



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



In the matter of:)	
)	
)	ISCR Case No. 20-01659
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/09/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate security concerns under Guideline E (personal conduct) or Guideline F (financial considerations). Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 1, 2019. On February 3, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and F. The CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

When Applicant answered the SOR on February 16, 2022, he requested a decision on the administrative (written) record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to a Department Counsel on June 16, 2022, and on June 23, 2022, she exercised her right to convert the case to a hearing under paragraph E.3.1.7 of Enclosure 3 of the Directive's Additional Procedural Guidance. Applicant was notified of the conversion by letter on that date. (Hearing Exhibits (HE) IV and V; September 14, 2023 Transcript (Tr.) 30-43)

The case was assigned to me on June 1, 2023. The hearing was initially scheduled for August 7, 2023. That hearing was continued due to technical issues, and because Applicant was not prepared to proceed, as he believed he was not sponsored for a clearance, which is a prerequisite for DOHA's jurisdiction in the case. (August 7, 2023 Transcript at 3-7) Subsequently, Applicant's sponsorship was confirmed. (HE I; Sept. 14, 2023 Tr. 8-11) On August 17, 2023, DOHA issued a notice scheduling the hearing for September 14, 2023.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 9. GE 1, GE 2, and GE 4 through 9 were admitted without objection and GE 3 was admitted over Applicant's objection. (Tr. 23-24) Applicant testified and submitted Applicant's Exhibits (AE) A through G. AE A and AE B were submitted with his Answer. All his exhibits were admitted without objection. At the end of the hearing, I held the record open until September 28, 2023, to allow Applicant the opportunity to submit additional documentation. He did not submit any additional documentation before the record closed. DOHA received the hearing transcript (Tr.) on September 22, 2023.

Findings of Fact

Applicant denied or effectively denied the SOR allegations under Guideline E (SOR ¶¶ 1.a-1.q), with some explanations. He denied or effectively denied the SOR allegations under Guideline F (SOR ¶¶ 2.a-2.g), with explanations. After a thorough and careful review of the pleadings and evidence submitted, I make the following findings of fact.

Applicant is 47 years old. He has a bachelor's degree. His marriage, from 2005 to 2008, ended in divorce. He has three children, ages 23, 21, and 19, all with his ex-wife. He has been employed with a large defense contractor since April 2019 as an analyst. He earns an annual salary of about \$119,000. He previously held jobs in his field with other employers (July 2018 to April 2019, February to July 2018, 2013 to 2018, and 2009 to 2013). He has not been unemployed since 2017. He has lived with his fiancée since about 2010. She is a doctor earning about \$200,000 annually. (GE 1; Tr. 100-101, 107, 115, 123-125, 135-139)

The SOR alleged, under Guideline E, a series of arrests and criminal offenses between 1994 and 2009. Applicant effectively denied them all in his SOR response. He

provided some details in his background interview (GE 2), a supplemental answer to the SOR (AE C) and his testimony.

SOR ¶ 1.a alleges an arrest for theft at a university in State 1 in September 1994. Applicant denied the allegation, asserting that he had never been charged or convicted of theft at State University 1. (Answer) His criminal record reflects that he was charged by State University 1 police with theft and larceny in September 1994. Disposition of the charge is unclear. (GE 3 at 4) Applicant testified that this charge resulted from a college scavenger hunt on campus. He was charged or cited for taking a campus parking decal for private use. The decal was confiscated by campus police. He did not recall going to court or paying a fine. (AE C; Tr. 56-57, 108)

SOR ¶ 1.b alleges a charge for deceptive practices in City B, State 1 in January 1996. Applicant denied the allegation. He said he wrote a check to cover tuition expenses at age 17 (about 27 years ago). the check cleared his account before federal funds had been deposited into his account to cover it. Once the matter was clarified, he said the case was dismissed and expunged from his record. (Answer) Applicant's criminal record reflects that the offense was a felony. It also shows that the record was sealed. (GE 3 at 5-6; AE A). In his background interview he asserted that he was not involved, as his brother used his name. (GE 2 at 7)

Applicant was in college and had been approved for financial aid. He was writing checks at grocery stores, and believed his mother was putting money into his account to cover them. Numerous checks came back unpaid. He was 17 at the time. His brother was not involved. (Tr. 54-57, 98) Police records from City N, State 1 reflect that police were called to a local store when Applicant was detained by store employees after 33 checks he wrote at the store were returned by the bank for insufficient funds. The checks were all written to "Cash." (GE 4) The criminal records for the charges at SOR ¶¶ 1.a and 1.b were sealed and expunged in 2016. (AE A, AE D)

SOR ¶ 1.c alleges a charge of retail theft in November 1997 in County C, State 1. Applicant denied the allegation as inaccurate, asserting he had never been so charged. (Answer) His criminal record reflects a misdemeanor shoplifting charge in November 1997 in that jurisdiction. In December 1997, the case was "stricken off with leave to reinstate." (GE 3 at 9) Applicant denied the charge during his hearing, said he did not know what it was, and said he received no documentation about it from court authorities when he asked. (Tr. 57-58) The charge was not addressed in his background interview. (GE 2)

SOR ¶ 1.d alleges a charge of aggravated assault in May 1999 in County C, State 1. Applicant denied the allegation as inaccurate, asserting he had never been so charged. (Answer) His criminal record shows an arrest for misdemeanor aggravated assault in April 1999, resulting in a guilty finding in County C, State 1 court in May 1999. Applicant was sentenced to six months' conditional discharge and 15 days of public service. Disposition of the matter was "terminated satisfied" in September 2001. (GE 3

at 9-10) He explained that he denied the allegation since he was not convicted. (Tr. 108-109)

Applicant said he was with his brother at the time. They were pulled over by undercover, plainclothes police. His brother was being “flippant” and the officer “slammed him on the car.” Applicant said, “I know karate” and was prepared to defend himself. He was charged with assault. (Tr. 57-58) He received a conditional discharge after six months and the charge was dismissed. (AE C)

SOR ¶ 1.e alleges that Applicant was charged in October 1999 with aggravated eluding/fleeing an officer/reckless driving, in County C, State 1. In answering SOR ¶ 1.e. he said he was not convicted. He said he was charged because he did not pull over when he was alerted to do so by the officer, who was in an unmarked car. He said he pulled over and called police, out of a fear of being carjacked and robbed. He said the charge was dismissed. (Answer). Applicant’s criminal record lists the offenses as misdemeanor traffic offenses, of which he was found guilty in June 2000. Disposition of the matter was “terminated satisfied” in December 2001. (GE 3 at 10-11)

Applicant said he was approached by plainclothes narcotics officers while driving his mother’s car and running an errand with his sister. He declined to pull over and drove to his mother’s house, where he was arrested. He said he pleaded guilty to a reckless driving charge and the remaining charges were dismissed after a period of conditional probation. (Tr. 59-62)

SOR ¶ 1.f alleges that Applicant was charged with aggravated assault in February 2000 in County C, State 1. He denied the allegation, asserting that he was not charged with that offense in either May 1999 (SOR ¶ 1.d) or February 2000 (SOR ¶ 1.f) (Answer) The offense is listed in his criminal record as a charge with the County C, State 1 sheriff’s office in February 2000. The disposition date was May 25, 2000. (GE 3 at 12) Applicant did not recall this charge and believes it may be related to an earlier case. (Tr. 62-63)

SOR ¶ 1.g alleges that Applicant was arrested and charged with driving under the influence of alcohol (DUI) in November 2005 in County C, State 1. Applicant asserted that he was not charged with DUI nor was he found guilty. He was a passenger in the vehicle. He “switched seats with a relative” and both of them were ticketed. He was charged with refusing a breathalyzer test and open container, and he received 18 months conditional supervised probation. He was returning from a barbeque had had food and unsealed (not “open”) alcohol in the back of the truck. (Answer) In his background interview he asserted that he was not involved, as his brother used his name when he was charged. (GE 2 at 7) Applicant did not disclose this offense on his SCA. (GE 1)

Applicant’s criminal record lists a series of traffic and petty offenses in November 2005, including driving on a suspended license, operating an uninsured vehicle, illegal possession or transport of liquor, among others, as well as DUI-Alcohol. It reflects a

disposition of guilty for the DUI charge, dated July 27, 2008. He was sentenced to 18 months of supervision and fined \$1,155. (GE 3 at 16-21) He said he paid the fine and said this was the only DUI he has had. (Tr. 51-54)

SOR ¶ 1.h alleges that Applicant was charged with theft in March 2007 in County D, State 1. Applicant denies the allegation on the grounds that the charge was nolle prossed. (Answer) Applicant's criminal record reflects a charge of felony theft /larceny in County D, State 1, in September 2007 (not March) that was nolle prossed in June 2008. (GE 3 at 21) A police report from City N, State 1 reported that Applicant stole a \$300 Blackberry personal device and made \$100 worth of calls on it. (GE 5) He said he was provided a blackberry for work. The company he worked for closed on short notice. He denied any intent to take the item without permission. He returned the blackberry once he was paid. (AE C; Tr. 64-66)

SOR ¶ 1.i alleges a charge of bond forfeiture warrant in County C, State 1, in June 2007. Applicant explained that he missed an emissions test on his car and the state suspended his vehicle registration. He then missed a related court date to show proof of resolution, The bond was \$100. He was living at home and his parents would not let him drive until he cured the problem, which he did quickly. (Answer; GE 3 at 20; Tr. 66-68) (SOR ¶ 1.g).

SOR ¶ 1.j alleges that Applicant was charged in March 2008 with domestic battery in County C, State 1. Applicant denied the allegation, asserting that he was not charged or convicted. (Answer) The offense is listed on GE 3 but was nolle prossed weeks later. (GE 3 at 21) When asked about the offense during his background interview, Applicant said his brother used his name when he was charged. (GE 2 at 7) Applicant explained this reference by asserting that the interviewer had asked a general question and that his brother had been involved in a similar case. (Tr. 121-122)

Police records reflect that police were called to an urgent care facility on a domestic violence call. The victim reported that Applicant, her husband, came home at 4:30 am, struck her with his fist, breaking a rib. He hit her again and bruised her eye. He fell asleep, woke up, and left. The victim then went to urgent care early that morning. When Applicant was arrested, he said they had been in a shoving match, and she fell into a coffee table. (GE 6 at 2)

Applicant said that at the time, he and his wife were going through a divorce. They had three young children. They were separated and seeing other people. He said she invited him over to spend time with their children. He said they had an argument and she pushed him, and she fell into a coffee table. He said they argued about the amount of child support he was to pay. He went to a hotel. He was charged after she went to the hospital and told the police that he punched her in the face. He denied punching her in the face or breaking her rib, which he believes came from a skating accident. He said the charges were dismissed. (Tr. 68-72)

Applicant acknowledged in his testimony that he was charged and went to court. In explaining his answer to the allegation in his SOR response, he asserted that he thought “charged” meant “convicted.” (Tr. 116-120)

SOR ¶ 1.k alleges that Applicant was arrested and charged with driving under the influence of alcohol (DUI) and driving on a suspended license in County C, State 1, in April 2008. Applicant denied the allegation, asserting that this related to the 2005 DUI charge (SOR ¶ 1.g). (Answer) He said he failed to pay a related fine and his license was suspended as a result. (Answer) Applicant’s criminal record reflects that he was charged in Town M, State 1, in April 2008, with driving on a suspended license, speeding, and DUI. The DUI was listed as having been resolved in either July 2009 or October 2012 with a “judgment on forfeiture.” (GE 3 at 23-24)

Applicant testified that this was a “continuation of the same case,” (SOR ¶ 1.g) but also said he was pulled over at the same restaurant, by the same officer. He again refused a breathalyzer test. He denied drinking that night, though there was alcohol in the back seat. He denied that his license was suspended because he had failed to pay the fine from the previous offense, but then acknowledged that he was allowed to drive with a restricted license for about two years. (Tr. 72-77) He said he later got an unrestricted license in State 1. If there is a balance pending on the fine, he said he will pay it. His driver’s license in State 2 is unrestricted. (Tr. 132-135) He did not list this offense on his SCA. (GE 1)

SOR ¶ 1.l alleges that Applicant was charged in June 2008 with harassment in County C, State 1. He denied the allegation. (Answer) His criminal record reflects a misdemeanor charge of making an obscene communication / harassment by phone. The case was nolle prossed in July 2008. (GE 3 at 24-25) He said his ex-wife was calling the woman he was dating and said she was being harassed. He said he was charged because “it was coming from my phone.” He denied the conduct, and said the case was dismissed. (Tr. 77-79)

SOR ¶ 1.m alleges that Applicant was charged with theft in March 2009 in County D, State 1. Applicant denied the allegation. His criminal record reflects that, on an undefined date, he received a six-day jail term. (GE 3 at 25) He said in his testimony that this related to an unresolved fine from the March 2007 theft charge (SOR ¶ 1.h) (Tr. 79-80)

SOR ¶ 1.n alleges that Applicant deliberately failed to disclose the DUI offenses at SOR ¶¶ 1.g and 1.k on his July 2019 SCA in answer to the question, “Have you EVER been charged with an offense involving alcohol or drugs?” Applicant did not answer SOR ¶ 1.n, in his SOR response but denied the allegation of deliberate falsification in his testimony. He said he believed he did not have to report the DUI charge because he was not convicted. He said he was not aware of the “Have you ever” timeframe of the question until recently. (Tr. 81-83)

SOR ¶ 1.o alleges that Applicant failed to disclose any delinquent debts in the last seven years, such as debts reported to a collection agency, on his July 2023 SCA. (GE 1) Applicant did not answer SOR ¶ 1.o in his SOR response, but he denied the allegation of deliberate falsification in his testimony. He said he was trying to resolve some of them, but some were not his. (Tr. 82-83, 91-92) The debts at issue are discussed under Guideline F, below.

SOR ¶ 1.p alleges that Applicant falsified material facts in his August 2019 background interview in denying having any delinquent debts. Applicant did not answer SOR ¶ 1.p, so I consider that he denied the allegation of deliberate falsification. The debts at issue are discussed under Guideline F, below. He acknowledged being confronted about the debts in his interview. (Tr. 94) He denied referencing his brother or “identity theft” in addressing his child support obligations in his interview. (Tr. 111-112; GE 2 at 2)

SOR ¶ 1.q alleges that Applicant falsified material facts in his August 2019 background interview after being confronted with evidence of the offenses at SOR ¶¶ 1.b, and 1.g through 1.i, in that his brother was the one involved and not Applicant himself. Applicant did not answer SOR ¶ 1.q, so I consider that he denied the allegation of deliberate falsification. Applicant denied saying that in his interview, but he said he could not confirm what charges were his because “I know my brother has used my name previously.” (Tr. 95-97)

In his background interview, Applicant did not acknowledge any arrests, offenses, or debts until he was confronted about them by the interviewing agent. (GE 2 at 6-8) Applicant certified the summary of his August 2019 background interview as accurate in June 2020 without making any edits or corrections. (GE 2; Tr. 112-115)

Applicant reported no criminal record on his 2019 SCA and did not disclose any delinquent debts. (GE 1) He also did not disclose any of his children on his SCA. When asked about this at hearing he said his ex-wife asked him not to, as she did not want to “rehash” their divorce.” (Tr. 109-110) He denied that child support had anything to do with it because “that’s on record, that’s not hard to find out.” (Tr. 111) He denied any falsification and said that he answered the SCA to the best of his ability. He has had no arrests or offenses since 2009. He moved from State 1 to State 2 in 2012. (Tr. 20, 50-54, 123, GE 1)

Guideline F

SOR ¶ 2.a (\$293) is an insurance debt placed for collection. Applicant asserted that the debt has been removed from his credit report and that he is the victim of identity theft. The debt is listed on a December 2020 credit bureau report (CBR). (GE 8)

SOR ¶ 2.b (\$2,376) is a cell-phone account placed for collection. Applicant asserted that the debt has been removed from his credit report and that he is the victim of identity theft. The debt is listed on a February 2020 CBR. (GE 7)

SOR ¶ 2.c (\$1,376) is a cell-phone account placed for collection. Applicant denied having an account with the carrier, asserted that the debt has been removed from his credit report and that he is the victim of identity theft. (Answer; Tr. 84) The debt is listed on CBRs from July 2019 and February 2020 (GE 8, GE 9)

SOR ¶ 2.d (\$11,366) is debt placed for collection relating to an auto repossession. Applicant said he was co-signer on a loan for a vehicle that was repossessed in 2015. The debt is listed on a July 2019 CBR (GE 9) and on a January 2021 CBR Applicant provided. (AE B) He said the account was jointly owed with his ex-wife. He believes it has been resolved. (Tr. 84, 101)

SOR ¶¶ 2.e (\$18,202) and 2.f (\$93,647) are child support accounts placed for collection by a government agency in State 1. Applicant asserted that the debts have been removed from his credit profile. The debts are listed on a July 2019 CBR. (GE 9) He asserted that it was “impossible” that he ever owed over \$100,000 in past-due child support while making \$12 to \$15 an hour. (Tr. 83) Applicant said his ex-wife requested \$1,500 a month, which was too much. He then lost his job, so the amount he owed “built up” though it was mostly interest. He said he has worked with State 1’s child support forgiveness program and has had \$25,000 in interest reduced. He said his children are now over 18 and are working adults. He acknowledged the accounts and said he had an agreement to pay \$340 a month plus \$35 in arrearage. The debt no longer appears on his credit report. (Tr. 84-86, 94) He said he was not aware he owed \$120,000 in child support. He was last in court in 2010 or 2011 to reduce the amount. (Tr. 86-91) He said he is current on child support and is paying \$225 a month for his youngest daughter, age 20 and in college. (Tr. 129-131) His other two children are adults. He provided no documentation of the current amount he owed.

SOR ¶ 2.g (\$92) is an account placed for collection. Applicant blames identity theft and asserts that he is working to have the debt removed from his credit profile. The debt is listed on a July 2019 CBR (GE 9) and on a January 2021 CBR Applicant provided. (AE B)

Applicant said he is not making payments on debts that have been removed from his credit report. He cited the debts alleged in SOR ¶¶ 2.a, 2.b, 2.c, and 2.g, as not his. (Tr. 101-102) But he said he would pay any debt he owes. (Tr. 135)

Applicant has other past-due debts on his current CBR, from September 2023, including a \$971 phone debt and an auto loan for a repossessed vehicle with over \$31,000 written off and about \$8,700 past due, as he acknowledged. He said he was unable to make the payments and had the car voluntarily repossessed. He is hoping to work out a settlement but has not contacted the creditor to do so. (Tr. 104-105, 116, 118; AE F) He has not participated in formal credit counseling recently. (Tr. 115, 127)

Applicant is trying to better himself and move forward. He understands the Government’s concerns. He loves his job and has loved working for government agencies for the last 20 years. He does not want to be judged on his past. (Tr, 141-142,

151-152) He has been commended and recognized for his efforts and excellence at work. (AE E)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, 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 used in evaluating an applicant’s eligibility for access to classified information.

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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 that “[a]ny 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

The debts alleged in the SOR total about \$127,000. They are established by credit reports in the record. AG ¶¶ 19(a) and (c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable in this case:

(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 to resolve the issue.

Applicant's delinquent debts are detailed on credit reports from 2019 and 2020. He asserted that most of them are not his responsibility, but he failed to provide documentation to support his claims that he was the victim of identity theft. The fact that debts no longer appear on more recent credit reports is insufficient evidence that they are resolved. He provided no evidence, particularly documentary evidence, that any of the debts have been paid or are being resolved. His child support arrearages are by far the largest debts in the SOR. Two of his children are now adults, but he did not establish sufficient evidence that he took responsible action to address those debts. Applicant also has other, unalleged debts on more recent credit reports that he has not addressed. He did not establish that any Guideline F mitigating conditions should apply to mitigate the financial considerations security concern.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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 official government representative; and

(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;

Under Guideline E, the SOR alleged a series of arrests and criminal offenses between 1994 and 2009. Applicant effectively denied them all in his SOR response. These alleged offenses are established by the record evidence, whether by Applicant's explanations about them or by reference in his criminal record. All of the offenses are quite old. Some are more serious than others. Most are mitigated by the passage of time, as discussed below. Several might have been alleged under either Guideline G (alcohol consumption) or Guideline J (criminal conduct). AG ¶16(c) applies to the allegations at SOR ¶¶ 1.a-1.m.

Most of Applicant's alleged offenses were minor and need not have been disclosed on his SCA. The exceptions are the DUIs in 2005 and 2008 (SOR ¶¶ 1.g and 1.k). Applicant acknowledged the 2005 DUI arrest for refusing a breathalyzer. He asserted that the 2008 DUI is related to that charge but it is not established that they are the same offense. Applicant had a duty to disclose both on his 2019 SCA under the "Have you ever been charged with an offense related to alcohol or drugs" question and did not do so. His explanation that he did not believe he had to report offenses that did not result in a conviction is not credible. AG ¶ 16(a) applies to SOR ¶ 1.n.

Applicant also failed to disclose any delinquent debts on his SCA, in answer to questions calling for disclosure of that information. AG ¶ 16(a) also applies to SOR ¶ 1.o.

Perhaps most troubling, the record supports a conclusion that Applicant repeatedly failed to acknowledge either any criminal offenses or arrests during his background interview (even offenses that need not have been disclosed on the SCA),

He repeatedly cited his brother as the one responsible for many of the offenses, when the record said otherwise. He also repeatedly failed to acknowledge any delinquent debts until he was confronted about them by the interviewer. AG ¶ 16(b) applies to SOR ¶¶ 1.p and 1.q.

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

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

(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

(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.

Applicant's offenses alleged in SOR ¶¶ 1.a-1.m are mitigated by the passage of time, under AG ¶ 17(c) as they occurred from 14 to 28 years ago and he has no subsequent charges. Some of the earlier issues are minor and occurred during his college years. The overall mitigation effect, however, is undercut by his recent, repeated false statements and refusals to accept responsibility for his actions and his debts, especially during the security clearance process. AG ¶¶ 17(a), 17(c) and 17(d) do not apply to SOR ¶¶ 1.n-1.q.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I 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 E and F in my whole-person analysis. I considered Applicant's long career in his field and the fact that he has been commended at work. But Applicant's established lack of candor about his criminal record and his debts outweighs this evidence. He also did not provide sufficient evidence to mitigate security concerns about his financial situation. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-1.m:	For Applicant
Subparagraphs 1.n-1.q:	Against Applicant
Paragraph 2: Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.g:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge