



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-12980

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2013

Decision

Harvey, Mark, Administrative Judge:

From July 1987 to September 2010, Applicant was arrested or charged seven times with misdemeanor-level offenses, which resulted in five-misdemeanor level convictions mostly for driving under the influence of alcohol (DUI) or assault. He recently filed his 2010 tax return, and financial considerations concerns are mitigated. More time without criminal conduct must elapse before criminal conduct and personal conduct concerns will be fully mitigated. Eligibility for access to classified information is revoked.

Statement of the Case

On December 17, 2010, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (GE 1) On September 5, 2012, the Department of Defense (DOD) Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines J (criminal conduct) and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR further informed Applicant that DOD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On November 14, 2012, Applicant responded to the SOR and requested a hearing. (HE 3) On January 2, 2013, Department Counsel indicated she was ready to proceed on Applicant's case. On January 7, 2013, Applicant's case was assigned to me. On February 11, 2013, DOHA issued a hearing notice, setting the hearing for February 21, 2013. (HE 1) Applicant's hearing was held as scheduled using video teleconference. (HE 1) Department Counsel offered 17 exhibits, and Applicant did not offer any exhibits at his hearing. (Tr. 19; GE 1-17) There were no objections, and I admitted GE 1-17 into evidence. (Tr. 19-20) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR into evidence. (HE 1-3) On March 4, 2013, I received the transcript. On March 22, 2013, I received nine exhibits from Applicant, which were admitted without objection into evidence. (AE A-I)

Procedural Issue

Department Counsel moved to amend the SOR to add an allegation under Guideline F (financial considerations) that Applicant had not filed his 2010 federal income tax return by the time of his hearing. (Tr. 65-68) Applicant objected because he did not believe his failure to file his tax return was pertinent. (Tr. 68) I overruled his objection as to relevance. (Tr. 69) Applicant decided to proceed with his hearing without requesting a delay in his hearing. (Tr. 68) I approved a 30-day delay to March 21, 2013, for Applicant to submit additional documentary evidence. (Tr. 70, 116) Applicant provided additional information concerning financial considerations after his hearing.

Findings of Fact¹

Applicant admitted the conduct alleged in the SOR, and he provided some extenuating and mitigating information. (HE 3; GE 10) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 50-year-old station mechanic performing facilities maintenance, who has been employed by a defense contractor for the last 10 ½ years. (Tr. 8-9) He graduated from high school in 1981, and he has not attended college. (Tr. 8) He has not served in the military. (Tr. 8) He has held a security clearance since January 2005, and there are no allegations of security violations. (Tr. 9-10) He has never been married. (Tr.

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

94) He has two children from a 17-year partner relationship and one child from another relationship. (Tr. 94, 96, 103)

Criminal offenses

In July 1987, the police stopped Applicant for erratic driving and his breathalyzer test (BAT) result was above .08. (SOR ¶ 1.a) Applicant was convicted of DUI. (GE 1 at 37) He was sentenced to a \$500 fine (\$250 suspended) and jail for 30 days (27 days suspended). (GE 10; GE 11 at 2)

On September 2, 1991, Applicant was charged with a misdemeanor-offense of riot after a bar fight. (SOR ¶ 1.b; GE 9; GE 11 at 2) The charge was dismissed. (GE 9; GE 10; GE 11 at 2)

On February 28, 1992, Applicant was charged with assault and malicious mischief, resulting from a road-rage incident. (SOR ¶ 1.c; HE 2; GE 10) Both charges were dismissed upon payment of damages. (GE 10)

Applicant was in a relationship with V from 1996 to 2009. (Tr. 84) On November 14, 1997, Applicant and V were in an argument. V pushed Applicant, and then she threw a fire extinguisher at him. (Tr. 52; GE 14 at 2) Applicant grabbed V by the throat and choked her for two seconds. (Tr. 52; GE 14 at 2) Applicant was charged with and convicted of assault in the fourth degree, a misdemeanor. (SOR ¶ 1.d; GE 2; GE 7; GE 10)² He was sentenced to detention, required to attend a violence prevention class, and placed on two years of probation. (SOR ¶ 1.d; GE 14 at 2) He completed 17 weeks of anger management after the 1997 arrest. (Tr. 83)

On April 7, 2000, Applicant exited his car to converse with another driver after the other driver failed to let Applicant pass. (GE 11 at 3; GE 14 at 1) After arguing, Applicant grabbed the other driver's neck, leaving marks. (GE 11 at 3; GE 14 at 1; GE 15 at 4) Applicant was charged with assault in the fourth degree, a misdemeanor. (GE 6 at 1) He was convicted of assault pursuant to his guilty plea. (SOR ¶ 1.e; GE 2 at 3-4; GE 6; GE 10; GE 11 at 3; GE 14 at 1) On August 28, 2000, he was sentenced to 10 years of probation, a \$5,000 fine (\$5,000 suspended), and 365 days in jail (335 days suspended). (GE 2 at 4; GE 6; GE 10; GE 11 at 3; GE 15) The probation order required him not to have any criminal offenses. (GE 15)

In 2004, Applicant made a statement at his security clearance hearing in which he indicated that he did not currently drink alcohol, does not go to bars, and stopped consuming alcohol two years previously. (Tr. 92-94 (citing GE 12 (2004 Tr. at 42)); GE 11 at 3) A DOHA administrative judge noted Applicant's abstinence from alcohol consumption as an important factor in his decision to continue Applicant's security clearance.

²Applicant's SF 86 indicated he was convicted on a lesser charge of "interference of a 911 call." (GE 1 at 37) Actually this charge was dismissed. (GE 7, 10)

On January 28, 2009, Applicant grabbed V because she was yelling at him. (Tr. 85, 88; GE 5) It was sufficiently violent to leave a mark on her skin. (Tr. 88; GE 2) On December 15, 2009, Applicant pleaded guilty to Harassment-2—Offensive Physical Contact, a class B misdemeanor. (Tr. 45; GE 5 at 1, 6; SOR ¶ 1.f) He was sentenced to 30 days in jail (23 days suspended), no contact with V except through counsel, and unsupervised probation for 730 days beginning on December 15, 2009. (GE 5 at 6)

In May 2010, V moved out of Applicant's residence. (Tr. 44) He completed 36 weeks of anger management classes after the 2009 arrest. (Tr. 82; GE 17) Applicant said V was bipolar and suffered from post-traumatic stress disorder and dissociative disorder. (Tr. 84) He said V caused Applicant to become depressed and gain weight. (Tr. 85) He conceded what he did to V was wrong. (Tr. 89) V maintained a restraining order against Applicant for two years; however, it may have expired. (Tr. 108-109) Applicant did not believe assault offenses would recur because of his anger management training and the reduction in stress due to having V out of his life. (Tr. 90)

On September 18, 2010, Applicant was charged with DUI and refusal to take a BAT. (SOR ¶ 1.g; GE 1 at 36; GE 3) On January 10, 2011, Applicant pleaded guilty to DUI, and the refusal to take a BAT charge was dismissed. (GE 3; AE F) The DUI is a Class A misdemeanor. (GE 3) He was sentenced to 60 days in jail (53 days suspended), fine of \$3,000 (\$1,500 suspended), and other fines of about \$500. (AE F) An interlock device was installed on his vehicle from January 19, 2011 to August 2, 2011. (AE G) His use of the interlock device cost \$990. (AE G) On November 7, 2012, he paid \$510 towards his fine. (AE H) He said all fines have been paid. (Tr. 45) Applicant said the only time since 2004 that he drove while under the influence of alcohol was the time he was caught in 2010. (Tr. 72) He said after 2010, he has not driven a vehicle after consuming alcohol. (Tr. 73) Applicant said his three-year probation from his 2010 DUI ended in January 2013, except for an insurance requirement. (Tr. 110-111; GE 2)

After his alcohol-related offenses, he received some alcohol counseling. He did not indicate that he was currently participating in an alcohol counseling or treatment program.

Financial Considerations

During Applicant's July 2011 Office of Personnel Management (OPM) personal subject interview (PSI), he mentioned that he had not filed his 2010 federal tax return. (Tr. 54; GE 2) Applicant told the OPM investigator that he planned to file his 2010 tax return by February 2012. (GE 2 at 5)

Applicant owed about \$1,800 on his 2010 federal tax return. (Tr. 57) He filed his 2011 federal tax return and expected to receive a \$1,700 refund. (Tr. 57) From June or July 2012 to December 2012, the Internal Revenue Service (IRS) wrote Applicant four or five times asking why he did not file his 2010 tax return. (Tr. 58-59) He did not respond to any of the IRS letters or file his tax return because he knew he owed the IRS, and he did not have the money to pay. (Tr. 59)

At his hearing, Applicant said he planned to file his 2010 federal tax return soon after his hearing. (Tr. 54) He did not file his tax return because he lacked the funds to pay his taxes due to the necessity of paying his back child support and attorney fees. (Tr. 55) After his hearing, Applicant said he filed his 2010 federal tax return. (AE A) He provided a copy of his 2011 tax return, undated and unsigned, showing a refund due of \$1,766, and his 2012 federal tax return, signed February 18, 2013, showing a refund due of \$5,134. (AE A, C, D) He said:

On the day of the hearing I mailed my 2010 tax forms into the IRS so it would be filed before I received my 2012 tax return, this has happened and I have not received that return to date, this should take care of the taxes owed for the 2010 tax year. I have provided you with a copy of my 2011 and 2012 tax forms. (AE A)

It is unclear why he did not provide a copy of his 2010 federal tax return or specifically indicate how much he owed or paid the IRS on that tax return.

Applicant believed that excessive child support caused him to have financial problems. His monthly child support payment was reduced from \$2,408 to \$2,100, and then to \$1,920, and in December 2012, it was further reduced to \$1,680. (Tr. 55-56, 91) At one point, his child support arrearage was \$5,000; however, he gradually paid his arrearage. (Tr. 91) Applicant is current on his child support. (Tr. 53-54) He provided child support records supporting his statements about required child support payments and current status. (AE E, I)

Applicant had attorney fees from his child support, property distribution, and custody litigation of about \$30,000, and he still owes about \$15,000 to his attorney. (Tr. 56, 72, 98-99, 103)

Character evidence

Applicant's employer did not take any disciplinary actions against Applicant. (Tr. 22-23) Applicant is a good union member, who assisted in union activities whenever he was needed. (Tr. 25) He did not violate security at work. (Tr. 27-28, 36) Applicant's supervisors described him as a great employee, who is an asset to the company. (Tr. 28, 31, 36) Applicant is conscientious about ensuring that security is protected. (Tr. 31) He was promoted because of his demonstrations of diligence and responsibility. (Tr. 40)

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 that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Nothing in this decision should be construed to suggest that I based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

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

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines J (criminal conduct), E (personal conduct) and F (financial considerations) with respect to the allegations set forth in the SOR and amended SOR.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case, "(a) a single serious crime or multiple lesser offenses," and "(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶¶ 31(a) and 31(c) apply. From July 1987 to September 2010, Applicant was arrested or charged seven times with misdemeanor-level crimes, which resulted in five-misdemeanor level convictions mostly for DUI or assault.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

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

Although none of the mitigating conditions fully apply, there are important mitigating factors. The most recent offense occurred on September 18, 2010, and is not particularly recent. He complied with all the terms of his most recent probation. He has been continuously employed for 10 ½ years. His employer describes him as a great employee without disciplinary problems at work. Applicant expressed regret and remorse concerning his offenses. He received anger management counseling and

alcohol-related counseling. Two of the allegations of assault involved V, and Applicant's relationship with V has ended.

Significant factors weighing against mitigating criminal conduct concerns remain. Applicant has five misdemeanor-level criminal convictions, including two in the last five years. Alcohol consumption contributed to several offenses, and he resumed alcohol consumption after two years of abstinence prior to his 2004 security clearance hearing. More time must elapse before there is enough assurance that criminal conduct and other behavior raising security concerns is unlikely to recur. Applicant is not ready to be entrusted with access to classified information at this time.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

Two personal conduct disqualifying conditions under AG ¶ 16 are potentially applicable. Those two disqualifying conditions provide:

(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. This includes but is not limited to consideration of: . . . (3) a pattern of . . . or rule violations; and

(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. . . .

AG ¶¶ 16(d) and 16(e) apply. Applicant violated rules when he committed five criminal offenses. When Applicant committed five criminal offenses, he engaged in conduct which adversely affects his personal, professional, and community standing. Further analysis concerning applicability of mitigating conditions is required.

Four mitigating conditions under AG ¶ 17 are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

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

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

AG ¶ 16(e) is mitigated by AG ¶ 17(e) because Applicant has fully disclosed his criminal conduct. Law enforcement, the courts, and security officials are well aware of his criminal conduct, and he is not vulnerable to exploitation, manipulation, or duress because of his criminal offenses.

None of the mitigating conditions apply to mitigate concerns under AG ¶ 16(d). The personal conduct allegations in SOR ¶ 2.a duplicate the criminal conduct allegations in SOR ¶¶ 1.a to 1.g. The scope of his security-related conduct is thoroughly addressed under Guideline J and the Whole-Person Concept, *infra*. The five misdemeanor convictions raise unresolved security concerns as rule violations because they show Applicant has questionable judgment, is untrustworthy, unreliable, and may not properly safeguard protected information. Personal conduct concerns are not mitigated.

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts; . . . (c) a history of not meeting financial obligations; and . . . (g) failure to file annual Federal, state, or local income tax returns as required. . . ."

Applicant's history of delinquent debt is documented in his OPM PSI and his hearing record. Applicant admitted that he failed to file his 2010 federal income tax return as of his hearing on February 21, 2013. He explained that he did not file his taxes as required because he was using available funds to pay his child support obligations. He also cited his substantial attorney fees as a significant cause of his financial stress. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;³ and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's failure to file his 2010 federal income tax return is mitigated. Many tax payers do not understand that they must file a tax return on time, even if they do not

³The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

have the funds to pay the taxes owed. Applicant's failure to respond to the IRS letters asking about his 2010 federal tax return was irresponsible. Applicant said that he filed his 2010 federal income tax return on February 21, 2013, the same day as his hearing. His child support is current, and he has paid half of his \$30,000 debt to his attorney. Separation from his partner of 17 years and substantial child support obligations adversely affected his finances and constitute circumstances beyond his control. He showed some good faith when he admitted responsibility for not filing his 2010 federal income tax return during his OPM PSI and at his hearing.

Applicant has taken reasonable actions to resolve the issue raised in the amended SOR. There is sufficient evidence that his financial problem is resolved and his finances are under control. He has established his financial responsibility. Financial consideration concerns are mitigated.

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. My comments under Guidelines J, E, and F are incorporated into my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is considerable evidence supporting continuation of Applicant's access to classified information. Applicant is a 50-year-old station mechanic performing facilities maintenance, who has been employed by a defense contractor for the last 10 ½ years. He has held a security clearance since January 2005, and there are no allegations of security violations. He is conscientious about safeguarding security. He is a good union member. His supervisors described him as a great employee, who is an asset to the company. He was promoted because of his demonstrations of diligence and responsibility. He did not consume alcohol at work. There is no evidence at his current employment of any disciplinary problems. There is no evidence of disloyalty or that he would intentionally violate national security.

The evidence against continuation of Applicant's access to classified information is more substantial than the evidence supporting continuing his security clearance. From July 1987 to September 2010, Applicant was arrested or charged seven times with misdemeanor-level criminal offenses, which resulted in five-misdemeanor level convictions mostly for DUI or assault. In 2004, a DOHA administrative judge continued his security clearance and noted his abstinence from alcohol consumption prominently in his decision. Applicant resumed his alcohol consumption and committed two criminal offenses in the last five years. On August 28, 2000, Applicant was sentenced to 10 years of probation after he grabbed a motorist around his neck. His 2009 harassment of V, which involved grabbing her with sufficient force to leave a mark on her skin, was an apparent violation of his 10-year probation. On September 18, 2010, Applicant committed his second DUI offense, and apparently violated the two-year probation from his 2009 harassment offense. His history of criminal conduct "creates doubt about [his] judgment, reliability, and trustworthiness. By its very nature, it calls into question [his] ability or willingness to comply with laws, rules and regulations." AG ¶ 30. His criminal conduct and personal conduct cannot be fully mitigated at this time because more time without criminal conduct and compliance with rules and statutes is necessary to establish his reliability and trustworthiness.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude continuation of Applicant's access to classified information is not warranted at this time.

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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to continue Applicant's security clearance. Eligibility for access to classified information is revoked.

MARK HARVEY
Administrative Judge