



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



In the matter of:)
)
) ISCR Case No. 20-02551
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

04/08/2022

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are mitigated; however, Guidelines E (personal conduct) and J (criminal conduct) security concerns are not mitigated at this time. Eligibility for access to classified information is denied.

Statement of the Case

On April 29, 2019, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On January 4, 2021, the Department of Defense (DOD) Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines F, J, and E.

(HE 2) Applicant provided an undated response to the SOR and requested a hearing. (HE 3) On April 8, 2021, Department Counsel was ready to proceed.

On November 19, 2021, the case was assigned to me. On January 6, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 4, 2022. (HE 1) The hearing was held as scheduled.

Department Counsel offered six exhibits into evidence, and Applicant did not offer any exhibits into evidence at his hearing. (Transcript (Tr.) 9, 12-14; Government Exhibit (GE) 1-GE 6) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 13-14) On February 14, 2022, DOHA received a transcript of the hearing. Three post-hearing exhibits were received; there were no objections; and the three documents were admitted into evidence. (Applicant Exhibit (AE) A (Alcohol and Substance Abuse Program (ASAP) completions); AE B (payments to address one debt); and AE C (emails showing dispute of student loan debt). The record was held open until March 28, 2022, to enable Applicant to provide documentation. (Tr. 23, 52; AE C)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations. (HE 3) He also provided extenuating and mitigating information. (*Id.*) His admissions are accepted as findings of fact.

Applicant is a 35-year-old nuclear inspector, who has worked for a defense contractor for three years. (Tr. 6-7; GE 1) In 2006, he received a General Educational Diploma (GED). (Tr. 6) He has some college credits; however, he did not receive a degree. (Tr. 7) He has not served in the military and has never been married. (Tr. 7) He does not have any children. (Tr. 7)

Financial Considerations

The SOR alleges five student-loan debts totaling \$31,425, which were placed for collection as follows: ¶ 1.a for \$9,646; ¶ 1.b for \$8,801; ¶ 1.d for \$5,685; ¶ 1.e for \$5,326; and ¶ 1.f for \$1,967. His SOR also alleges a charged-off vehicle-related loan in ¶ 1.c for \$6,772 and two delinquent medical debts in ¶ 1.g for \$1,427 and ¶ 1.h for \$194.

Applicant went to a college that was implicated in fraudulent activity. (Tr. 16) The college closed, and the credits he earned were not transferable because the college was not accredited. (Tr. 45-46) He made some payments on his student loans. (Tr. 45) He believed he could be released from liability for his student loans. The Department of Education (ED) holds the student loans in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.f. About two years ago, Applicant contacted ED and learned ED wanted him to start payments. (Tr. 17) Applicant was trying to get a deferment until he could obtain a release from the student loans. (Tr. 17-21) He said his most recent credit report does not reflect his student-loan

debts. (Tr. 17-18) However, his January 31, 2020 credit report, the most recent credit report of record, states the five student loans were opened in the 2011 to 2013 timeframe and reflects their transfer to collection status in 2017. (GE 3) The amounts in the SOR are the amounts the five accounts are shown as delinquent in this credit report. (GE 3) He does not have any documentation showing he attempted to settle his ED debt. (Tr. 18)

On February 4, 2022, the Federal Student Loan Borrower Defense Customer Service emailed Applicant and advised him:

We have received your application for a borrower defense discharge of your federal student loans under the borrower defense to repayment rules at 34 C.F.R. § 685.206(c) (2017). . . . We will notify you once a decision has been made on your application. If your borrower defense claim is approved, we will determine how much debt relief (0% -100%) to provide based on the amount of financial harm you suffered as a result of your school's conduct. (AE C)

On March 25, 2022, ED emailed Applicant and gave him updated information about his borrower defense. (AE C) ED advised that he could provide additional information to assist in reconciling his claims. (*Id.*) In 2018, Applicant's federal income tax refund was diverted to pay his student-loan debt. (GE 2) His student loans are no longer in collection status pending resolution of his claim. (AE C)

As for the debt in SOR ¶ 1.c for \$6,772, Applicant said he borrowed money in 2012 to purchase a car, and it was voluntarily repossessed. (Tr. 20) He made \$100 to \$150 monthly payments for about five years to address this debt. (Tr. 19; AE B) He believed this account was in good standing. (Tr. 19) On January 31, 2022, the creditor wrote that he paid off 95 percent of the loan and now owes \$1,246. (AE B)

SOR ¶¶ 1.g and 1.h allege and Applicant admitted that he had delinquent medical debts for \$1,427 and \$194. (SOR response) He had some discussions with creditors or collection agents. (Tr. 22) He is considering some options on how to settle the larger medical debt. (Tr. 22) He believes he paid the smaller medical debt. (Tr. 23-24) His January 31, 2020 credit report shows both debts are in collections. (GE 3) His January 31, 2020 credit report also shows that his non-SOR debts are paid or current. (GE 3)

Criminal Conduct

SOR ¶ 2.i alleges in about December 2006, Applicant was charged with failure to appear on a misdemeanor charge, and in about February 2007, he was convicted of this charge. However, he did not remember the underlying misdemeanor charge. (Tr. 28; SOR response; GE 5) Under state law, failure to appear on a misdemeanor charge is itself a misdemeanor. (GE 5)

SOR ¶ 2.h alleges and Applicant admitted that in about March 2012, he was charged with driving under the influence of alcohol (DUI). (Tr. 28; SOR response; GE 5;

GE 6) In his April 29, 2019 SCA, he disclosed that he was arrested for DUI in 2012 and convicted of DUI. (GE 1) He received a \$500 fine and five days in jail. (GE 1; GE 2) According to the FBI record and state record, he was convicted of reckless driving in June 2012. (GE 5; GE 6) Under state law, the first and second DUIs and reckless driving are misdemeanors.

SOR ¶ 2.k alleges and Applicant admitted that in about July 2012, he was charged with driving with a suspended license. (Tr. 28; SOR response) Under state law, driving with a suspended or revoked license is a misdemeanor.

SOR ¶ 2.j alleges and Applicant admitted that in about August 2012, he was charged with driving with an expired registration. (Tr. 28; SOR response) Under state law, driving with an expired registration is a traffic infraction and not a criminal offense.

SOR ¶ 2.i alleges and Applicant admitted that in about October 2012, he was charged with an HOV violation and with speeding. (Tr. 28; SOR response) Under state law, an HOV violation and speeding are traffic infractions and not criminal offenses.

SOR ¶ 2.g alleges and Applicant admitted that in about May 2013, he was charged with driving while intoxicated (DWI) first offense, and in about September 2013, he was convicted of DWI. (Tr. 27-28; SOR response; GE 5) In his August 8, 2019 Office of Personnel Management (OPM) interview, Applicant said he was arrested for DWI and speeding, and he received a \$500 fine and two weeks in jail. (GE 2)

SOR ¶ 2.f alleges and Applicant admitted that in about July 2013, he was charged with illegally carrying a concealed weapon. (Tr. 28; SOR response) The concealed weapon charge was dismissed when Applicant went to court. (GE 2) Applicant admitted he had a firearm in his vehicle when the police stopped his vehicle. (GE 2)

SOR ¶ 2.e alleges and Applicant admitted that in about July 2013, he was charged with DUI, and in about September 2013, he was convicted of this offense (Tr. 28; SOR response). The state record supports this DUI arrest and conviction (GE 6); however, Applicant said he only had one DUI in 2013.

SOR ¶ 2.d alleges in about April 2014, Applicant was arrested for a capias or arrest warrant for a State Alcohol Safety Action Program (SASAP) violation. In about July 2014, he was convicted of violating his parole when he failed to complete the terms of his DUI conviction. He admitted he violated one of the SASAP rules; he turned himself in to the police; and he was convicted of a parole violation. (Tr. 27; SOR response) A parole violation is a misdemeanor offense.

SOR ¶ 2.c alleges and Applicant admitted that in about December 2018, he was charged with driving with a suspended driver's license and fail to obey highway sign. (Tr. 26; SOR response) Under state law, driving with a suspended driver's license is a misdemeanor, and fail to obey traffic sign is a traffic infraction and not a criminal offense.

SOR ¶ 2.b alleges in about January 2019, Applicant was charged with driving with a suspended license. He said when the police officer stopped him, he became aware that his driver's license was suspended. (Tr. 26) The police officer issued a ticket to him. (Tr. 26) He did not know why his driver's license was suspended in 2018 and 2019, and he suggested he might have owed money on a ticket. (Tr. 43) Under state law, driving with a suspended driver's license is a misdemeanor.

SOR ¶ 2.a alleges in about January 2019, Applicant was charged with texting or emailing while driving. He said a police officer mistakenly believed he was texting because he was holding his phone in his hand. (Tr. 25) Nevertheless, the police officer wrote him a ticket for texting while driving. (Tr. 25) He paid a fine for the texting ticket. (GE 2) Under state law, illegally using a handheld personal communications device while driving is a traffic infraction and not a criminal offense.

Applicant said he was arrested for three DUIs, with the most recent DUI being in 2020. (Tr. 29, 42) One of the DUIs in the SOR was reduced to reckless driving. (Tr. 42) Under state law, reckless driving is a misdemeanor. For the first two DUIs, his blood alcohol content (BAC) was .08, and for his 2020 DUI his BAC was .12. (Tr. 43) He was convicted of the 2020 DUI. (Tr. 44) His driver's license is currently revoked. (Tr. 44)

In 2013, 2016, and 2021, Applicant successfully completed alcohol safety action programs (ASAP). (Tr. 30-31, 44; AE A) He improved his handling of alcohol. (Tr. 30) He said he reduced his alcohol consumption after 2013. (Tr. 29)

Personal Conduct

SOR ¶¶ 3.a and 3.c allege Applicant failed to disclose on his April 29, 2019 SCA that he was fired in October 2017 from employment at a store for sexual harassment. Applicant said he touched a person he considered a friend on her shoulder, and he said "I hope you feel better." (Tr. 32) In his August 8, 2019 OPM interview, Applicant said he grabbed his coworker by the shoulders and squeezed them two or three times to show that he was happy she was back at work after an illness. (GE 2) The "shoulder touch" was caught on camera, and "turned into a huge situation." (Tr. 32) He was fired for sexual harassment. (Tr. 32) He said he answered no to the question about being fired or terminated from employment because he misunderstood the question. (Tr. 36) He was given an opportunity to disclose the firing for sexual harassment during his OPM interview, and he did not provide information about it until the OPM investigator confronted him with information about the sexual harassment allegation. (GE 2)

SOR ¶¶ 3.b alleges Applicant failed to disclose on his April 29, 2019 SCA that he had the delinquent debts in SOR ¶¶ 1.a through 1.h, *supra*. He said he misread the SCA question about having debts in collections, charged-off debts, repossessions, or debts delinquent more than 120 days. (Tr. 37-40)

SOR ¶ 3.d alleges and Applicant admitted that he was terminated around May 2015 from his employment at a store for punctuality and attendance infractions. (Tr. 33;

SOR response) He disclosed three reprimands for lack of punctuality and his firing on his April 29, 2019 SCA. (GE 1)

SOR ¶ 3.e alleges and Applicant admitted that he resigned in lieu of being fired around October 2012 from his employment at a credit union. (Tr. 33; SOR response) He was unable to attend college classes and work at his other job as well as at the credit union. (Tr. 34) He disclosed on his April 29, 2019 SCA that he quit this job after being told he was going to be terminated. (GE 1)

SOR ¶ 3.f alleges and Applicant admitted that he was discharged from his employment at a financial institution around February 2012 for performance issues. (Tr. 35; SOR response) He was terminated because a check was missing, and his employer decided Applicant was at fault. (Tr. 35) He disclosed on his April 29, 2019 SCA that he was discharged after losing a check. (GE 1)

SOR ¶ 3.g cross alleges the criminal conduct in SOR ¶ 2 as a personal conduct security concern.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or

in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). "The Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

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

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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 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; 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant described one circumstance beyond his control, which adversely affected his finances. He was the victim of an unscrupulous college. However, "[e]ven if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his 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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). Applicant did not file a lawsuit against his college or seek reimbursement from his college before it closed.

Another component under AG ¶ 20(a) is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that he maintained contact with the creditor for his student loans. He did not provide any evidence of any payments or settlement offers. AG ¶¶ 20(a) and 20(d) do not apply.

Applicant has been employed for the previous three years. He did not prove he was unable to make payments to address his SOR debts. AG ¶ 20(b) does not apply. Applicant did not describe any financial counseling. AG ¶ 20(c) does not apply.

Applicant has a basis to dispute his student loans. He believes the college did not fully disclose information to him relevant to his decision to obtain student loans. His student loans are under ED purview. He filed a dispute and ED is reviewing his claim. AG ¶ 20(e) applies to his student loans.

Applicant has paid down 95 percent of the loan in SOR ¶ 1.c. He currently owes \$1,246, and he is making monthly payments to address this debt. SOR ¶ 1.c is mitigated.

Applicant has accepted responsibility for the two medical debts in SOR ¶¶ 1.g and 1.h for \$1,427 and \$194. Based on his track record of paying his debts, I believe he will pay or resolve his remaining debts. There is sufficient assurance that his financial problem is being resolved. Under all the circumstances, he established mitigation of financial considerations security concerns.

Criminal Conduct

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

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case, “(a) a single serious crime or multiple lesser offenses,” and “(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.” The record establishes AG ¶¶ 31(a) and 31(c). Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

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

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

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

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

Applicant’s SOR alleges, and he admitted that he committed nine misdemeanor offenses between 2006 and 2019 in SOR ¶¶ 2.b through 2.h, 2.k, and 2.l. The conduct alleged and he admitted in SOR ¶¶ 2.a, 2.i, and 2.j are traffic infractions and not criminal offenses. SOR ¶¶ 2.a, 2.i, and 2.j are found for Applicant.

The SOR does not allege that Applicant was arrested in 2020 for DUI, and his BAC was .12. He was convicted of the 2020 DUI. His driver’s license is currently revoked. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(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 Section 6.3.

Id. (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. Apr. 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)). The non-SOR allegations will not be considered except for the five purposes listed above.

After careful consideration of the Appeal Board's jurisprudence on criminal offenses, and all the facts and circumstances, I have continuing doubts about the risks that Applicant will make poor decisions and show poor judgment in connection with security and classified information. Not enough time has elapsed without criminal conduct to eliminate doubt about Applicant's current reliability, trustworthiness, and good judgment. Criminal conduct concerns are not fully mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. . . .

(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.

Applicant did not disclose on his April 29, 2019 SCA that he had delinquent debts and a repossessed vehicle. He did not disclose that he was terminated from his employment in October 2017 for sexual harassment.

Applicant said he did not understand the questions on his SCA about his delinquent debts and reasons for leaving employment. The financial questions and leaving employment questions are straight forward and easy to understand. He answered two questions on his SCA about termination of employment and accurately disclosed negative information.

“Applicant’s statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant’s mens rea in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant’s intent or state of mind may not always be based on an applicant’s statements, but rather may rely on circumstantial evidence. *Id.*

Applicant knew his vehicle was repossessed, and he knew his student loans were delinquent. The sexual harassment involving the “shoulder touch” was caught on camera, and “turned into a huge situation.” He was fired for sexual harassment. I am not convinced Applicant honestly answered the questions on his SCA about his termination from employment in 2017 and delinquent debts. The questions about delinquent debts and employment termination are clear and easy to understand. He elected not to disclose his delinquent debts and termination for sexual harassment. The record evidence establishes AG ¶ 16(a) in relation to SOR ¶ 3.a and ¶ 3.b.

AG ¶ 16 has three disqualifying conditions that are relevant in this case. AG ¶¶ 16(c), 16(d)(3), and 16(e)(1) read:

(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 person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

AG ¶¶ 16(c) and 16(d)(3) do not apply to the allegation in SOR ¶ 3.g. As indicated in the previous section, Guideline J is the most appropriate guideline for Applicant's criminal conduct. The Guideline J discussion indicates sufficient evidence for an adverse determination. Personal conduct security concerns are refuted with respect to SOR ¶ 3.g.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(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.

Applicant's terminations from employments for attendance-related issues and losing a check are relatively minor, and have not recurred since 2015. AG ¶ 17(c) applies to the conduct in SOR ¶¶ 3.d, 3.e, and 3.f, and they are mitigated.

None of the mitigating conditions fully apply to Applicant's failure to disclose his delinquent debts and termination from employment in 2017 for sexual harassment on his April 29, 2019 SCA, and the underlying sexual harassment, which was the basis of his termination. His false statements on his SCA and his sexual harassment in 2017 continue to cast doubt on his reliability, trustworthiness, and good judgment. 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 the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 35-year-old nuclear inspector, who has worked for a defense contractor for three years. In 2006, he received a GED. He has some college credits; however, he did not receive a degree. There is no evidence of employment problems at his current employment.

The factors weighing against granting his security clearance are more substantial than the mitigating circumstances. Applicant committed 10 misdemeanor-level criminal offenses from 2006 to 2020, including three alcohol-related driving offenses. He violated parole, drove with a suspended license, and possessed a concealed firearm in his vehicle. He failed to disclose his delinquent debts and termination from employment for sexual harassment in 2017 on his April 29, 2019 SCA.

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*, 913 F. 2d at 1401. Unmitigated security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more time without criminal conduct and other conduct raising a serious concern, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial

considerations security concerns are mitigated; however, criminal conduct and personal conduct security concerns are not mitigated at this time.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.h:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b through 2.h:	Against Applicant
Subparagraphs 2.i and 2.j:	For Applicant
Subparagraphs 2.k and 2.l:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a through 3.c:	Against Applicant
Subparagraphs 3.d through 3.g:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge