



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



In the matter of: )  
 )  
 --- ) ADP Case No. 17-02366  
 )  
 Applicant for Public Trust Position )

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*

01/17/2019

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding criminal conduct, alcohol consumption, financial considerations, and personal conduct considerations. Eligibility to occupy a public trust position is denied.

**Statement of the Case**

On January 10, 2017, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 13, 2017, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories, essentially to verify the accuracy of his Enhanced Subject Interview of March 28, 2017. On October 23, 2017, he did so, with corrections. On November 7, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued

eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged trustworthiness concerns under Guidelines J (Criminal Conduct), G (Alcohol Consumption), F (Financial Considerations), and E (Personal Conduct), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant received the SOR on November 17, 2017. In a sworn statement, dated December 5, 2017, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on January 3, 2018. The case was assigned to me on March 20, 2018. A Notice of Hearing was issued on June 29, 2018, scheduling the hearing for July 26, 2018. I convened the hearing as scheduled.

During the hearing, Government exhibits (GE) 1 through GE 6 and Applicant exhibits (AE) A through AE F were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 7, 2018. I kept the record open to enable Applicant to supplement it. He failed to take advantage of that opportunity. The record closed on August 23, 2018.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with comments, nearly all of the factual allegations pertaining to criminal conduct in the SOR (SOR ¶¶ 1.a. through 1.d., and 1.f. through 1.j.); and financial considerations (SOR ¶¶ 3.a. through 3.i., and 3.k. through 3.q.). He failed to admit or deny the allegations pertaining to alcohol consumption, so a denial was registered for him. He denied, with comments, all of the remaining allegations. Applicant's admissions and comments are incorporated herein as findings of fact. 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 46-year-old employee of a defense contractor. He has been serving, first as the manager, web business, and currently as an application systems developer, with his current employer since May 1999. A 1990 high school graduate, Applicant earned some college credits, but no degree. He has never served in the U.S. military. He has never held a security clearance, but has been occupying a position of public trust since 1999. Applicant was married in 1993. He has three children, born in 1993, 1995, and 1998, respectively, and is now a grandfather.

## Criminal Conduct and Alcohol Consumption

Applicant starting consuming alcohol when he was 15-years old. He eventually generally drank 12 12-ounce beers over a three-day weekend, every weekend, or an unspecified amount of alcohol every other day, to feel calm and relaxed. He estimated that a half-pint of liquor and a 12-pack of beer would make him feel intoxicated. He became intoxicated monthly. Applicant acknowledged that he is an alcoholic, but he contends that he stopped drinking alcohol in about June 2016.<sup>1</sup> He indicated that after the 2013 incident, described below, he obtained counseling assistance from the Employee Association Program (EAP), and he attended five sessions with a certified psychologist. He was referred to Alcohol Anonymous (AA). He claimed that he regularly attends Alcohol Anonymous (AA) three times per week, but acknowledged that he has not been to an AA meeting during the three weeks leading up to the hearing; he has an AA sponsor; and he attends an unspecified number of church-related Adult Children of Alcoholics (ACOA) counseling sessions with a spiritual advisor. ACOA is an organization intended to provide a forum for individuals who desire to recover from the effects of growing up in an alcoholic or otherwise dysfunctional family.

Applicant stated an intention of never picking up another drink in his life, but if he fails in doing so, he believes he has a strong foundation and support network to help him get back on the right track.<sup>2</sup> Applicant failed to submit any documentation or witnesses to support his contentions that: (1) he no longer consumes alcohol, and the date he stopped consuming it; (2) he attends AA, or the nature of his participation; or (3) he attends ACOA, and the nature and frequency of the meetings and counseling sessions.

The SOR alleged one incident of criminality by Applicant in 1991, and another seven incidents over a period 14 years, commencing in 2001 and continuing until 2015. At least three of those incidents were alcohol-related:

(SOR ¶ 1.a.): In April 1991, one month shy of his 19<sup>th</sup> birthday, Applicant was arrested and charged with Attempt to Commit Robbery, Conspiracy to Commit Robbery, and Simple Assault. The two robbery-related charges were dismissed, and Applicant pled guilty to Simple Assault. He was placed on probation for two years;<sup>3</sup>

(SOR ¶ 1.b.): In July 2001, Applicant was charged with Driving Without a License, a misdemeanor, as opposed to the charge Driving Under Suspension (DUS). Applicant denied being aware that his operator's license had been "suspended"; although, he subsequently indicated that because he had a number of tickets, the license from another

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<sup>1</sup> GE 2 (Enhanced Subject Interview, dated March 28, 2017), at 6; Applicant's Answer to the SOR, dated December 5, 2017; Tr. at 45, 65.

<sup>2</sup> GE 2, *supra* note 1, at 6; Tr. at 46-47, 56-57, 63-66.

<sup>3</sup> Applicant's Answer to the SOR, *supra* note 1; GE 4 (Federal Bureau of Investigation (FBI) Identification Record, dated February 2, 2017).

state may have been suspended. He was convicted as charged. The sentence was not reported;<sup>4</sup>

(SOR ¶ 1.c.): In August 2006, Applicant was charged with Driving Without a License, a misdemeanor, once again as opposed to the charge DUS. He again denied being aware that his operator's license had been suspended, and he thought it had been transferred to his current state of residence during a "period of transition." The disposition of the charge was not reported;<sup>5</sup>

(SOR ¶ 1.d.): In December 2006, Applicant was charged with Driving Under the Influence (DUI), Driving Without a License, and Violation ABC Law, all misdemeanors, after losing control of his vehicle on an Interstate highway and striking a guard rail, breaking his neck. Once again, he was not charged with DUS. In this instance, Applicant acknowledged that he lost his operator's license because of excessive parking tickets.<sup>6</sup> He also acknowledged that he had consumed four or five 12-ounce beers before he drove.<sup>7</sup> Although the disposition of the charges was not reported in the FBI Identification Record,<sup>8</sup> Applicant indicated that he was fined;<sup>9</sup>

(SOR ¶ 1.e.): In April 2007, Applicant was charged with Fraudulent Check Under \$500 – 1<sup>st</sup>, a misdemeanor. Although Applicant denied that he was ever formally charged with a crime related to the "inadvertently bounced" check, he was, in fact, convicted of the charge and fined \$93.73;<sup>10</sup>

(SOR ¶ 1.f.): In November 2012, Applicant was charged with DUS, a misdemeanor. He was convicted of the charge and fined \$652.50;<sup>11</sup>

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<sup>4</sup> Applicant's Answer to the SOR, *supra* note 1; Tr. at 28-29; GE 4, *supra* note 3. According to the state statute covering the cited charge:

A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of [the section] is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for thirty days and, upon conviction of a second offense, be fined five hundred dollars or imprisoned for forty-five days, or both, and for a third and subsequent offense must be imprisoned for not less than forty-five days nor more than six months.

<sup>5</sup> Applicant's Answer to the SOR, *supra* note 1; Tr. at 30-32; GE 4, *supra* note 3.

<sup>6</sup> Tr. at 34; GE 2, *supra* note 1, at 5.

<sup>7</sup> GE 2, *supra* note 1, at 5.

<sup>8</sup> Applicant's Answer to the SOR, *supra* note 1; GE 4, *supra* note 3.

<sup>9</sup> GE 2, *supra* note 1, at 5.

<sup>10</sup> Applicant's Answer to the SOR, *supra* note 1; GE 4, *supra* note 3.

<sup>11</sup> Applicant's Answer to the SOR, *supra* note 1; GE 4, *supra* note 3. According to the state statute covering the cited charge:

(SOR ¶ 1.g.): In May 2013, after arguing with his wife and consuming “a couple of beers” with a friend, Applicant was charged with DUI – 1<sup>st</sup>, Open Container, and DUS, all misdemeanors;<sup>12</sup> and he was convicted of Reckless Driving and DUS.

(SOR ¶ 1.h.): In December 2015, Applicant was charged with Habitual Traffic Offender, a felony, DUI – 3<sup>rd</sup>, a misdemeanor, and DUS – 3<sup>rd</sup>, a misdemeanor. The DUS charge was *nolle prossed*, and the disposition of the other charges was not reported. Applicant contended that upon his successful completion of a court ordered DUI program, lasting four days per week for a period of one year, with random urinalysis, and total alcohol abstinence, his DUI would be expunged. He claimed he successfully completed the program in November 2017,<sup>13</sup> but he failed to submit any documentation about the program, his participation in the program, or his successful completion of the program.

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A person who drives a motor vehicle on a public highway of this State when the person's license to drive is canceled, suspended, or revoked must, upon conviction, be punished as follows:

(a) for a first offense, fined three hundred dollars or imprisoned for up to thirty days, or both; (b) for a second offense, fined six hundred dollars or imprisoned for up to sixty consecutive days, or both; and (c) for a third or subsequent offense, fined one thousand dollars, and imprisoned for up to ninety days or confined to a person's place of residence pursuant to the Home Detention Act for up to ninety days. No portion of a term of imprisonment or confinement under home detention may be suspended by the trial judge except when the court is suspending a term of imprisonment upon successful completion of the terms and conditions of confinement under home detention. For purposes of this item, a person sentenced to confinement pursuant to the Home Detention Act is required to pay for the cost of such confinement.

(e)(i) A person convicted of a first or second offense of this item, as determined by the records of the department, and who is employed or enrolled in a college or university at any time while the person's driver's license is suspended pursuant to this item, may apply for a route restricted driver's license permitting the person to drive only to and from work or the person's place of education and in the course of the person's employment or education during the period of suspension. The department may issue the route restricted driver's license only upon a showing by the person that the person is employed or enrolled in a college or university and that the person lives further than one mile from the person's place of employment or place of education.

<sup>12</sup> Applicant's Answer to the SOR, *supra* note 1; GE 4, *supra* note 3.

<sup>13</sup> Applicant's Answer to the SOR, *supra* note 1; GE 4, *supra* note 3; Tr. at 52-54. According to the state statute covering the cited charge:

An habitual offender shall mean any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a), (b) and (c) committed during a three-year period; provided, that where more than one included offense shall be committed within a one-day period such multiple offenses shall be treated for the purposes of this article as one offense:

(a) Three or more convictions, singularly or in combination of any of the following separate and distinct offenses arising out of separate acts: (1) Voluntary manslaughter, involuntary manslaughter or reckless homicide resulting from the operation of a motor vehicle; (2)

Applicant claimed that over an extended period of years, especially when his operator's license was suspended, or when he did not actually have a license, he rarely drove his vehicle. He said he got to work as part of a car pool with his wife or others driving, and on other occasions when the children were in the car, also with his wife driving. He noted that on some of occasions, such as when he was stopped by the police, or during an emergency situation with a sick child, he was not accompanied by his wife.<sup>14</sup>

Applicant also attributed the reasons for the suspensions of his operator's license to the parking issues; tax liens; failure to pay property tax on the vehicle; or the cancellation of his automobile insurance.<sup>15</sup> During the hearing, Applicant stated that he currently does not have an operator's license as it was suspended because of his designation as a habitual traffic offender.<sup>16</sup>

### **Financial Considerations<sup>17</sup>**

Applicant acknowledged that when he started his family at the age of 21, he did not understand the value of a dollar or what exactly "credit" meant. That lack of understanding, coupled with his "alcoholism," left him in a financial hole. He claimed to have hired a credit repair company to assist him in rebuilding his credit, essentially by disputing most of the delinquent accounts listed in his credit reports, as well as financial advisors to help him spend his money wisely.<sup>18</sup> He failed to submit documentation to

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Operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs; (3) Driving or operating a motor vehicle in a reckless manner; (4) Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked, except a conviction for driving under suspension for failure to file proof of financial responsibility; (5) Any offense punishable as a felony under the motor vehicle laws of this State or any felony in the commission of which a motor vehicle is used; (6) Failure of the driver of a motor vehicle involved in any accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identity;

(b) Ten or more convictions of separate and distinct offenses involving moving violations singularly or in combination, in the operation of a motor vehicle, which are required to be reported to the department for which four or more points are assigned pursuant to [the statute] or which are enumerated in subsection (a) of this section.

(c) The offenses included in subsections (a) and (b) shall be deemed to include offenses under any federal law, any law of another state or any municipal or county ordinance of another state substantially conforming to the above provisions.

<sup>14</sup> Tr. at 32, 42-43, 60.

<sup>15</sup> Tr. at 39-41.

<sup>16</sup> Tr. at 28-29, 58-59.

<sup>17</sup> General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 2, *supra* note 1; GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 7, 2017); GE 6 (Equifax Credit Report, dated October 30, 2017); AE A (Credit Plus Credit Report, dated July 12, 2018); and Applicant's Answer to the SOR, *supra* note 1.

<sup>18</sup> Applicant's Answer to the SOR, *supra* note 1.

support his claims that a credit repair company had been hired; the identity of that company; what that company had actually done for him or in his behalf; that financial advisors had been hired; the identity of the financial advisors; or what type of guidance they had furnished him. Additionally, aside from Applicant's lack of financial knowledge, coupled with his alcoholism, it is unclear how or when his financial problems first emerged.

In February 2005, Applicant and his wife filed a voluntary petition for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code, and in September 2007, that bankruptcy was discharged after the Bankruptcy Trustee had disbursed \$36,854.20 to various creditors, including the U.S. Treasury and the state department of revenue.<sup>19</sup>

Despite the bankruptcy discharge and the relative abatement of his financial issues associated with the Bankruptcy Trustee's rejection of various accounts, within three years, Applicant's financial problems mushroomed once again. In 2010, the Internal Revenue Service (IRS) notified him that because of errors in his income tax returns he owed the IRS between \$10,000 and \$20,000, and a voluntary repayment plan withdrawal was established, ending in approximately 2014-2015. In 2011 and 2012, several accounts became delinquent, and over the ensuing years, even more accounts became delinquent.<sup>20</sup> In 2014, a number of tax liens were filed against him.<sup>21</sup>

In addition to the Chapter 13 bankruptcy, the SOR identified 16 purportedly delinquent accounts that had been placed for collection or charged off, as generally reflected by Applicant's March 2017 or October 2017 credit reports. Those debts total approximately \$12,275. The current status of those accounts is as follows:

There has been no change in the status of a vast majority of Applicant's accounts that were placed for collection. While many of them were unsuccessfully disputed for reasons not explained, the following accounts remain unaddressed and unresolved, as acknowledged by Applicant: various medical accounts with unpaid balances of \$90 (SOR ¶ 1.b.); \$125 (SOR ¶ 1.c.), \$561 (SOR ¶ 1.d.); \$225 (SOR ¶ 1.e.); \$85 (SOR ¶ 1.k.); \$415 (SOR ¶ 1.n.); and \$760 (SOR ¶ 1.o.); and other accounts: two bank-issued credit-card

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<sup>19</sup> GE 3 (Bankruptcy Petition and Final Report and Account, various dates).

<sup>20</sup> GE 2, *supra* note 1, at 6; GE 5, *supra* note 17.

<sup>21</sup> GE 5, *supra* note 17, at 5-7; Tr. at 69-72. Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unlisted and unalleged delinquent accounts and tax liens will be considered only for the five purposes listed above.

accounts with unpaid balances that were charged off in the amounts of \$179 (SOR ¶ 1.i.) and \$171 (SOR ¶ 1.m.); a cable-television account with an unpaid balance of \$689 (SOR ¶ 1.p.); and a fitness center account with an unpaid balance of \$2,090, that Applicant intends to start making unspecified payments to in August 2018 (SOR ¶ 1.q.).<sup>22</sup>

There are also some accounts that Applicant claims he has either made payments to, or has paid them off. There are three medical accounts with unpaid balances of \$162 (SOR ¶ 1.f.); \$85 (SOR ¶ 1.g.); and \$51 (SOR ¶ 1.h.).<sup>23</sup> Applicant's most recent credit report reflects seven delinquent medical accounts with the same collection agent. Only three of those accounts are alleged in the SOR. Applicant submitted a May 2018 receipt from the collection agent, in the amount of \$405.66,<sup>24</sup> and he contended that the payment covered all of the delinquent accounts with that one collection agent. He submitted three letters from the collection agent indicating that ten different accounts, including the three listed in the SOR had been settled in full.<sup>25</sup> AE B refers to the three SOR-related accounts. Those three accounts have been resolved.

The two remaining accounts refer to a lease with an unpaid balance of \$6,507 due to damage (SOR ¶ 1.i.) that was placed for collection; and a student loan with an unpaid balance of \$80 (SOR ¶ 1.j.).<sup>26</sup> With respect to the former account, Applicant contends that he reached out to the creditor and agreed to a repayment plan under which, starting in March 2018, he would pay \$100 per month.<sup>27</sup> Regarding the latter account, he contended that he paid the creditor the outstanding amount in June or July 2018.<sup>28</sup> Applicant failed to submit documentation to support his contentions that payments had been made to either creditor, even though he indicated that he would do so if the record would be kept open. In the absence of such documentation, neither account has been resolved.

During the hearing, Applicant was requested to complete a Personal Financial Statement to reflect his monthly net income; monthly expenses; and a monthly remainder available for discretionary saving or spending. He failed to do so. However, during the hearing, he acknowledged that his annual salary was about \$74,000 and his wife's annual salary was about \$125,000, for a total of approximately \$200,000.<sup>29</sup> He has less than \$1,000 in his 401(k), after withdrawing \$10,000 in anticipation of closing on his new

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<sup>22</sup> GE 5, *supra* note 17; GE 6, *supra* note 17; Applicant's Answer to the SOR, *supra* note 1; Tr. at 78-80, 93-97.

<sup>23</sup> GE 5, *supra* note 17; GE 6, *supra* note 17; Applicant's Answer to the SOR, *supra* note 1.

<sup>24</sup> AE E (Receipt, dated May 17, 2018).

<sup>25</sup> AE B (Letter, dated May 17, 2018); AE C (Letter, dated May 17, 2018); AE D (Letter, dated May 17, 2018); Tr. at 80-90.

<sup>26</sup> GE 5, *supra* note 17; GE 6, *supra* note 17; Applicant's Answer to the SOR, *supra* note 1.

<sup>27</sup> Tr. at 90-92.

<sup>28</sup> Tr. at 91-93.

<sup>29</sup> Tr. at 101.



residence; and less than \$1,000 at the end of each month for discretionary saving or spending.<sup>30</sup> He purchased a new hybrid sport-utility vehicle (SUV) for his wife in 2016. In response to a question as to why he failed to make more progress with modest or minimum delinquent debts with a combined annual income of \$200,000, Applicant could not respond, claiming that because “we have a ton of bills,” they are trying to adjust their finances. Applicant disputed certain accounts solely because he disagreed with the amounts reflected. He was unable to explain why his finances went into such disarray before 2005 as to justify his filing for bankruptcy; and he was unable to explain why his finances deteriorated in 2007 to create his current delinquencies. Although the record remained open, he also failed to furnish a requested updated status of his SOR-related accounts supported by receipts, checks, or letters related to those debts; and a copy of his repayment plan showing any priority for addressing his delinquent accounts.

### **Personal Conduct<sup>31</sup>**

(SOR ¶ 4.a.): This allegation cross-references the SOR allegations associated with his criminal conduct and alcohol consumption.

(SOR ¶ 4.b.): On January 10, 2017, when Applicant completed his e-QIP, he responded to certain questions pertaining to his police record found in Section 22. Those questions requested certain information regardless of whether the record in his case had been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed. Certain convictions, not relevant here, did not need to be reported. Those questions were essentially as follows: In the past seven years have you been: a. issued a summons, citation, or ticket to appear in court in a criminal proceeding against you?; b. arrested by any police officer, sheriff, marshal, or any other type of law enforcement official?; c. charged, convicted, or sentenced of a crime in any court?; and d. or are you currently on probation or parole? In addition, are you currently on trial or awaiting a trial on criminal charges? Applicant answered “yes” to the combined questions, and he reported the incident from 2013 in which he said he was charged with DUI, but reduced to Reckless Driving, and ordered to pay a fine.<sup>32</sup> He omitted the 2013 DUS charge, the November 2012 DUS charge; and the December 2015 DUI, DUS, and Felony Habitual Traffic Offender charges. He certified that his responses to those questions were “true, complete, and correct” to the best of his knowledge and belief, but, because of his omissions, the responses to those questions were, in fact, false.

Applicant subsequently offered differing explanations for the omissions. He either did not recall the 2012 or 2015 incidents; did not consider traffic incidents to be criminal;

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<sup>30</sup> Tr. at 102-107.

<sup>31</sup> During the hearing, Department Counsel moved to amend SOR ¶ 4.a. by deleting that portion of the allegation that reads “and 3.a. through 3.q.” There being no objection, the motion was granted, and the SOR was amended as indicated. See Tr. at 135-138.

<sup>32</sup> GE 1 (e-QIP, dated January 10, 2017), at 24-25; Tr. at 120-128.

misinterpreted the questions; or his claimed, but otherwise unconfirmed, stroke interfered with his recollections. He denied deliberately failing to disclose the omitted information.

(SOR ¶ 4.c.): On January 10, 2017, when Applicant completed his e-QIP, he also responded to certain questions pertaining to his finances found in Section 26. Those questions asked if, in the past seven years, he had any bills or debts turned over to a collection agency; or he had any account or credit card suspended or cancelled for failing to pay as agreed. Applicant answered “no” to each of the questions.<sup>33</sup> He certified that his responses to those questions were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false. He omitted every one of the 16 delinquent accounts that were eventually alleged in the SOR as well as the tax issues that were not alleged; even though those tax liens were not resolved until 2014, well within the seven-year period of interest.

Applicant subsequently offered differing explanations for the omissions. He claimed that at the time he completed his e-QIP, he was unaware that he had any such delinquent accounts; a creditor reached out to him after the e-QIP was completed; he thought “all that stuff was off [his] credit report;” he thought his medical bills had been paid; he did not think that tax liens would show up on his credit report; and he did not consider a voluntary payment to be the same as a garnishment.<sup>34</sup> He denied deliberately failing to disclose the omitted information.

## **Work Performance**

A review of several years’ of Applicant’s annual performance reviews reveals a number of bonus and incentive payments as well as final overall ratings that generally fall within the “sometimes exceeds expectations” with occasional “meets expectations” and one “consistently exceeds expectations.”<sup>35</sup>

## **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 [position of public trust].”<sup>36</sup> 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. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.<sup>37</sup>

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<sup>33</sup> GE 1, *supra* note 32, at 26-30.

<sup>34</sup> Tr. at 129-135.

<sup>35</sup> AE F (Performance Reviews, various dates).

<sup>36</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>37</sup> It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, Adjudication of Trustworthiness Cases, dated November 19, 2004,

Positions formerly designated as ADP I or ADP II are classified as noncritical-sensitive positions and include those personnel “[w]ith access to automated systems that contain military active duty, guard, or reservists’ personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by [the DOD Privacy Program] where such access has the potential to cause serious damage to the national security.”<sup>38</sup>

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for a public trust position.

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 common sense 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.”<sup>39</sup> 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.<sup>40</sup>

A person who seeks access to sensitive 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

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covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

<sup>38</sup> DOD Manual 5200.02, *Procedures for the DOD Personnel Security Program (PSP)* (April 3, 2017) (Manual) ¶ 4.1.a. (3)(c).

<sup>39</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>40</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.<sup>41</sup> 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**

Upon consideration of all the facts in evidence, including those in the DOD CAF case file, those submitted by Applicant, his testimony, as well as an assessment of Applicant's demeanor and credibility, and after application of all appropriate legal precepts and factors, I conclude the following with respect to the allegations set forth in the SOR:

#### **Guideline J, Criminal Conduct**

The trustworthiness 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 conditions under AG ¶ 31 that could raise trustworthiness concerns:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
- (c) individual is currently on parole or probation.

Applicant has established a lengthy pattern of criminality involving felonies and misdemeanors. There is one incident of criminality by Applicant in 1991, and another seven incidents over a period 14 years, commencing in 2001 and continuing until 2015. They include a variety of charges, police involvement, court involvement, and sentences.

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<sup>41</sup> *Egan*, 484 U.S. at 531.

Some charges were dismissed or *nolle prossed*. With one exception, he admitted the allegations, and for that one allegation to which he claimed that he was not formally charged with a crime, the evidence is clear that he was, in fact, convicted of the charge and fined \$93.73. Applicant's willingness to comply with laws, rules, and regulations is suspect, for he routinely ignored the law when he consistently drove a vehicle without a license, under suspension, or under the influence, for such a lengthy period. That is why he has been identified as a Felony Habitual Traffic Offender – a designation that still applies to him. It appears that such a designation is akin to a probation. Furthermore, Applicant admitted that on rare occasions, he operated a vehicle without a valid operator's license in emergencies and at other times. It is troubling that the information pertaining to the alleged crimes was offered only through the incomplete FBI information record, without police reports, or court records. Nevertheless, while the information of criminality is of poor quality, it has generally been "admitted" by Applicant, raising that information to the level of substantial evidence. Accordingly, based on the actions described above, AG ¶¶ 31(a), 31(b), and 31(c) have been established.

The guideline also includes examples of conditions under AG ¶ 32 that could mitigate trustworthiness concerns arising from criminal conduct. They include:

- (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;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

None of the mitigating conditions apply. While a substantial period may have elapsed since the robbery/assault-related incident occurred in 1991, Applicant's other more recent criminal behavior commenced in 2001 and continued until at least December 2015. He is a recidivist, displaying a long pattern of DUS, DUI, and driving without a license violations, despite periodic police and court involvement. Furthermore, he is still designated as a Felony Habitual Traffic Offender. Applicant appears to have a good employment record, but without the requested documentation about the DUI program, his participation in the program, or his successful completion of the program in November 2017, I am unable to determine if he has actually successfully completed the program.

A person should not be held forever accountable for misconduct from the past, but in this instance, the most recent criminal conduct is two years ago. Given his cavalier attitude towards laws, rules, and regulations, Applicant's history of criminal conduct,

under the circumstances, continues to cast doubt on his reliability, trustworthiness, or good judgment.

### **Guideline G, Alcohol Consumption**

The trustworthiness concern relating to the guideline for Alcohol Consumption is set forth in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 22:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed;

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

My discussion related to Applicant's criminal conduct is adopted herein. Eventually, Applicant generally drank 12 12-ounce beers over a three-day weekend, every weekend, or an unspecified amount of alcohol every other day, to feel calm and relaxed. He acknowledged that he became intoxicated monthly. He also acknowledged that he is an alcoholic. His use of alcohol has, directly or indirectly, led to a number of incidents that resulted in actions taken by police and court authorities. He was repeatedly charged with some alcohol-related charges – three DUIs – as well as more isolated open container and violation of ABC law. While some of those charges were reduced or dismissed, several charges resulted in convictions. AG ¶¶ 22(a) and 22(c) have been established, but none of the other conditions have been established.

The guideline also includes several examples of conditions under AG ¶ 23 that could mitigate trustworthiness concerns:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

AG ¶ 23(b) partially applies, but none of the remaining conditions apply. Because of their relative recency, Applicant's 2013 and 2015 DUIs are the most significant, as far as his trustworthiness review is concerned. Applicant's behavior, stemming from his association with alcohol, has not been infrequent, and the circumstances developed do not appear to be unusual. While Applicant now acknowledges his pattern of maladaptive alcohol use, for far too long he seemingly gave lip-service to it. He contends that he has been abstinent since June 2016. He also claims to have successfully completed various alcohol-related programs and that he is currently participating in other alcohol-related programs, but without the requested documentation regarding those programs and his purported participation in them, it is impossible to determine what his participation has been. There is no evidence that he was ever diagnosed by a qualified medical or mental health professional for alcohol use disorder, and there is no evidence regarding what the treatment recommendations may have been.

Because of his lengthy history of maladaptive alcohol use, questions regarding his abstinence, and his irregular attendance at AA, there remain significant questions as to whether such maladaptive alcohol use will recur. Nevertheless, Applicant should be encouraged to remain abstinent for a much longer period. He has failed to demonstrate a clear and established pattern of modified consumption or abstinence, and under the circumstances, there remain doubts on his reliability, trustworthiness, or good judgment.

### **Guideline F, Financial Considerations**

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (d) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant filed for bankruptcy protection under Chapter 13 of the U.S. Bankruptcy Code in 2005, and the bankruptcy was discharged in 2007. He claimed that he did not understand the value of a dollar or what exactly "credit" meant. That lack of understanding, coupled with his "alcoholism," left him in a financial hole. Despite the bankruptcy discharge and the relative abatement of his financial issues associated with the Bankruptcy Trustee's rejection of various accounts, within three years, Applicant's financial problems mushroomed once again. In addition to the Chapter 13 bankruptcy, the SOR identified 16 delinquent accounts, totaling approximately \$12,275, that had been placed for collection or charged off. There has been no change in the status of a vast majority of Applicant's accounts that were placed for collection. While many of them were unsuccessfully disputed for reasons not explained, nearly all of the accounts remain unaddressed and unresolved, as acknowledged by Applicant. AG ¶¶ 19(a), 19(c), and 19(d) have been established. AG ¶ 19(b) has been partially established because, with a combined annual family income of \$200,000, it is unclear why he failed to make more progress with modest or minimum delinquent debts, or if he was simply unwilling to do so.



The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties under AG ¶ 20:

- (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;<sup>42</sup>
- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>43</sup> 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.

AG ¶¶ 20(b) and 20(d) minimally apply, but none of the remaining conditions apply. Applicant claimed he hired a credit repair company to assist him in rebuilding his credit, essentially by disputing most of the delinquent accounts listed in his credit reports, as well

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<sup>42</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

<sup>43</sup> The 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 [or statute of limitations]) 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)).

as financial advisors to help him spend his money wisely. As noted above, he failed to submit documentation to support his claims that a credit repair company had been hired; the identity of that company; what that company had actually done for him or in his behalf; that financial advisors had been hired; the identity of the financial advisors; or what type of guidance they had furnished him. Additionally, aside from Applicant's lack of financial knowledge, coupled with his alcoholism, it is unclear how or when his financial problems first emerged. Although the record remained open, he also failed to furnish a requested updated status of his SOR-related accounts supported by receipts, checks, or letters related to those debts; and a copy of his repayment plan showing any priority for addressing his delinquent accounts.

Applicant seemingly took little action to resolve his delinquent SOR-related debts until after the SOR was issued. He offered no documentation to indicate that he sought information from his creditors or collection agents,<sup>44</sup> or by obtaining financial counseling and credit resolution guidance and assistance. He made arrangements with the state tax authority regarding tax liens that were not alleged in the SOR, and there is evidence that he satisfied those liens. But, with a healthy combined annual income, he could not motivate himself to pay off delinquent debts of \$80, \$85, \$90, \$125, or \$171. The few relatively modest medical accounts were not resolved until six months after the SOR was issued and two months before the hearing was conducted. Applicant offered substantial evidence to indicate that his combined annual income is excellent, but little evidence to indicate that his financial situation is now under better control, especially considering his comment that "we have a ton of bills." Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.<sup>45</sup>

Trustworthiness decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, with minor exceptions, Applicant's promises have not transitioned into positive action.

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<sup>44</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>45</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

## **Guideline E, Personal Conduct**

The trustworthiness 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes examples of conditions that could raise trustworthiness concerns under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

My discussions related to Applicant's criminal conduct, alcohol consumption, and financial considerations are adopted herein. At the time Applicant completed his e-QIP in January 2017, he concealed and omitted DUIs from 2012 and 2015; and denied having financial issues, although there were numerous delinquent accounts. Applicant's

comments provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely inaccurate answers that were the result of oversight or misunderstanding of the true facts on his part. Proof of incorrect answers, standing alone, does not establish or prove an applicant's intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the alleged falsifications or omissions occurred. I have considered the entire record, including Applicant's initial and subsequent comments.<sup>46</sup> Applicant's explanations for his submissions, in my view, are simply not persuasive evidence of Applicant's actual intent. In addition, aside from his lack of candor with respect to the QIP, there is Applicant's lengthy history of criminality. As to the deliberate falsifications on the e-QIP regarding the police record and financial record, AG ¶¶ 16 (a) and 16(c) have been established. As to the combined criminal conduct and alcohol consumption allegations, AG ¶ 16 (c) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate trustworthiness concerns arising from personal conduct. They include:

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

Neither of the conditions apply. Applicant's lengthy criminal history continued until at least December 2015; his pattern of maladaptive alcohol use continued until at least June 2016; and his false responses to the e-QIP inquiries occurred in January 2017. Applicant was confronted with the true facts by an investigator in March 2017, but before that interview, he apparently made no efforts to correct the omissions, concealments, or falsifications. Far from being infrequent, Applicant's maladaptive alcohol use was routine

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<sup>46</sup> The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

- (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See also ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant's level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose [significant facts] on an application was deliberate).

for decades, and his attitude towards laws, rules, and regulations also lasted for a lengthy period. Furthermore, three DUIs and multiple DUSs and driving without a license, while misdemeanors, are not minor offenses, and his continuing designation as a Felony Habitual Traffic Offender, is also not insignificant. Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust 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 SEAD 4, App. A, ¶ 2(d):

(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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of public trust 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.<sup>47</sup>

There is some evidence in favor of mitigating Applicant's conduct. Applicant is a 46-year-old employee of a defense contractor, serving, first as the manager, web business, and currently as an application systems developer, with his current employer since May 1999. He is a high school graduate, with some college credits, but no degree. He has been occupying a position of public trust since 1999. Applicant is married, and has three children. He is a grandfather. Applicant has purportedly made efforts to remove himself from the clutches of alcohol, and he claims that he has been abstinent since June 2016.

The disqualifying evidence under the whole-person concept is more substantial. Applicant is a self-proclaimed alcoholic, and a justice-involved individual whose history of criminal conduct took place with one incident of criminality in 1991, and another seven incidents over a period 14 years, commencing in 2001 and continuing until 2015. His finances are in disarray, with one bankruptcy under Chapter 13 discharged in 2007; and a renewed history of delinquent accounts that still remain unaddressed by him, despite a

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<sup>47</sup> 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).

combined annual income of approximately \$200,000. Although he claimed to have taken certain positive actions to address his creditors and delinquent accounts; and attended certain programs associated with his consumption of alcohol, Applicant failed to submit requested documentation to support his various claims and contentions.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>48</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a poor track record of debt reduction and elimination efforts, essentially failing to address most of his SOR-related debts. Overall, the evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has failed to mitigate the trustworthiness concerns arising from his criminal conduct, alcohol consumption, financial considerations, and personal conduct. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

### **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. through 1.h:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT

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<sup>48</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraph 2.a.:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a. through 3.q.:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a. through 4.c.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a position of public trust to support a contract with the DOD. Eligibility is denied.

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ROBERT ROBINSON GALES  
Administrative Judge