



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



In the matter of: )  
)  
) ISCR Case No. 21-01137  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
*Pro se*

March 29, 2023  
\_\_\_\_\_

**Decision**

\_\_\_\_\_

GLENDON, John Bayard, Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on February 11, 2019. On July 16, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations), G (Alcohol Consumption), I (Psychological Conditions), and E (Personal Conduct). This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within DoD after June 8, 2017.

Applicant submitted an answer to the SOR, dated August 17, 2021, (Answer) and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 22, 2022, Department Counsel was prepared to proceed. DOHA assigned the case to me on September 28, 2022, and on December 2, 2022, issued a Notice of Video Teleconference Hearing scheduling the hearing on January 9, 2023. Applicant requested a continuance due to a natural disaster that closed access to his office. On January 6, 2023, DOHA issued a second Notice of Video Teleconference Hearing. The case was heard as rescheduled on January 19, 2023.

The Government offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Department Counsel had prepared an eighth exhibit, which was a December 2022 credit report, but due to a miscommunication, he withdrew the exhibit. Applicant testified on his own behalf and offered one exhibit, which I marked as Applicant Exhibit (AE) A and admitted without objection. I left the record open until February 3, 2023, to give Applicant an opportunity to supplement the record. Applicant timely provided two documents, which I marked as AE B and AE C and admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 30, 2023. (Tr.at 11-18, 37.)

### **Findings of Fact**

Applicant is 41 years old, divorced, and has one minor child. He graduated from high school and attended some college classes. Since September 2019 he has worked for a DoD contractor performing inventory duties. He is a first-time applicant for national security eligibility. He is seeking to obtain a security clearance in connection with his employment. (Tr. at 7, 20-24.)

#### **Paragraph 1 - Guideline F, Financial Considerations**

The Government alleged 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 lists one medical debt and two tax debts, both for tax year (TY) 2017 (Federal and state). In his Answer, Applicant admitted the medical debt (SOR ¶ 1.a) and denied the two tax debts (SOR ¶¶ 1.b and 1.c). (Answer at 1-2.)

Applicant testified about his income and expenses. He is able to pay all of his monthly expenses and child support. He tries to save about \$800 per month. He has about \$3,000 in savings and about \$14,000 in his employer's 401K account. (Tr. at 24-28.)

The current status of the debts alleged in paragraph 1 of the SOR is as follows:

**1.a. Medical debt in collection in the approximate amount of \$31,688.** This debt arose after Applicant was in a car accident in 2016. He was taken by helicopter from the accident scene to a large city hospital for emergency care. The cost of the transportation expense was not covered by his insurance. In 2020 Applicant settled the debt for \$6,000 and paid it with monthly payments. In November 2020 he made an initial payment of \$265. Thereafter, he made weekly payments of \$65. He provided a record from the creditor evidencing each payment, along with a final payment of \$2,953 on November 5, 2021. He made the final payment with funds from a tax refund. His total payments were \$6,338. He also provided a letter from the creditor stating that this debt had been paid in full and the account was closed. This debt is resolved. (Tr. at 29-34; GE 3 at 4; GE 4 at 2; AE B; AE C.)

**1.b. Federal tax debt for TY 2017 in the approximate amount of \$4,961.** Applicant acknowledged that he owed the IRS additional taxes for TY 2017. He testified that this debt was paid through his tax refunds in subsequent years. He provided letters from his tax preparer bearing the date of December 29, 2022, which was the date the letters were reprinted for purposes of submission in this security clearance proceeding. The annual letters summarize Applicant's tax status and cover TYs 2014 through 2021. The letters state that Applicant was due refunds from the IRS for every year except TY 2017, when he owed an additional tax of \$4,637. Applicant volunteered in his initial security interview on March 21, 2019, that he owed the IRS about \$4,000 for TY 2017. Additional taxes were owed that year because he withdrew funds from his 401K due to losing his job in 2017 and he was unemployed for a period. Applicant relied upon his 401k trustee to withhold sufficient taxes at the time of the withdrawal and the funds withheld and paid to the IRS and the state proved to be insufficient. As of the date of his security interview, Applicant had not paid the tax, but he subsequently learned that his tax refunds for TYs 2018, 2019, 2020, and 2021, which totaled about \$6,300, were applied to his TY 2017 tax debt rather than paid to him as refunds. Applicant believes that this tax debt has been fully satisfied. He was unable to provide an account transcript from the IRS to confirm the payment of this tax debt because he does not possess the necessary identifying information, such as a credit card or any other required document, to open an online account with the IRS. This debt is resolved. (Tr. at 34-42; GE 2 at 6; AE A at 2-6.)

**1.c. State tax debt for TY 2017 in the approximate amount of \$1,944.** Applicant's state issued a garnishment of his wages in August 2019 to pay this debt. Applicant decided to pay the debt through deductions from his paycheck. The debt was initially paid by wage garnishments. At some point, Applicant entered into a payment plan with the state to pay the balance of his tax debt. He paid it off before 2022. He presented a copy of a state tax refund check, dated October 25, 2022, he received for TY 2021, which evidences that he owed no additional taxes to the state at that point. This debt is resolved. (Tr. at 41-43; GE 7; AE A at 1.)

## **Paragraph 2 - Guideline G, Alcohol Consumption**

The Government alleged in this paragraph that Applicant has a history of excessive alcohol consumption, which raises security concerns because his drinking can lead to the exercise of questionable judgment or the failure to control impulses. The Government also alleged that Applicant's alcohol consumption can raise questions about his reliability and trustworthiness. Specifically, the Government alleged that Applicant consumed alcohol during a period he was also taking Hydrocodone, a pain killer, which was against medical advice; that he was treated at a medical facility after a possible suicide attempt that involved alcohol; that he was charged with Driving Under the Influence (DUI) of alcohol; and that he continued to drink alcohol to intoxication. In the Answer, Applicant admitted the four allegations (SOR ¶¶ 2.a- 2.d) with two explanations.

Applicant testified that he stopped drinking alcohol on January 30, 2022, He stopped drinking "cold turkey" because he felt that alcohol was toxic and he did not want to consume it any more. He also stopped dating a woman who wanted to go out to bars and drink alcohol. He is happier and his child is happier that he has stopped drinking. He has no intention of ever drinking alcohol again. (Tr. at 43-44.)

**2.a. Alcohol consumption with Hydrocodone.** Applicant admitted in the Answer that during the period from August 2012 to June 2015, he drank alcohol while taking the prescription medication Hydrocodone even though that was against his doctor's advice. He explained that during that time period, he had two back surgeries and was suffering from a lot of pain. He found that combining alcohol with this painkiller medication helped reduce his pain and made him more mobile. In or about late 2015 or 2016, Applicant stopped taking Hydrocodone. As discussed below, he was in a bad car accident in 2016 and he refused to take any pain killers. He testified that he presently only takes two Advil capsules for pain. (Tr. at 44-45, 50.)

**2.b. Suicide attempt while intoxicated.** In August 2016, Applicant had a bad evening at home due to being upset about his recent divorce and being unhappy with his relationship with a woman he was dating. Applicant's brother came to check on him and found him intoxicated and with a knife in his hand. He had self-inflicted cuts on his arms. His brother called the police, and Applicant testified that he agreed to go with them to a stabilization facility for a brief hold to make sure he would not commit any serious self harm. Applicant does not believe than any prescription pain pills were involved in this incident, just alcohol. Applicant has subsequently committed himself to eliminating toxicity in his life and the people around him who cause it. He has had no suicidal ideations since that evening and has not engaged in any further self harm. (Tr. at 45-47, 50-51.)

**2.c. DUI arrest and charges.** In October 2016, Applicant was arrested and charged with DUI. His girlfriend at that time was driving, and she had a bad accident. Her driver's license had been suspended, and she had been drinking. She told the police that Applicant was driving. He was intoxicated at the time and went along with the girlfriend's story. He was actually in the passenger seat at the time of the accident and hit his head

the front windshield so hard, he lost consciousness. He was taken by helicopter to a large city hospital where he regained consciousness. He hired a lawyer and a collision expert. The expert convinced the prosecutor that Applicant was in the passenger seat at the time of the accident. The charges were dropped. (Tr. at 47-50.)

**2.d. Continued excessive alcohol consumption.** The Government alleged that Applicant continued to drink excessively until at least December 2020. Applicant admitted in the Answer that he did continue to drink, but only “a couple of beers” at a time. He denied any excessive drinking in recent years, and, as noted, he stopped drinking entirely in January 2022. (Tr.at 48-49.)

### **Paragraph 3 – Guideline I, Psychological Conditions**

**3.a. Alcohol consumption with Hydrocodone.** The Government cross-alleged its allegation in SOR ¶ 2.a in SOR ¶ 3.a under Guideline I. Department Counsel was at a loss to explain the Government’s theory of this allegation and did not ask any questions or make any argument based upon the alleged facts under this guideline. (Tr. at 55, 65, 71.)

### **Paragraph 4 - Guideline E, Personal Conduct**

In paragraph 4 of the SOR, the Government alleged numerous acts of misconduct by Applicant, including four falsification allegations. In his Answer, Applicant denied the falsification allegations with one exception. The Government also cross-alleged his debts set forth in paragraph 1 and the alcohol consumption allegations in paragraph 2. (Answer at 3.)

The details regarding each of the SOR allegations set forth in paragraph 4 are as follows:

**4.a. Falsification of e-QIP question in Section 26 regarding unpaid taxes.** Applicant testified that to his knowledge, he was paying his Federal and state taxes and the appropriate answer was to write “No,” he did not fail to pay his taxes. He thought he was answering the question truthfully. During his security interview about one month after he submitted the e-QIP, Applicant “volunteered” that he had a federal tax bill of about \$4,000 and that he had plans to pay the past-due taxes. In a follow-up interview, he stated that he had not failed to pay his taxes, he merely “short paid,” *i.e.*, under withheld the full amount of the taxes due. (Tr. at 54, 58-59; GE 2 at 6, 9.)

**4.b. Falsification of e-QIP Question regarding financial delinquencies.** Applicant admitted this allegation. He testified that when he prepared the e-QIP he was told by others to only provide what he had to. The co-workers who gave him that advice were older employees who had worked at this company for a long time and had retired. Applicant was told that he was just an entry-level laborer, and he did not need to worry about the details like listing his debts. He admitted he did not take the process seriously.

He has since received a promotion and has a better understanding of the security clearance process and the importance of total honesty in preparing a security clearance application. He learned from the security interview process that the advice he was given was wrong and that “even if you are at the bottom of the food chain, it’s very serious.” With his promotion and his work in the inventory field, he understands the sensitivity of the information with which he works. He said, “I 100% get it.” If he was filling out the application for a security clearance today, he would provide even more information than what was asked. (Tr.at 54-57.)

In his initial security interview about one month after he submitted his e-QIP, Applicant “volunteered” that he had two tax debts and a debt in collection for helicopter transportation services following a serious accident in 2016. (GE 2 at 6-7.)

**4.c. Falsification of e-QIP Section 24 question regarding alcohol treatment or counseling.** Applicant was advised by older workers that he should not disclose his brief stay at the stabilization facility in response to the questions in Section 24 about alcohol treatment. He did not want to disclose that experience, but he also did not view the services he received there as counseling or treatment. He thought he was there to “just sleep it off.” When he woke up there, he thought the facility was just a “drunk tank” to hold people while they sober up. He was only there overnight and was released in the morning. The reason Applicant was being held at the stabilization facility was to determine if he potentially posed a threat to himself. If he was not a threat, the facility had to release him, which is what happened the next morning. He did not understand that this was a counseling or treatment facility. He thought his answer was truthful. (Tr. at 58-59, 61-62.)

**4.d. Deliberate Omission during March 21, 2019 security interview regarding treatment at the stabilization facility.** In his Answer Applicant denied the allegation and wrote I “did not deliberately omit [this information], I wasn’t aware that I had to [disclose it.]” The information he failed to disclose was the self-inflicted cuts and his suicidal ideation that evening. At his security interview, he came to realize that his experience at the stabilization facility could be viewed as a hospitalization for a mental health condition, and he volunteered information to the investigator about what happened to him that night at his home and at the stabilization facility. Department Counsel conceded that Applicant’s disclosures were significant and that any facts not discussed did not rise to the level of a security-significant omission of material facts (Answer at 3; Tr. at 59-66; GE 2 at 3-4.)

**4.e. Cross-allegation of the financial considerations allegations in paragraph 1.** Department Counsel did not pursue this allegation at the hearing. The allegation has no merit. The issues relating to Applicant’s financial consideration are fully addressed under Guideline F and do not raise separate issues of misconduct cognizable under Guideline E. (Tr. at 61-65.)

**4.f. Cross-allegation of the alcohol consumption allegations in paragraph 2.** Department Counsel did not pursue this allegation at the hearing. The allegation has no

merit. The issues relating to Applicant's past alcohol consumption are fully addressed under Guideline G and do not raise separate issues of misconduct cognizable under Guideline E. (Tr. at 61-65.)

## **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 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 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;
- (c) a history of not meeting financial obligations; and
- (f) . . . failure to pay annual Federal, state, or local income tax as required,

As of the date of the SOR, Applicant owed approximately \$39,000 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.

All three of the above mitigating conditions have been fully established. Applicant incurred a large med-evac helicopter bill, due to an accident he did not cause, that was not covered by his medical insurance, and he could not afford to pay it. His 401K trustee under withheld the amount of taxes he had to pay when he withdrew funds from his 401K account during his post-accident period of unemployment. He has acted responsibly and initiated a good-faith effort to repay his debts in a manner he could afford. All three SOR debts are now paid and resolved. His behavior is unlikely to recur. He is being financially responsible. His past behavior does not cast doubt on his current reliability, trustworthiness, or judgment. Paragraph 1 of the SOR is found in favor of Applicant.

## **Paragraph 2 – 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.

AG ¶ 22 describes five conditions that could raise security concerns and may be disqualifying in 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;

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

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder.

The record evidence does not support application of AG ¶¶ 22(d) and 22(f). Applicant has never been diagnosed with alcohol use disorder. The record evidence supports the application of AG ¶ 22(a) in that he was once arrested for DUI, even though the charge was ultimately dropped due to being factually erroneous. The evidence also supports application of AG ¶ 22(c) in that Applicant, in the past, occasionally abused alcohol for self-medicated management of pain. The intent of AG ¶ 22(e) is arguably limited to treatment advice after a diagnosis of alcohol use disorder, which is not applicable under the facts of this case. However, he did use alcohol after being advised by a medical professional not to do so while taking Hydrocodone for pain relief following back surgeries. This behavior showed a lack of judgment and renders this disqualifying condition at least partially applicable. Accordingly, the record evidence shifts the burden of mitigation to Applicant.

The following mitigating conditions under AG ¶ 17 have possible application:

(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; and

(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.

Applicant has provided sufficient evidence in mitigation under the above conditions to mitigate his past misuse of alcohol. He has established a clear pattern of abstinence and has provided a credible statement of his intent not to ever drink alcohol again. He believes that alcohol is "toxic" to him and his healthy living. He no longer wants alcohol to play any role in his life. He has eliminated relationships that have involved the use of alcohol and is much happier. His alcohol use is unlikely to recur, and his past alcohol consumption does not cast doubt on his current reliability, trustworthiness, or judgment. Paragraph 2 is found in favor of Applicant.

### **Paragraph 3 - Guideline I, Psychological Conditions**

The security concern under this guideline is set out in AG ¶ 27 as follows:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or

acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counselling.

AG ¶ 28 describes two conditions that could have application under the admitted facts and raise a security concern that may be disqualifying in this case:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; and

(d) failure to follow a prescribed treatment plan, related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

AG ¶ 28(a) is not established because the behavior is covered under Guideline G, and has been mitigated. AG ¶ 28(d) is not established because Applicant's treatment plan under which he was prescribed Hydrocodone was related to his physical condition following back surgery and was not related to a "psychological/psychiatric condition." Accordingly, the alleged facts do not raise separate security concerns cognizable under Guideline I.

#### **Paragraph 4 – 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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government representative;

(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:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

With respect to the four falsification allegations in the SOR, Applicant denied three of them in the Answer, *i.e.*, SOR ¶¶ 4.a, 4.c, and 4.d. Accordingly, the Government has the burden of proving that Applicant deliberately failed to disclose the facts that were alleged in the SOR in his e-QIP or at his March 21, 2019 security interview.

The allegation in SOR ¶ 4.a relates to Applicant's TY 2017 taxes. He credibly testified that he believed the correct answer to the question in Section 26 of the e-QIP ("In the last seven years have you failed to file or pay Federal state or other taxes when required by law or ordinance?") was, "No." He argued that he did not fail to pay his Federal

or state taxes, he merely withheld an insufficient amount out of his 401K withdrawal to cover his entire tax liability to the IRS and his state. Also, when he completed his e-QIP, he was in the process of paying the remainder of his tax liability. He did not believe that these actions constituted a failure to pay his taxes. I note that the question does not ask if he owes any taxes, merely did he fail to pay them. Applicant's rationale for his negative response to this question is sufficiently credible and reasonable to negate the Government's inference that the omission was deliberate, arising solely from the omission of facts about his tax debts. As to SOR ¶ 4.a, the disqualifying condition set forth in AG ¶ 16(a) is not established.

The allegation in SOR ¶ 4.c relates to Applicant's eight hours spent in the stabilization facility after he drank too much, made suicidal gestures and comments, and needed to sober up. He credibly testified that he believed the correct answer to the question in Section 24 of the e-QIP ("Have you EVER received counseling or treatment as a result of your use of alcohol in addition to what you have already listed on this form?") was "No." He wrote in his Answer, I "was not aware that what was done was considered treatment." Applicant credibly testified that he thought his answer to the question was honest. He believed he was there to sleep off his intoxication in a safe environment and to go home, which is in fact what happened. Likely the staff also made an assessment that Applicant was not a danger to himself and had no reason to hold him longer than they did. Applicant's rationale for his negative response to this question is sufficiently credible and reasonable to negate the Government's inference that the omission was deliberate, arising solely from the omission of facts about his overnight stay at the stabilization center. As to SOR ¶ 4.c, the disqualifying condition set forth in AG ¶ 16(a) is not established.

The allegation in SOR ¶ 4.d relates to Applicant's comments during his March 21, 2019 security interview on the subject of his experience at the stabilization center. Specifically, the allegation asserts that he failed to tell the investigator that he went to the stabilization center "in large part due to [his] suicidal ideations and self-inflicted cuts on his forearms." Applicant responded in the Answer that he did not deliberately omit this information, he just was not aware that he had to tell the investigator about it. In fact, the report of the interview states that he volunteered information about a hospitalization for a mental health condition. He described the circumstances of what happened before he went to the stabilization center. He explained that his decision to go there was voluntary, that he was only there for eight hours, and that he left after he woke up without objection from the staff. As noted, Department Counsel acknowledged that the omission of certain facts regarding suicidal ideations and cuts on his forearm did not rise to the level of material omissions in the context of the rest of Applicant's very detailed description of the events. I find that the evidence does not support an allegation that Applicant omitted important facts in order to mislead the Government. To the contrary, he disclosed information that he did not believe he had to provide in response to the e-QIP question in Section 24, as discussed above. He was trying to be more forthcoming than he initially thought was required. As to SOR ¶ 4.d, the disqualifying condition set forth in AG ¶ 16(b) is not established.

Applicant admitted the allegation in SOR ¶ 4.b regarding his intentional omission of delinquent debts in response to the question in Section 26 of his e-QIP. He was badly advised by older co-workers that he need not provide that kind of information on his application. He now realizes that was a mistake. He also realized his mistake at the time of his initial security interview, and he volunteered information about his large medical debt that was in collection and his tax debts. He now understands the importance of disclosing everything to the Government in his application. Applicant's admission to this allegation establishes the disqualifying condition set forth in AG ¶ 16(a).

The SOR also cross-alleges under Guideline E all of the Guideline F allegations and the Guideline G allegations. Even if taken together, the allegations do not rise to the level of supporting an adverse whole-person assessment. AG ¶ 16(c) is not established. Also, these allegations are specifically covered under other guidelines, which renders AG ¶ 16(d) inapplicable. These allegations do not establish separate security concerns cognizable under Guideline E, as Department Counsel conceded.

The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's sole admitted falsification about his delinquent debts (SOR ¶ 4.b):

(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.

Both mitigating conditions fully apply. Applicant volunteered, at his March 21, 2019 security interview, the information he omitted in his February 11, 2019 e-QIP about his large medical collection debt and two tax debts. This voluntary disclosure constitutes a prompt, good-faith effort to correct the omission before being confronted with the facts. Also, the behavior is so infrequent, and it happened under such unique circumstances of Applicant receiving bad advice from more senior employees in a new work environment, that it is unlikely to recur. Applicant now understands how important it is to make full disclosures in security clearance applications and is committed to never repeat this behavior again. The omission does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. Paragraph 4 is found in favor of 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 experienced a difficult time when his wife left him and he was abusing alcohol. He has learned from that experience many years ago and has made significant changes to remove toxicity in his life, including alcohol and toxic individuals, and to refocus his life on his child, his job where he has been rewarded with a promotion, and a healthy lifestyle. Overall, the record evidence leaves me without any 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 F:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant
Paragraph 3, Guideline I:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	FOR APPLICANT

Subparagraphs 4.a through 4.f:

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