DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-02221
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/11/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was convicted of breach of peace offenses committed in January 2013 and February 2013, and for assault and violation of probation in May 2012. He falsified his security clearance application by not disclosing the 2013 charges. Applicant's lengthy unemployment contributed to his financial problems, but it does not mitigate the financial considerations security concern in light of the irresponsibility documented when he squandered more than $100,000 of an insurance settlement. Concerns persist about his judgment, reliability, and trustworthiness. Clearance is denied.

Statement of the Case

On July 18, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct), and explaining why it was unable to find it clearly consistent with the national interest to grant a security clearance for him. The DOD CAF took the action 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 the DOD on September 1, 2006.

Applicant responded to the SOR allegations on August 1, 2014. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 25, 2014, I issued a Notice of Hearing scheduling the hearing for October 16, 2014.

I convened the hearing as scheduled. Fourteen Government exhibits (GEs 1-14) were admitted into evidence without objection. Department Counsel submitted as a supplement to his oral closing argument a chart, which was marked as a hearing exhibit but not entered into evidence. Applicant testified, as reflected in a transcript (Tr.) received on October 28, 2014.

Summary of SOR Allegations

The SOR alleges under Guideline J that Applicant was arrested and convicted of two breach of peace offenses committed in February 2013 (SOR 1.a) and January 2013 (SOR 1.b), respectively, and of assault and probation violation offenses in May 2012 (SOR 1.c). Additionally, he was charged with misdemeanor reckless driving in September 2006 (SOR 1.d). Under Guideline F, Applicant is alleged to owe child support arrearage of $2,234 (SOR 2.a) and nine collection debts totaling $3,426 (SOR 2.b-2.j) as of July 18, 2014. Under Guideline E, Applicant is alleged to have falsified an April 2013 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing his arrests in January 2013 and February 2013 in response to any arrests in the past seven years (SOR 3.a).

Applicant admitted the arrests when he answered the SOR, adding that he successfully completed probation for the February 2013 breach of peace. He indicated that the other charges on his record had been dropped, although he paid fines for the January 2013 breach of peace and September 2006 reckless driving, and completed probation for the May 2012 assault and probation violation. Applicant admitted the debts with the exception of SOR 2.d, which was a duplicate listing of the debt in SOR 2.c. Applicant explained that the debts were incurred when he was unemployed following a car accident that left him physically incapable of working. Applicant denied that he intentionally falsified his e-QIP.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the findings of fact:

Applicant is a 33-year-old high school graduate with experience as a mechanic. (GE 1.) He had been employed as an electrician by a defense contractor, but was laid off around November 2013 because of a lack of a DOD security clearance. His recall to

employment is contingent on him being granted a DOD security clearance. (Tr. 6-7, 44, 46-47, 56.) Applicant still lives at home with his parents. He has never married, although he has a young son, for whom he is required to pay child support.[1] (GE 1; Tr. 59-60.) He was unaware that he had a son for the first two years of his child's life. (Tr. 60.)

Criminal Conduct

Applicant was charged with misdemeanor reckless driving in September 2006 (SOR 1.d) for excessive speed. (Tr. 90.) He forfeited bond in November 2006, and the charge was dropped. (GE 8.) Available evidence also shows a May 2007 speeding infraction, for which he paid $150 in court costs (GE 7), but no further involvement with law enforcement until 2012. In mid-April 2012, Applicant punched a friend in the face in retaliation for commenting negatively about Applicant's girlfriend. Applicant left the scene and thought nothing more about it. Applicant's explanation for the assault is that he "thought [his] personal space was being invaded." (Tr. 68.) One month later, Applicant was stopped by local police for some motor vehicle violations. He was arrested on a warrant for 3rd degree assault, a class A misdemeanor (SOR 1.c). He pleaded guilty in late May 2012 to the charge and was sentenced to nine months in jail, execution suspended, and to 18 months of probation. (GEs 1, 9, 13, 14; Tr. 67-71.)

In January 2013, Applicant was arrested for 2nd degree breach of peace, a Class B misdemeanor, and criminal trespass (SOR 1.b). (GEs 4, 6, 12.) Applicant had argued with his girlfriend's mother, who complained to the police that he trespassed on her property. (GE14.) Six days later, Applicant was arrested for violating his probation for the May 2012 assault because of the January 2013 breach of peace charge. (GEs 6, 9, 13.)

While the breach of peace and violation of probation charges were pending disposition, Applicant was arrested in February 2013 for breach of peace-2nd violation/threatening, a Class B misdemeanor (SOR 1.a). (GEs 5, 11.) Applicant argued with his girlfriend while they were at a local tavern, and she dropped her cell phone. He left the premises without her, driving off in his truck with her purse inside. The police found him at a local sports bar and charged him with 2nd degree breach of peace with violence/threat. (GE 11, 14.) Applicant was also charged with criminal mischief because of his girlfriend's damaged cell phone. (GE 4.) In late March 2013, Applicant pleaded guilty to the January 2013 breach of peace and probation violation charges, and to the February 2013 breach of peace charge. He was ordered to pay $285 court costs for the January 2013 breach of peace and his probation was continued. (GEs 6, 9, 12, 13.) For the February 2013 breach of peace, he was sentenced to six months in jail, execution suspended, and to a conditional discharge of 18 months. (GEs 5, 11; Tr. 74.) Applicant completed his probation for the May 2012 charge in November 2013 (AE 14.) In the summer of 2013, he attended five sessions of court-ordered anger management counseling. (Tr. 84, 94.) In early October 2014, Applicant's girlfriend complained to the police that Applicant had broken her phone. Applicant denied any validity to the charge when the police came to his home, and he apparently was not arrested. (Tr. 83, 89.)

[1] Applicant indicated on his e-QIP that his son was born in 2008. (GE 1.) At his hearing, he testified that his son was born in 2007. (Tr. 59-60.)

Financial

Applicant was a dockworker for a package delivery service from November 2002 to December 2005. In January 2004, he began working as a mechanic for an auto and tire business during the daytime while working nights for the package delivery service. After Applicant left his night job in December 2005, he continued to work as a mechanic until January 2008. In February 2008, he was injured in an automobile accident that left him unable to work for about two years, through April 2010. (Tr. 49-50.) He was supported financially by his parents, and he collected unemployment compensation for some of the time that he was out of work. (GEs 1, 2.) During his lengthy unemployment, Applicant stopped paying on some of his financial obligations, including a phone debt of $267 (SOR 2.f), a medical debt of $138 (SOR 2.i), and an insurance debt of $208 (SOR 2.h). (GE 3.) Applicant worked full time for a machine shop from May 2010 to July 2010. (GE 1; Tr. 55.)

Applicant was again unemployed for over a year, from August 2010 to November 2011, but he received a financial windfall around 2011. (GE 1.) He filed lawsuits against the companies that insured his and the other vehicle involved in the accident. He was awarded a judgment of $50,000 in his first lawsuit, of which he received $42,000. He was awarded a judgment of $100,000 from his own insurer, of which he received $66,000. His attorney took a third of the awards. With his $108,000, Applicant paid some medical bills, although he still owes a medical debt for orthopedic services. He gave his parents $17,000 toward their mortgage. Applicant also bought "some cars and quads" for himself. He bought a used (model year 1994 or 1995) Camaro for $2,500, a 2001 pickup truck for $17,000, a sport car for $9,000, and two all-terrain vehicles at $2,900 and $18,000. He admittedly made "poor choices" with his money in that he gambled away more than $20,000 at a local casino over the span of three or four months. (Tr. 50-54, 80.) He was behind in his child support, but he did not feel that the mother of his son deserved any of the money because she had concealed his son's birth from him for two years. However, he bought clothes, shoes, and diapers for his son with some of the money. (Tr. 62-63.)

Applicant held a part-time job from November 2011 to February 2013 in tire maintenance for a wholesale club, when he resigned to work for a defense contractor. (Tr. 56.) He made no effort to repay his old delinquencies, and he fell behind on several other accounts, as listed in the SOR. He had been ordered to pay child support at $369 per month, and his child support arrearage accrued to $2,234 by March 2013. (GEs 2, 3, 14; Tr. 59.)

In conjunction with his application to work for the defense contractor, he completed and certified to the accuracy of an e-QIP on April 1, 2013. Applicant responded affirmatively to the financial record inquiries concerning any delinquency involving routine accounts in the past seven years. He listed two past-due wireless phone debts and estimated that he owed $700 on the account in SOR 2.b and $900 on the account in SOR 2.f. (GE 1.) He did not report his child support arrearage. He now claims that he had asked someone in the child support enforcement department if he should report the delinquency

and was told that his account would not show up on his credit report as delinquent unless he was "over like $1,299." (Tr. 81.)

A check of Applicant's credit on April 6, 2013, revealed several past-due debts, most of which had not been previously disclosed. (GE 3.) On April 17, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) partially about the delinquencies on his credit record. He expressed his belief that he owed $1,000 in past-due child support for his son, and explained that he was unable to make his payments when he was unemployed. His current child support of $85 a week was being paid through payroll deduction. Applicant also indicated that he was making payments on the wireless phone debt in SOR 2.b, and intends to arrange for repayment of the other wireless phone debt (SOR 2.f). Applicant was then told that his child support arrearage was reportedly $2,234. He indicated that he planned to pay off as much as he could with his tax refund for 2012 and then have the rest taken out of his paycheck until paid in full. About the $608 wireless phone debt in collection (SOR 2.c, duplicated in SOR 2.d), Applicant indicated that the debt was owed to his current phone service provider; that he paid $100 on the account in March 2013 and was making payments. Applicant expressed his belief that the medical debts in SOR 2.e and 2.g were for ambulance and medical bills incurred on a school playground in 2012. He thought the town would cover his bills because his accident was on town property. Additionally, Applicant explained that the $267 cell phone bill (SOR 2.f) was incurred when he was unemployed; that he must have forgotten to make his last truck insurance payment (SOR 2.h) when he switched carriers after a claim was denied; and that the insurance debt in SOR 2.j was for motorcycle coverage that he cancelled late. Applicant lacked specific recall of the medical debt in SOR 2.i, although he did not dispute its validity. (GE 14.)

In November 2013, after about six months on the job, Applicant was laid off due to the lack of a security clearance. He had had no problems at work apart from being late on one occasion due to a snowstorm. (Tr. 89-90.) He collected unemployment until approximately mid-May 2014 when he exhausted his benefit. (Tr. 47, 56.) Applicant made some income doing lawn jobs or scrapping to afford his car payment and car insurance. He also sold his cars and the all-terrain vehicles to pay bills with the exception of the 2001 pickup truck. (Tr. 46-47, 56-59.) About six weeks after he started working for a defense contractor, his truck stopped working. Applicant's father opened an auto loan for Applicant for a 2008 model-year vehicle. The loan payments are $200 a month. (Tr. 46-47, 57-58.) Because of his limited income, Applicant could not afford to make any payments on his delinquent debts. (Tr. 46-47.)

As of September 18, 2014, Equifax Information Services was reporting that the debt in SOR 2.c (duplicated in SOR 2.d) had been listed in collection in July 2013 with a new assignee. Applicant's child support was past due 180 days or more for $2,292 (SOR 2.a). No progress was shown toward the wireless phone debt in SOR 2.b, even though he had claimed in April 2013 that he was making payments. (GE 2.)

Applicant testified that he made $800 in child support payments from one of his paychecks (Tr. 87), but he provided no documentation corroborating those claimed

payments. In his August 2014 response to the SOR, Applicant stated, "Once I get my job back I will be able to pay off all of my debts, but without a job and money I cannot do very much." In October 2014, Applicant had his child support reduced from $85 a week to $40 a week. (Tr. 47-48.) He gives his mother $120 a week for his car insurance and the car payment. (Tr. 58.)

Personal Conduct

On his e-QIP signed and certified on April 1, 2013, Applicant responded affirmatively to the police record inquiries concerning whether he had been arrested in the last seven years. He listed only his May 2012 offense and responded "No" to whether he had been charged, convicted, or was currently awaiting trial as a result of the offense. In explanation, he stated, "ASSAULT 3--GUILTY BREACH OF PEACE—NOLLED I AM CURRENTLY ON PROBATION UNTIL NOVEMBER 2013." (GE 1.)

Applicant fully discussed his May 2012 arrest during his April 17, 2013 personal subject interview with the OPM investigator. When asked whether he had any other issues with police, Applicant responded affirmatively and indicated that since filling out his e-QIP, he had been charged on two different occasions with breach of peace. Applicant explained that he had not listed them on the form because they happened after he had filled it out. Applicant then detailed the incidents, including his probationary status until November 2013. (GE 14.)

Applicant admitted the criminal charges on his record when he answered the SOR on August 1, 2014. He asserted that he gave the OPM investigator his complete arrest record, and he never lied about it. (Answer.)

At Applicant's security clearance hearing in October 2013, when asked about the omission of his January 2013 and February 2013 arrests from his April 2013 e-QIP. Applicant responded, as follows:

> Either it was a misconception but I had gone to the [city name omitted] Police Department and pulled my complete file of my arrest record and I handed it to the gentleman I was speaking with in case I had missed anything. I probably just didn't—I was more concerned about the assault charge than the other arrests. It wasn't like I deliberately lied and said that I was never arrested. . . I probably just didn't write it down. It's not that I didn't want anybody to know. (Tr. 75.)

When it was pointed out to Applicant that he completed the e-QIP before he met with the OPM investigator, Applicant testified, "[The investigator] asked me if I might have forgotten anything to write down . . . And that's why. I had forgotten to write it down." (Tr. 76-77.) Applicant later explained that he was in a rush and excited about getting a job, so he missed the question about having to list all arrests within the last seven years ("It says police record and I didn't read this totally through and I just clicked yes and went on to the next question."). (Tr. 78-79.)

Ask to why he had discrepantly told the OPM investigator that the 2013 offenses happened after he completed his e-QIP, Applicant indicated that he never thought he would be offered a job with the defense contractor ("I was just filling out applications online. That's what it comes down to."). (Tr. 86.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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. Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . ." The applicant 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 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. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

The security concern for criminal conduct is articulated in AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The evidence establishes the criminal conduct alleged in the SOR. Applicant admits that he was excessively speeding in September 2006, which resulted in the reckless driving charge. He was convicted of assaulting a friend in May 2012, and of violating his 18 months of probation for that offense when he was arrested for breach of peace in January 2013 after arguing with his girlfriend's mother. Then in February 2013, he argued with his girlfriend. He was sentenced to six months in jail, suspended, and granted a conditional discharge of 18 months for that breach of peace. Three disqualifying conditions under AG ¶ 31 apply:

> (a) single serious crime or multiple lesser offenses;
>
> (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
>
> (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant has not been arrested since February 2013. Sufficient time has passed since the 2006 reckless driving to mitigate the concerns raised by that violation. Yet, because of three misdemeanor incidents in less than one year, and his probation violation, it is difficult to mitigate completely the security concerns under AG ¶ 32(a):

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant shows some evidence of successful rehabilitation under AG ¶ 32(d) in that he completed his 18 months of probation and five sessions of court-ordered anger management counseling. There is no evidence of any problems when he was working for the defense contractor in 2013 apart from being late once during a snowstorm. AG ¶ 32(d) provides as follows:

> (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or

> restitution, job training or higher education, good employment record, or constructive community involvement.

However, I am not yet persuaded that his criminal conduct is safely in the past. Applicant's girlfriend filed a complaint about his behavior to the police in October 2014. The evidence suggests some volatility in the relationship but does not prove any wrongdoing on his part in October 2014. On the other hand, Applicant's lack of full candor about his arrests when he completed his e-QIP, as discussed under Guideline E, and his failure to acknowledge the deliberate nature of his felonious conduct, shows that he is not fully rehabilitated.[2]

Guideline F, Financial Considerations

The security concern for financial considerations is articulated in AG ¶ 18:

> Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The evidence establishes that Applicant owes approximately $5,052 of unresolved delinquent debt (SOR 2.a-2.c, 2.e-1.j), including $2,234 in child support arrearage (SOR 2.a). Two disqualifying conditions under AG ¶ 19 apply:

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

Mitigating condition, AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment," does not apply. Some of the debts were incurred in 2008 or 2009, but other debts, such as the child support arrearage, are more recent. Furthermore, despite $108,000 in insurance payouts following a car accident, Applicant has not resolved any of the established past-due debts.

[2] Applicant certified to the accuracy of his e-QIP, which clearly placed him on notice that "a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001)." (GE 1.) The Government did not allege Applicant's e-QIP falsification under Guideline J, so it cannot provide a separate basis for falsification under Guideline J. Yet, it is relevant to assessing Applicant's rehabilitation. The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Directive Section 6.3. *See, e.g.*, ISCR Case No. 02-07218 (App. Bd. Mar. 15, 2004); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

Applicant fell behind on some of the debts between February 2008 and April 2010 when he was unable to work while recuperating from an accident. AG ¶ 20(b) applies in that the accident and his unemployment were unexpected and not within his control:

> (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), and the individual acted responsibly under the circumstances.

It is unclear what led Applicant to be unemployed from August 2010 to November 2011, but he was not without funds that could have gone to pay his debts, including his child support arrearage. Applicant received insurance payments totaling $108,000 around 2011. He made very poor financial decisions with the money. He bought multiple cars and all-terrain vehicles, and he gambled away more than $20,000 at local casinos. His serious financial irresponsibility is not mitigated under AG ¶ 20(b).

Applicant has contacted some of his creditors about his debts, but he has made no payments. The lack of progress toward resolving his delinquent debts precludes favorable consideration of either AG ¶ 20(c) or AG ¶ 20(d):

> (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control, and
>
> (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's limited income from odd jobs and collecting scrap is enough to cover his car payment and little else. He testified that should his security clearance be adjudicated favorably, he intends to resume his employment with the defense contractor and to pay his debts with that income. Applicant's delinquent debt is not particularly burdensome should he regain full-time employment. On the other hand, whatever personal problems Applicant may have had with the mother of his son, he raised serious concerns about his financial judgment by gambling away more than $20,000 and buying two all-terrain vehicles rather than satisfying his child support debt. In addition, Applicant clearly knew about the wireless phone delinquencies identified in SOR 2.b and 2.f because he listed those debts on his April 2013 e-QIP. His failure to pay those debts when he was gainfully employed by the defense contractor gives little assurance that he will resolve his past-due debts if he is recalled to his defense contractor employment. The financial considerations concerns are not fully mitigated.

Guideline E, Personal Conduct

The security concerns for personal conduct are articulated 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant did not disclose his then very recent arrests for breach of peace in January 2013 and breach of peace—second violation in February 2013 on his April 1, 2013 e-QIP. When he was interviewed by the OPM investigator on April 17, 2013, Applicant was asked whether he had any additional police record information to report. He volunteered the charges and their disposition in March 2013, only days before he completed his e-QIP. Yet, he inconceivably claimed that he had not included them on his e-QIP because they occurred after he completed his form. When he answered the SOR, Applicant denied any intentional falsification.

The DOHA Appeal Board has explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). The objective evidence supports a reasonable finding of intentional falsification. Applicant was arrested and sentenced on all the charges before he signed and certified to the accuracy of his April 2013 e-QIP. At his security clearance hearing, Applicant initially claimed that he had been focused on the May 2012 assault. He then indicated he had forgotten about the arrests, which stretches credulity, given he had been sentenced only a few days before he completed the e-QIP. He subsequently testified that he rushed to complete the form. When asked about his claim that the arrests happened after his e-QIP, he responded that he never thought he would be offered a job with the defense contractor. He was "just filling out applications online." His failure to provide a credible, consistent explanation for the e-QIP omission also leads me to conclude that the omission of the arrests from his e-QIP was knowing and willful. Disqualifying condition AG ¶ 16(a) applies:

> (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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," is satisfied in that Applicant discussed his then very recent arrests when he was interviewed on April 17, 2013, two weeks after he completed his e-QIP. Applicant testified at his security clearance hearing that he had copied his arrest record from the local police and instead of typing it all on the form, he gave it to the investigator. (Tr. 76.)

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," cannot reasonably apply. The information omitted from his e-QIP was relevant and material to determining his suitability for access to classified information, even though his omission from the e-QIP was not repeated so it can reasonably be characterized as "infrequent." Moreover, Applicant's inconsistent explanations for the omission of his arrests show that he has yet to acknowledge and accept responsibility for his false responses on his e-QIP. Applicant does not show the reform needed to satisfy AG ¶ 17(d):

> (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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's failure to provide a consistent, credible explanation for his omission of the arrest record information makes it difficult to rely fully on his representations.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).[3]

Applicant's youth only partially explains his irresponsible handling of his financial affairs, his breach of peace and assault offenses, and his e-QIP omissions. He has shown some reform by accepting responsibility for the criminal charges. He fully disclosed his

[3] The factors under AG ¶ 2(a) are as follows:

> (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.

arrest record to the OPM investigator. Nonetheless, concerns persist about Applicant's judgment and maturity in light of his failure to address his past-due debts when he was financially able to do so, and his efforts at his security clearance hearing to deny or downplay the seriousness of the security issues. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). After considering the adjudicative guidelines in light of the evidentiary record, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f.:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	Against Applicant
Subparagraph 2.j:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge