



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



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| In the matter of: |) | |
| |) | |
| [Redacted] |) | ISCR Case No.21-00835 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: *Pro se*

10/12/2022

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 29, 2020. On November 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DCSA CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on December 6, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 31, 2022. On July 22, 2022, Applicant's employer requested an expedited hearing. The case was assigned to me on August 9, 2022. On August 18, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 30, 2022. I convened the hearing as scheduled.¹

Government Exhibits (GX) 1 through 21, 23, and 24 were admitted in evidence without objection.² Department Counsel withdrew GX 22 before the hearing, but I did not renumber the exhibits. (Tr. 6.) I granted Department Counsel's request to take administrative notice of the Appeal Board decision in ISCR Case No. 12-00660, dated July 9, 2014, which is attached to the record as Hearing Exhibit (HX) I.

Applicant testified but did not present the testimony of any other witnesses or offer any documentary evidence. At Applicant's request, I kept the record open until September 16, 2022, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, an explanatory cover letter, and AX 1 through 24. Department Counsel did not object to any of the documents but submitted detailed comments, which are attached to the record as HX II. DOHA received the transcript (Tr.) on September 12, 2022. The record closed on September 16, 2022.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 2.a, 2.c-2.k, 2.m, and 2.n. He denied the allegations in SOR ¶¶ 1.a-1.f, 2.b and 2.l. His admissions are incorporated in my findings of fact.

Applicant is a 40-year-old employee of a defense contractor. He received an associate's degree in 2002. (GX 2 at 8.) He married in April 2013 and has two children, ages six and four. He received a security clearance in March 2002, which was revoked in May 2014 because of concerns under Guideline F. He told a security investigator that his clearance was revoked because of a \$200 debt to a department store that was referred for collection. (GX 4 at 23.) The Appeal Board decision upholding the revocation recited that the SOR in the case alleged 14 delinquent debts totaling about \$40,000, of which at least \$21,000 was unresolved. (HX I at 2.)

Applicant has worked for defense contractors since January 2005. He did not report any periods of unemployment in his SCA. However, during an interview with a security investigator in January 2020, he stated that he was unemployed pending the

¹ Applicant affirmatively waived the 15-day notice requirement. (Tr. 5.)

² The pages within the government exhibits use the Bates numbering system, with the last three numbers showing the page number within each exhibit.

outcome of his security clearance background investigation. (GX 4 at 33.) His clearance was restored in July 2021. (GX 5 at 1.)

The SOR alleges six delinquent debts reflected in credit reports from August 2022, February 2021, and August 2020. (GX 7, 8, and 9). The evidence concerning these debts is summarized below:

SOR ¶ 1.a: auto loan placed for collection of \$38,537. Applicant bought a two-year-old luxury car in 2018. He was unable to make the payments and voluntarily surrendered the car. When he responded to DOHA interrogatories in April 2021, he stated that he surrendered the car in February 2021. (GX 4 at 3.) In his SOR response, he stated that he paid off this debt in February 2021. At the hearing, he testified that he was unable to make the payments because his wife was not working outside the home and he was assisting his elderly parents. He testified that the car was surrendered in mid-2020. (Tr. 31-32.) After the hearing he submitted evidence that he settled this account for less than the full balance in August 2022. (AX 10.)

SOR ¶ 1.b: auto loan charged off for \$14,508. The August 2022 credit report reflects that this debt was charged off for \$11,120, and that the last activity on the account was in March 2019. In Applicant's response to the SOR, he disputed this debt. He denied ever having a loan from this lender and he stated that he suspected identity theft. He testified that he hired a law firm to dispute the debt. (Tr. 35.) He submitted no evidence reflecting that he disputed the debt with the creditor or the credit bureau or that he reported identity theft to any law enforcement agency. When he was interviewed by a security investigator in October 2019, he admitted that he incurred the debt with this creditor when he traded in a 2014 model car for a 2016 model, and he told the investigator that the debt had been resolved. (GX 2 at 29.) After the hearing, he submitted documentation that the debt was settled for less than the full amount on February 10, 2022. (A-11.)

SOR ¶ 1.c: utility bill placed for collection of \$753. The February 2021 credit report reflects that this debt was referred for collection in February 2019. (GX 8 at 2.) It is not reflected in the August 2022 credit report. (GX 7.) After the hearing, Applicant submitted a statement reciting that he contacted the creditor by telephone and was told that his account was closed three years ago, which is consistent with the February 2021 credit report reflecting that the original creditor closed the account when it was placed for collection. However, the evidence does not establish that the collection account was resolved. Applicant testified that he paid the debt with a credit card, but he did not provide documentation of payment. (Tr. 39.) The debt is not resolved.

SOR ¶ 1.d: medical bill placed for collection of \$257. The credit report from August 2022 reflects a medical bill referred for collection of \$539. It became delinquent in January 2020 and was assigned for collection in April 2022. (GX 7 at 2.) Applicant's account statement from the collection agency, dated November 30, 2021, reflects a zero balance. (AX 6.) This debt is resolved.

SOR ¶ 1.e: bank account debt charged off for \$63. This debt was paid in January 2020. (AX 5.)

SOR ¶ 1.f: credit union account debt charged off for \$2,920. This account was closed by the credit union and had a zero balance in June 2019. It is resolved. (AX 7.)

The SOR also alleges multiple instances of personal conduct under Guideline E. The evidence concerning these allegations is summarized below.

SOR ¶ 2a: Termination from employment in June 2021. Applicant was hired by a former employer as a full-time employee in May 2021. The SOR alleges that he was terminated from employment for concealing that he held at least two full-time jobs in violation of company policy. He admitted this allegation in his answer to the SOR. In his employment agreement, he agreed that he would not perform services for compensation for any other entity without the express and written consent of the company president. (GX 24 at 4.) He was terminated for violation of this provision in June 2021. (GX 22; GX 24 at 4.)

In Applicant's answer to the SOR, he explained that he was helping his wife with her online business, and that while he was in an online meeting, his employer overheard him talking to his wife about her business. His supervisor asked him if he was doing other work, and he admitted that he was helping his wife with her business calls. At the hearing, he testified that he was promoted from being an engineer to a managerial position, even though he preferred a hands-on engineering job. With the encouragement of his wife, he found and accepted a second job where he would work as an engineer. He told the first employer that he intended to give them a two-week notice and take the second job, and two days later he received his termination letter. (Tr. 19-21.)

SOR ¶ 2.b: Removal from working on a contract for misusing government equipment to send inappropriate emails to a female colleague. Applicant denied this allegation in his answer to the SOR, and explained that he was fired because he used his government computer to invite a female colleague to have lunch together. At the hearing, he testified that the only inappropriate email he sent was to his manager, telling the manager that he needed to take off from work for a couple of days because his girlfriend was cheating on him. (Tr. 21-22.) He admitted that he had a girlfriend for a short time while he and his wife were having marital difficulties. (Tr. 58-59.)

SOR ¶ 2.c: Falsification of an SCA by failing to disclose the employment and conduct alleged in SOR ¶ 2.b. During a security interview in October 2019, Applicant was questioned extensively about his employment record, but he was not questioned about this incident, and he did not volunteer any information about it. At the hearing, he testified that he did not disclose this incident in his SCA because the accusation was false. (Tr. 64.)

SOR ¶ 2.d: Falsification of an SCA by failing to disclose the debts alleged in SOR ¶¶ 1.a through 1.f. Applicant admitted this allegation in his answer to the SOR.

When he was confronted with his delinquent debts during a security interview in October 2019, he told the investigator that all the debts were being disputed and that the credit reports reflecting those debts were erroneous. (GX 4 at 27.) At the hearing, he testified that he filled out the SCA in the evening when he was tired and suffering from a cold, and he mistakenly omitted the information. (Tr. 22-23.)

SOR ¶¶ 2.e-2.m: Traffic Offenses. Applicant admitted all the traffic offenses except the offense alleged in SOR ¶ 2.l, which he denied. The evidence concerning these offenses is summarized below.

SOR ¶ 2.e: Reckless driving in December 2015 by driving a vehicle 94 miles per hour (mph) in a 55 mph zone. Applicant pleaded nolo contendere. He was convicted, his driver's license was suspended for 90 days, and he paid a \$500 fine plus court costs. (GX 10.) At the hearing, he testified that he was speeding because of an emergency at work when someone tried to hack into his employer's computer network. (Tr. 70.)

SOR ¶ 2.f: Following too closely and driving without a valid license in January 2018. Applicant forfeited collateral of \$163 for the first offense and \$188 for the second. (GX 11.) At the hearing, he denied committing these offenses. He testified that the police officer was tailgating him and pulled him over because he was driving too slowly. He was driving his wife's car and did not have his driver's license with him. (Tr. 24.)

SOR ¶ 2.g: Driving 79 mph in a 55 mph zone in April 2018. Applicant pleaded guilty and paid a \$160 fine. (GX 12.) At the hearing, he admitted this incident and explained that he was hurrying because he was late for work. (Tr. 24.)

SOR ¶ 2.h: Driving 71 mph in a 55 mph zone in November 2018. Applicant prepaid \$163 in fines and court costs. (GX 13.) He testified that he was running late for a church event. (Tr. 24-25.)

SOR ¶ 2.i: Driving 93 mph in a 55 mph zone in February 2019. Applicant pleaded guilty, received probation before judgment, and paid a \$290 fine plus court costs. (GX 14.) In response to DOHA interrogatories, he disclosed that his probation before judgment also included not driving for 30 days. He explained that he was speeding because he was running late for a church event. (GX 2 at 6.)

SOR ¶ 2.j: Driving 76 mph in a 55 mph zone in June 2019. Applicant pleaded not guilty but was convicted. The court records do not reflect the sentence. (GX 15.) In response to DOHA interrogatories, he stated that he was fined \$125. (GX 2 at 6.) At the hearing, he testified that he was driving a friend's car and did not realize how fast he was driving. (Tr. 25.)

SOR ¶ 2.k: Driving 116 mph in a 60 mph zone in August 2019. Applicant pleaded guilty. Court records do not reflect the sentence. (GX 16.) He testified that his wife was pregnant and had fallen down some stairs, and he was rushing home to care for her. He testified that he was fined \$250. (Tr. 25-26.)

SOR ¶ 2.l: Driving 80 mph in a 55 mph zone in August 2020 and driving in violation of a restricted suspended driver's license. The record contains no information reflecting these offenses. Applicant denied this offense in his answer to the SOR. At the hearing, he testified that the police were chasing a driver with a similar car, that the officer stopped him and realized that he had stopped the wrong driver, and that he was not charged with any offenses. (Tr. 26.)

SOR ¶ 2.m: Driving 100 mph in a 55 mph zone, unsafe passing on the right of an overtaken vehicle, and driving in violation of a restricted license. Applicant pleaded not guilty, but he was convicted of all three offenses. (GX 17.) He testified that he was fined \$530 for speeding, \$100 for unsafe passing, and \$70 for violating the terms of his restricted license. He testified that he was not wearing his glasses at the time, even though his driver's license required it. (Tr. 26-27.)

Uncharged traffic offenses: In November 2021, Applicant was cited for driving 103 mph in a 55 mph zone. He denied driving 100 mph because he has a device in his car that alerts him if he exceeds 85 miles per hour, and it was not triggered. (A-16.) He pleaded guilty to speeding and paid a \$150 fine. (GX 18; AX 15.) In July 2022, he was charged with a misdemeanor for driving 99 mph in a 55 mph zone. The citation was pending disposition at the time of the hearing. (GX 19; Tr. 78.)³

SOR ¶¶ 2.n: Falsification of an SCA by failing to disclose the traffic violations involving a fine of \$300 or more, alleged in SOR ¶¶ 2.e and 2.k. Applicant admitted this allegation and attributed it to being tired and having a cold when he completed the SCA. The evidence reflects that he was fined \$500 for the offense alleged in SOR ¶ 2.e. However, the court records do not reflect the amount of the fine imposed for the offense alleged in SOR ¶ 2.k, and Applicant testified that he was fined \$250 for that offense. The evidence shows that Applicant was fined more than \$300 for the traffic offense alleged in SOR ¶ 2.m, but failure to disclose this violation was not alleged in the SOR. I conclude that SOR ¶ 2.n is partially established for the traffic offense alleged in SOR ¶ 2.e but not for the traffic offense alleged in SOR ¶ 2.k.

On August 22, 2020, Applicant completed a four-hour aggressive driver's course. (AX 21.) On August 25, 2020, he completed a state-administered driver improvement program. (Tr. 27-28; AX 17-20, 22, 23.)

Applicant testified that he and his wife currently have joint family income of about \$300,000 per year before taxes, and they have no financial issues. (Tr. 86-87.) About two months before the hearing, Applicant purchased an expensive sports car financed with a loan for \$107,000. (Tr. 80.) The monthly payments are about \$2,300. A credit

³ The traffic offenses that were not alleged in the SOR may not be an independent basis for revoking Applicant's security clearance, but they may be considered to assess his credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether he has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the evidence of the unalleged offenses for these limited purposes.

report from August 19, 2022, reflected that the car payments were past due for \$2,327. (GX 7.) Applicant asserted that the credit report was erroneous. (Tr. 81.)

Policies

“[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant gave inconsistent and conflicting information about his delinquent debts during the adjudication process. However, the evidence establishes that for several years, he was financially overextended and was unable to keep up with his debts. He eventually reached the point where he and his wife had substantial income, but he continued to neglect his financial obligations. His admissions and the evidence submitted at and after the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant has not submitted evidence of circumstances largely beyond his control. He told a security investigator that he was unemployed in January 2020, but he did not disclose this unemployment in his SCA, and he presented no evidence that unemployment contributed to his financial delinquencies. He testified that his financial aid to his elderly parents contributed to his inability to pay the debt alleged in SOR ¶ 1.a, but he did not provide evidence showing how much he contributed or how it affected his ability to pay his debts. The consumer debts were voluntarily incurred. He presented no evidence regarding the circumstances of the medical debt.

AG ¶ 20(c) is not established. Applicant retained a law firm to assist him in disputing some of the debts, but the law firm did not provide the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f, which have been resolved. It is not established for the debts alleged in SOR ¶¶ 1.a and 1.b, which Applicant did not resolve until he received the SOR and realized that his security

clearance was in jeopardy. Payment of debts under pressure of obtaining or retaining a security clearance is not “good faith.” An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). This mitigating condition is not established for the delinquent utility bill alleged in SOR ¶ 1.c. An applicant who claims that a delinquent debt has been resolved is expected to present documentary evidence to support his or her claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(e) is not established. Applicant initially disputed the delinquent auto loan alleged in SOR ¶ 1.b, but he admitted it during his security interview in October 2019 and settled it in February 2022.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

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

The following disqualifying conditions under this guideline are relevant:

AG ¶16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 16(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

AG ¶ 16(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; [and] (3) a pattern of dishonesty or rule violations

AG ¶ 16(a) is established. When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010). Applicant is a mature adult and an experienced federal contractor employee. He has submitted SCAs on several occasions and is familiar with the security clearance process. His testimony at the hearing was replete with efforts to minimize and excuse his culpability for his debts and his personal conduct. His claim that he was too tired and too sick to pay attention to the questions in the SCA is not credible.

AG ¶ 16(d) is not applicable to Applicant's traffic offense alleged in SOR ¶ 1.e, which was a misdemeanor explicitly covered under Guideline J (Criminal Conduct), but it is applicable to all of the remaining traffic offenses alleged in the SOR. His failure to follow the rules at his places of employment and his individual speeding tickets might not individually be sufficient for an adverse determination, but when they are considered as a whole, they support an assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(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; and

AG ¶ 17(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.

AG ¶ 17(a) is not established. Applicant did not attempt to correct the omissions in his SCA until he was confronted with the evidence during an interview with a security investigator.

AG ¶ 17(c) is not established. Applicant's falsification of his SCA is arguably "infrequent" because it involves only one SCA. However, it is not "minor," because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) It did not occur under unique circumstances. It was recent, because it affected Applicant's pending application. Applicant's termination of employment in June 2021 was an isolated, minor incident. His termination from working on a contract in July 2017 is mitigated by the passage of time, and the minor nature of the conduct. His traffic violations are arguably "minor" individually, but they are numerous, recent, and demonstrate a pattern of disregard for rules and regulations.

AG ¶ 17(d) is not established. Applicant has acknowledged his behavior, but he was not particularly remorseful at the hearing. The fact that he set the speed monitor in his car at 85 mph indicates that he intends to continue driving well over the speed limit. His online driver improvement courses are commendable, but the timing suggests that they were motivated by his desire to keep his security clearance rather than modify his driving habits.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by financial delinquencies and personal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.c: **Against Applicant**

Subparagraphs 1.d-1.f: **For Applicant**

Paragraph 2, Guideline E, Personal Conduct: **AGAINST APPLICANT**

Subparagraphs 2.a and 2.b: **For Applicant**

Subparagraphs 2.c-2.n: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge