



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11581
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

December 10, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On March 5, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a March 25, 2010, response, Applicant admitted two allegations and, in part, admitted a third allegation of the eight allegations raised in the SOR under Guideline E. He did not address the allegations raised under Guideline J and I considered them denied. Applicant requested a hearing on the matter. DOHA assigned the case to me on July 14, 2010. Department Counsel and Applicant agreed to a hearing date of August 26, 2010. A notice of hearing was issued to that effect on August 5, 2010. I convened the hearing as scheduled. Applicant gave testimony, offered one witness, and presented four documents, which were accepted as exhibits (Exs.) A-D without objection. Applicant was given until September 3, 2010, to submit any additional

documents for consideration. Department Counsel offered 16 documents, admitted as exhibits (Exs.) 1-16 without objection. The transcript (Tr.) of the proceeding was received on September 3, 2010. On September 7, 2010, Department Counsel forwarded to me eight additional documents from Applicant. In the absence of any objection to the materials, I accepted them into the record as Exs. E-L. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden in mitigating security concerns arising under Guideline E and Guideline J. Clearance is granted.

Findings of Fact

Applicant is a 27-year-old custodial worker who has worked for the same defense contractor since January 2008. He has completed three years of college. He is single.

In mid-April 2001, Applicant was completing his senior year in high school and looking forward to college. One night, he drove with a school friend to a local nightclub. A few hours later, a fight broke out between Applicant's friend and some mutual acquaintances against another group of young men. Applicant's friend was told to leave the club and Applicant followed him outside along with another acquaintance. Shots rang out and the men scattered. Applicant and the acquaintance ran and hid behind Applicant's car, unaware as to where Applicant's friend had gone for cover.¹ Passing police officers questioned the two briefly, then let them go. Applicant drove the acquaintance to his own vehicle, but they were again stopped by the police. The police found a handgun in Applicant's passenger seat, wrapped in the acquaintance's shirt. The two were arrested and taken to jail, where Applicant stayed for one or two days before his parents posted bail. Applicant was charged with Handgun in Vehicle, Handgun on Person, and Possession of Firearm/Ammo/Minor, but the charges were later dismissed. It was determined that the gun did not belong to Applicant.²

While at college in January 2002, a professor concluded that Applicant's questions had become disruptive. She reported Applicant to campus police, who filed an incident report and cited his conduct as constituting disruptive behavior.

Later that year, Applicant's mother informed him that some court papers had arrived at their home, charging Applicant with Motor Vehicle/Unlawful Taking and Livestock/Motor Vehicle. Applicant denied any knowledge of the incidents described. With Applicant away at school, his mother decided to investigate. When she saw the mug shot of the individual designated as being her son, she realized it was the same acquaintance with whom Applicant had gone to a nightclub with in April 2001.³ It was

¹ Tr. 65. It was later determined that Applicant's friend had been shot.

² Tr. 77-78.

³ Tr. 37.

determined that the acquaintance was the culprit in the matter and the charge was dismissed.⁴

On April 6, 2003, a college fight broke out between a group of locals and a fraternity.⁵ Applicant did not know all the participants. He got involved in the fracas. Applicant, now 20 years old, was knocked out. He was kicked repeatedly in the face, breaking his jaw. He was found unconscious and taken to the hospital.⁶ At the hospital, Applicant's injuries were addressed and his jaw was wired shut so it could heal.⁷ His sister and parents took him home from the hospital on April 8, 2003. An April 15, 2003, university police report states that Applicant threatened one of the fight participants at an April 10, 2003, party by repeatedly stating he was going to kill him.⁸ The report does not reconcile how Applicant, with a jaw wired shut, conveyed a serious threat, but it does note that the incident occurred off-campus and that the April 15, 2003, report was not contemporaneous.⁹ Applicant has consistently denied the attributed threat. He notes that he was recuperating at the time, was unable to speak, and did not attend a party on April 10, 2003.¹⁰ The report notes that Applicant was the victim in its investigation. It also notes that Applicant declined to prosecute or go to trial over the matter, thus ending the investigation.

A year later, on the evening of April 7, 2004, Applicant and an acquaintance were in Applicant's car. Applicant received a call from a fellow student asking him if he would like to participate in a "robbery of a guy who has some marijuana."¹¹ Applicant declined to be involved. His passenger overheard part of the conversation and said he would be interested in participating.¹² Applicant gave him the phone to discuss the matter.¹³ He then drove the visitor to an appointed site near the intended target's

⁴ Ex. A (Case Information, dated Jul. 15, 2010); Tr. 36-39. Ex. A notes Applicant's name as an alias of Applicant's friend. It describes this individual as being approximately three inches taller and about 25 pounds lighter than Applicant was when he completed his 2008 security clearance application. It also notes an incorrect birth date and year. See Ex. 1 (Security Clearance Application, dated May 29, 2008) at 6 of 30.

⁵ Tr. 41.

⁶ Ex. 6 (Report, dated Apr. 15, 2003) at 4.

⁷ Tr. 42-43.

⁸ Ex. 6, *supra*, note 4 at 4.

⁹ *Id.*

¹⁰ Tr. 42-47. Applicant also referenced x-rays from April 6, 2002, that indicated Applicant's jaw was broken. They were not taken into evidence as there was no medical expert available to confirm the radiologist's finding, but the evidence indicates that Applicant's jaw was broken. See Tr. 46-47.

¹¹ Tr. 48.

¹² Tr. 82.

¹³ *Id.*

apartment to meet up with the caller and some associates. Applicant then went home.¹⁴ The caller had set up the crime. The robbers approached the target's apartment door and knocked. When the target answered, they entered the apartment, robbed the occupants, and the drug dealer was shot in the process. A houseguest of the victim was also shot. Later, Applicant was informed of what had happened. The acquaintance implicated Applicant in the crimes, which ultimately included the drug dealer's murder. Applicant was arrested and held for a year.¹⁵

Ultimately, in mid-2005, the acquaintance and others pled guilty to various crimes. Pending trials for those charged in the incident, Applicant was charged with Attempted Robbery, Murder, Break and Enter, Maiming, and four counts of Use of a Firearm. Applicant's counsel convinced Applicant to accept a plea agreement, which he did. Applicant was convicted of Attempted Robbery, a felony, and sentenced to 10 years incarceration (nine years suspended), 12 months of probation, and payment of court costs. He was then released from incarceration after his plea, with his one year in prison pending trial counted as time served toward his adjudged jail time.¹⁶ The remaining charges were *nolle prosequi*. The 22-year-old Applicant then completed his 12 months of supervised probation on May 9, 2006.¹⁷ As a result of his involvement in the crime, Applicant was expelled from college. On reflection, he deeply regrets his involvement in the crime.¹⁸

In May 25, 2007, while he was employed as a consultant with a real estate entity, Applicant saw a man on a street corner who asked him if he could have a ride. Applicant asked if the man had any gas money. The man revealed himself as a police officer conducting a sting operation concerning illegal hackers. Applicant was charged and found guilty of Solicit Offer to Transport a Passenger and fined \$57.50.¹⁹

On May 29, 2008, Applicant completed a security clearance application (SCA). In response to Question 23 (Your Police Record - In the last seven years, have you been arrested for, charged with, or convicted of any offenses not listed above?), Applicant noted his Attempted Robbery conviction and other incidents. He did not disclose information concerning the 2002 Motor Vehicle/Unlawful Taking and Livestock/Motor Vehicle charges or the 2007 Solicit Offer to Transport a Passenger conviction. Applicant explained that he did not list the 2002 incident because, to the best of his

¹⁴ Tr. 97. Applicant explained that I just really didn't think I was participating in anything, so I thought in my mind that I was eliminating myself from the situation by leaving." Tr. 83.

¹⁵ Tr. 53.

¹⁶ Tr. 106.

¹⁷ Ex. G (Letter Confirming Expiration of Probation, dated Aug. 30, 2010); Tr. 54-58, 106-107.

¹⁸ Tr. 104.

¹⁹ In the common vernacular, such a violation is similar to those incurred by an unlicensed "hack," a for-hire driver or cab driver. There is no evidence as to whether the location of the sting was at or near an airport, depot, or other similar destination frequented by unlicensed hackers.

knowledge, he was never arrested or charged with the matter, noting that his mother had adequately corrected the issues administratively.²⁰ He did not list the hacker conviction because he was told by a security officer that it was a misdemeanor, and that a misdemeanor would “hold no weight.”²¹ Because he was told not to list it, he did not.²²

Now 27 years old, Applicant has not been involved in any criminal conduct since the 2007 hacker law violation, nor any serious criminal conduct since 2004.²³ He is committed to avoiding criminal and compromising situations in the future. Since his release from prison in 2005, Applicant has turned his life around. He is candid about his past, including his incarceration. He has matured and maintained continuous employment in a variety of positions. He received instruction in real estate before trying a career as a broker.²⁴ He has enjoyed the stability of his current custodial position for three years. A supervisor described him as “professional and respectful to co-workers and the occupants of the [facility]. He tackles his duties with dedication and a smile. [He] is always respectful and his demeanor is always pleasant.”²⁵ He has built strong ties with co-workers and associates.²⁶

Applicant is highly contrite about his past behavior and has worked to comport his behavior appropriately. He tried to return to college, but has yet to save sufficient funds to do so.²⁷ He is now saving money for tuition. He hopes to soon return to school and finish his degree.²⁸ Applicant has been volunteering with local foster care children by helping them in sports and learning responsibility.²⁹ He encourages his charges, teaching them “stuff not to do and just making sure they stay on the right track.”³⁰ Applicant associates with a more mature and stable network of friends and associates. He has the support of family members, some of whom work along side him at this current place of employment. He has especially strong support from his sister, a mentor

²⁰ Tr. 61.

²¹ Tr. 62.

²² Tr. 62-63. Applicant noted “Why would I put a murder charge on here and not a hacking charge? That doesn’t really - - that doesn’t really weigh out.” On his SCA, Applicant fully detailed the 2004 incident, as well as the dismissed 2001 incident.

²³ A traffic/speeding ticket from May 2010 has been paid. See Tr. 110.

²⁴ Tr. 108.

²⁵ Ex. K (Letter, dated Aug. 30, 2010).

²⁶ Tr. 109-110; Ex. E and Exs. I-M (Recommendations). Applicant displayed similar qualities throughout the proceedings.

²⁷ *Id.*.

²⁸ Ex. H (Letter, dated Aug. 31, 2010).

²⁹ Tr. 109.

³⁰ *Id.*

who is encouraging him to move on with his life and succeed on his new path.³¹ She articulated well his appreciation of his current job and its importance to him.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ³² The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ³³

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. The Government reposes a high degree of trust and confidence in 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites

³¹ Tr. 117-121.

³² See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁵

Based upon consideration of the evidence, Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) are the most pertinent to this case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because 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.³⁶ In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.³⁷ Here, personal conduct security concerns arose because Applicant failed to disclose his 2002 charges for Motor Vehicle/Unlawful Taking and Livestock/Motor Vehicle and the 2007 incident involving the Solicit Offer to Transport a Passenger on his SCA. In addition, overall security concerns arose because of personal conduct issues related to seven alleged instances of criminal conduct and social misconduct between 2001 and 2007.³⁸

Regarding the SCA-related issues, if his omissions were intentional, the omissions would be sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 16(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).

In completing his SCA, Applicant duly noted his past criminal conduct, including the information leading to his attempted robbery conviction. He did not mention the

³⁴ *Id.*

³⁵ *Id.*

³⁶ AG ¶ 15.

³⁷ *Id.*

³⁸ Although instances of alleged criminal conduct is better examined and fully considered under Guideline J, below, it is equally considered under Guideline E.

motor/vehicle/unlawful taking and livestock/motor vehicle incident noted in SOR allegation ¶ 1.c because he did not commit the violation, he was shown not to have committed the violation, and he assumed it had been administratively corrected. Applicant made an honest mistake, and his failure to list this charge was not deliberate or with intent to deceive the Government. As for the 2007 solicit offer to transport misdemeanor noted in SOR allegation ¶ 1.g, Applicant was told by his security officer not to list the incident. As Applicant logically surmised, it would make no sense to conceal a hacking violation while disclosing an attempted murder charge. I find that Applicant's omission of these two incidents was not occasioned by an intent to falsify or conceal. Consequently, no disqualifying condition applies.³⁹

As for the remaining allegations under Guideline E, personal conduct disqualifying conditions AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information), AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information), and ¶ 16(g) (association with persons involved in criminal activity) apply.

With regard to the motor/vehicle/unlawful taking and livestock/motor vehicle incident noted in SOR allegation ¶ 1.c because he did not commit the violation, he was shown not to be the individual who committed the violation, and he assumed it had been administratively corrected. These facts raise AG ¶ 17(f) (the information was unsubstantiated or from a source of questionable reliability). The solicit offer of transport violation noted in SOR allegation ¶ 1.g is an infraction for a relatively arcane misdemeanor. Applicant was unaware that asking for gas money in return for a ride was not permitted in his city. There is no evidence he meant to breach local rules, and the conduct demonstrated is aberrant when compared to the prior examples of alleged criminal activity and misconduct. There is no likelihood such conduct will recur. I find that AG ¶ 17(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) applies.

Applicant was a teen when he was charged with firearms citations (SOR allegation ¶ 1.a). Those charges were ultimately dismissed, with the evidence indicating that the gun in question was not his. Such unique circumstances are sufficient to raise AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so

³⁹ If a disqualifying condition were applicable, mitigating conditions ¶¶ AG 17(f) and 17(b) would apply, respectively.

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) and AG ¶ 17(f) (the information was unsubstantiated or from a source of questionable reliability). Moreover, since Applicant served his 2005 sentence, he has eschewed the company of those involved in criminal and questionable behavior, raising AG ¶ 17(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 was an underclassmen when he was cited for disruptive behavior in the classroom in 2002, as described in SOR allegation ¶ 1.b, and reported as having verbally threatened the life of another student at a party in 2003, as noted in SOR allegation ¶ 1.d. Applicant's description of the former incident is credible, and it is notable that no administrative or academic action was taken as a result of his alleged classroom disturbance. As for the latter incident, the report accurately notes that Applicant's mouth/jaw was wired shut at he time. The report, however, notes that the information gathered was solicited days after the alleged incident, a party at which Applicant denies he attended. His version of the facts, the report's indefinite findings, and an absence of legal or administrative repercussions for the alleged threat, make this allegation suspect, particularly given the fact error was obviously present in the situation noted at SOR allegation ¶ 1.c. Given, Applicant's age at the times concerned, the unique situations presented, and the age of the allegations, Personal Conduct Mitigating Condition AG ¶ 17(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) applies.⁴⁰

Remaining is the incident that led to Applicant's conviction for Attempted Robbery, a felony, and his resultant expulsion from college (SOR allegations ¶¶ 1.e and 1.f). While the rest of the allegations are unsubstantiated or depict incidents of youthful injudiciousness, the facts and circumstances prefacing the April 2004 robbery and eventual murder are atypically egregious. When Applicant declined to participate in the robbery, he demonstrated some judgment. Rather than hang up the phone, however, he gave the receiver to an acquaintance who willingly accepted a role in the crime. Good judgment would have had Applicant walk away. Instead, Applicant drove his acquaintance to a designated spot near the targeted apartment, dropped his passenger to assist in a contemplated robbery, and went home. While Applicant had no idea that the evening would end in gunshots and murder, he knew a robbery was planned against a known drug dealer. His involvement, limited as it was, demonstrated considerably poor judgment and merited a conviction for attempted robbery because he aided in the commission of the offenses. To the extent that Applicant has been candid about his 2005 Attempted Robbery conviction and the 2004 events leading up to his plea, as well as his full disclosure of the events on his SCA , AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) applies.

⁴⁰ In addition, regarding SOR allegation ¶ 1.c, sufficient evidence exists to suggest that AG ¶ 17(f) also applies.

Remaining as potentially applicable is AG ¶ 17(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). In early 2004, Applicant was charged with multiple counts, including Murder. After consideration of the facts and a plea bargain, he was convicted of Attempted Robbery for his limited participation in the shooting. In the interim, Applicant was taken into custody and expelled from school. In May 2005, his plea was entered, sentence imposed, and he was released from prison based on the one year served. He completed his probation on May 6, 2006. Aside from the 2001 firearm charge, which was dismissed when it was determined the gun in his car was not his, it is his only substantiated charge regarding violence and his only conviction.

Since the 2004 incident, Applicant has completed his sentence and his probation. He was also fined a nominal sum for asking a passenger for gas money. He has been continuously employed, pursued real estate studies, tried to return to college, and volunteered his time to help foster children avoid facing a similar fate. Applicant has excelled in his current work as a custodial worker. At work, he is described as professional, respectful, and dedicated. He now associates with professionals, peers, and family members, all of whom speak highly of his diligence and personality. At the hearing, he was a credible and communicative witness who took responsibility, and expressed contrition, for his part in the 2004 crime. At that time, Applicant was barely 21 years old. Today, he is 27 years old.

Moreover, in the six-and-a-half years since he drove an acquaintance to a designated venue to engage in a serious felony, Applicant has demonstrably changed. He has matured considerably over the years, through natural maturation and raw experience. Rather than become embittered following his incarceration, Applicant has emerged a pleasant and earnest man who genuinely wants to put his past behind him, move on, and avoid both questionable activities and associates. Without dismissing the gravity of the crime committed, sufficient time has passed since that singular, grievous crime was committed, I find that the foregoing and Applicant's demonstrated maturation give rise to AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). As well, AG ¶ 17(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) also applies.

Applicant paid his dues to society for his part in the 2004 scheme that ultimately resulted in a murder. The lack of judgment displayed in 2004 was extreme, but Applicant has effectively turned his life around, matured, and now demonstrates sound judgment. Other than a 2007 fine for soliciting gas money in exchange for a ride in his vehicle, he has led an incident-free life, been gainfully employed, and volunteers in his community. This process is concerned with an applicant's security worthiness; it is not designed to disregard personal improvement marked by reliability and trustworthiness

or serve a blindly punitive purpose. In light of the foregoing, I find that Applicant has mitigated personal conduct security concerns.

Guideline J – Criminal Conduct

The concern under this guideline is that “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.”⁴¹ In raising this guideline, the SOR simply redirects attention to four allegations previously addressed, specifically, SOR allegation ¶ 1.a, the dismissed 2001 handgun incident; ¶ 1.c, the inaccurately reported August 2002 charges for Motor Vehicle/Unlawful Taking and Livestock/Motor Vehicle; ¶ 1.f, the 2004 crime leading to Applicant’s 2005 conviction for Attempted Robbery; and ¶ 1.g, the 2007 Solicit Offer to Transport Passenger. Such incidents are sufficient to raise Criminal Conduct Disqualifying Condition AG ¶ 31(a) (a single serious crime or multiple lesser offenses) and AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). Consequently, it is Applicant’s burden to mitigate the security concerns raised.

As previously noted, the 2001 handgun possession charge was dismissed because the gun at issue was not Applicant’s. Given the fact presented, Criminal Conduct Mitigating Condition AG ¶ 32(c) (evidence that the person did not commit the offense) applies.

The court documents related to the August 2002 charges for Motor Vehicle/Unlawful Taking and Livestock/Motor Vehicle reveal that the individual noted with an alias that was the same as Applicant’s name, but taller and with a different birth date, was the true culprit in a crime of which Applicant had no knowledge. AG ¶ 32(c) (evidence that the person did not commit the offense) applies.

In light of the nature of the 2007 Solicit Offer to Transport Passenger charge, Applicant’s conviction, his nominal fine, and no evidence the incident was the result of an ill advised attempt to start an illegal hacking career, AG ¶ 32(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) applies. This offense is unlikely to recur and does not reflect adversely on Applicant’s current judgment.

I have again considered the facts and circumstances surrounding the crime that ultimately led to Applicant’s Attempted Robbery conviction and incorporate my findings above herein. Moreover, I again have considered the extreme nature of the occurrences of that night, the extent of Applicant’s participation, Applicant’s highly credible contrition for his participation in that crime, his subsequent good behavior, the passage of time without recurrence of criminal conduct, good work performance, community service, and his attempts to further his education.

⁴¹ AG ¶ 30.

Applicant's 2007 conviction was for a minor, technical violation; his significant criminal contribution in 2004 occurred over six-and-a-half years ago. Now 27, he has matured considerably in the intervening years. He has completely changed his life and his lifestyle. He is devoted to his job. He values the opportunity to prove his self-worth and diligence. There is no evidence he continues to associate with, or emulate, individuals who disregard the law. Rather, he articulated and demonstrated his commitment to staying clear of incidents manifesting criminal and personal conduct issues. For those reasons and those previously noted, I find AG ¶ 32(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 AG ¶ 32 (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) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Speaking in Applicant's favor, he is 27 years old and has been successfully employed as a custodial worker for nearly three years. At work, he is a valued and effective employee. He has served his sentence for his limited participation in a grievous crime in 2004, which occurred shortly after he turned 21. He is contrite over his past criminal involvement and very poor judgment, both in 2004 and for earlier incidents while in school. He was unaware that asking for gas money in exchange for a car ride was proscribed. Applicant is earnestly focusing on his custodial work, building his future, contributing positively to his community, and completing his college education. Applicant sincerely wants to continue his efforts to prove his self-worth at work and with peers. He is backed by a supportive family and his employer. He was a highly credible witness and his equally credible sister was exceptionally passionate in her support of the more mature man he is today. Applicant is committed to staying away from criminal activity and leading an honest life.

Much of Applicant's earlier incidents of issue were the result of immaturity, poor selection of associates, or being in the wrong place at the wrong time. The 2004 criminal offense is the most striking. Although it is not recent, it is a singular instance of deliberate malfeasance. Applicant declined to participate in the planned robbery of a drug dealer. Before going home, however, he voluntarily drove an associate to a meeting place so his acquaintance could join in the planned criminal activity. Consequently, the 21-year-old Applicant helped bring the planned crime together. For

that decision, Applicant spent a year in jail pending trial, stood trial, was released, and completed his probation without incident. Rather than become embittered, Applicant has struggled to live an industrious and crime-free life. Since that time, his only adverse incident was a citation for soliciting gas money for giving someone a ride in his car. He has held steady work as a custodian for three years, where he is regarded as a hard worker. He volunteers with foster children by encouraging them to take responsibility for their actions and to stay "on the right track." He is attempting to complete his college education. He has been candid about his attempted robbery conviction, which he fully detailed on his security clearance application, and credibly testified his commitment to living with the law. There is no indication that further criminal incidents will occur in the future. He is committed to excelling at work and doing nothing that might jeopardize his employment. In light of the foregoing, I find that Applicant has mitigated personal conduct and criminal conduct security concerns. Clearance is granted.

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 E:	FOR APPLICANT
Subparagraphs 1.a-1h:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge