



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-04813

Appearances

For Government: Pamela Benson, Esquire, Department Counsel

For Applicant: *Pro se*

04/09/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding criminal conduct and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On July 13, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On November 26, 2013, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on December 26, 2013.² On March 13, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

¹ Item 4 (SF 86), dated July 13, 2010.

² Item 5 (Applicant's Answers to Interrogatories, dated December 26, 2013).

(January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline J (Criminal Conduct) and Guideline 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 or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR. In a sworn statement, dated August 8, 2014, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on February 25, 2015, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on March 3, 2015. He submitted a response on March 20, 2015. The case was assigned to me April 3, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted all but one of the factual allegations pertaining to criminal conduct and personal conduct in the SOR (¶¶ 1.a.-1.c., 2.a., and 2.b.), adding explanations for his actions. He failed to address SOR ¶ 2.c. Applicant's admissions 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 33-year-old employee of a defense contractor. He has been serving as a designer with his current employer since February 2000.³ A June 1999 high school graduate, Applicant attended a local community college for approximately six months, but did not receive a degree.⁴ Applicant has never served in the U.S. military.⁵ He has never been married,⁶ but does have three children: twin daughters born in 2001 and a son born in 2002.⁷ Applicant was granted a secret clearance in November 2010.⁸

³ Item 4, *supra* note 1, at 15.

⁴ Item 5 (Personal Subject Interview, dated March 20, 2012), at 1; Item 4, *supra* note 1, at 13-14.

⁵ Item 4, *supra* note 1, at 19.

⁶ Item 4, *supra* note 1, at 22.

⁷ Item 4, *supra* note 1, at 24-26; Item 5, *supra* note 4, at 2.

⁸ Item 7 (Joint Adjudication Management System (JAMS)) Person Summary, downloaded January 22, 2015).

Criminal Conduct

Applicant has a brief history of criminal conduct that commenced in March 2008 and continued through December 2010. He attributed that conduct, in part, to his temper, to being in a volatile relationship with a former girlfriend, to personal judgment that was not the best, and to being in the wrong place at the wrong time.⁹ He might have added poor anger management and disregard of police officer directions.

(SOR ¶ 1.c.): In March 2008, Applicant was driving his girlfriend's car while she was scrolling through his cell phone. She found telephone numbers for other women, and an argument ensued. Applicant stopped the car, got out, and began walking through an apartment complex towards his cousin's apartment. At about the same time, the police were in the complex responding to a burglary call. Applicant was observed walking in the area and the police ordered him to stay where he was. Applicant ignored the order and kept walking. When he was eventually stopped, he refused to respond to their questions pertaining to the burglary.

Despite his not matching the description of the purported burglar,¹⁰ Applicant was arrested and charged with breaking and entering the dwelling house of another in the nighttime with intent to commit a felony or any larceny therein – burglary - a class 3 felony; and obstructing justice without force, a class 1 misdemeanor.¹¹ The burglary charge was subsequently dismissed and the charged was amended to trespass after having been forbidden to do so, a class 1 misdemeanor.¹² On July 30, 2008, Applicant pled guilty to the remaining charges in order to get the matter behind him, and he was sentenced to 12 months in jail (suspended), unsupervised probation for two years, and fined \$71.¹³ Applicant denied ever being involved in the burglary, and he felt that he was simply in the wrong place at the wrong time.¹⁴

(SOR ¶ 1.b.): In November 2008, Applicant and the same girlfriend engaged in another verbal dispute after she again went through his cell phone and discovered the telephone numbers of other women. The verbal dispute turned physical. Applicant contends he pushed his girlfriend into a television that fell and broke, but she reported that Applicant had kicked the television screen.¹⁵ He departed, taking her car keys with him. Applicant's girlfriend filed a complaint against him.

⁹ Item 3 (Applicant's Answer to the SOR, dated August 8, 2014), at 3; Item 5, *supra* note 4, at 4; Item 4, *supra* note 1, at 36.

¹⁰ Item 5 (Personal Subject Interview, dated September 8, 2010).

¹¹ Item 5, *supra* note 4, at 3; Item 8 (Criminal Case Details, downloaded November 26, 2013), at D3-D4.

¹² Item 8, *supra* note 11, at D3; Item 5, *supra* note 4, at 3.

¹³ Item 8, *supra* note 11, at D3-D4; Item 5 (Personal Subject Interview, dated August 6, 2010).

¹⁴ Item 5, *supra* note 4, at 3.

¹⁵ Item 5, *supra* note 4, at 3-4; Item 9 (Incident/Investigation Report, dated December 9, 2013), at 4.

After he turned himself into the authorities, Applicant was arrested and charged with trespass after having been forbidden to do so, a class 1 misdemeanor; petit larceny, a class 1 misdemeanor; and damaging property, a misdemeanor. On December 10, 2008, the charges were dismissed, and Applicant was ordered to pay \$91 in costs.¹⁶

(SOR ¶ 1.a.): In December 2010, Applicant was driving his cousin to an unknown friend's home when they were stopped by the police for having a broken brake light. Five or six police cars were involved in the stop. It was later learned that a confidential informant had reported that a large quantity of cocaine was being delivered to the house, and the police were under the impression that Applicant and his cousin were making the delivery. As the police approached the vehicle, Applicant's cousin fled, but was later caught by the police. Applicant exited the vehicle and, because he was nervous about all the police at the scene, he too started to walk away. A police search of the vehicle and both individuals came up negative. However, a search of a trash can near where Applicant was standing, came up with two grams of cocaine.¹⁷

Applicant was arrested and charged with unlawful possession of controlled substances – cocaine, a class 5 felony.¹⁸ In June 2011, Applicant was tried, judgment was deferred for one year, and Applicant was placed in the first offender program. He was required to visit his probation officer, submit to random urinalysis, and complete 100 hours of community service. His six urinalyses were negative.¹⁹ On June 29, 2012, the charge was dismissed, and Applicant paid \$545 in costs.²⁰ Applicant denied ever being involved in the purchase, sale, possession, or distribution of any illegal drugs. He no longer associates with his cousin or with anyone who uses drugs. He believes this cocaine incident occurred because he was simply in the wrong place at the wrong time.²¹

Personal Conduct

(SOR ¶ 2.a.): Following Applicant's December 2010 arrest and felony charge, he failed to report the incident to his employer in violation of the employer's security policy. As a result, the employer issued Applicant a Final Written Warning, noting that Applicant had held a security clearance for several years and had completed annual security training each year where the topics of adverse information and employee responsibility

¹⁶ Item 8, *supra* note 11, at D5-D7; Item 5, *supra* note 4, at 4.

¹⁷ Item 5, *supra* note 4, at 2.

¹⁸ Item 5, *supra* note 4, at 2; Item 8, *supra* note 11, at D8.

¹⁹ Item 5, *supra* note 4, at 3.

²⁰ Item 8, *supra* note 11, at D9.

²¹ Item 5, *supra* note 4, at 3.

were covered.²² Applicant stated that he did not report the incident to his employer because the charge would eventually be dismissed.²³

(SOR ¶ 2.b.): On July 13, 2010, when Applicant completed and submitted his SF 86, he responded to a question set forth therein. The SOR alleges Applicant deliberately failed to disclose complete information in response to the following police record question: § 22c - *Have you EVER been charged with any felony offense?*²⁴ Applicant answered “no.”²⁵ Despite his answer to that question, Applicant did report that he had been arrested and charged in March 2008 with trespassing and obstructing justice, and in November 2008 with grand larceny and destruction of property.²⁶ Applicant mischaracterized his petit larceny charge as a grand larceny, and in the state, grand larceny is a felony. He did not refer to the March 2008 burglary charge, the only actual felony charge he was ever faced with. Applicant denied intentionally falsifying the material facts and contended that his failure to list the burglary felony was merely an honest mistake. He contended he misinterpreted the question and assumed it stated “have you ever been convicted.”²⁷

Applicant acknowledged making mistakes in the past and being in situations in which his personal judgment was not the best. He is not proud of his actions, and he has made efforts to remove himself from all volatile situations that could negatively impact him. He ended the relationship he had with his former girlfriend. He has worked diligently to remain active in his community, and currently mentors young children and their families in helping them learn how to express their thoughts and feelings through safe avenues such as organized sports. He accepts full responsibility for his actions.²⁸

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.”²⁹ 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. The President has authorized the Secretary of Defense or his

²² Item 6 (Final Written Warning, dated October 31, 2011).

²³ Item 5, *supra* note 4, at 2.

²⁴ The SOR allegation is confusing for it mixed up two questions in the SF 86. The allegation in SOR ¶ 2.b. identified the question in § 22e, but quoted the actual question from § 22c.

²⁵ Item 4, *supra* note 1, at 35.

²⁶ Item 4, *supra* note 1, at 35-36.

²⁷ Item 3, *supra* note 9, at 3; Item 5, *supra* note 2, at 114.

²⁸ Item 3, *supra* note 9, at 3-4; Applicant’s Response to the FORM, dated March 20, 2015, at 1-2.

²⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³⁰

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

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 commonsense 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.”³¹ The Government initially has the burden of producing evidence to establish 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.³²

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 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 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”³³

³⁰ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³¹ “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 but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³² *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³³ *Egan*, 484 U.S. at 531

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.”³⁴ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 security concern under 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 several conditions that could raise security concerns. Under AG ¶ 31(a), “a single serious crime or multiple lesser offenses” is potentially disqualifying. Similarly, under AG ¶ 31(c), an “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” may raise security concerns. As noted above, Applicant has a brief history of criminal conduct that commenced in March 2008 and continued through December 2010. During that period he was charged with burglary, a class 3 felony (dismissed); obstructing justice, a class 1 misdemeanor; two counts of trespass after having been forbidden to do so, class 1 misdemeanors; petit larceny, a class 1 misdemeanor; damaging property, a misdemeanor; and unlawful possession of controlled substances – cocaine, a class 5 felony (dismissed). AG ¶¶ 31(a) and 31(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where “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.” Similarly, AG ¶ 32(d) may apply where “there is evidence of successful rehabilitation: including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.”

³⁴ See Exec. Or. 10865 § 7.

AG ¶¶ 32(a) and 32(d) apply. Applicant's brief history of criminal conduct, which commenced in March 2008, ceased in December 2010. That conduct can be attributed, in part, to: his temper, poor anger management, being in a volatile relationship with a former girlfriend, personal judgment that was not the best, disregard of police officer directions, and being in the wrong place at the wrong time. Two of the incidents occurred under very unusual circumstances. The arrest in March 2008 arose even though Applicant did not meet the description of the purported burglar. The December 2010 arrest occurred when Applicant was stopped by five or six police cars because Applicant had a broken brake light and was suspected, as reported by a confidential informant, of intending to make a large cocaine delivery. A search of the vehicle, as well as of Applicant and his cousin, failed to find any cocaine. A search of a trash can near where Applicant was standing did find two grams of cocaine.

Over four years have elapsed since Applicant's most recent criminal behavior occurred. Since then, Applicant has taken steps to minimize the probability of recurrence by disassociating himself from his volatile relationship with his former girlfriend, as well as his relationship with his cousin. With the exception of his failure to report the conviction for drug possession to his employer, Applicant has maintained a good employment record, and he is constructively involved in his community. Applicant's acceptance of responsibility for his past misconduct, his acknowledgment of his shortcomings, and the subsequent period without recurrence of criminal conduct are all viewed in Applicant's favor, and furnish evidence of successful rehabilitation. Applicant's two and one-half years of criminal conduct have been followed by nearly four and one-half years without recurrence of criminal activity, which is sufficient to conclude that such conduct will not recur. There are no longer doubts as to Applicant's reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern under 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 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), 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," is potentially disqualifying. Also, "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect

the person's personal, professional, or community standing . . . ,” may raise security concerns under AG ¶ 16(e). Applicant was charged with burglary (dismissed); obstructing justice; two counts of trespass after having been forbidden to do so; petit larceny; damaging property; and unlawful possession of controlled substances – cocaine (dismissed). Applicant's omission, concealment, and purported falsification of critical information pertaining to his 2008 felony arrest on his 2010 SF 86, as well as his failure to inform his employer of his 2010 drug arrest, provide sufficient evidence to examine if his omission pertaining to the SF 86 was a deliberate falsification or was the result of simple oversight or negligence on his part, and if his failure to report his 2010 arrest was a deliberate concealment by Applicant.³⁵

As noted above, although Applicant had been previously briefed on the organization's security policy, he failed to comply with the requirement that any “adverse information” be reported. When offered the opportunity to explain his failure, Applicant stated he did not report the December 2010 arrest to his employer because the charge would eventually be dismissed. In fact, one year later the charge was dismissed. Nevertheless, in failing to report the incident to his employer, Applicant did violate his employer's security policy. His failure was deliberate.

Applicant's omission, concealment, and purported falsification of critical information pertaining to his 2008 felony arrest on his 2010 SF 86, is not as clear-cut. The SOR alleges Applicant deliberately failed to disclose complete information in response to the following question: *Have you EVER been charged with any felony offense?* Appellant answered “no.” Despite his answer to that question, Applicant did report that he had been arrested and charged in March 2008 with trespassing and obstructing justice, and in November 2008 with grand larceny and destruction of property. Applicant mischaracterized his petit larceny charge as a grand larceny, and in the state, grand larceny is a felony. He did not refer to the March 2008 burglary charge, the only actual felony charge he was ever faced with, because he was not convicted of the charge. Applicant denied intentionally falsifying the material facts and contended that his failure to list the burglary felony was merely an honest mistake. He contended he misinterpreted the question and assumed it stated “have you ever been convicted.” Applicant is not trained in the law, and the significant differences between a misdemeanor and a felony are not explained in the SF 86. Applicant's confusion regarding a charge and a conviction, and his misinterpretation of the question, under these circumstances, effectively rebut the conclusion that he deliberately falsified his

³⁵ The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10390 at 8 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

response to the question. AG ¶ 16(e) has been established, but AG ¶ 16(a) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if “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.” Under AG ¶ 17(d), personal conduct concerns may also be mitigated where “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” In addition, where “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” AG ¶ 17(e) may apply.

AG ¶¶ 17(c), 17(d), and 17(e) apply. Applicant’s two and one-half years involving three incidents of criminal conduct, two of which occurred under very unique or unusual circumstances, have been followed by nearly four and one-half years without recurrence of criminal activity. Since then, Applicant has taken steps to minimize the probability of recurrence by disassociating himself from his former girlfriend and his cousin. With the exception of his failure to report the arrest for drug possession to his employer, Applicant has maintained a good employment record, and he is constructively involved in his community. Applicant’s acceptance of responsibility for his past misconduct, his acknowledgment of his shortcomings, and the subsequent period without recurrence of criminal conduct are all viewed in Applicant’s favor, and furnish evidence of successful rehabilitation. Applicant acknowledged making mistakes in the past and he is not proud of his actions. There are no longer doubts as to Applicant’s reliability, trustworthiness, or good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration

of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³⁶

There is some evidence against mitigating Applicant's conduct. Applicant's brief history of criminal conduct, which commenced in March 2008, ceased in December 2010. His temper, poor anger management, being in a volatile relationship with a former girlfriend, personal judgment that was not the best, disregard of police officer directions, and being in the wrong place at the wrong time, all contributed to his arrests. Applicant's activities resulted in his being convicted and sentenced on two of three occasions. He also failed to comply with his employer's security policy.

The mitigating evidence under the whole-person concept is more substantial. It is true that Applicant has a history of criminal activity, including the two convictions, and the one incident that was ultimately dismissed. However, over four years have elapsed since Applicant's most recent criminal behavior occurred. Since then, he has taken substantial steps to minimize the probability of recurrence. He is constructively involved in his community. Applicant's acceptance of responsibility for his past misconduct, his acknowledgment of his shortcomings, and the subsequent period without recurrence of criminal conduct are all indications of successful rehabilitation. There are no longer doubts as to Applicant's reliability, trustworthiness, or good judgment. See AG ¶ 2(a)(1) through AG ¶ 2(a)(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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c.:	For Applicant

³⁶ 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).

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 security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge