



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



In the matter of:)	
)	
)	ISCR Case No. 20-02993
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Pro se

August 12, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on May 22, 2019. On November 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines E (Personal Conduct), J (Criminal Conduct), and F (Financial Considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense (DoD) after June 8, 2017.

Applicant submitted an undated answer to the SOR (Answer) and requested a hearing before an administrative judge. On March 22, 2022, Department Counsel was prepared to proceed. The case was assigned to me on April 5, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on April 25, 2022. The case was heard as scheduled on June 16, 2022.

The Government offered Government Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 24, 2022.

Findings of Fact

Applicant is 54 years old. He married in 1989 and separated from his wife in 1992. A divorce was never finalized. Since 2010 Applicant has cohabitated with a woman. He has six children. He received his high school diploma in 1985 and enlisted in the U.S. Navy after graduation. In 1995 he was administratively separated under Other Than Honorable conditions. He claimed at the hearing that his discharge was subsequently upgraded. He held a security clearance while in the Navy and during periods of subsequent employment. He was employed by a DoD contractor as a tradesperson since November 2018 and at the time of his submission of his e-QIP. In March 2022, he began working for a different DoD contractor. He is seeking to obtain a security clearance in relation to his employment. (Tr. at 16-20, 35, 41-42.)

Paragraph 1 (Guideline E, Personal Conduct)

In paragraph 1 of the SOR, the Government listed numerous acts of misconduct by Applicant resulting in the issuance of bench warrants for failure to appear in court, including an outstanding bench warrant issued in June 2017 and charges of contempt of court on at least four occasions. The SOR also alleged that in 1994 Applicant was taken to Captain's Mast for offenses involving fraudulent checks. In addition, the SOR alleged that Applicant deliberately provided false information three times on his May 2019 e-QIP. In his Answer, Applicant admitted the allegations in paragraph 1, except he denied the falsifications by virtue of responding only to the underlying claims of criminal conduct. (Answer at 1-3.)

The details regarding each of the SOR allegations set forth in paragraph 1 are as follows:

1.a Outstanding bench warrant issued June 2017. Applicant failed to appear in court on June 15, 2017, as required for a readiness hearing on a driving violation citation. On June 20, 2017, the court issued a bench warrant for his arrest and set bail at \$10,000. The underlying charge was issued in about February 2017 and was for Driving with a Suspended License (DSL), after his license was suspended or revoked for driving under the influence of alcohol (DUI). Applicant license has been suspended or revoked since

about 1994 for DUI. He was originally arraigned on the DSL charge on May 1, 2017, after being stopped for speeding. He was also charged with speeding. In his Answer, Applicant admitted the SOR allegation about an outstanding bench warrant and wrote that he was homeless at the time and had custody of his son. He explained that he had no funds available to pay a fine, although there was no fine to pay at the court hearing he missed. He blamed his five-year delay in resolving the bench warrant on his work schedule, which included travelling overseas. At the DOHA hearing, he testified that he resolved the outstanding warrant in May 2022. He provided no documentation, however, to support his testimony. (Answer at 1; Tr. at 21-25, 33; GE 7 at 9, 17.)

1.b Additional bench warrants, and May 2009 arrest for Fugitive from Justice in another state. The SOR alleged that bench warrants had been issued for Applicant's arrest for failure to appear in court in State 1 in or about July 2005, September 2006, February 2009, as well as the June 2017 bench warrant alleged in SOR 1.a. The SOR also alleged that Applicant was arrested in May 2009 in State 1 for being a Fugitive from Justice in State 2. Following his arrest, he was extradited to State 2 on June 19, 2009. In his Answer, Applicant admitted the allegations in this subparagraph 1.b. He testified that the bench warrants were issued because he was delinquent on his child support payments. At the DOHA hearing, he clarified that he assumed the bench warrants were due to child support issues. He testified that he has two ongoing child support issues that he hopes to resolve with an insurance payment for a car accident. He also explained that he was extradited to State 2 for failure to pay a probation fine. He sought to shift the blame for the non-payment of the fine in State 2 to a woman with whom he once had a relationship. (Answer at 1; Tr. at 25-29, 36-37; GE 6 at 7; GE at 7 at 1, 5, 7, 17, 21.)

1.c Multiple charges for Driving on a Suspended or Revoked License due to a prior DUI. Applicant was issued citations for this driving offense in or about December 1994, December 1995, March 2008, August 2008, December 2016, and February 2017. In his Answer, he admitted these allegations and citations. He testified at the DOHA hearing that he still has to complete an 18-month program to be eligible to receive his driver's license. (Answer at 1; Tr. at 29-33; GE 6 at 6; GE 7 at 13, 15.)

1.d Multiple charges of Contempt of Court. Applicant has been found in contempt of court on at least four occasions, specifically in May 2005, September 2007, May 2009, and May 2012. In his Answer, Applicant admitted this allegation. At the DOHA hearing, he explained that the contempt citations were likely due to delinquencies in his child support payments over a number of years. (Answer at 1; Tr. at 33-38; GE 6 at 6- 7; GE 7 at 10, 21.)

1.e October 1994 Non-Judicial Punishment for issuing fraudulent checks. In his Answer, Applicant admitted that he was charged with this offense. Included in the record evidence is a report of investigation prepared by the Naval Criminal Investigative Service, dated October 18, 1994, which states that Applicant was punished administratively on October 16, 1994, in connection with a related Naval Criminal Investigative Service investigation into fraudulent check activity. Applicant received a reduction in rank to E-4,

30 days' restriction, 25 days' extra duty, and forfeiture of ½ pay for two months, which was suspended for six months. At the DOHA hearing, Applicant denied the misconduct. He admitted that he received another Captain's mast in 1995 and was administratively separated from the Navy. (Answer at 1; Tr. at 38-43; GE 6 at 4; GE 8.)

1.f. Falsification on e-QIP under Section 22 - Police Record. The focus of the Government's three falsification allegations under Section 22 of the e-QIP is whether Applicant has ever been convicted of an offense and sentenced to a term of imprisonment exceeding one year, or charged with a felony offense, an offense involving firearms, or an offense involving alcohol or drugs. He answered this question in the negative when in fact he had been charged with a felony offense and was convicted and sentenced to a term of imprisonment exceeding one year. Separately, he was charged with an offense involving both drugs and a firearm. He has also been charged with an offense involving alcohol. The details are as follows:

1.f.i Failure to disclose Applicant's April 2004 arrest in State 2 for Possession of Marijuana 5 Lbs or Greater. This was a felony charge. In his e-QIP, Applicant characterized this charge as a misdemeanor. The FBI report in the DOHA record reflects that both the charge at this arrest and the charge to which he pled guilty were felonies. He was sentenced to two years of incarceration and five years of probation. In August 2009, his probation was revoked because his fine had not been paid, and he was sentenced to serve up to nine months in jail. Applicant's extradition from State 1 to State 2 in 2009, discussed in SOR 1.b above, was in response to his probation revocation. He was released from jail in February 2010. In his July 2019 background interview, he failed to voluntarily disclose that the charge was a felony. When confronted with the Government's information that the charge was a felony and he was sentenced to two years of confinement, he did not dispute either fact. In his Answer, he wrote that the charge was "presented" as a misdemeanor though he acknowledged that the offense "carried" a two-year sentence. He also denied that he possessed five pounds or more of marijuana. At the DOHA hearing Applicant insisted the 2004 charge was for a misdemeanor. He also denied being sentenced to two years of incarceration. Applicant did not deny that he served nine months in jail after his probation was revoked for non-payment of the \$8,000 fine imposed as part of his original sentence. His testimony was inconsistent with the FBI report in the record evidence that the charge was a felony and that he was sentenced to two years of incarceration. His testimony was unconvincing and lacked credibility. Applicant's e-QIP falsification was deliberate. (Tr. at 43-47; GE 1 at 33-34; GE 2 at 12; GE 6 at 10-12.)

1.f.ii Failure to disclose a December 1995 arrest and felony charge of Possession, Purchase Cocaine Base for Sale and related charges, including Possession of a Controlled Substance while Armed. Applicant pled guilty to Transportation with the Intent to Sell Narcotics Controlled Substance and was sentenced to 270 days in jail and three years of probation. This charge is a felony, and it involved drugs and a firearm. Applicant failed to disclose this arrest and the charges, and he did not voluntarily disclose them during his July 2019 background interview. In his Answer, Applicant did not try to

explain why he did not disclose, in his e-QIP, these charges and conviction, for which he served jail time. At the hearing, he sought to explain his omission based on the number of years that had passed since these charges. His testimony was unconvincing and lacked credibility. Applicant's e-QIP falsification was deliberate. (Tr. at 47-52; GE 1 at 32-34; GE 2 at 12; GE 6 at 5.)

1.f.iii Failure to disclose February 1993 arrest and charge of DUI with a BAC over 0.10%. The documentary records in evidence reflect that Applicant was arrested for DUI on December 5, 1994. In his e-QIP, Applicant provided two separate dates for this arrest, December 1993 and December 1994. At his hearing, Applicant testified that he only had one DUI and that was in 1993. His license was suspended at that time. In his background interview, however, he described his DUI arrest as occurring in December 1994. In his Answer, Applicant admitted to this arrest, though he denied having a BAC over 0.10%. I am unable to find in the evidence any official record of a second DUI offense in 1993, and Department Counsel did not note any such record. Applicant truthfully disclosed on his e-QIP his one DUI, which occurred in December 1994 according to the official records. (Answer at 2; Tr. at 53-55; GE 1 at 32-33; GE 2 at 11; GE 7 at 11.)

1.g Falsification on e-QIP under Section 24 – Use of Alcohol. Applicant failed to disclose on his e-QIP treatment received in May 1993 at a Navy Counseling and Assistance Center (CAAC) as a result of his use of alcohol. Applicant was referred to Level II treatment for alcohol abuse at a Navy CAAC and completed his treatment in May 1993. The e-QIP question in Section 24 asks if the individual has ever been ordered or asked to seek counseling or treatment as a result of his use of alcohol. The question also asks if the individual has ever voluntarily sought counseling or treatment as a result of his use of alcohol. Applicant answered both questions in the negative, which was incorrect. In his Answer, he claims he was never ordered to attend CAAC, but he states that upon his arrival at a new duty station he was sent to CAAC. It is unclear what he meant by those statements. At the DOHA hearing, he clarified that he simply forgot about the treatment. He further explained that he never sought the treatment nor was he ever ordered to attend it. He testified that his attendance at the CAAC was simply part of the requirement of reporting to a new duty station. He explained in his July 2019 background interview that the CAAC alcohol education program also satisfied the education requirements he was ordered to take after what he described as his 1993 DUI conviction. Under the wording of the e-QIP question, his attendance at CAAC alcohol education treatment required an affirmative answer. Applicant's testimony on this SOR allegation was confusing, disjointed, unconvincing, and lacked credibility. Applicant's e-QIP falsification was deliberate. (Answer at 2; Tr. at 55-59; GE 1 at 35-36; GE 2 at 11, 14.)

Paragraph 2 (Guideline J, Criminal Conduct)

The Government cross-alleges as criminal conduct the personal conduct allegation set forth in subparagraph 1.a. concerning the outstanding June 2017 bench warrant. In his Answer, he denied having ever been involved in any criminal activity. He wrote that all of the alleged incidents of criminal activity were the result of "being in the

wrong place at the wrong time.” (Answer at 3; Tr. at 59.) As discussed above, Applicant testified that the 2017 bench warrant was resolved, but he provided no supporting documentation.

Paragraph 3 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR identifies three past-due debts that have been referred to collection. The debts total about \$9,000. In his Answer, Applicant admitted each of the allegations, but asserted that two of the debts had been resolved and that he has been trying to contact the creditor to resolve the third debt (SOR 3.b) (Answer at 3.)

The current status of the allegations in paragraph 3 of the SOR is as follows:

3.a. Cellphone account in collection in the approximate amount of \$1,416. Applicant admitted that he failed to pay this bill when it was due because he lost his job in 2018 and was unemployed for about two-to-three months (June 2018 to August 2018). He testified that he paid this account in June 2021. This debt is resolved. (Tr. at 60-61; GE 4 at 1; GE 5 at 6.)

3.b. Rental account in collection in the approximate amount of \$7,305. Applicant was unable to pay his rent due to his loss of employment in June 2018. He was unemployed from June to August 2018. He vacated his residence in October 2018 with about four months of rent (\$1,780 per month) unpaid. Applicant testified that since he returned from his most recent overseas business trip in 2021, he has tried to contact this creditor, but he has not been successful. Applicant’s background interview conducted by a U.S. Government investigator occurred in July 2019. The investigator’s report of investigation summarizing the interview was attached to DOHA’s interrogatories in the record. Applicant noted in his interrogatory responses that he agreed with the report as accurate and adopted the report as his own statement. In that report, it was noted that Applicant was in contact with this creditor at the time of the interview. He was told he would receive in the mail a statement with the balance due. He told the interviewer that he planned to pay the debt off in installments by May 2020. He provided no documentary evidence addressing the current status of this debt or his claimed attempts to seek a resolution. This debt is unresolved. (Tr. at 61-63; GE 1 at 9, 15; GE 2 at 5, 14; GE 4 at 2; GE 5 at 5.)

3.c. Pay-day cash loan account in collection in the approximate amount of \$315. Applicant admitted that he failed to repay this loan when it was due. He testified that he repaid this loan in or about June 2021. GE 3 reflects a zero balance due on this account. This debt is resolved. (Tr. at 63-66; GE 3 at 5; GE 4 at 3; GE 5 at 6.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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.

AG ¶ 16 describes three conditions that could raise security concerns and may be disqualifying in this case:

(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;

(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; and

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior.

The record evidenced established three of the four falsification allegations in the SOR (1.f.i, 1.f.ii, and 1.g) and all of the misconduct allegations (1.a through 1.e). The above disqualifying conditions apply. SOR 1.f.iii is not established.

The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's alleged falsifications and other personal misconduct:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) was established with respect to SOR 1.g by Applicant's voluntary disclosure of his CAAC treatment after his DUI arrest and the court sentence, which included taking an alcohol education class. Applicant made no prompt good-faith disclosure of the two charges that are the subject of SOR 1.f.i and 1.f.ii, so AG ¶ 17(a) does not apply to those allegations.

Mitigation of the remainder of the SOR allegations under this paragraph (1.a through 1.f.ii) has not been established under AG ¶ 17(c). The misconduct was serious and frequent. Most recently, his 2017 bench warrant has remained unresolved for the last five years. Applicant testified that he resolved it shortly before the DOHA hearing, but provided no supporting documentation. Applicant's irresponsible and unlawful personal conduct over almost three decades casts doubt on his reliability, trustworthiness, and judgment. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline J, Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

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 security concerns and may be disqualifying in this case:

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

The Government could have cross-alleged under Guideline J much of Applicant's personal misconduct set forth under Guideline E, but chose instead to only cross-allege SOR 1.a under this guideline. I cannot consider unalleged conduct as disqualifying. Accordingly, AG ¶ 31(a) has not been established because the one criminal offense for which Applicant was charged does not constitute a pattern of minor offenses.

The record evidence supporting SOR 1.a, however, fully establishes concerns under AG ¶ 31(b). This evidence shifts the burden to Applicant to mitigate the security concerns raised by his criminal conduct.

AG ¶ 32 sets forth four mitigating conditions under Guideline J. The following two mitigating conditions have possible application to the facts in this case:

(a) so much time has passed 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; and

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

Neither mitigating condition has been established. The criminal behavior is recent and did not happen under unique circumstances. The record contains no evidence to suggest that it is unlikely that bench warrants for Applicant's arrest due to his driving on a suspended license are unlikely to recur. Since 1993, he has not held a valid driver's license. Moreover, Applicant did not establish that he resolved a bench warrant that has remained outstanding for the last five years. This bench warrant casts doubt on Applicant's reliability, trustworthiness, and judgment.

Paragraph 3 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

As of the date of the SOR, Applicant owed approximately \$9,000 for three past-due debts. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. The three debts alleged in the SOR are recent, frequent and did not occur under any unique circumstances that are unlikely to recur. The debts cast doubt on Applicant's reliability, trustworthiness, and judgment.

AG ¶ 20(b) is only partially established. At least two of the debts may have arisen at a time when Applicant was unemployed in 2018 and may have been due to conditions that were largely outside of his control. In 2021 he paid two of the debts (SOR 3.a and 3.c), but he has not acted responsibly with respect to his largest debt for unpaid rent (SOR 3.b).

AG ¶ 20(c) is only partially established. Applicant initiated a good-faith effort to repay the two smallest SOR debts. He has not initiated a good-faith effort to repay his largest debt (1.b).

Overall, Applicant has not fully established mitigation of the security concerns raised in the SOR under this guideline. Paragraph 3 is resolved against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at 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), the ultimate determination of whether to grant national security 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Further comment is warranted. Applicant's repeated failures to appear in court and his being in contempt of court on multiple occasions, along with his failures to pay fines for criminal offenses, portray an individual who is not reliable and trustworthy and who does not have the good judgment expected of an individual granted national security eligibility. Most recently, he did not establish that he has resolved his 2017 bench warrant. Even if it has been resolved, as he says, it remained outstanding for five years. But given my concerns about his credibility, Applicant's testimony that he resolved the bench warrant cannot be given credence. It is illogical to suggest that an applicant with a long-term, probably outstanding bench warrant is a suitable candidate for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.fii and 1.g:	Against Applicant
Subparagraph 1.f.iii:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.c:	For Applicant
Subparagraph 3.b:	Against Applicant

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge