



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 20-01538
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2021

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not present sufficient information to mitigate the security concerns raised by his unpaid delinquent debts, his arrest record, and his lack of candor on his security clearance application concerning any charges involving alcohol. Clearance eligibility is denied.

Statement of the Case

On September 1, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The DCSA CAF explained in the SOR why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified*

Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

On September 15, 2020, Applicant responded to the SOR and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On October 28, 2020, the Government submitted a File of Relevant Material (FORM), which included nine documents (Items 1-9) proffered as evidence in support of its position that it is not clearly consistent with the national interest to grant Applicant access to classified information. DOHA forwarded a copy of the FORM to Applicant, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on December 10, 2020. No response was received by the January 9, 2021 deadline.

On January 28, 2021, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on February 5, 2021.

Evidentiary Rulings

Department Counsel submitted as Item 3 in the FORM a summary report of personal subject interviews (PSI) of Applicant conducted on May 2, 2019, and May 15, 2019, by an authorized investigator for the Office of Personnel Management (OPM). The summary report was included in a DOD report of investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant's attention was directed to the following notice regarding [Item] 3:

Also, please note that the attached summary of your [PSI] — labeled as Enclosure 3 — is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this [FORM], you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you

do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider it as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. *Pro se* applicants are not expected to act like lawyers, but they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Applicant was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. Applicant did not object to the FORM or indicate that the PSI summary contained inaccurate information. Furthermore, Government officials are entitled to a presumption of regularity in the discharge of their official responsibilities. See *e.g.*, ISCR Case No. 15-07539 (App. Bd. Oct. 18, 2018), and there is nothing in the record to indicate the PSI contains information that was inaccurate or contrary to what Applicant reported.

Applicant served in the United States Navy from December 2001 to December 2005 and was eligible for access to sensitive compartmented information (SCI) for most of that time. He then worked outside of the defense industry for a succession of employers before acquiring his job with a defense contractor in April 2018. He can reasonably be held to have read the PSI summary, and there is no evidence that he failed to understand his obligation to file any objections to the summary if he did not want the administrative judge to consider it. Accordingly, I find that Applicant waived any objections to the PSI summary. The SOR and Answer (Item 1) are incorporated in the record as the pleadings. Items 2 through 9 are accepted into the record as Government's exhibits, subject to issues of relevance and materiality in light of the entire record.

Findings of Fact

The SOR alleges under Guideline F that, as of September 1, 2020, Applicant owed eight collection debts (SOR ¶ 1.a - \$9,089; SOR ¶ 1.d - \$1,812; SOR ¶ 1.e - \$980; SOR ¶ 1.f - \$567; SOR ¶ 1.g - \$1,758; SOR ¶ 1.h - \$1,504; SOR ¶ 1.i - \$993; and SOR ¶ 1.j - \$567); two charged-off debts (SOR ¶ 1.b - \$5,172 and SOR ¶ 1.c - \$4,830); and four medical debts (SOR ¶ 1.k - \$2,104; SOR ¶ 1.l - \$1,036; SOR ¶ 1.m - \$1,100; and SOR ¶ 1.n - \$156). Under Guideline E, Applicant is alleged to have been arrested in July 2000 for

shoplifting (SOR ¶ 2.a); in October 2000 for illegal possession of alcohol (SOR ¶ 2.b); in July 2001 for felony theft/receipt of stolen property (SOR ¶ 2.c); in September 2009 (SOR ¶ 2.d) and January 2011 for driving under the influence (DUI) (SOR ¶ 2.g); in November 2010 (SOR ¶ 2.e), December 2010 (SOR ¶ 2.f), and January 2011 (SOR ¶ 2.g) for driving with a suspended license; and in February 2011 (SOR ¶ 2.h) and September 2011 (SOR ¶ 1.i) for probation violation. Additionally alleged under Guideline E, Applicant was given an Other Than Honorable discharge from the Navy in December 2005 after receiving non-judicial punishment for failure to obey a lawful order and for wrongful use/possession of codeine (SOR ¶ 2.j). He is alleged to have falsified a March 6, 2019 Electronic Questionnaire for Investigations Processing (e-QIP) (security clearance application or SCA) by denying that he had ever been charged with an offense involving alcohol or drugs (SOR ¶ 2.k) and by denying that he had ever been illegally involved with a drug or controlled substance while possessing a security clearance (SOR ¶ 2.l). (Item 1.)

When he responded to the SOR, Applicant admitted the debts without any explanation other than that he was making scheduled payments on his student loan debts. He denied SOR allegations ¶ 2.a, stating he had no recollection of the event, and ¶ 2.b, stating that he was not arrested but instead was fined. He admitted the incidents in SOR ¶¶ 2.c-2.j, but explained that the drug use that led to his administrative separation from the Navy was “a Japanese cold medicine, while stationed in Japan.” He denied any knowledge that codeine was an ingredient in the medicine and denied abusing it. While he responded “I admit” to the alleged falsifications of his SCA, he denied any intent to falsify and reiterated that he took the drug in Japan as prescribed. (Item 1.)

After considering the pleadings and Government exhibits, I make the following findings of fact:

Applicant is 38 years old. He has been married since February 2015. (Item 2.) He has a 15-year-old stepson, a 10-year-old daughter, and a 6-year-old son. Applicant has worked for his current employer, a defense contractor, since April 2018. (Item 3.) He is a technical support associate. (Item 2.)

Applicant graduated from high school in May 2000. (Item 3.) He apparently enrolled in college in June 2000, as he obtained student loans of \$1,872 and \$753 at that time. (Items 4-6.)

In approximately October 2000, Applicant was involved in a car accident. Responding police found a bottle of vodka in his vehicle. He denies that he consumed any alcohol before the incident, and there is no evidence to the contrary. However, he was fined \$295 in April 2001 for illegal possession of alcohol by a minor (SOR ¶ 2.b). (Item 3.)

On July 27, 2001, Applicant was charged with the felony offense of receiving stolen property/theft (SOR ¶ 2.c). On October 18, 2001, he pleaded guilty to a misdemeanor charge of conversion and entered a pretrial diversion program. The charge was dismissed on December 5, 2001, in return for him enlisting in the U.S. Navy. (Items 3, 8.) Applicant

entered on active duty in December 2001. Following a background investigation that was closed in approximately August 2002, he was granted eligibility for access to SCI. (Item 2.)

In September 2005, an empty bottle of a Japanese cough suppressant containing a Schedule II controlled substance (dihydrocodeine), a sealed box labeled with the drug name, and some other items were found in Applicant's room during a barracks inspection. Applicant admitted that he had ingested five tablets of the drug the previous evening. He was brought before a Captain's Mast for failure to obey an order or regulation, in violation of Article 92 of the Uniform Code of Military Justice (UCMJ), and for wrongful use and possession of a controlled substance, in violation of Article 112a of the UCMJ (SOR ¶ 2.j). (Item 7.) He was placed on limited duty and his access to SCI was revoked (Items 2-3.) During his May 2019 PSI, Applicant explained that he became ill while stationed in Japan; that the woman he was dating had purchased the drug for him, and that he had forgotten that he was prohibited from purchasing any drugs from Japanese pharmacies. (Item 3.) In December 2005, Applicant was given an Other Than Honorable discharge. (Items 2-3.)

On September 27, 2009, Applicant was arrested for DUI (SOR ¶ 2.d). During his March 2019 PSI, Applicant stated that he had consumed only two drinks on that occasion, but also that on his arrest, his blood alcohol level tested at .18%, which suggests he may have consumed more alcohol than he has stated. On October 26, 2009, he pled guilty and was fined \$1,951 and placed on two years of probation. (Items 3, 9.)

On November 2, 2010, Applicant was arrested for DUI after drinking "a few drinks" at a bar with some friends. He pled guilty and was sentenced to a diversion program. His probation for his previous DUI was extended (SOR ¶ 2.e). (Items 3, 9.) The offense is inexplicably alleged in the SOR as driving on a suspended license, even though the Federal Bureau of Investigation (FBI) (Item 9) and Applicant (Item 3) indicate it was a DUI offense.

On December 23, 2010, Applicant was caught driving while his license was suspended (SOR ¶ 2.f). He was released at the scene and allowed to return home. (Item 1.)

On January 10, 2011, Applicant was arrested for DUI; criminal driving-driving while license suspended; and misdemeanor recklessly endangering (SOR ¶ 2.g). On March 30, 2011, he was convicted of the DUI and criminal driving-driving on a suspended license. For the DUI, he was sentenced to ten days in jail, a \$2,618 fine, and 48 months of probation. For driving while his license was suspended, he was fined \$1,286 and placed on 48 months of probation. The recklessly endangering charge was dismissed. (Items 3, 9.)

On February 3, 2011, Applicant was arrested for probation violation and criminal driving-driving on a suspended license (SOR ¶ 2.h). (Items 1, 9.) Available information does not reflect the disposition of the charge.

On September 21, 2011, Applicant was arrested for failure to appear, 2nd degree misdemeanor; probation violation; and criminal driving-driving on a suspended or revoked

license (SOR ¶ 2.i). The prosecution elected not to file a complaint for failure to appear. Applicant was convicted of misdemeanor probation violation and criminal driving. His probation was extended to October 2013 for the probation violation. He was sentenced on the criminal driving charge to 15 days in jail, a \$2,409 fine, and 36 months of probation. (Item 9.)

On March 6, 2019, Applicant completed and certified to the accuracy of an SCA on which he responded negatively to inquiries concerning whether he had ever been charged with an offense involving alcohol or drugs (SOR ¶ 2.k) and whether he had been involved illegally with a drug or controlled substance while holding a security clearance (SOR ¶ 2.l). (Item 2.) At the time, Applicant did not recall his underage alcohol possession offense that occurred in October 2000. He apparently recalled the September 2009 and January 2011 DUI arrests (the November 2010 DUI was not alleged), but he asserts that he had no intention to falsify his SCA. Regarding his use of an illegal drug in September 2005, Applicant admits that he had taken a Japanese cough medicine, but denies that he took it other than as prescribed. (Item 1.) He reported on his March 6, 2019 SCA that his SCI access eligibility was cancelled in September 2005 after he received non-judicial punishment. (Item 2.) He did not elaborate on his SCA about the reason for his Captain's Mast and Other Than Honorable discharge from the military.

During his May 2, 2019 PSI, Applicant provided details about his use of codeine in September 2005, which led to his non-judicial punishment and military discharge. He responded "Yes" when asked whether he had ever been arrested for an offense involving alcohol or drugs and volunteered that he had been arrested for DUI in October 2009, November 2010, and January 2011. (Item 3.) There is no indication that he was asked by the OPM investigator to explain his SCA denial of any alcohol-related charges on his record.

Finances

There is no information in evidence about Applicant's employments, if any, after his military discharge in December 2005 until April 2009, when he began working in customer support for a cable and Internet services provider. After one year, Applicant then worked as an assembler in the semiconductor industry from May 2010 to February 2012. He was unemployed from February 2012 until April 2013. He then worked as a technician for about a year. From April 2014 to April 2017, he was employed as a production assembler. He then worked from May 2017 to April 2018 as a production technician for yet another employer outside the defense industry. (Item 3.) The evidentiary record contains no information about his income from these employments.

On his March 6, 2019 SCA completed for his current employer, Applicant listed a \$980 cell phone delinquency (SOR ¶ 1.e) that he was disputing; a \$9,089 vehicle loan debt in collection that he cannot afford to repay (SOR ¶ 1.a); and past-due medical debts of \$2,104 (SOR ¶ 1.k) and \$1,036 (SOR ¶ 1.l) that he was disputing. (Item 2.) A check of Applicant's credit on March 19, 2019, revealed additional delinquencies, including student loan debts. Salient details about Applicant's past-due accounts include the following:

Collection debt of \$9,089 (SOR ¶ 1.a)

Applicant and a joint borrower obtained an automobile loan of \$22,791 in January 2014. They stopped paying on the loan in March 2015, and the account was transferred for collection in October 2017. In November 2017, the original lender charged off his account for \$11,999. In March 2019, the collection entity reported a past-due balance of \$9,089 on the account. (Item 4.) Applicant acknowledged owing the debt during his May 2019 PSI and expressed an intention to establish a repayment plan for the debt in 2019. (Item 3.) The debt remains unresolved (Items 1, 5-6.) He presented no evidence of any efforts to pay the debt.

Charged-off debt of \$5,172 (SOR ¶ 1.b)

In September 2012, Applicant and a joint borrower obtained an automobile loan of \$11,236. They stopped paying on the loan in May 2013, and the account became \$5,172 past due. As of February 2019, the creditor was reporting a charged-off balance of \$5,422. (Item 4.) Applicant did not report the debt on his March 2019 SCA (Item 2), but he acknowledged the delinquent debt during his May 2019 PSI and indicated that he planned to set up a payment plan in 2019. (Item 3.) As of November 2019, the past-due balance was reportedly \$5,172. (Item 5.) The debt had been removed from his credit record by October 2020 (Item 6), but there is no evidence that it had been resolved.

Charged-off debt of \$4,830 (SOR ¶ 1.c)

Applicant signed on as co-maker on an installment sales contract opened in January 2011 that had a high credit of \$12,659. The repayment term was \$435 per month for 54 months. In October 2012, the account was charged off for \$4,830. (Item 4.) Applicant did not report the debt on his March 2019 SCA (Item 2), but he acknowledged the debt during his May 2019 PSI and indicated that he would establish a payment plan in 2019. (Item 3.) The debt had been removed from his credit record by January 2020 (Item 5), but there is no evidence that it had been resolved.

Collection debt of \$1,812 (SOR ¶ 1.d)

Applicant and a joint obligor owed past-due rent as of July 24, 2018. In December 2018, a \$3,704 balance was placed for collection. (Items 5-6.) As of October 2020, the debt had been paid down to \$258. (Item 6.) Applicant did not report the debt on his March 2019 SCA. (Item 2.)

Collection debt of \$980 (SOR ¶ 1.e)

Applicant opened a cell-phone account in 2010 or 2011. (Item 3.) In October 2014, a cell-phone service provider placed a \$980 debt for collection. The debt was unpaid as of March 2019. (Item 4.) Applicant listed the debt on his March 2019 SCA as an open financial issue that was incurred because he could not make his payments. He unsuccessfully disputed the debt. (Items 2-3.) He acknowledged owing the debt during his

May 2019 PSI and expressed an intention to establish a payment plan in 2019 to resolve the debt. (Item 3.) The debt was not reported on Applicant's credit record as of January 2020 (Item 5) and October 2020 (Item 6), but there is no evidence it had been resolved.

Collection debt of \$567 (SOR ¶ 1.f)

In September 2014, a cable and Internet services provider placed a \$567 debt for collection. As of February 2019, the debt was reported on his credit record as unpaid. (Item 4.) Applicant denied the debt when confronted about it during his May 2019 SCA. (Item 3.) The debt was not reported on Applicant's credit record as of January 2020 (Item 5) and October 2020 (Item 6), but there is no evidence it had been resolved.

Student loan collection debt of \$1,758 (SOR ¶ 1.g)

Applicant's credit reports list a student loan of \$3,000 acquired in November 2015. The loan was \$1,745 past due as of October 2016 and in collection as of January 2018. (Items 4-5.) Applicant did not list any student loan delinquency on his March 2019 SCA. (Item 2.) As of March 2019, the loan was in collection for \$3,431. (Item 4.) When confronted about the debt during his May 2019 SCA, Applicant stated that he opened the account "when he attended college in 2001." He added that the account was closed because the Federal government took his income tax refund in 2019 to pay it off. (Item 3.) Applicant did not present any Federal tax records, such as an Internal Revenue Service (IRS) tax transcript or letter from the IRS, to show the disposition of his tax refund. However, in September 2020, Equifax reported the loan as current with a balance of \$1,758. (Item 6.)

Student loan collection debt of \$1,504 (SOR ¶ 1.h)

Applicant obtained a student loan of \$1,872 in June 2000. Due to inactivity on the account since November 2016, his loan was placed for collection. (Item 4.) Applicant did not list the debt on his March 2019 SCA. (Item 2.) He acknowledged the educational loan during his May 2019 PSI but indicated that the account was closed because the Federal government took his tax refund in 2019 to resolve the debt. (Item 3.) Applicant did not present IRS tax documentation showing application of his refund to this account. The loan had a past-due balance of \$1,495 in December 2019. (Item 5.) As of September 2020, the account had a past-due balance of \$1,504. (Item 6.)

Student loan collection debt of \$993 (SOR ¶ 1.i)

Applicant's credit reports indicate that he obtained a student loan of \$1,750 in November 2015. His loan became delinquent in November 2016 and for placed for collection in October 2017. As of March 2019, the loan was past due for \$1,939. (Item 4.) Applicant did not list the debt on his March 2019 SCA. (Item 2.) During his May 2019 PSI, he stated that he obtained the loan for college in 2001, and he did not know when it became delinquent. As with his other student loans, he asserted that the account was closed as the Federal government had taken his income tax refund in 2019 to resolve the

debt. (Item 3.) He presented no tax documentation showing that his income tax refund had been applied to this debt. However, as of September 2020, the account was current with a balance of \$993. (Item 6.)

Student loan collection debt of \$567 (SOR ¶ 1.j)

Applicant obtained a student loan of \$753 in June 2000. Last activity on the account was in November 2016. (Item 4.) Applicant did not list the debt on his March 2019 SCA. (Item 2.) During his May 2019 PSI, he stated that he obtained the loan for college in 2001, and he did not know when it became delinquent. As with his other student loans, he asserted that the account was closed as the Federal government had taken his income tax refund in 2019 to resolve the debt. (Item 3.) He presented no tax documentation showing that any of his income tax refund had been applied to this debt. As of September 2020, the account had a past-due balance of \$567. (Item 6.)

Medical collection debt of \$2,104 (SOR ¶ 1.k)

Applicant listed the debt from emergency room care in September 2018 on his March 2019 SCA. He indicated that it was an open financial issue that was incurred because he could not make payments. He reported that he was disputing the debt (Item 2), but he provided no corroborating documentation of any contacts with the credit reporting agencies or creditor. The debt was listed on Applicant's credit record with a collection balance of \$2,104 as of February 2019. (Item 4.) Applicant acknowledged owing the debt during his May 2019 PSI and expressed an intention to establish a repayment plan for the debt in 2019. (Item 3.) The debt was not reported on Applicant's credit record as of January 2020 (Item 5) and October 2020 (Item 6), but there is no evidence it has been resolved. He presented no evidence of any payments toward the debt.

Medical collection debt of \$1,036 (SOR ¶ 1.l)

Applicant listed the debt from emergency room care in February 2018 on his March 2019 SCA. He indicated that it was an open financial issue that was incurred because he could not make payments. He reported that he was disputing the debt (Item 2), but he provided no corroborating documentation of any contacts with the credit reporting agencies or creditor. The debt was listed on Applicant's credit record with a collection balance of \$1,036 as of February 2019. (Item 4.) The debt was not reported on Applicant's credit record as of January 2020 (Item 5) and October 2020 (Item 6), but there is no evidence it has been resolved.

Medical collection debt of \$1,100 (SOR ¶ 1.m)

The SOR alleges a medical collection debt of \$1,100. Applicant admitted the debt without explanation in response to the SOR. (Item 1.) However, none of the evidentiary documents in evidence substantiate the debt.

Medical collection debt of \$156 (SOR ¶ 1.n)

Applicant's credit reports list a \$156 medical debt from January 2018 placed for collection in April 2018. (Items 4-6.) Applicant did not report the debt on his March 2019 SCA. (Item 2.) He disputed the debt when confronted about it during his May 2019 PSI. (Item 3.) The debt was reported by Equifax as unpaid as of September 2020. (Item 6.)

During his May 2, 2019 PSI, Applicant stated that he previously viewed his credit as "out of sight, out of mind," and that he did not realize its importance in his life. He admitted that he had held an immature attitude about his credit. He explained that he was the sole income source for his household as his spouse had to care for their autistic child and two other children. He gave priority to necessities such as rent and utilities over other debts. Applicant asserted that he was living within his means and paying his debts, and that his present income should allow him to repay his past delinquencies and avoid new financial problems. He described his overall financial situation as stable. The OPM investigator gave Applicant the opportunity at and after his PSI to provide additional documentation about his delinquent debts, and he failed to do so. (Item 3.)

The DCSA CAF issued an SOR to Applicant on September 1, 2020, partially because of the aforesaid delinquencies. All but one of them (SOR ¶ 1.m) were included on one or more of his credit reports. In response, Applicant admitted each of the debts, but indicated that he was "making scheduled payments" on the four student loans alleged in the SOR. He provided no documentation of those payments. His October 2020 credit report (Item 6) showed a substantial reduction in the balances owed on the student loans in SOR ¶¶ 1.g and 1.i, although it is unclear to what extent the reduction is due to payments by Applicant and/or interception and application of his income tax refund in 2019.

There is no evidence in the record that Applicant filed a response to the FORM. Applicant presented no details about his income or expenses. There is no evidence that he has had any financial or budget counseling.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated 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. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The Appeal Board explained the

scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Guideline F security concerns are established when an individual fails to pay financial obligations according to terms. The available credit information substantiates that Applicant defaulted on the debts in SOR ¶¶ 1.a-1.l and 1.n. Applicant's record of delinquency establishes AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant also admitted the debt in SOR ¶ 1.m. However, there is no clear evidence that proves the validity of the debt. It does not appear on any of the credit reports in the evidentiary record. Applicant did not list the debt on his SCA, and he was not asked about it during his PSI. Applicant exhibited during his PSI a lack of full knowledge about his debts. There is no credible evidence that conclusively establishes the debt as a legitimate obligation for Applicant. I find the Government failed to meet its threshold burden to establish the debt as a security concern.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his proven delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving 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; 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.

Available credit information for Applicant shows that he and a joint borrower defaulted on the automobile loans in SOR ¶¶ 1.a and 1.b in March 2015 and May 2013, respectively. The installment sales contract (SOR ¶ 1.c) was charged off in October 2012. The cell phone (SOR ¶ 1.e) and cable services (SOR ¶ 1.f) debts were placed for collection in 2014. While these debts were incurred some time ago, AG ¶ 20(a), which provides for mitigation of debts that happened “so long ago,” cannot reasonably apply. None of these debts have been resolved. These debts are considered recent because an applicant’s ongoing, unpaid debts evidence a continuing course of conduct. *See, e.g.*, ISCR 17-03146 at 2 (App. Bd. July 31, 2018) (citing *e.g.*, ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)). His four student loans were in collection status at the time he completed his SCA in March 2019, even though progress was subsequently made on two of them. The medical debts (SOR ¶¶ 1.k, 1.l, and 1.n) were incurred in 2018, and they remain unpaid.

Regarding AG ¶ 20(b), Applicant explained during his PSI that his financial issues were incurred because he is the sole source of income for his household. His spouse has to care for their three children, including their autistic child. However, he did not provide any details about his income or expenses so it is difficult to determine whether he managed his income responsibly. Additionally, Applicant did not provide any information showing that the debts were incurred due to circumstances beyond his control. To the contrary, he acknowledged during his PSI that he had held an “immature” attitude about his credit and largely ignored his old debts (“out of sight, out of mind”).

Furthermore, for AG ¶ 20(b) to apply in mitigation, Applicant has to demonstrate that he acted responsibly under his circumstances to address his debts. He failed to do so. During his May 2019 PSI, Applicant expressed an intention to establish payment plans for several of his past-due debts. There is no evidence that he acted on his stated intention to address the debts in SOR ¶¶ 1.a-1.c, 1.e, 1.k, and 1.l. The Appeal Board has held that an applicant must demonstrate “a plan for debt payment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” *See* ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018), citing, *e.g.*, ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018). There is no evidence that Applicant made any attempt to contact his creditors or otherwise take action toward resolving or settling his delinquent debts with the exceptions of the debt in SOR ¶ 1.d and the student loans in SOR ¶¶ 1.g and 1.i.

Whether in large part due to payments by Applicant or with respect to the student loans in SOR ¶¶ 1.g and 1.i also the application of his income tax refund, the debts in SOR

¶¶ 1.d, 1.g., and 1.i have been sufficiently resolved to apply AG ¶¶ 20(c) and 20(d) to those debts and find for Applicant on those debts. Neither AG ¶ 20(c) nor AG ¶ 20(d) has been satisfied with regard to those delinquencies (SOR ¶¶ 1.a-1.c, 1.e-1.f, 1.h, 1.k-1.l, and 1.n) for which no debt reduction has been shown. Two of the debts (SOR ¶¶ 1.b-1.c) have been charged off and do not appear on his latest credit report. So too, some of the collection debts (SOR ¶¶ 1.e-1.f and 1.k-1.l) have been dropped from his credit report. While some of the debts may no longer be a source of financial pressure for Applicant, the Federal government is still entitled to consider the facts and circumstances surrounding his conduct in incurring and failing to satisfy the debt in a timely manner. See, e.g., ISCR Case No. 14-03991 at 2 (App. Bd. Jul. 1, 2015). The Appeal Board has held that the administrative judge is not precluded from considering whether the circumstances underlying a debt impugn an applicant's judgment or reliability. See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015). Neither AG ¶ 20(c) nor AG ¶ 20(d) is established by waiting until past-due balances are written off by creditors who may decide not to pursue a debt any longer, or until debts drop from one's credit record because of the passage of time without activity or other reason unrelated to payment or having a reasonable dispute of the debt. There is no evidence that Applicant attempted to make any payments on the delinquencies that have been removed from his credit report or on the debts that are still adversely affecting his credit. Furthermore, Applicant has not presented evidence that he has had financial counseling, which is required for full mitigation under AG ¶ 20(c). AG ¶ 20(e) is established only with respect to the alleged debt in SOR ¶ 1.m, which was not proven to be a legitimate obligation for Applicant.

Applicant is credited with not incurring credit-card debt that could further strain his finances, but not enough is known about Applicant's current financial situation, including his income and expenses, to overcome the financial judgment concerns in this case. A reasonable assessment of his financial situation is not possible based on the limited information available. The financial considerations security concerns have not been adequately mitigated.

Guideline E: Personal Conduct

The security concerns about personal conduct are articulated 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 Government alleges security concerns about Applicant's personal conduct because of his arrest record; his non-judicial punishment and military discharge for using an illegal controlled drug (codeine); and falsification of his March 2019 SCA for failing to report any offenses involving alcohol and his use of non-prescribed codeine in 2005 while he had a clearance. With limited exception, Applicant does not dispute his record of

offenses, which includes receiving stolen property/theft pled down to a conversion of property charge; three DUIs; and recidivist driving on a suspended license. He violated his probation for a January 2011 DUI by driving on a suspended license in February 2011 and September 2011. Applicant denies an alleged arrest for shoplifting in July 2000 (SOR ¶ 2.a), and that allegation was not proven to have occurred. While Applicant denies he was arrested for underage possession of alcohol in October 2000 (SOR ¶ 2.b), he admitted to an OPM investigator on May 15, 2019, that he had been fined for the offense. Applicant does not dispute that he received non-judicial punishment and was discharged from the Navy for use of a prohibited controlled substance (codeine) in September 2005 (SOR ¶ 2.j). However, he asserts that he had no knowledge that codeine was an ingredient in the cold medicine that he took in Japan, and denies abusing the substance. His denial of any knowing misuse of a controlled substance was found not credible by the military, however. Applicant's record of offenses, and his misuse of codeine while he held SCI access eligibility, occurred between 10 and 20 years ago. Nonetheless, when his dated offenses are considered with his more recent SCA falsification, they demonstrate a serious pattern of disregard for law, rules, and regulations. Disqualifying condition AG ¶ 16(c) applies. It provides:

(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.

Regarding his negative responses on his SCA to inquiries concerning whether he had ever been charged with an offense involving alcohol or drugs (SOR ¶ 2.k) and whether he had ever been illegally involved with a drug or controlled substance while possessing a security clearance (SOR ¶ 2.l), the objective evidence shows that Applicant should have listed his DUI offenses and his misuse of codeine on his SCA. Applicant admits the negative responses to the inquiries but denies any intentional falsification.

The DOHA Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's 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)).

Applicant did not provide an explanation for his failure to list his DUI offenses on his SCA. He clearly knew about the offenses, for he volunteered them when asked about any alcohol or drug charges during his May 2, 2019 PSI. I find that he deliberately omitted them from his SCA. In addition to raising security concerns under AG ¶ 16(c), the deliberate omission of information that is relevant and material to the investigation and adjudication of his security clearance eligibility raises security concerns under AG ¶ 16(a). That disqualifying condition provides:

(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.

I am not persuaded that Applicant deliberately omitted his abuse of codeine from his SCA, however. Although Applicant responded, "I admit," to whether he had deliberately failed to disclose his codeine use on his SCA, he also stated, "At no time was I abusing this drug or taking it other than prescribed." He did not regard his use of codeine as illegal, but rather as it turned out, a failure to comply with a signed agreement not to purchase a drug from a Japanese pharmacy. Applicant indicated on his SCA that he had received non-judicial punishment and been discharged from the Navy, which militates against a finding of intentional concealment on that issue. Accordingly, I find for Applicant as to SOR ¶ 2.I.

AG ¶ 17 provides for mitigation of the personal conduct security concerns under one or more of the following conditions:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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 contributed to 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.

Mitigating condition AG ¶ 17(a) has some applicability in that Applicant made a timely effort to rectify his deliberate omission of his DUI offenses from his SCA. The evidence shows that, at his first opportunity, Applicant volunteered to the OPM investigator on May 2, 2019, that he had been arrested for and convicted of three DUI offenses. However, his falsification of his SCA and his extensive, albeit now old, criminal record cannot be viewed in isolation from each other. I cannot reasonably apply AG ¶ 17(c) because of the recency of his SCA falsification and the recidivist nature of his DUIs and criminal driving on a suspended license, including in violation of his probation for drunk driving. Applicant has shown some reform under AG ¶ 17(d) by volunteering information about his DUIs and other offenses during his May 2, 2019 PSI. However, he has yet to provide a credible explanation for his failure to list any of his DUIs on his SCA. While he admits “Events 2d and 2g,” he also stated it was not his intention to falsify facts. When considered as a whole, Applicant has demonstrated questionable judgment that continues to cast doubt on his judgment, reliability, and trustworthiness. The personal conduct security concerns are not 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 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 AG ¶ 2(c), “[t]he ultimate determination of whether the granting or continuing of national security clearance eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the [pertinent] guidelines” and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis.

The security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. It is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness with regard to his fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-02160 (App. Bd. June 21, 2010). It was incumbent on Applicant to show that his financial situation is sufficiently stable and not likely to present an ongoing security concern. As discussed above, too many unanswered questions exist about his financial situation. He presented no character reference information that could possibly overcome the doubts about his personal conduct. By not reporting any of his alcohol offenses on his SCA, he exhibited an unacceptable tendency to act in self-interest.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009), (citing *Adams v. Laird*, 420 F 2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.k:	Against Applicant
Subparagraph 2.l:	For 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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge