



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13240
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

April 9, 2009

Decision

GALES, Robert Robinson, Chief Administrative Judge:

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

Statement of the Case

On April 26, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On November 21, 2008, the Defense Office of Hearings and Appeals (DOHA) 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; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest 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.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 28, 2008. In a sworn, written statement, dated that same day, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on December 8, 2008, and the case was assigned to Administrative Judge Martin H. Mogul on December 12, 2008. It was reassigned to me on January 23, 2009, due to caseload considerations. A Notice of Hearing was issued on February 2, 2009, and I convened the hearing, as scheduled, on February 11, 2009.

During the hearing, five Government exhibits and two Applicant exhibits were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on February 19, 2009.

Findings of Fact

In his Answer to the SOR, Applicant denied all of the factual allegations in the SOR (¶¶ 1.a. through 1.d., and 1.a. and 1.b.).

Applicant is a 45-year-old employee of a defense contractor, and he is seeking to retain a SECRET security clearance. He currently holds an interim clearance. Applicant has never been married.¹ He has been gainfully employed by the same defense contractor since March 2007, and currently serves as a mechanic.² His employment history since 1999 includes various periods of unemployment (January-April 2001, August 2001-February 2002, June 2002-January 2003, April 2003-April 2004, December 2004-November 2005, and January-March 2007).³

¹ Government Exhibit 1 (e-QIP, dated April 26, 2007), at 25.

² *Id.* at 11.

³ *Id.* at 12-13, 15, 17-18, 20-21.

Criminal Conduct

Applicant was a substance abuser whose choice of substances was alcohol, marijuana, and methamphetamines (“speed”). He was a frequent consumer of alcohol from the time he was in high school, during 1980-81, sometimes while with friends and sometimes alone, until about 2003.⁴ He would consume limited amounts of alcohol on weekends, and get intoxicated two or three times per year.⁵ He estimated it would take six beers or mixed drinks for him to become intoxicated.⁶ Applicant’s excessive consumption of alcohol diminished substantially in 2003 after he was diagnosed with diabetes.⁷ Since that time, he no longer goes to bars, and limits his alcohol consumption to one or two beers at a time, once or twice a month.⁸

His drug use started earlier while in high school, during 1977-81, when he started experimenting⁹ with marijuana and methamphetamines,¹⁰ and continued until about 2003, when it ceased forever.¹¹ He considered his drug abuse to be recreational, and occasionally would use those substances, at most once a month, either alone or with friends.¹² There were also periods of four or five months at a time when he did not use any drugs.¹³ He attributed some of his substance abuse to peer pressure,¹⁴ depression, and being upset over certain past incidents.¹⁵

During the period from July 1992 through March 2001, Applicant was arrested three times for substance-related activities. In October 1993, after smoking marijuana with a friend, Applicant was upset over not being paid for some work he had done, and decided to ride his bicycle to get a beer and cool off. He was stopped by police for unknown reasons.¹⁶ For some unexplained reason, Applicant attempted to flee, and

⁴ Government Exhibit 2 (Interrogatories and answers to interrogatories, dated October 27, 2008) at 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Tr. at 76.

⁹ Government Exhibit 2, *supra* note 4, at 3.

¹⁰ *Id.* at 10; Government Exhibit 1, *supra* note 1, at 34.

¹¹ Tr. at 46, 56.

¹² Government Exhibit 2, *supra* note 4, at 4.

¹³ *Id.*

¹⁴ Tr. at 57.

¹⁵ Government Exhibit 2, *supra* note 4, at 4.

¹⁶ *Id.* at 9.

the officer threw a flashlight to stop him.¹⁷ A search of Applicant incident to the arrest, revealed an amount of marijuana, a pipe for smoking marijuana,¹⁸ and a 3.5 to 4 inch long folding double-edged buck knife,¹⁹ characterized by the police as a “dangerous weapon,”²⁰ and by Applicant as a “pocket knife.”²¹ He was charged with (1) possession of a dangerous weapon (the knife), a felony; (2) possession of less than 28.5 grams of marijuana; and (3) resisting arrest.²² The 2nd charge was amended to possession of controlled substance paraphernalia. The 1st charge was dismissed; the 2nd charge was suspended and he was sent to a drug diversion program. He was convicted of the 3rd charge and sentenced to 12 months probation and 2 days in jail. The diversion term was successful and the charge was eventually dismissed.²³

In February 1997, after consuming alcohol at a bar with a friend, Applicant got behind the wheel of his truck and was driving home when one wheel drifted slightly off the road and the friend grabbed the wheel, causing an over-correction. The truck rolled and ended up in a field. Applicant was unhurt, but his friend sustained minor injuries and was transported to the hospital.²⁴ Applicant admitted he was intoxicated, and was administered a blood test. His blood-alcohol level registered 0.15 or 0.16 percent.²⁵ He was charged with (1) driving under the influence of alcohol (DUI); and DUI causing bodily injury. He was subsequently convicted of the 1st charge and the 2nd charge was dismissed in the furtherance of justice. He was sentenced to 2 days time served in jail, 3 years probation, a substantial fine, and ordered to attend a first offender’s DUI program.²⁶ He successfully completed his probation and all required counseling.²⁷

In March 2001, after consuming alcohol at a bar alone, followed by an unspecified period of additional drinking alone in his car, Applicant became, by his own admission, intoxicated.²⁸ He subsequently drove around searching for female companionship. He solicited a date with a woman who, unfortunately for Applicant,

¹⁷ *Id.*

¹⁸ *Id.* at 9-10.

¹⁹ Tr. at 80.

²⁰ Government Exhibit 3 (County Sheriff Master File, various dates), at 6.

²¹ Tr. at 51, 80.

²² Government Exhibit 3, *supra* note 20, at 6.

²³ Applicant Exhibit A (State Department of Justice Record Review, dated July 17, 2008), at 2.

²⁴ Government Exhibit 2, *supra* note 4, at 4.

²⁵ *Id.*

²⁶ *Id.*; Applicant Exhibit A, *supra* note 23, at 3; Government Exhibit 5 (Federal Bureau of Investigation (FBI) Identification Record, dated May 13, 2007), at 3.

²⁷ Tr. at 49.

²⁸ Government Exhibit 2, *supra* note 4, at 3.

turned out to be a police officer.²⁹ He was arrested, transported to jail, where he remained for nearly 2 days, and charged with (1) possession of a controlled substance, a felony; and (2) disorderly conduct: prostitution.³⁰ The controlled substance found in his car was methamphetamine.³¹ He was subsequently convicted of the 2nd charge, and sentenced to 24 months probation, a fine, and 3 days (apparently reduced to time served) in jail.³² It is unclear if the remaining charge was dismissed, for there is no court disposition other than “further investigation,” listed in the evidence.³³

In July 1992, according to SOR ¶ 1.d., Applicant was purportedly arrested and charged with robbery, a felony.³⁴ The charge was subsequently dismissed for lack of evidence.³⁵ Applicant denied the allegation and disputed the arrest, contending he was never arrested for robbery, and claimed the evidence of such arrest is erroneous.³⁶ No further evidence is known about this alleged arrest, and, interestingly, it is not listed in his FBI Identification Record.³⁷

In July 2004, Applicant decided to relocate from the state where he had previously gotten into trouble. He had become tired of everything that was going on around him, including the wrong crowd with whom he was hanging around, the peer pressure to do things he shouldn't be doing, the trouble it had caused, and the heartache caused his family.³⁸ As a result, the changes have brought about a positive attitude and outlook, as well as reduced peer pressure, and he no longer hangs out with the wrong crowd.³⁹ Since the move, he has had no unfavorable involvement with law enforcement.⁴⁰ Moreover, he has vowed never to use illegal substances again,⁴¹ and because of his diabetes, has substantially decreased his alcohol consumption. The

²⁹ *Id.*

³⁰ Government Exhibit 3, *supra* note 20, at 7.

³¹ Tr. at 44.

³² Government Exhibit 4 (Court Records, various dates), at 1, 12; Applicant Exhibit A, *supra* note 23, at 3.

³³ *Id.* (Applicant Exhibit A).

³⁴ Government Exhibit 3, *supra* note 20, at 3.

³⁵ Applicant Exhibit A, *supra* note 23, at 2.

³⁶ Government Exhibit 2, *supra* note 4, at 10; Tr. at 53.

³⁷ See Government Exhibit 5, *supra* note 26.

³⁸ Tr. at 39, 46, 57.

³⁹ *Id.* at 57.

⁴⁰ *Id.* at 56.

⁴¹ Government Exhibit 2, *supra* note 4, at 10.

change in lifestyle has also had a positive impact on his professional career, for in June 2008, he was promoted by his employer.⁴²

Falsification of Security Clearance Applications

As noted above, in April 2007, Applicant applied for a security clearance and submitted an e-QIP version of a Security Clearance Application. At that time, Applicant was with a small group of new hires and they received a very cursory oral instruction on how to complete a questionnaire.⁴³ He cannot recall any written instructions,⁴⁴ and aside from the form itself, there is no evidence of any such instructions. Seeking additional guidance on completing some responses, Applicant turned to a colleague, not the facility security officer, and was advised to only go back for seven years.⁴⁵ Applicant filled out the questionnaire in long hand, without the benefit of any records, relying solely on his memory.⁴⁶ He signed the questionnaire and submitted it, but did not complete the form on a computer, and does not know who did so.⁴⁷ In fact, until he received a copy of the e-QIP from Department Counsel, he had never seen the computerized version, a copy of which is in evidence.⁴⁸

The SOR alleges Applicant deliberately failed to disclose two aspects of his police record in Section 23 thereof. The SOR ¶ 2.a. refers to question 23.d. (*Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?*). There is no modifier to that particular question which would limit the reportable period to anything less than “ever.”⁴⁹ Applicant answered “Yes” to the question and described the incidents from SOR ¶¶ 1.a. (2001 - drugs) and 1.b. (1997 - alcohol).⁵⁰ He did not mention the incident from SOR ¶ 1.c. (1993 – drugs). The Government argues the omission of that incident was made deliberately by Applicant, but he denies his omission was deliberate or with intent to falsify his police record. He contends he was in a rush to complete the information, and “did so to the best of [his] ability and what [he] could recall,⁵¹ did not have the exact dates and times of past offenses,⁵² and was under

⁴² Applicant Exhibit B (Employer Correspondence, dated June 21 and 24, 2008), at 1.

⁴³ Tr. at 59, 68.

⁴⁴ *Id.* at 68.

⁴⁵ *Id.* at 59-60.

⁴⁶ *Id.* at 34-35, 63, 65, 69-70.

⁴⁷ *Id.* at 71-72.

⁴⁸ *Id.*

⁴⁹ It should be noted, however, that questions 23.e. and 23.f. do contain such modifiers. See Government Exhibit 1, *supra* note 1, at 32.

⁵⁰ *Id.* at 31-33.

⁵¹ Tr. at 34.

⁵² *Id.* at 35.

the erroneous impression that he was only supposed to list incidents within the past seven years.⁵³ After reviewing the e-QIP during the hearing, and upon further reflection, Applicant conceded that he “messed up” in failing to include the other incident.⁵⁴ While Applicant clearly omitted the incident, I find his explanations to be reasonable, and can find no substantial benefit to have been gained by deliberately omitting the oldest incident when he had already admitted the two most recent incidents and they covered both alcohol and drugs. Accordingly, I find Applicant is credible in his denial of “deliberate falsification.”

The SOR ¶ 2.b. refers to question 23.a. (*Have you ever been charged with or convicted of any felony offense?*). Applicant answered “No” to the question.⁵⁵ He did not mention the incidents from SOR ¶ 1.c. (1993 – dangerous weapon) or SOR ¶ 1.d. (1992 – robbery). The Government again argues the omissions of those incidents were made deliberately by Applicant, but he again denies these omissions were deliberate or with intent to falsify his police record, and contends, in addition to his other explanations, that he was under the impression that the question referred to “felony convictions.”⁵⁶ While Applicant clearly omitted the incidents, I again find his explanations, including the one that he was not aware of any “felony convictions,” to be reasonable. Moreover, as far as SOR ¶ 1.d. is concerned, Applicant consistently disputed the occurrence of the 1992 arrest for robbery, and the FBI Identification Record does not list it. Applicant’s erroneous impressions may be wrong, but that is not evidence of deliberate falsification. I find Applicant is credible in his denial of “deliberate falsification.”

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.”⁵⁷ 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 designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵⁸

⁵³ I recognize he disclosed the 1997 incident which occurred more than seven years previously. *Id.* at 59.

⁵⁴ *Id.* at 35.

⁵⁵ Government Exhibit 1, *supra* note 1, at 31-32.

⁵⁶ Tr. at 63-64.

⁵⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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."⁵⁹ 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.⁶⁰

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 protect or 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."⁶¹

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."⁶² Thus, nothing

⁵⁹ "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).

⁶⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶¹ *Egan*, 484 U.S. at 531

⁶² See Exec. Or. 10865 § 7.

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 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 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 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. Applicant's history of criminal conduct, involving at least three arrests and three convictions, is documented in his police and court records, his answers to interrogatories, and the evidence, including his testimony, presented during the hearing. The Government has established AG ¶¶ 31(a) and 31(c).

The guidelines also include 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." In addition, when there is "evidence that the person did not commit the offense," AG ¶ 32(c) may apply. Similarly, AG ¶ 32(d) may apply when "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."

AG ¶¶ 32(a) and 32(d) apply because Applicant's alleged criminal conduct (the 2001 arrest) last occurred approximately eight years ago and there has been no further alleged criminal conduct. His illegal substance abuse ceased in 2003, and his abstinence has continued for about six years since then. He has clearly exhibited remorse, and since turning his life around and avoiding the wrong crowd, he has established a good employment record with constructive community involvement.

As far as AG ¶ 32(c), it is really unclear if Applicant was arrested for robbery, for while he denies the arrest, county police records claim that he was, but FBI records record no such arrest. I carefully viewed his demeanor and am satisfied that he was not arrested for robbery in 1992. This particular criminal offense is unsubstantiated.

Guideline E, Personal Conduct

The security 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 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. Similarly, under AG ¶ 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative,” may raise security concerns. Applicant’s omissions of critical information pertaining to arrests, provides sufficient evidence to examine if his omission was a deliberate falsification or was the result of simple oversight or negligence on his part.

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct. Under AG ¶ 17(b), “the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully,” may apply. In this instance, while Applicant’s omissions were not considered to be deliberate attempts to conceal certain arrests, there appears to have also been some improper or inadequate advice received which misled Applicant. While there is no clear evidence that the advice was from “authorized personnel,” regardless of the source, Applicant’s state of mind was partially influenced by it. Accordingly, AG ¶ 17(b) partially applies. Most importantly, I find that AG ¶ 17(f), “the information was unsubstantiated or from a source of questionable reliability,” applies.

Based on the evidence, I have already concluded that Applicant credibly stated during his hearing that at the time he completed his Security Clearance Application, he

did not believe he needed to disclose the information regarding incidents that were outside the seven year limit, he was unaware that he had been convicted of a felony, and he was never arrested for robbery. I find Applicant is credible in his denial of deliberate falsification.⁶³

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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines J and E in my analysis below.

While in high school, Applicant started hanging around with the wrong crowd and developed bad habits. In part, due to peer pressure, he consumed alcohol, sometimes to excess, and abused marijuana and methamphetamines. That substance abuse eventually resulted in some arrests. While some of the charges were dismissed, he was convicted several times and punished. Some of the sentences included probation, participation in certain rehabilitation or education programs, and brief periods of incarceration.

As bad as things had become, with his 2001 arrest, they took a turn for the better, and there has been no further negative involvement with law enforcement authorities since that time. Furthermore, in 2003, he decided to abstain from further drug abuse and significantly diminished his alcohol consumption. In July 2004, Applicant relocated from the state where he had previously gotten into trouble. He

⁶³ 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.

turned his back on the old crowd and shed his bad habits, and developed a new life and lifestyle. The changes have brought about a positive attitude and outlook. Now, there is little potential for pressure, coercion, exploitation, or duress, and the likelihood of recurrence is nil. The change in lifestyle has also had a positive impact on his professional career.

It is true that Applicant made poor choices, but those activities occurred in 2001 and before, and have not recurred. Using the analogy from the Appeal Board in financial cases, Applicant has established a “meaningful track record” of good conduct over the past eight years, establishing a new life and lifestyle with positive results. These factors show responsibility, rehabilitation, and mitigation. (See AG ¶¶ 2(a)(2), 2(a)(3), 2(a)(5), 2(a)(6), 2(a)(7), 2(a)(8), and 2(a)(9).)

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the criminal conduct and personal conduct security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Chief Administrative Judge