DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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----------	)	ISCR Case No. 10-05574
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: Leslie McAdoo Gordon, Esquire

07/26/2012

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Decision

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GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the security concerns arising from his criminal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On July 21, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on January 25, 2012.[2] On February 24, 2012, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative*

[1] Government Exhibit 1 (SF 86), dated July 21, 2009.

[2] Government Exhibit 5 (Applicant's Answers to Interrogatories, dated January 25, 2012).

Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct), and detailed reasons why DOHA was unable find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on March 7, 2012. In a sworn written statement, dated April 9, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 7, 2012, and the case was assigned to me on May 11, 2012. A Notice of Hearing was issued on May 17, 2012, but because Applicant had recently engaged the services of Ms. Gordon, upon her motion for a continuance, and there being no objection to said motion by Department Counsel, on May 25, 2012, I granted the motion and rescheduled the hearing for June 19, 2012. However, due to Applicant's previously scheduled mission responsibilities overseas, another motion for a continuance was made on May 29, 2012. There being no objection to said motion by Department Counsel, on June 4, 2012, I granted the motion and rescheduled the hearing for June 27, 2012. I convened the hearing, as scheduled.

During the hearing, 11 Government exhibits (GE 1-11) and 27 Applicant exhibits (AE A-AA) were admitted into evidence without objection. Applicant and one other witness testified. The hearing transcript (Tr.) was received on July 9, 2012.

Procedural Matters

On April 25, 2012, nearly two weeks after Applicant responded to the SOR, Department Counsel amended the SOR without offering any explanation for the action.[3] At the commencement of the hearing, I handled the action as a motion to amend[4] and reviewed the proposal with both parties. Specifically, Department Counsel moved to withdraw SOR ¶ 1.d., and ¶¶ 2.a. through 2.f. There being no objection, the motion was granted.[5] Accordingly, the SOR allegations pertaining to Guideline E (Personal Conduct) were withdrawn and are no longer a security concern.

[3] Department Counsel cited ¶ E.3.1.13 of the Directive as authority for the amendment : "As far in advance as practical, Department Counsel and the applicant shall serve one another with a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge."

[4] ¶ E.3.1.17 states: "The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. . . ."

[5] Tr. at 10.

Findings of Fact

In his Answer to the SOR, Applicant admitted all but two of the factual allegations pertaining to criminal conduct (¶¶ 1.a. and 1.b.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. He denied the two remaining allegations.[6] After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor, currently serving as a program analyst.[7] In his SF 86, Applicant indicated he was granted access to sensitive compartmented information (SCI) in March 2005,[8] but during the hearing he stated he was granted a top secret security clearance in December 2006, with no mention of the SCI.[9] He subsequently lost his security clearance, but regained it in July 2009, and currently holds a top secret security clearance.[10]

Following his high school graduation in May 2001, Applicant attended a community college for an unspecified number of years, but did not receive a degree.[11] He enlisted in the United States Marine Corps (USMC) in July 2001, and served honorably until July 2006, when he separated as a corporal.[12] During his military career, Applicant was awarded the Navy and Marine Corps Achievement Medal (with gold star), the USMC Good Conduct Medal, the Global War on Terrorism Service Medal, the National Defense Service Medal, the Rifle Qualification Badge (Expert), and the Pistol Qualification Badge (Expert).[13] He also received accolades for outstanding achievement.[14]

Since separating from active duty, Applicant has held several positions with different organizations. He was a senior training specialist from July 2006 until October 2007, and a project officer from October 2007 until December 2008.[15] He joined his current employer in December 2008.[16] Applicant has never been married.[17]

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[6] SOR ¶ 1.d. was withdrawn by the subsequent amendment to the SOR.

[7] Tr. at 126. *But see* Tr. at 32 where Applicant described his title as program manager.

[8] GE 1, *supra* note 1, at 40.

[9] Tr. at 36.

[10] Tr. at 37-38.

[11] Tr. at 34-35; GE 1, *supra* note 1, at 14-15.

[12] GE 1, at 24; Tr. at 48, 126.

[13] AE R (Certificate, dated April 15, 2005); AE X (Certificate, dated June 26, 2006); AE S (Certificate, dated January 1, 2006); GE 5 (Certificate of Release or Discharge from Active Duty (DD 214), dated July 30, 2006).

[14] AE Y (Certificate, dated July 30, 2006); AE W (Certificate, undated); AE V (Certificate, dated June 30, 2006); AE P (Certificate, dated November 19, 2004).

[15] GE 1, at 18-20; Tr. at 34, 125-126.

[16] Tr. at 125-126.

Criminal Conduct

Applicant has a history of diverse criminal conduct that commenced in 2002 while he was on active duty and resumed in 2009. In May 2002, when he was about 18 or 19 years old, Applicant used marijuana on one occasion.[18] During the period March 2002 until July 2002, Applicant used methamphetamine between 12 and 15 occasions at parties with friends.[19] He has not used any illegal drugs since July 2002.[20] In July 2002, while sitting in a car with a friend, Applicant was found to be illegally carrying what was described as a concealed weapon under state law: a wooden handled knife that had a total length of about eight inches and a blade length of about four and one-half inches.[21] At that time, although Applicant claimed to be on authorized leave,[22] he was arrested by local law enforcement authorities and held in the city jail, followed by the county jail, and then returned to military custody, for possession of the knife and for being absent without leave from his detachment for eight days.[23]

As a result of the above alleged misconduct, Applicant was charged with violations of Article 86 (10 U.S.C. § 886) (absence without leave), Uniform Code of Military Justice (UCMJ), Article 112a (10 U.S.C. § 912a) (wrongful use of controlled substances), UCMJ, and Article 134 (10 U.S.C. § 934) (general article), UCMJ, and referred to a special court-martial.[24] The charge and specification for violation of Article 86 was dismissed or withdrawn for unspecified reasons, although Applicant contends it was because he was actually on authorized leave.[25] In December 2002, Applicant entered a plea of guilty to the two remaining charges and three specifications: wrongful

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[17] GE 1, *supra* note 1, at 27.

[18] GE 2 (Security Clearance Application, dated May 5, 2005), at 7.

[19] GE 2 (Security Clearance Application), *supra* note 18, at 7; GE 8 (Affidavit, dated January 30, 2006), at 2.

[20] GE 8, *supra* note 19, at 2.

[21] Tr. at 42.

[22] Tr. at 41.

[23] Tr. at 41; GE 6 (Record of Conviction by Summary Court-Martial, undated).

[24] GE 6, *supra* note 23; GE 9 (Commander's Report of Disciplinary or Administrative Action, dated January 4, 2003). The accuracy of several of the Government exhibits is questionable due to the numerous inconsistencies appearing in them. For example, Government Exhibit 9 lists three offenses on the first page: absent without leave, wrongful possession of methamphetamine, and wrongful use of amphetamine, with no mention of unlawfully carrying a concealed weapon, but on the reverse side, lists four offenses: unauthorized absence, wrongful use of methamphetamine, wrongful use of marijuana, and unlawfully carrying a concealed weapon. The charges were referred to a special court-martial. Government Exhibit 6, on the other hand, lists the following offenses: unauthorized absence, wrongful use of methamphetamine, wrongful use of amphetamine, and wrongful use of marijuana, with no mention of unlawfully carrying a concealed weapon, and adding the offense of wrongful use of amphetamine. Furthermore, the type of court-martial is reflected as a summary court-martial, not a special court-martial. The Government did not offer a Charge Sheet (DD Form 458) to verify the charges and specifications.

[25] GE 6, *supra* note 23; Tr. at 46.

use of methamphetamine, wrongful use of marijuana, and unlawfully carrying a concealed weapon.[26] The military judge found Applicant guilty, and sentenced him to be reduced to pay grade E-1, to forfeit $725.00 pay per month for two months, to be confined for a period of 60 days, and to be discharged with a bad-conduct discharge (BCD).[27] The commanding general approved all but that portion of the sentence that called for the BCD and confinement for more than 30 days.[28] Accordingly, those allegations of SOR ¶¶ 1.b. and 1.b(1) that refer to wrongful use of amphetamine or forfeiture of $700 per month for two months have not been established. The remaining allegations in SOR ¶¶ 1.b., 1.b(1), and 1.b(2) have been established.

In June 2002, a Marine friend gave Applicant $470.25 and her automobile to have the vehicle's rear bumper repaired by a local mechanic he knew.[29] While the vehicle was at the mechanic's residence and workplace, an unlicensed resident of the house took the car for a test drive, but was pulled over by police because of the missing rear bumper. The vehicle was impounded.[30] Those actions apparently resulted in charges being filed against Applicant. The SOR alleged that in 2002, Applicant was tried by special court-martial for two violations of Article 121 (10 U.S.C. § 921) (larceny of private funds – over $100, and larceny of a private vehicle), UCMJ. He was purportedly found guilty and sentenced to be reduced to pay grade E-1, to forfeit $700.00 pay per month for two months, to be confined for a period of one month, and to be discharged with a BCD.[31] Applicant denied the convictions and contended the charges were withdrawn.[32]

The Government produced some evidence regarding the existence of the charges and the unverified resultant sentences, punishments, or administrative action. However, there is noticeably missing a DD Form 458 or a special court-martial order confirming a court-martial, a sentence, or an approved action. Under the *Rules for Courts-Martial* (R.C.M.), Rule 307(c)(4) , "charges and specifications alleging all known offenses by an accused *may be* preferred at the same time." (emphasis added). Furthermore, in the discussion section of R.C.M. Rule 601(e)(1), "ordinarily all known

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[26] GE 10 (Special Court-Martial Order, dated March 17, 2005), at 1.

[27] GE 10, *supra* note 26, at 1.

[28] GE 10, *supra* note 26, at 2. GE 9 is again inaccurate regarding "resultant sentences, punishments, or administrative action." It reflects a reprimand, a written admonition, a fine of $700 for two months, reduction to E-1, confinement for two months, and a BCD. Nowhere in the special court-martial order are there any references to a reprimand, a written admonition, or a fine of $700 for two months. GE 6 referred to the $700 per month forfeiture.

[29] Applicant's version of the facts differed from those of the vehicle owner. He claimed the vehicle owner and he both went to the mechanic's residence. *See* GE 8, *supra* note 19, at 8.

[30] Tr. at 49-50; GE 7 (Military Police Report, dated June 29, 2002), at § VII – Narrative; GE 8, *supra* note 19, at 8.

[31] GE 7 (Commander's Report of Disciplinary or Administrative Action, dated January 30, 2003). There are two versions of this document in the record, with one primarily typed and dated, but unsigned, and the other primarily handwritten and signed, but undated.

[32] Tr. at 48-49.

charges *should be* referred to a single court-martial." (emphasis added). Considering the R.C.M., Applicant's denial of a separate special court-martial during the same time-frame as the initial one, the suspect sentence, the absence of meaningful direct evidence of the second conviction, and Applicant's Good Conduct Medal period which commenced December 18, 2002,[33] I conclude that the allegations in SOR ¶ 1.c. have not been established.

In May 2009, Applicant returned to the United States from an overseas assignment and contacted a female acquaintance he had previously met on line and dated a few times.[34] Although he had been awake for approximately 40 hours,[35] they spent the day together shopping, doing his laundry, preparing dinner, consuming a "fair amount of alcohol," and watching a movie.[36] After consuming beer and wine, Applicant turned to "hard alcohol."[37] Applicant's acquaintance described him as definitely intoxicated.[38] As the evening wore on, the atmosphere changed. Applicant started to act in a bizarre, agitated manner, initially sitting with a dazed look, glaring straight ahead, rocking back and forth, and then grabbing several knives to defend against someone or something.[39] Applicant never thrust the knives at his acquaintance and never held them against any part of her body.[40] They entered her automobile, and he directed her to drive. She managed to run from the car at a stop sign and ran to a police officer.[41] Applicant remembered nothing about the events of the evening.[42]

Applicant was arrested and charged with (1) abduction by force or intimidation, a felony; (2) intentional destruction of property less than $1,000, a felony; (3) aggravated sexual battery by force or with a weapon, a felony; and (4) assault, a misdemeanor.[43] Applicant also admitted he had been charged with public intoxication.[44] Under a plea agreement,[45] in June 2009, he pleaded no contest to the public intoxication charge and

[33] GE 5 (DD Form 214), *supra* note 13.

[34] Tr. at 61-62; GE 5 (Court Transcript, dated March 22, 2010), at 22.

[35] GE 5 (Personal Subject Interview, dated November 23, 2009), at 1.

[36] Tr. at 62-63; GE 5 (Court Transcript), *supra* note 34, at 24.

[37] Tr. at 63, 65-66.

[38] GE 5 (Court Transcript), *supra* note 34, at 24-25

[39] Tr. at 66-67; GE 5 (Court Transcript), *supra* note 34, at 17-19, 26-27.

[40] GE 5 (Court Transcript), *supra* note 34, at 19.

[41] Tr. at 68; GE 4 (Police Press Release, dated May 26, 2009).

[42] Tr. at 68; GE 5 (Personal Subject Interview), *supra* note 35, at 1.

[43] GE 3 (Court Traffic/Criminal Case Details, various dates); GE 5 (Warrant of Arrest – Felony, dated May 26, 2009).

[44] Applicant's Answer to the SOR, dated April 8, 2012.

[45] Tr. at 69.

was fined $100 and ordered to pay $71 in court costs.[46] The charges for intentional destruction of property less than $1,000; aggravated sexual battery by force or with a weapon; and assault, were *nolle prosequi* in September 2009.[47] The remaining charge, abduction by force or intimidation, was reduced to attempted unlawful wounding.[48] In March 2010, Applicant pleaded guilty to the reduced charge and was sentenced to be incarcerated for five years, suspended on condition of good behavior, and placed on supervised probation for five years unless sooner released.[49] Applicant's probation will expire in June 2015, but he will be eligible for early release after he has completed one-half of the entire probation.[50] He has not yet reached the halfway point, which was calculated as December 2012.[51]

In an effort to deal with, and confront, the issues that have resulted in his conduct, Applicant has done an assessment of his life and other factors. He has undergone two mental health evaluations, and has made changes to his personal habits, including getting more rest and stopping consuming alcohol. He has developed a support group.[52] He has also developed a totally different perspective as a result of his realization of how his actions affect other individuals.[53]

Work Performance and Character References

The most recent overall summary of Applicant's work performance has been characterized as successful, although various success factors have been rated exceptional or excellent.[54] The executive director of the office for whom Applicant provides "mission critical support," a lieutenant general who is the commander of a U.S. Army command, a rear admiral who is the deputy commander of a joint command, and a patrol agent in charge with the U.S. Customs and Border Protection, have all effusively praised Applicant's outstanding and exceptional service and performance, unparalleled ingenuity, impressive and extraordinary knowledge, dedication, and professionalism. He has been described a nothing short of a "National Treasure."[55]

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[46] Applicant's Answer to the SOR, *supra* note 44.

[47] GE 3, *supra* note 43, at 3-8.

[48] Tr. at 69-70.

[49] Tr. at 71; Applicant's Answer to the SOR, *supra* note 44.

[50] AE AA (E-mail from Probation Officer, dated April 11, 2012).

[51] Tr. at 72.

[52] Tr. at 72-84.

[53] Tr. at 138-140.

[54] AE E (Performance Document, dated January 30, 2012).

[55] AE G (Character Reference, dated June 18, 2012); AE H (Favorable Communication, dated June 19, 2012); AE I (Favorable Communication, dated June 19, 2012); AE J (Favorable Communication, dated June 20, 2012); AE K (Favorable Communication, dated March 3, 2012).

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."[56] 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."[57]

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."[58] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[59]

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

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

[58] "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).

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[60]

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."[61] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline J, Criminal Conduct

The security concern under the guideline for Criminal Conduct is set out in AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), "*a single serious crime or multiple lesser offenses*" is potentially disqualifying. Similarly, under AG ¶ 31(d), if "*the individual is currently on parole or probation*," security concerns may be raised. As noted above, in 2002, when he was about 18 or 19 years old, Applicant was convicted in a special court-martial of wrongful use of methamphetamine, wrongful use of marijuana, and unlawfully carrying a concealed weapon. The military judge sentenced Applicant to be reduced to pay grade E-1, to forfeit $725.00 pay per month for two months, to be confined for a period of 60 days, and to be discharged with a BCD. The commanding general approved all but that portion of the sentence that called for the BCD and confinement for more than 30 days.

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

[61] *See* Exec. Or. 10865 § 7.

In 2009, Applicant was arrested and charged with abduction by force or intimidation; intentional destruction of property less than $1,000; aggravated sexual battery by force or with a weapon; assault; and public intoxication. Under a plea agreement, he pleaded no contest to the public intoxication charge and was fined. The charges for intentional destruction of property less than $1,000; aggravated sexual battery by force or with a weapon; and assault, were *nolle prosequi*. The remaining charge, abduction by force or intimidation, was reduced to attempted unlawful wounding. In March 2010, Applicant pleaded guilty to the reduced charge and was sentenced to be incarcerated for five years, suspended on condition of good behavior, and placed on supervised probation for five years unless sooner released. Applicant's probation will expire in June 2015, but he will be eligible for early release in December 2012. AG ¶¶ 31(a) and 31(d) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where "*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*." Similarly, AG ¶ 32(d) may apply where "*there is evidence of successful rehabilitation: including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*."

AG ¶ 32(a) partially applies. Applicant's criminal history is actually two very diverse incidents separated by seven years of unblemished record. The first incident occurred during a period of relative youth when, at about 18 or 19 years of age, he fell in with the wrong crowd, decided to use illegal drugs, and carried a knife that was classified under state law as a concealed weapon. He was tried and convicted in a special court-martial, but most significantly, that portion of the sentence that called for a BCD was overturned and Applicant was retained in the USMC. He was returned to duty and eventually earned an honorable discharge.

Subsequently, as a civilian employee of a defense contractor, he focused exclusively on his job and the mission. Applicant became critical to the success of the mission. His focus, however, took its toll, and he had little time to decompress and relax. In May 2009, the apparent stress, the lack of sleep, and the consumption of alcohol, finally caused a melt-down. Applicant began to exhibit bizarre behavior, leading to some very strange actions by him. While he was convicted of attempted unlawful wounding, the evidence is clear that he was delusional at the time, but not threatening towards the "victim." He was attempting to protect her. Nevertheless, she was scared. The court acknowledged the unusual circumstances when it suspended any incarceration and imposed supervised probation. Applicant has successfully completed two years of probation and will be eligible to come off probation in December 2012. In addition, in an effort to deal with and confront the issues that resulted in his conduct, Applicant did an assessment of his life and other factors. He underwent two mental health evaluations, and made changes to his personal habits, including getting more rest and stopping

consuming alcohol. He has developed a support group. Since his May 2009 arrest, he has avoided any subsequent participation in any criminal activity. Over three years have elapsed since Applicant's most recent criminal activity happened, and it happened under very unusual circumstances. With his changed lifestyle, it is unlikely that such criminal behavior will recur, and it no longer casts doubt on his reliability, trustworthiness, or good judgment.

AG ¶ 32(d) partially applies. Applicant's character references and those who wrote favorable communications reveal his outstanding employment record and praise him for his "mission critical support." In addition, while he has not yet completed his five-year period of supervised probation, he has successfully completed nearly one-half of the entire period of probation. These factors, along with the absence of any misconduct since May 2009, and his life-changing activities and perspective, present substantial evidence of successful rehabilitation.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[62]

There is some evidence against mitigating Applicant's conduct. He used drugs while on active duty, and was convicted in 2002 in a special court-martial of wrongful use of methamphetamine, wrongful use of marijuana, and unlawfully carrying a concealed weapon. His most recent criminal conduct occurred in 2009 when he was convicted of attempted unlawful wounding, and placed on supervised probation for five years unless sooner released. Applicant's probation will expire in June 2015, but he will be eligible for early release in December 2012.

[62] *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).

The mitigating evidence under the whole-person concept is more substantial. When he was 19 years old, Applicant was convicted in a special court-martial of three criminal counts. He was retained on active duty and rehabilitated himself to the point that he eventually earned both the Good Conduct Medal and an honorable discharge. Over the next seven years, he was an exemplary employee, praised by superiors and those whose missions he supported. However, in May 2009, the confluence of several factors including little time to decompress and relax, stress, lack of sleep, and the consumption of alcohol, finally caused a melt-down. Applicant began to exhibit bizarre, delusional behavior. He was subsequently convicted of attempted unlawful wounding. Applicant did an assessment of his life and other factors, obtained mental health evaluations, and made changes to his personal habits, including getting more rest and stopping consuming alcohol. Since his May 2009 arrest, he has avoided any subsequent participation in any criminal activity. Applicant's probation will expire in June 2015, but he will be eligible for early release in December 2012. He is 29 years old and effusively praised by senior officials for his mission critical work. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9). For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his criminal 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.a(1):	For Applicant
Subparagraph 1.a(2):	For Applicant
Subparagraph 1.a(3):	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.b(1):	For Applicant
Subparagraph 1.b(2):	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Withdrawn
Subparagraph 2.a:	Withdrawn
Subparagraph 2.b:	Withdrawn
Subparagraph 2.c:	Withdrawn
Subparagraph 2.d:	Withdrawn
Subparagraph 2.e:	Withdrawn
Subparagraph 2.f:	Withdrawn

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge