holding her hand to stop her from doing more harm, she pushed and struck him, and slammed his wrist in the door. Applicant pushed her away. At one point during their disagreement, she went outside and threw a hatchet at the house, putting a hole in the house.¹² Applicant called the police. When the police arrived, Applicant's wrist was treated with an ice pack and wrap, and both Applicant and his fiancée were interviewed. Applicant's fiancée acknowledged having anger issues, leading to violent outbursts, and denied that Applicant struck her. Nevertheless, both Applicant and his fiancée were arrested and charged with domestic violence, 3rd degree.¹³ On October 2, 2017, the court found Applicant not guilty of the charge and dismissed the charge *nolle prossed*. All records pertaining to the charge were ordered expunged and destroyed.¹⁴

⁹ GE 2 (2017), *supra* note 4, at 6-7; AE A (Recognizance, dated June 25, 2013_.

¹⁰ GE 7, *supra* note 8, at 2; GE 2 (2017), *supra* note 4, at 7; Applicant's Answer to the SOR, dated March 1, 2018.

¹¹ Tr. at 29, 50-51.

¹² Tr. 51-53, 64-65.

¹³ GE 2 (Order for Destruction of Arrest Records, dated November 3, 2017); Applicant's Answer to the SOR, *supra* note 10. Domestic Violence, 3rd degree is the lowest of the degrees in the state. It is illegal to cause physical harm or injury to another "household member" as defined under the law, or to offer or attempt to cause physical harm or injury to a household member with apparent present ability to reasonably create imminent fear a misdemeanor and will receive of fine of between \$1,000 and \$2,000, jailed up to 90 days or both. Although the statute was previously modified to allow the officer freedom to decide if an arrest should in fact be made, most officers take the position that they must still make an arrest to remove one person from the dispute to prevent or minimize potential or further injury.

¹⁴ GE 2 (Order for Destruction of Arrest Records), *supra* note 13.

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 [position of public trust].”¹⁵ 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. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.¹⁶

Positions formerly designated as ADP I or ADP II are classified as noncritical-sensitive positions and include those personnel “[w]ith access to automated systems that contain military active duty, guard, or reservists’ personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by [the DOD Privacy Program] where such access has the potential to cause serious damage to the national security.”¹⁷

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”¹⁸ The Government initially has the burden of producing evidence to establish

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁶ It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, Adjudication of Trustworthiness Cases, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

¹⁷ Manual, ¶ 4.1a(3)(c).

¹⁸ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla

a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.¹⁹

A person who seeks access to sensitive 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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.²⁰ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline J, Criminal Conduct

The trustworthiness concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes two conditions under AG ¶ 31 that could raise trustworthiness concerns:

(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.

but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁰ *Egan*, 484 U.S. at 531.

There are allegations that Applicant was, on four occasions, between November 2006 and April 2017, cited or arrested and charged with a variety of crimes, all essentially associated with domestic violence. Applicant disputed the underlying bases of all of the incidents, and steadfastly denied that he was the aggressor during the three domestic violence incidents, or that he knowingly violated the alleged PFA and the unalleged EPO. Nevertheless, based on the actions described above, AG ¶¶ 31(a) and 31(b) have been established.

The guideline also includes examples of conditions under AG ¶ 32 that could mitigate security concerns arising from criminal conduct. They include:

(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

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

AG ¶ 32(a) applies, but AG ¶ 32(c) partially applies to all but SOR ¶ 1.b. As noted above, Applicant's toxic and volatile relationship with his wife was replete with incidents where, because of her mental-health issues, she became routinely enraged at him, attacked him, kicked him, pushed him, and lied to investigating sheriff and police authorities, as well as to the courts. It is significant that during the two domestic violence incidents involving his wife, Applicant was the passive individual, not the aggressor, who called for police assistance. The responding sheriff and police authorities were, for the most part, not convinced of her allegations against him, and on at least one occasion, the court admonished her for abusing the system. As for the PFA violation, it occurred during a period of attempted reconciliation and did not appear to be an intentional violation by Applicant. With respect to the incidents involving his wife, Applicant denied her allegations, and he was supported on one occasion by witness statements by his two sons, and he was eventually absolved of all charges either by withdrawal of the charges, or dismissal of the charges. The PFA and the EPO were both withdrawn or cancelled.

Applicant's relationship with his fiancée, while being at one time somewhat volatile, seems to have become calmer now that she is being treated medically. Her one outburst was instigated by her, with Applicant essentially becoming the victim, notwithstanding the decision of the arresting deputy sheriff who charged them both. The charge against Applicant was also dismissed and he was found not guilty.

With the exception of the most recent incident involving his fiancée who testified at the hearing, because the police records and court records did not report more than sketchy, minimal information regarding those incidents, Applicant became the major source of the information regarding them. His explanations have gone un rebutted. So much time has elapsed since that alleged criminal behavior happened – at least five years since the last alleged incident with his wife – and they happened under such unusual circumstances, it appears that it is unlikely to recur. As far as the more recent similar

behavior of conduct, the one involving Applicant's fiancée in 2017, that incident does not serve to revalidate the earlier conduct for there is no evidence that he was the aggressor.

A person should not be held forever accountable for alleged misconduct from the past, especially since he appears to be the victim, not the aggressor. While there may be some questions as to Applicant's wisdom in choosing female companionship, there are no concerns about future criminal conduct. Applicant's past history of alleged criminal conduct, under the circumstances, no longer casts doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The trustworthiness concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes an example of conditions that could raise trustworthiness concerns under AG ¶ 16:

(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.

My discussion related to Applicant's alleged criminal conduct is adopted herein. As to the allegations regarding the alleged personal conduct consisting of the domestic-violence incidents, because of my conclusions that he appears to be the victim, not the aggressor, all charges against him have been dismissed, and at least one judge admonished Applicant's wife for abusing the system, AG ¶ 16(c) has not been established. The one exception is the violation of the PFA, for which AG ¶ 16(c) has been established. Nevertheless, I consider it unlikely that Applicant's alleged personal conduct, especially the conduct associated with his alleged domestic violence, will recur.

The guideline also includes one example of a condition under AG ¶ 17 that could mitigate security concerns arising from personal conduct. It is:

(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.

As discussed above, the violation of the PFA occurred in March 2007 – over a decade ago – during a period of attempted reconciliation with his wife, and that incident was never repeated. In fact, the PFA was eventually withdrawn or cancelled. The circumstances surrounding Applicant's violation of the PFA were rather unique, and it is unlikely that such a situation will recur. Accordingly, AG ¶ 17 (c) has been established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust 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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of public trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²¹

²¹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's conduct. Because of several disciplinary incidents while in the U.S. Army Reserve three decades ago, he was issued an uncharacterized discharge while training. On four occasions between November 2006 and April 2017, Applicant was cited or arrested and charged with a variety of crimes, all essentially associated with domestic violence. A PFA and an EPO were issued against him.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 49-year-old employee of a defense contractor, and he has been serving as a solution-delivery designer with his current employer since April 2016. He held a confidential clearance in 1988, and he held a secret clearance from 2007 to 2008. During those domestic-violence incidents involving his wife and his fiancée, Applicant was the passive individual, not the aggressor. He called for police assistance. Applicant denied he was the aggressor, and he was supported on one occasion by witness statements by his two sons, and he was eventually absolved of all charges either by withdrawal of the charges, or dismissal of the charges. The PFA and the EPO were both withdrawn or cancelled. On at least one occasion, the court admonished Applicant's wife for abusing the system. His fiancée acknowledged that she was the aggressor during her incident with Applicant.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has successfully mitigated the trustworthiness concerns arising from his alleged criminal conduct and personal conduct. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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:	FOR APPLICANT
Subparagraphs 1.a. through 1.d.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a position of public trust to support a contract with the DOD. Eligibility is granted.

ROBERT ROBINSON GALES
Administrative Judge