



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



In the matter of:)	
)	
)	ISCR Case No. 21-00436
)	
)	
Applicant for Security Clearance)	

Appearances

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

For Applicant:
Pro se

August 30, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on April 23, 2019. On May 28, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption), H (Drug Involvement and Substance Misuse), E (Personal 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 answered the SOR in a written response on June 28, 2021 (Answer) and requested a hearing before an administrative judge. On March 31, 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) originally scheduled the hearing for May 16, 2022, but issued an Amended Notice of Video Teleconference Hearing on April 25, 2022, rescheduling the hearing for June 16, 2022. The case was heard as rescheduled.

The Government offered Government Exhibits (GE) 1 through 10, which were admitted without objection, except GE 3, 4, and 5 because he believed the exhibits contained some inaccurate information. These documents are credit reports pertaining to Applicant's credit history and are admissible under Directive ¶ E3.1.19 and the Federal Rules of Evidence, which serve as a guide. I overruled Applicant's objection and advised him that he was free to provide corrections to the exhibits as he deemed appropriate. Applicant testified on his own behalf and submitted Applicant Exhibits (AE) A through L, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 24, 2022. (Tr. at 11-23.)

Findings of Fact

Applicant is 43 years old. He married in September 2020. He has three children, ages 21, 17, and 15, and his wife has two children, ages 17 and 13, from a prior relationship. Applicant received a high school diploma in 1998 and attended a technical institute for two years, but did not receive a degree or certification. He enlisted in the U.S. Navy in December 1998, but in April 2000 he was administratively discharge under Other Than Honorable conditions. He held a security clearance while serving in the Navy. Applicant has experienced two periods of unemployment since 2016 (August 2016 to September 2017 and December 210 to March 2019). He has been employed by a DoD contractor as an artisan since March 2019. He is seeking to obtain a security clearance in relation to his employment. (Tr. at 23-25; GE 1 at 14-16.)

Paragraph 1 (Guideline G, Alcohol Consumption)

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

1.a. March 2000 Non-Judicial Punishment (NJP) for Drunkenness and Incapacitation for the Performance of Duties. Applicant admitted this allegation in his Answer. He was too drunk to report for duty. (Answer at 1; Tr. at 27, 32; GE 2 at 19.)

1.b. June 2008 Charge of Felony Battery resulted from an incident in which Applicant was under the influence of alcohol. Applicant denied the battery charge, but admitted that he was under the influence of alcohol at the time of the dispute with his domestic partner and unplugged the house phone while his domestic partner was making a call to 911. He was taken to jail intoxicated. The record evidence reflects that the battery charge was a misdemeanor. The altercation was just verbal and there were no injuries.

The record evidence also reflects that the offense of maliciously obstructing a communication device is also a misdemeanor. Neither the battery charge nor the obstruction of the call charge were prosecuted. Applicant recalls pleading guilty to being drunk. (Answer at 1; Tr. at 28, 32-35; GE 8 at 17; GE 9 at 2, 4.)

1.c. November 2008 charge of Driving Under the Influence of Alcohol (DUI). Applicant admitted that he pled guilty to a misdemeanor charge of DUI and was ordered to complete a DUI program. He was given a sentence of probation for five years. His driver's license was also suspended. (Answer at 1; Tr. at 28, 35-36; GE 7 at 3.)

1.d. February 2009 charge of Drunk in Public amended at the hearing to Driving on Suspended License (DSL). Applicant denied the original allegation because he has no memory of any such charge or arrest. Department Counsel moved to amend the SOR to conform to the Government's evidence. According to that evidence, Applicant was actually cited for DSL at that time. Applicant admitted this amended allegation. He was sentenced to probation for three years. (Answer at 1; Tr. at 29, 35-37; GE 8 at 10; GE 10 at 8.)

1.e. March 2010 charges of DUI and DSL and failure to complete court-ordered DUI program. In his Answer Applicant admitted the arrest on that date and the charges. He was on probation at that time for his 2008 DUI and his DSL convictions. He pled guilty to misdemeanor DUI and was sentenced to probation for five years. The court ordered him to attend a program for multiple DUI offenders. He denied part of the SOR allegation because he disputed the Government's claim that he had not completed the DUI program. He testified that he completed the program, but his certificate of completion was never submitted to the court. He requested the program manager to provide a duplicate certificate to the court, and he submitted a copy of the certificate into evidence at the DOHA hearing. The certificate reflects that Applicant enrolled in the course in October 2012 and completed it in November 2016. He attributed the delay in enrolling and completing the course to his inability to pay the fees associated with the program. It took him about four years to complete an 18-month program. He claims that he sought extensions from the court when he could not continue the program for financial reasons. (Answer at 2; Tr. at 29-30, 38-39; GE 7 at 3; AE A.)

1.f. April 2010 charges of DUI and DSL. Applicant asserts that these charges are the same as those alleged in 1.e. The time difference between the two alleged dates is only six days. He noted that during this period, he had no access to his vehicle, which had been taken from him by the police. (Answer at 2; Tr. at 30, 39-40.)

1.g. August 2016 charges of DUI, DSL, Spousal Battery, and maliciously/unlawfully removing telephone. At the hearing Department Counsel moved to amend the SOR allegation by deleting the phrase "maliciously/unlawfully removed telephone" on the ground that this charge was part of the charges filed against Applicant and alleged in SOR 1.b, above, and was not a part of the 2016 charges. Applicant denied the entire allegation. He believes that his criminal records are wrong or they have been

misinterpreted in the preparation of the SOR. He asserted that he has only had two DUIs (2008 and 2010) and the battery charge is a duplicate of the 2008 charge. At the hearing, Applicant denied the DUI charge, but admitted he was cited for DSL due to the lack of a record evidencing his completion of the court-ordered course that was part of his sentence for the 2010 DUI. He argued that his driver's license should never have been suspended. He claimed that the DSL charge was withdrawn after he established that he had completed the program by producing a duplicate of his certificate of completion. I find Applicant's testimony regarding the DSL charge to be credible and that the SOR allegation regarding other charges is based upon incorrect information. (Answer at 2; Tr. at 30, 40-45; GE 2 at 23; GE 7 at 4; GE 8 at 3, 21-24; GE 10 at 3.)

Applicant has never received any in-patient treatment for alcohol abuse. He has never been diagnosed with alcohol dependence or abuse. (Tr. at 45-46.)

Paragraph 2 (Guideline H, Drug Involvement and Substance Misuse)

The details regarding the SOR allegations set forth in paragraph 2 are as follows:

2.a. March 2000 Non-Judicial Punishment for testing positive for marijuana. Applicant was administratively discharged from the Navy under Other Than Honorable conditions as a result of failing a drug test on March 2, 2000. Applicant admitted this allegation. He commented that he was 19 years old at the time and was influenced by his friends and peers. He regrets the choices he made at that time. (Answer at 2, 5; Tr. at 49-51; GE 6.)

2.b. Applicant used marijuana from 2000 until June 5, 2013. Applicant denied this allegation on the ground that the June 5, 2013 date is incorrect. That date is his official "clean date" for abstaining from both illegal drugs and alcohol. His last use of marijuana was in 2012, the year in which he gained custody of two of his children. The information in the report of his background interview about drug use until June 2013 is the result of a misunderstanding by the investigator. That date only applies to his last use of alcohol. (Answer at 2, 5; Tr. at 50-51; GE 2 at 20, 23.)

Paragraph 3 (Guideline E, Personal Conduct)

The SOR sets forth three allegations of omissions in Applicant's e-QIP that resulted in false answers. The details regarding the SOR falsification allegations set forth in this paragraph and Applicant's responses are as follows:

3.a. Failure to disclose his use of marijuana in the seven years preceding April 2019 in his response to Section 23 – Illegal Use of Drugs in the e-QIP. Applicant ceased using marijuana in 2012 when he was granted full physical custody of two of his children. He understood that responsibility required him to be drug-free. He did not list his last use of marijuana sometime in 2012 because it was about seven years prior to the date of his e-QIP and disclosure was not required under the question's seven-year time limitation.

He credibly testified that the information in GE 2 regarding drug use until June 5, 2013, is a misunderstanding. That date only applies to use last use of alcohol. (Tr. at 52-53; GE 2 at 20.)

3.b. Failure to disclose in his response to Section 22 - Police Record all of his offenses involving alcohol and drug use during the period 2000 to August 2016 and an alleged felony charge. Applicant was never charged with a felony, so he had nothing to report in response to the e-QIP question regarding past felony charges. The same is true with respect to the alleged 2016 DUI. Applicant disclosed his 2010 DUI arrest in response to Section 22, and in response to Section 24 – Use of Alcohol, he disclosed the DUI offenders program he was ordered to take. He failed to respond correctly to a follow-up question in Section 22 that asks for other instances of certain types of charges including alcohol and drugs. As a result, he failed to list his 2008 DUI charge and his 2000 NJPs for alcohol intoxication and drug use. He failed to list these incidents due to misunderstanding the question and acknowledges that he answered the question incorrectly. He said that he filled out the questionnaire, which he described as lengthy, after a long day of work, and he did not clearly understand the question. He credibly testified that he had no intention to mislead the Government or to withhold this derogatory information from many years ago. In his background interview, he volunteered the information regarding 2008 DUI before being confronted. (Tr. at 54-57; GE 1 at 31-32, 33-34; GE 2 at 7, 10.)

3.c. Failure to disclose his delinquent debts incurred in the seven years preceding April 2019 in his response to Section 26 – Financial Record. Applicant credibly testified that he failed to disclose his delinquent debts and repossessed vehicle due to oversight. He acknowledged that he answered the question incorrectly. He said he was not prepared to respond to these detailed financial questions. He did not have a credit report at the time he prepared his responses to the e-QIP questions, and he mistakenly did not disclose certain debts in response to the questions. He had no intention to mislead the Government about his debts. In his July 2019 background interview, Applicant discussed his debts at length indicating that he had no intent to shield information from the Government in his e-QIP. (Tr. at 55, 57-58; GE 2 at 10-18.)

Paragraph 4 (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 eight past-due debts that have been referred to collection or charged off. The debts total about \$23,000. In his Answer, Applicant denied all of the allegations under this guideline, except one (4.b). (Answer at 3-4, 7-8.)

The current status of the allegations in paragraph 4 of the SOR is as follows:

4.a. Credit union account charged off in the amount of \$14,888. This debt is a vehicle loan account. Applicant defaulted on paying the monthly loan payments in 2016 during a period of unemployment from August 2016 to September 2017.. In 2020 he entered into a payment plan agreement with the creditor and has been paying this account monthly. GE 3 and 4 confirm that Applicant is “paying under a partial payment agreement.” This debt is being resolved. (Tr. at 59-60; GE 3 at 6; GE 4 at 2; GE 5 at 4.)

4.b. Credit account in collection in the approximate amount of \$1,263. Applicant paid this debt after his July 2019 background interview, possibly in 2020. He does not have a receipt. The account does not appear on the most recent credit report in the record, dated March 31, 2022. This debt is resolved. (Tr. at 60-61; GE 3; GE 4 at 2; GE 5 at 6.)

4.c. Credit account in collection in the approximate amount of \$878. The original creditor on this account is the same creditor as the one listed in 4.b, above. Applicant testified that he only had one account with this creditor. In 2021 he disputed this debt with the credit bureaus. He believes his dispute is still under investigation. He provided no evidence regarding the dispute. The credit reports in the record do not reflect that this debt is disputed. This debt is unresolved. (Tr. at 61-62; GE 4 at 2.)

4.d. Collection account in the approximate amount of \$593. This account was originally a credit-card account. Applicant paid this debt in May 2021. He provided proof of payment of the debt. This debt has been resolved. (Tr. at 62-63; GE 4 at 2-3; GE 5 at 12; AE C.)

4.e. Payday loan account in collection in the approximate amount of \$315. This account became delinquent after Applicant prepared his e-QIP. Applicant paid this debt in late 2020 or early 2021. This debt has been resolved. (Tr. at 63; GE 2 at 11; GE 4 at 3; GE 5 at 12.)

4.f. Credit union account in collection in the approximate amount of \$815. Applicant defaulted on paying this credit-card account in late 2016 or early 2017 when he was unemployed. Applicant settled this debt for less than the full balance, as evidenced by a credit report in the record, dated January 5, 2021 (GE 4). The settlement was paid in June 2020. Applicant provided proof of the resolution of this debt. This debt has been resolved. (Tr. at 63; GE 3 at 7; GE 4 at 3; GE 5 at 5; AE B.)

4.g. Collection account in the approximate amount of \$4,516. Applicant disputed this account in about April 2021 because he does not know what it is. The dispute is confirmed by the Government’s March 31, 2022 credit report in the record (GE 3). Applicant called the original creditor identified in his credit report (Creditor A) and learned that it is an online lender. He claimed that he has never taken out a loan from Creditor A. His dispute has not been resolved. In his background interview, Applicant admitted that

he received a loan in the amount of \$3,000 from Creditor A in May 2016 and that he became delinquent on the loan in August 2016 due to limited financial resources during periods of unemployment. Government Exhibit 5 confirms Applicant's loan for \$3,000 from Creditor A and the dates he provided to the investigator. This debt is unresolved. (Tr. at 64; GE 2 at 16; GE 3 at 5; GE 5 at 4.)

4.h. Medical account in the approximate amount of \$294. Applicant does not recognize this debt. He insists that in 2019 and 2020 he had a state-funded medical insurance policy for low-income families that has no co-pays. The date on which Applicant became delinquent on this account is not apparent in the Government's credit reports and it only appears on the oldest report, dated May 11, 2019. Applicant has reviewed his recent credit report and this debt does not appear on it. He has not taken any action to dispute this debt. This debt is unresolved. (Tr. at 64; GE 2 at 11; GE 5 at 12.)

Mitigation

Applicant summarized his life's journey in a brief statement (AE K). He acknowledged his history of misconduct when he was young and irresponsible. He also admitted that he has a history of losing jobs and encountering financial difficulties. He wrote that he began to change his ways when he was granted full physical custody of two of his children in 2012. In that year he stopped using illegal drugs, *i.e.*, marijuana. In 2013 he ceased drinking alcohol so that he could become a better father. He joined a church that has become central to his life along with his family. Now he is married at age 41. He works on improving his character and being a better husband and father. He has been an active participant in Narcotics Anonymous (NA) for over 8 years and has worked all of the steps. He has been sober since June 2013. He has a support group as part of NA that is important to him. His most important supporter is his wife. He has made a serious commitment to himself and his family to provide his children with a better life. His children have successfully developed into responsible individuals. His oldest is attending college studying civil engineering, and the younger ones are excelling as well. (Tr. at 48, AE K.)

Applicant provided character letters from senior managers, supervisors, and co-workers at his place of employment and from his church pastor and assistant pastor. They all describe Applicant in glowing terms and remark how he matured and devoted himself to his wife and family and to his church. His pastor wrote that Applicant has "completely turn[ed] his life around" and has "grown emotionally, mentally and spiritually." The church's assistant pastor commented that Applicant takes "full responsibility for his past" and now is one of the pastors "most trusted and faithful friends." At work, he is described as "dedicated, hardworking, and possess[ing] a can do spirit." He is praised for his work ethic, reliability, honesty, integrity, and positive attitude, as well as his professionalism. (AE D through J and L.)

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 G, Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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

The following potentially disqualifying conditions under AG ¶ 22 apply to the facts of this case:

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

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder; and

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

Applicant's two DUI convictions (SOR 1.c and 1.e), his first NJP for intoxication (SOR 1.a) and his past excessive drinking habits (*e.g.*, SOR 1.b) establish the above potentially disqualifying conditions and shift the burden of mitigation to Applicant.

AG ¶ 23 sets forth the following four mitigating conditions under Guideline G that have possible application to the facts in this case:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

All of the above mitigating conditions fully apply. Applicant has been sober since 2013. He has acknowledged his past abuse of alcohol and has taken control of his problem with the help of NA and his church and family. He continues to participate in a treatment program on a regular basis and he completed a court-ordered 18-month program. He views his sobriety as a solemn commitment to his family to do better personally and to give them a better life.

Paragraph 2 (Guideline H, Drug Involvement)

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition); and
- (b) testing positive for an illegal drug.

Applicant's admissions in his Answer and his testimony regarding his history of drug use establish both of the above disqualifying conditions and shift the burden to Applicant to mitigate the security concerns raised by his conduct.

The guideline includes two conditions in AG ¶ 26 that could mitigate the security concerns arising from Applicant's alleged drug involvement and substance misuse:

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

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome the problem, and has established a pattern of abstinence.

Applicant has fully established both mitigating conditions. His last use of marijuana was in 2012. He has acknowledged his drug involvement, provided evidence of his extensive activities with NA to overcome the problem and has established a ten-year pattern of abstinence.

Paragraph 3 (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 a condition 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;

Applicant convincingly testified that the omissions he made in his e-QIP were not deliberate. The questions he made mistakes on are not short, simple questions. They are lengthy and have many subparts with different time frames for different sets of questions. He has a high school diploma and attended a technical school after that education. He works with his hands performing hard manual labor. It is readily understandable that the 40-page questionnaire was somewhat overwhelming. More importantly, Applicant's testimony and character evidence convincingly shows him as a person of serious integrity and honesty who has committed himself to doing the right thing. He had nothing to gain by omitting drug use in 2000 or an NJP involving alcohol in 2000. The record evidence does not establish that he has ever been charged with a felony. Accordingly, he had

nothing to report in response to that important specific question in the e-QIP. His most serious mistake was not disclosing his debts. But even with that omission, I believe Applicant did not intend to deliberately withhold derogatory information from the Government. At the time he filled out the e-QIP, he was simply unprepared to provide answers to questions that call for detailed responses about his personal finances that were less than perfect due to past periods of unemployment.

To the extent that Applicant's omissions in the e-QIP might be deemed to be deliberate, it is necessary to review the mitigating conditions. The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's alleged falsifications:

- (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.

GE 2 clearly reflects that Applicant volunteered information about his first DUI in 2008 before being confronted with information about it. He made a prompt good faith-effort to correct the omission of information about a prior DUI in his e-QIP. Applicant's disclosure of his 2010 DUI in his e-QIP is significant because it was his second DUI and he was still on probation from the first one. His voluntary disclosure of the 2008 DUI in his interview reveals his intent to be forthcoming about potentially serious derogatory information from his past. AG 17(a) has been established with respect to this arguably material omission in his e-QIP.

The remaining omissions of Applicant's 2000 NJP for alcohol intoxication while on duty, the 2000 NJP for marijuana use, and the more recent financial debts are all relatively minor in the context of a person who has conquered a serious history of alcohol and drug abuse and a financial history plagued with job losses and unemployment. His life is on the right track. With his multiple support systems in place, his past is unlikely to recur. His e-QIP omissions were innocent mistakes. Applicant is no longer the sort of person he once was. Today, he obeys the rules and takes his responsibilities seriously. He now understands the seriousness and importance of preparing a security clearance application accurately to the best of his abilities. The omissions in his e-QIP do not cast doubt on Applicant's reliability, trustworthiness, or good judgment. AG 17(c) applies.

Paragraph 4 (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 \$23,000 for eight past-due debts, including one automobile repossession. Applicant's admissions and the credit reports in the record establish the existence of these debts and the foregoing disqualifying conditions and shift the burden to Applicant to mitigate the security concerns raised under this guideline.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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;
- (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 taken to resolve the issue.

Applicant's evidence in mitigation renders the above conditions fully applicable. He has resolved or has been paying monthly pursuant to a payment plan to resolve all of the SOR with three exceptions (4.c - \$878; 4.g - \$4,516; and 4.h - \$294), which Applicant disputes. The debts arose some time ago during periods of unemployment, and Applicant has acted responsibly under the circumstances by entering into a good-faith effort to resolve the five debts he does not presently dispute. In light of Applicant's responsible behavior with the debts he acknowledges, I am confident that he will resolve any of the disputed debts should one or more of them be established as legitimate. Applicant's behavior does not cast doubt on his current reliability, trustworthiness, or judgment.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G, H, E, and F in my whole-person analysis. Further comments are warranted. When Applicant was growing up, he could never have imagined that he would become a drug-free and alcohol-free, responsible parent and husband earning a good living working in a stable job as a contractor for the U.S military. He had the strength of character to realize he needed to change the direction of his life and began voluntarily participating with NA. He stopped using drugs and then he stopped drinking alcohol. He became engaged in his church and found a partner he wanted to marry and help raise her two children. He has responsibly resolved his history of alcohol and drug abuse, and he is paying his delinquent debts that arose due to periods of unemployment. He did not provide certain

information in his e-QIP, but he did alert the Government about his most recent DUI in 2010 and his discharge from the Navy under Other Than Honorable conditions after 15 months of service. He did not intentionally omit other information in his e-QIP that was of less security significance. Overall, the record evidence leaves me without questions or 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 G: Subparagraphs 1.a through 1.g:	FOR APPLICANT For Applicant
Paragraph 2, Guideline H: Subparagraphs 2.a and 2.b:	FOR APPLICANT For Applicant
Paragraph 3, Guideline E: Subparagraphs 3.a through 3.c:	FOR APPLICANT For Applicant
Paragraph 4, Guideline F: Subparagraphs 4.a through 4.h:	FOR APPLICANT For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is 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 granted.

JOHN BAYARD GLENDON
Administrative Judge