DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---------------------------	)	ISCR Case No. 09-02577
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro se*

January 20, 2011

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Decision

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GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On December 12, 2008, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (e-QIP).[1] On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories. He responded to the interrogatories on March 8, 2010.[2] On April 28, 2010, 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; Department

[1] Government Exhibit 1 (e-QIP), dated December 12, 2008.

[2] Government Exhibit 2 (Applicant's Answers to Interrogatories, dated March 8, 2010).

of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the 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.

Applicant acknowledged receipt of the SOR on May 10, 2010. In a sworn, written statement, notarized on May 12, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 25, 2010, and the case was assigned to me on June 28, 2010. A Notice of Hearing was issued on July 1, 2010, and I convened the hearing, as scheduled, on July 14, 2010.[3]

During the hearing, three Government exhibits were admitted into evidence, without objection.[4] Applicant testified. I offered to keep the record open to afford Applicant the opportunity to supplement it, but he declined the offer.[5] The transcript (Tr.) was received on July 22, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to Criminal Conduct in the SOR (¶¶ 1.a. through 1.c., and 1.e. through 1.g.). He denied the remaining allegation (¶ 1.d.), as well as all of the factual allegations pertaining to Personal Conduct (¶¶ 2.a. through 2.d.).

Applicant is a 37-year-old employee of a defense contractor, currently serving as an electronic technician[6] installing radio mounts.[7] He is seeking to obtain a security clearance. A high school graduate,[8] he has never served in the military.[9] He had previously worked in a variety of positions, including self-employment as a framer and

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[3] Applicant had been apprised of the hearing date by Department Counsel before the actual notice of hearing was issued, and on July 14, 2010, he signed a waiver of the established notice requirement and indicated he was willing to proceed with the hearing. Tr. at 12.

[4] Applicant offered no exhibits.

[5] Tr. at 68.

[6] Government Exhibit 1, *supra* note 1, at 10.

[7] Tr. at 19.

[8] *Id.* at 18-19.

[9] *Id.* at 19.

painter for a construction company, a drywall framer with a home builder, and a floor stocker for a gasoline station.[10] He has been with his current employer since November 2008.[11]

Applicant has never been married,[12] but does have four children (born in 1993, 2003, 2005, and 2006, respectively).[13] They all reside with him.[14]

Criminal Conduct

During the period 1996 until 2007, Applicant was involved in seven different incidents with local police authorities. He was charged with criminal offenses falling generally into three categories: drug-related, alcohol-related, or assault-related. In July 1996, Applicant was arrested and charged with felony possession of cocaine.[15] He offered two versions of the circumstances. He told an Office of Personnel Management (OPM) investigator in January 2009 that he had been at his girlfriend's residence and was driving home when he was stopped by an unmarked police car for reasons never explained. He said the police asked for permission to search his vehicle, and he granted it. Nothing was found. Additional officers arrived and the vehicle was searched four additional times, each time by a different officer. The last officer found a bag containing an unspecified amount of cocaine on the roadside by the vehicle and Applicant was arrested despite denying any knowledge or ownership of the cocaine. Applicant hired an attorney, never went to court, and the case was dismissed.[16]

His testimony at the hearing was that he was washing his truck at his girlfriend's house when he observed a vehicle with tinted windows driving past the house on five or six occasions. On the last occasion, he got into his truck and drove after the passing vehicle to see who was driving it. The vehicle stopped and he stopped. It turned out to be an unmarked police car and the police asked him for permission to search his truck. A marked police car soon arrived. After several fruitless searches by different officers, the last officer found a bag of cocaine under the truck by the rear tire.[17] The remainder of the story is essentially identical to the other version.

[10] Government Exhibit 1, *supra* note 1, at 11-13.

[11] *Id.* at 10.

[12] *Id.* at 14.

[13] *Id.* at 16-18.

[14] Tr. at 19.

[15] *Id.* at 20.

[16] Personal Subject Interview, dated January 28, 2009, at 1, attached to Government Exhibit 2, *supra* note 2. While the interview was conducted on January 27, 2009, the unsworn declaration was not printed until the following day.

[17] Tr. at 20-30.

In December 1996, Applicant drove to a store after consuming an unspecified quantity of beer at his sister's residence. He was arrested for driving under the influence (DUI). He initially testified that he was at a stop sign when a state trooper cruiser coming from the opposite direction made a u-turn and came up behind him. The trooper–who had married Applicant's cousin and had disputes with Applicant–said Applicant had been observed swerving before he had been stopped. Applicant was administered a breathalyzer test, which he failed, but he was able to pass the dexterity test. He was processed and released that same day, and was eventually found guilty of the charge and fined.[18] His license was suspended,[19] he was placed on unsupervised probation for 12 months,[20] and was ordered to attend Alcoholics Anonymous (AA) meetings.[21] Applicant denied he was drunk[22] or that he had swerved,[23] and contends the trooper had a grudge against him.[24] Although Applicant admitted the allegation, upon reflection, he retracted all of the above about the trooper and why he had been stopped, claiming he was confused, and instead claimed he could not remember why he had been stopped.[25] Regardless of Applicant's memory, the official record supports the charge and the punishment.

In about 1998, Applicant was charged with assault on a female and communicating threats. Applicant doesn't recall the specific event because there were several such instances.[26] The charges were dismissed, and the complaining witness was charged with frivolous prosecution and "taxed" with costs, $80.[27]

In July 2000, Applicant was charged with assault on a female.[28] Once again, Applicant doesn't recall the specific event because this one was one of several such instances. He was convicted of domestic violence.[29] He was fined $120, sentenced to 60 days in jail, reduced to 30 days, and placed on supervised probation for 12

[18] *Id.* at 30-34; Government Exhibit 2, *supra* note 16, at 1. Applicant recalls the fine being $120 (*Id.* Government Exhibit 2), but *compare* Government Exhibit 3 (State Criminal Record Search, undated) at 4, wherein the record reveals he was fined, with costs, $265.

[19] Tr. at 34.

[20] Government Exhibit 3, *supra* note 18, at 4.

[21] Tr. at 34.

[22] *Id.* at 30.

[23] *Id.* at 31-32.

[24] *Id.* at 32-33.

[25] *Id.* at 43-44.

[26] *Id.* at 37.

[27] Government Exhibit 3, *supra* note 18, at 3.

[28] *Id.* at 4.

[29] *Id.*

months.[30] Applicant contends he never spent any time in jail[31] and there is no evidence to refute his contention.

In 2001, the incident described above, initially identified by Applicant as the December 1996 incident, occurred. Applicant was eventually found guilty of the charge of driving while impaired (DWI).[32] His license was suspended, initially for 30 days, but after it was briefly restored, he lost it for an entire year.[33]

In February 2009, Applicant was again interviewed by an OPM investigator. In April 2002, according to his subsequent statement to the OPM investigator, some five or six hours after Applicant had consumed two or three beers, he was driving in a rural area when he was again stopped by a state trooper. Applicant refused to take a breathalyzer test and was arrested and charged with DWI. The case was eventually dismissed.[34] His testimony at the hearing was that he denied he had been drinking, and could not recall the circumstances of the incident.[35]

In September 2007, Applicant was charged with assault on a female. He and his girlfriend got into a physical dispute where she slapped him so he slapped her and she called the police.[36] The charge was eventually dismissed.[37]

Personal Conduct

On December 12, 2008, when Applicant completed and submitted his e-QIP, he responded to two separate questions set forth in the e-QIP. The SOR alleges Applicant deliberately failed to disclose complete information in response to § 23d: Your Police Record – (*Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?*), to which he answered "yes," and listed a December 2000 DWI (for which he stated he had been convicted) and a January 2001 DWI (which he stated was dismissed.)[38] He did not list his 1996 arrest for felony possession of cocaine (which was dismissed) or his 1996 arrest for DUI (for which he was convicted). Applicant did not think that incidents in which the charges were dismissed had to be listed or would show

[30] *Id.;* Tr. at 40-42.

[31] Tr. at 40.

[32] *Id.* at 44-46.

[33] *Id.* at 46.

[34] Personal Subject Interview, dated March 3, 2009, at 1, attached to Government Exhibit 2, *supra* note 2. While the interview was conducted on February 26, 2009, the unsworn declaration was not printed until March 3, 2009.

[35] Tr. at 47-49.

[36] Government Exhibit 2, *supra* note 2, at 5.

[37] Government Exhibit 3, *supra* note 18, at 5.

[38] Government Exhibit 1, *supra* note 1, at 21-23.

up on his record, so he did not list the cocaine arrest.[39] The DUI conviction was not listed because he "probably didn't remember it, [he] didn't know what date it was on."[40] He denied the omission was deliberate or an attempt to falsify the material facts.[41]

The SOR also alleges Applicant deliberately failed to disclose complete information in response to § 23f: Your Police Record – (*In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than $150 unless the violation was alcohol or drug related.))*, to which he answered "no." He did not list the 2007 charge of assault on a female (which was dismissed). His reasons for the failure to include the charge were the same as those offered for the other omission, and he denied the omission was deliberate or an attempt to falsify the material facts.[42]

As noted above, Applicant was interviewed by an OPM investigator in January 2009. The SOR alleges Applicant deliberately failed to disclose his entire criminal history. While he admitted the 1996 arrest for felony possession of cocaine (which was dismissed) and his 1996 arrest for DUI (for which he was convicted), he denied any other criminal offenses.[43] He cannot recall why he did not discuss the 1998 charges for assault on a female and communicating threats (which were dismissed), the 2000 charge for assault on a female (for which he was convicted of domestic violence), or the 2007 charge for assault on a female (which was dismissed). He was not afraid to discuss those incidents, but does not know why he failed to mention them.[44] He denied the omission was deliberate or an attempt to falsify material facts.[45]

Also, as noted above, Applicant was interviewed by the OPM investigator in February 2009. The SOR again alleges Applicant deliberately failed to disclose his entire criminal history. While he admitted the 2002 arrest for DWI (which was dismissed), and the 2007 charge for assault on a female (which was also dismissed), he denied any other criminal offenses.[46] He cannot recall why he did not discuss the 1998 charges for assault on a female and communicating threats (which were dismissed), or the 2000 charge for assault on a female (for which he was convicted of domestic violence). He believes he remembers someone at work telling him that he only had to list incidents within the past five or seven years, but because he didn't have a copy of

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[39] Tr. at 58, 60-61.

[40] *Id.* at 61.

[41] Applicant's Answer to the SOR, dated May 12, 2010, at 2.

[42] *Id.* at 2-3.

[43] Personal Subject Interview, *supra* note 16, at 1. Applicant was of the impression that he did not think he had stated such, but the denial appears in the unsworn declaration. Tr. at 63.

[44] Tr. at 63-64.

[45] Applicant's Answer to the SOR, *supra* note 41, at 3.

[46] Personal Subject Interview, *supra* note 34, at 1.

his criminal record to refer to, he could not remember all of the incidents.[47] He denied the omission was deliberate or an attempt to falsify material facts.[48]

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."[49] 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 eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[50]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[51] 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,

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[47] Tr. at 64-65.

[48] *Id.* at 66; Applicant's Answer to the SOR, *supra* note 41, at 3.

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

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

[51] "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).

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.[52]

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[53]

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."[54] 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. 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. As noted above, during the period 1996 until 2007, Applicant was "involved" in seven different incidents with local police authorities. He was charged with criminal offenses falling generally into three categories: drug-

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

[53] *Egan*, 484 U.S. at 531

[54] *See* Exec. Or. 10865 § 7.

related, alcohol-related, or assault-related. Of those seven incidents, Applicant was found guilty of three: a 1996 DUI, a 2000 domestic violence, and a 2001 DWI. The remaining charges were dismissed. Nevertheless, even considering his vague memory of the various incidents, he did admit that the essential facts of arrests and charges, while being unable to specifically recall the actual events leading up to those arrests. Accordingly, AG ¶¶ 31(a) and 31(c) have been established.

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." Also, when there is "evidence that the person did not commit the offense," AG ¶ 32(c) may apply. Similarly, AG ¶ 32(d) may apply where "there is evidence of successful rehabilitation: including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement."

Applicant, a single parent with custody of four minor children, has maintained steady employment since high school, but somehow seemed to be in the wrong places at the wrong times, sometimes with the wrong people. The evidence merely establishes that the incidents occurred, but because of Applicant's inability to separate the incidents in his memory, he was unable to discuss the underlying facts with any specificity.

As it pertains to the 1996 arrest for felony possession of cocaine, from the facts he could recall, it appears Applicant was the innocent victim of inappropriate police activity. In the absence of any other evidence of his involvement with drugs, and his steadfast denials, it appears that the dismissal of the charge should eliminate the characterization of the incident as Applicant's criminal activity. As it pertains to the 1998 charges of assault on a female and communicating threats, those charges were also dismissed, and the complaining witness was charged with frivolous prosecution. Under those circumstances, once again, it appears that the dismissal of the charges should eliminate the characterization of the incident as Applicant's criminal activity.

The most recent charge for which he was found guilty occurred in 2001 with Applicant's conviction of DWI. The more serious charge, assault on a female, occurred in 2000. There has been no more recent criminal conduct for which he was convicted. I recognize that there were two other incidents, a dismissed DWI in 2002 and a dismissed assault on a female in 2007, but without more information pertaining to the underlying circumstances, I am unable to conclude that those two incidents were also Applicant's criminal activity. Considering the nature of Applicant's "criminal conduct," and the 10 years since his most recent incident for which he was convicted occurred, I believe AG ¶¶ 32(a), 32(c), and 32(d) fully apply.

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. Also, 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. Similarly, under AG ¶ 16(e), "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . " may raise security concerns.

Applicant's omissions in his responses to inquiries in the e-QIP and the OPM interviews, of critical information pertaining to criminal conduct, provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or were the result of simple oversight or negligence on his part, as he contends. Applicant repeatedly claimed he had a bad memory and omissions by him were caused either by that bad memory or by his misinterpretation of what information was required. I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony.

During the hearing, his recollections and explanations created extensive confusion, as he was unable to separate incidents and facts, and consistently mixed up names and occurrences. It is my impression that his confusion regarding his personal conduct was real and his explanations are consistent. Considering the quality of the evidence before me, his testimony has the solid resonance of truth. I find Applicant's explanations are credible in his denial of deliberate falsification.[55] AG ¶¶ 16(a), 16(b), and 16(e) have not been established.

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[55] 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

Whole-Person Concept

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

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

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

There is some evidence against mitigating Applicant's conduct. During the period from 1996 until 2007, he was involved in seven different incidents with local police authorities. He was charged with criminal offenses falling generally into three categories: drug-related, alcohol-related, or assault-related. While the charges in four of those instances were dismissed for various known or unknown reasons, he was found guilty of DUI in 1996, assault on a female in 2000, and DWI in 2001. When asked to list all of his criminal incidents on his e-QIP, and discuss them with an OPM investigator, he omitted several such incidents, subsequently claiming he had forgotten the incidents or misunderstood the parameters of the inquiries.

The mitigating evidence under the whole-person concept is substantial. Applicant has a rather stale history of criminal conduct for which he was convicted, including incidents in 1996, 2000, and 2001. The most recent incident in which he was involved purportedly occurred in 2007, but the charges were dismissed.

Applicant is a single parent with custody of four minor children, and he has maintained steady employment since high school. Somehow he seemed to be in the wrong places at the wrong times, sometimes with the wrong people. Regarding the 1996 arrest for felony possession of cocaine, it appears Applicant was the innocent victim of inappropriate police activity, and the charge was dismissed. As for the 1998

> intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

charges of assault on a female and communicating threats, those charges were also dismissed, and the complaining witness was charged with frivolous prosecution. Under those circumstances, it appears that the dismissal of those charges should eliminate the characterization of the incidents as Applicant's criminal activity.

I am mindful that any one factor, considered in isolation, might put Applicant's criminal history, with emphasis on his repeated incidents with police authorities, in a less than sympathetic light. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[56] His unblemished record since 2007 (when the charge of assault on a female was dismissed), and particularly since 2000 (when he was found guilty of domestic violence), are sufficient to mitigate continuing security concerns. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his criminal conduct and personal conduct.

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
Subparagraph 1.e: For Applicant
Subparagraph 1.f: For Applicant
Subparagraph 1.g: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant
Subparagraph 2.b: For Applicant
Subparagraph 2.c: For Applicant
Subparagraph 2.d: For Applicant

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

Conclusion

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

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ROBERT ROBINSON GALES
Administrative Judge