



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 08-06209
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

December 11, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct). Clearance is granted.

Statement of the Case

On November 15, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleged security concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the 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 Applicant's clearance should be granted, continued, denied, or revoked.

On April 4, 2009, Applicant responded to the SOR. On April 14, 2009, DOHA received his response. On May 5, 2009, Department Counsel was prepared to proceed. On May 7, 2009, DOHA assigned the case to me. On May 14, 2009, DOHA issued a hearing notice scheduling the case for June 4, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 4, which were received without objection. Applicant offered Applicant Exhibits (AE) A through O, which were received without objection. I held the record open until June 19, 2009, and extended that date until June 24, 2009, to afford the Applicant the opportunity to submit additional documents. Applicant subsequently submitted AE P through X, which were received without objection. On June 18, 2009, DOHA received the hearing transcript (Tr.).

Findings of Fact¹

In his SOR response, Applicant denied all allegations. After a complete and thorough review of the evidence, I make the following findings of fact.

Background Information

Applicant is a 48-year-old staff engineer who has been employed by a defense contractor since August 2006. GE 1, Tr. 40, 107. Applicant seeks a security clearance as a first-time applicant. Applicant previously held an interim security clearance, which was revoked as a result of these proceedings. Tr. 104-105.

Applicant was awarded three separate associate degrees in electrical engineering, electrical technology, and telecommunications, dates uncertain. He was also awarded several work-related certificates. GE 1, Tr. 40-41, 105-106. Applicant married in August 1986, and has no children. GE 1, Tr. 104. His wife is employed as a licensed practical nurse. Tr. 109.

Criminal Conduct

Security concerns were identified during Applicant's background investigations stemming from three previous arrests in 2001, 2003, and 2006. None of the three arrests led to a conviction. The related charges were subsequently dismissed. Summarized they are:

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

1. October 2001 – Applicant was arrested and charged with simple assault. Applicant arrived home and discovered his wife was intoxicated. An altercation ensued, which led to the arrest of both Applicant and his wife. The charges against Applicant were dismissed. Tr. 41-42, 49-68, GE 2, GE 3, GE 4, AE T. (SOR ¶ 1.a.)

2. June 2003 – Applicant was arrested and charged with (1) simple assault, (2) unlawful possession of a weapon, and (3) threaten to kill. Applicant arrived home and discovered his wife was intoxicated. An altercation ensued, which led to the arrest of Applicant. The Applicant entered a pre-trial intervention program and was ordered to undergo a domestic violence assessment evaluation. The charge was subsequently dismissed in April 2004. Tr. 42-43, 68-80, GE 2, GE 4. (SOR ¶ 1.b.)

3. October 2006. Applicant was arrested and charged with simple assault. Applicant arrived home and discovered his wife was intoxicated. A dispute ensued spanning a several day period ending in an altercation and Applicant's arrest. Applicant pleaded not guilty and enrolled in a domestic violence abuse counseling program. He submitted an October 2007 letter from his case manager advising that he completed treatment and was no longer being monitored. The charge was dismissed. Tr. 43, Tr. 80-93, GE 2, GE 4, AE J. (SOR ¶ 1.c.)

Applicant's wife has a long history of alcohol abuse. After each of Applicant's arrests, Applicant's wife received or participated in some form of treatment. She attended an inpatient detoxification program from January 14, 1997 to January 22, 1997. She followed up with inpatient rehabilitation from January 22, 1997 to February 7, 1997. She participated in 17 sessions and a follow-up intensive outpatient program from February 13, 1997 to May 12, 1997, including 13 sessions. AE Q.

After the October 2001 incident, she was admitted to an inpatient rehabilitation program from October 25, 2001 to November 4, 2001. She voluntarily attended a residential inpatient drug and alcohol treatment program from November 18, 2001 to February 9, 2002. AE R, AE S. After the June 2003 incident, she attended a three-month alcohol rehabilitation program. Since the October 2006 incident, she has been seeing a psychiatrist. GE 2. Applicant testified that since these incidents, his wife has "discovered religion," which he believes contributed to her no longer drinking. Tr. 43-44, 103-104, 108.

Applicant's wife submitted a letter in which she discussed her long-standing struggle with alcohol. She stated all of her husband's arrests occurred after she called the police when she was drunk. She accused her husband (Applicant) of doing things he did not do to get him out of the house so she could continue drinking. She accepted responsibility for the "mess" she caused and is trying to do the right thing. She was baptized two years ago as a Jehovah's Witness and tries to live according to Bible principles. She stated her husband is an "honest and loyal man." AE T.

Applicant submitted a psychological evaluation completed in May 2009 that addressed Applicant's three arrests and marital conflict. The psychologist discussed Applicant's history and provided a favorable psychological assessment of Applicant stating that his past arrests stemmed from conflicts that originated and escalated as a result of his wife's drinking. He added that since Applicant's wife has sought professional help and stopped drinking, these conflicts have stopped. The evaluation concluded that Applicant's mental health is good and that there is no evidence that Applicant cannot be trusted to follow the rules and regulations of his present position. AE N.

Personal Conduct

The SOR further alleged that Applicant deliberately falsified material facts pertaining to his arrest record when he completed his November 2006 e-QIP. The pertinent question is:

Section 23: Your Police Record For this item, report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C 3607. **c.** Are there currently any charges pending against you for any criminal offense?;

to which Applicant answered "No." The SOR alleged that Applicant failed to list pending charges from his October 2006 arrest. Applicant annotated his e-QIP with information that he had been arrested in "01/2004 (Estimated)" for "civil simple assault." GE 1, p. 25.

Applicant acknowledged that his response was incorrect, but affirmatively and consistently denied that he engaged in deliberate falsification. Applicant's explanation was thoroughly explored at the hearing. Tr. 44-46, 49-103, 111. His explanation is perhaps best summarized in his signed, sworn post-hearing statement:

The first two arrests listed in the SOR occurred in October 2001 and June 2003. Both charges were eventually dismissed.

In or around late 2005, I approached one of the corporate attorneys who worked with my employer, [former employer], and asked him for assistance in getting the record of these two arrests expunged. At that time, it was common practice for company employees to receive personal services from various departments (legal, accounting, travel, etc.) free of charge.

To the best of my recollection, this attorney's name was [name of attorney]. [Attorney] told me that he would take care of the expungement, and that I would not be legally required to disclose the two incidents in the

future. I believe he prepared the initial paperwork based on the information I provided.

Several months later, the company fell on hard times and was forced to drastically reduce its expenses. Our legal service and many other non-essential services were eliminated. [attorney] stopped all work and even filed a lawsuit against the company to recover unpaid fees.

When [former employer] went out of business, it was my understanding that the expungement had been finalized before [Attorney] severed his relationship with the company. I did not discover the expungement had not been completed until the arrests came up in my clearance investigation.

In an effort to track down [attorney] and verify the above, I recently contacted an individual who used to work in [former employer]. She told me she thought that [attorney] might have retired and moved to the South.

I then contacted the former President of [former employer], and asked him if he had any additional information about my expungement request. He stated apologetically that he remembered the request, but thought that it likely fell through the cracks when the company began experiencing financial problems. He also stated that he did not want to open any communication with [attorney] because of the pending lawsuit.

In October 2006, I was arrested a third time as referenced in the Statement of Reasons. I was charged with simple assault, which I understood to be a civil charge as opposed to a criminal one. This charge was also dismissed, but on the condition that I attend nightly meetings at a Domestic Violence Access Center (DVAC).

The next month, I filled out an e-QIP as part of my security clearance application. In Section 23, I was required to provide information about my police record.

Under Question 23(c), I was asked whether there were any charges pending against me for any *criminal* offense. While I knew that the October 2006 charge was still technically pending because I had not yet completed my DVAC program, I believed that it was for "civil simple assault" and therefore did not constitute a criminal offense.

I checked with [senior security clerk] in the Security Office about this issue, and she confirmed that I only needed to disclose criminal charges. I have already submitted a letter from [senior security clerk] confirming that her understanding of my answers was consistent with what I have described above.

The lead Security Officer at [employer], [facility security officer], has also provided a statement confirming that I disclosed the arrest to [senior security clerk] when filling out my e-QIP.

The fact that I was not trying to withhold information about the 2006 arrest should be clear from my response to Question 23(f). That question requested information about “any offense(s),” which I interpreted to mean civil as well as criminal offenses. I accordingly disclosed the 2006 incident, though I listed the date of the offense as 01/2004 due to a simple mistake in my recollection.

I did not list the 2001 and 2003 arrests under Question 23(f) because of the advice I had received from [attorney]. It was my honest belief at the time I completed the e-QIP that I was no longer required to disclose these arrests for any reason. AE V.

The President of [former employer], senior security clerk, and facility security officer from his current employer submitted statements lending support to Applicant’s assertions. AE P, AE U, AE W, AE X.

Character Evidence

Two character witnesses testified on Applicant’s behalf. The first witness was his company’s manager of software engineering. She has held a security clearance for 22 years and has known Applicant since he was hired in August 2006. She described Applicant as an important member of her team, and his performance is “well above average.” She stated that Applicant has “great character,” and that “[p]eople look up to him, go to him for advice. He’s a good guy.” Tr. 20-21.

The second witness was his company’s director of software engineering for communication systems. She has held a security clearance for 31 years and has known Applicant since he was hired in August 2006. She described Applicant’s performance as “outstanding in his job duties.” Tr. 30. She stated Applicant is “an honest and ethical person. He’s been forthright at work.” Tr. 33.

Both witnesses were queried whether they were aware of Applicant’s arrests and his explanation for failing to accurately provide arrest information on his e-QIP. They confirmed that they were aware of his arrests and accepted his explanation of the underlying circumstances surrounding those arrests as well as his explanation for his failure to list provide accurate arrest information on his e-QIP, discussed *supra*. Both witnesses also stated Applicant is trustworthy and needs a security clearance for his job. Tr. 17-39. Both witnesses submitted reference letters on Applicant’s behalf that reiterated and expanded on their testimony. They noted that his superb performance has earned him a promotion, and that he has received incentive bonuses in 2007 and 2008 that are reserved for a “select number of employees.” AE G, AE H.

Applicant submitted a total of ten reference letters, including the two letters discussed *supra*. They include former long-term colleagues and neighbors. All reference letters provide compelling comments regarding Applicant's trustworthiness, good character, integrity, work ethic, and loyalty. They collectively endorse Applicant for a security clearance. AE A – AE I. Additionally, Applicant submitted a supervisor's memorandum recommending him for promotion and performance evaluations for 2007, 2008, 2009. His promotion recommendation and performance evaluations document consistent and sustained above average performance with extraordinary potential for future service. AE K – AE M.

Applicant earns approximately \$92,000 a year, and owns his house free and clear. His house is valued at \$450,000, and he has approximately \$500,000 in checking, savings, and investments for a total net worth of \$950,000. Tr. 47.

Policies

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

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

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. 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 not met the strict

guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines J (Criminal Conduct) and E (Personal Conduct).

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.

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case in regard to the allegation that Applicant was arrested three times in 2001, 2003, and 2006:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was arrested for three assault charges involving domestic violence. All three charges were dismissed. AG ¶¶ 31(a) and 31(c) are applicable. Further review is necessary.

Of the five criminal conduct mitigating conditions listed under AG ¶ 32, two are applicable:

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

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

AG ¶ 32(a) is applicable given the circumstances that the assaults are unlikely to recur. All arrests involved alcohol consumption by Applicant's wife. The effects of alcohol have had a mercurial affect on the behavior of Applicant and his wife. Applicant's wife of 23 years has a long history of admitted alcohol abuse. After undergoing various treatment programs, she has been able to maintain sobriety for approximately three years since the 2006 incident as a result of psychiatric treatment and religious involvement. Her alcoholism and bouts with drinking have been addressed. On Applicant's part, he has undergone court-ordered treatment after his last two arrests, and successfully completed those treatment programs. His case manager assigned to his 2006 arrest stated he is no longer being monitored as of October 2007. Courts of competent jurisdiction dismissed all three charges.

The record is void of any criminal involvement of any nature other than the incidents in question. Although not an excuse or exoneration for what happened, the offenses in question occurred when his wife was drinking heavily. Excessive alcohol consumption is the cause or trigger of the domestic altercations. Applicant has expressed remorse for his role in the altercations. His actions were clearly contrary to his otherwise very law-abiding behavior and reputation in the community and at work.

AG ¶ 31(d) applies. Applicant has fully complied with all court-ordered treatment, programs. His case manager following his October 2006 arrest stated that he has completed his treatment and was no longer being monitored. Applicant has consistently maintained superior performance. He has been awarded a promotion and bonuses. Two of his supervisors testified on his behalf and spoke of his work ethic, honesty, integrity, and contribution to the defense industry. Neighbors also spoke of his good neighbor qualities.

Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case in regard to the allegation Applicant provided a false security clearance application:

(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; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

In November 2006, Applicant provided an e-QIP which asked whether Applicant had any pending arrests. Applicant incorrectly responded "No," and disclosed in the remarks section that he had been arrested for "civil simple assault" in January 2004. AG ¶¶ 16(a) and 16(b) both apply because he provided an incorrect answer about his pending arrest. Further review is necessary.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by 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;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant consistently stated when he completed his e-QIP that he believed his most recent arrest was a civil matter and that he conferred with company security officials before submitting his e-QIP. He stated his imprecise date applied to his most recent and pending arrest. Not alleged under this concern, Applicant also stated that he did not list his first two arrests based on advice given to him by a previous company attorney. All of Applicant's assertions were subsequently corroborated. Applicant acknowledged his answer was incorrect, but added that there was no intent on his part to deliberately falsify his e-QIP. Of note, he listed an assault, albeit without an accurate date, referring to his 2006 arrest putting the government on notice that he had an arrest record for assault.

A statement is false when it is made deliberately. An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported. He was candid and forthright at his hearing about his arrests. In evaluating his testimony, I note his memory has faded over time, not only with regard to details surrounding his arrests, but also background information such as graduation dates.

Applicant's character evidence strongly supports the notion that he is an honest individual. Also persuasive was the testimony of his two supervisors, who stated that they believe Applicant to be an honest person and they accept his explanation regarding his failure to disclose his past arrests accurately. I conclude Applicant's alleged falsification of his e-QIP is mitigated. Although he provided incorrect information on his November 2006 e-QIP, AG ¶ 17(f) fully applies. The falsification allegations are

not substantiated. I am satisfied he did not deliberately and intentionally fail to disclose his 2006 arrest with intent to deceive.²

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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines J and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but warrant additional comment.

There is some evidence against mitigating Applicant's criminal conduct. The arrests for domestic assault, whether or not they were dismissed is a serious concern. Given the alcohol history of Applicant's wife, Applicant should reasonably have been put on notice that her drinking could lead to problems. When Applicant's wife drank, her track record demonstrated the situation could escalate to a physical altercation. Unfortunately, this set of facts led to Applicant being arrested three times for assault. These factors show a certain level of culpability and lack of judgment on Applicant's part.

²The Appeal Board has cogently 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. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

The mitigating evidence under the whole person concept is sufficient to warrant reinstatement of Applicant's security clearance. There is no evidence of any security violation(s). He is well regarded by his neighbors and is a contributing member of society. He owns his home free and clear and has a net worth of approximately \$950,000. His work performance record is flawless and he is held in high esteem by his supervisors and co-workers. Apart from these arrests, he is a law-abiding citizen and is a contributing member of society. He has complied with all court-ordered treatment and his wife has stopped drinking for approximately three years. Because of the change in circumstances, it is unlikely that the offenses will recur. Further, because of his law-abiding character, it is unlikely any criminal offenses will recur. His psychological assessment provides for a favorable prognosis.

Applicant's incomplete and incorrect descriptions of his past arrests placed his credibility into question. The government relies on each applicant for a security clearance to thoroughly and accurately respond to questions asked on a security clearance application. Information applicants provide forms the basis to grant or deny security clearances. Applicant's failure to provide accurate and complete information required further costly and time consuming inquiries that could have been avoided. Fortunately for Applicant, his lack of due diligence was not imputed to be intentional or deliberate.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude Applicant has mitigated criminal 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 fully 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

Subparagraphs 1.a to 1.c: For Applicant

PARAGRAPH 2, GUIDELINE E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

ROBERT J. TUIDER
Administrative Judge