

KEYWORD: Criminal Conduct, Financial Considerations; Personal conduct

DIGEST: When he was a teenager, the police arrested Applicant, and the juvenile court system punished him for his misconduct. While serving in the military, he received three non-judicial punishments for unauthorized absence, drinking, using drugs, and disobeying orders, which lead to his discharge under other than honorable conditions in 1996. Since then, the police arrested him once, then later released him after dismissing all charges. His financial problems occurred during his marriage and subsequent divorce. He has mitigated the government's security concerns for his past criminal conduct and financial considerations. He, however, has not mitigated the government's concerns regarding his falsification of answers in his security clearance application. Clearance is denied.

CASE NO: 05-02130.h1

DATE: 05/11/2006

DATE: May 11, 2006

In re:

SSN:

Applicant for Security Clearance

ISCR Case No. 05-02130

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

When he was a teenager, the police arrested Applicant, and the juvenile court system punished him for his misconduct. While serving in the military, he received three non-judicial punishments for unauthorized absence, drinking, using drugs, and disobeying orders, which lead to his discharge under other than honorable conditions in 1996. Since then, the police arrested him once, then later released him after dismissing all charges. His financial problems occurred during his marriage and subsequent divorce. He has mitigated the government's security concerns for his past criminal conduct and financial considerations. He, however, has not mitigated the government's concerns regarding his falsification of answers in his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On September 13, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On October 12, 2005, Applicant submitted a notarized response to the allegations, and requested a hearing.

This matter was assigned to me on January 4, 2006. A notice of hearing was issued on February 1, 2006, and a hearing was held on February 21, 2006. Seven Government Exhibits and five Applicant Exhibits were admitted into evidence. Applicant testified. The record was held open until March 21, 2006, for Applicant to submit additional documentation. The additional documentation was received on March 17, 2006 and March 21, 2006. The government did not object to the admission of this evidence, which has been admitted as Applicant Exhibits F through I. ⁽¹⁾ In light of these submissions, Applicant Exhibit E, which was admitted conditioned upon the submission of additional documentation, is admitted. The hearing transcript (Tr.) was received on March 1, 2006.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.b. through 1.g. under Guideline J, subparagraphs 2.a., 2.b., and 2.d. under Guideline F, and subparagraph 3.a. and 3.f. under Guideline E of the SOR.⁽²⁾ Those admissions are incorporated here as findings of fact. He denied the remaining allegations. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 35-year-old welder for a defense contractor.⁽³⁾ He has worked for this contractor for three and one-half years.⁽⁴⁾ He served seven years in the United States Navy.⁽⁵⁾ He ended his Navy career with a discharge under other than honorable conditions.⁽⁶⁾ He completed a Security Clearance Application (SF 86) in December 2002.

Applicant married in 1996.⁽⁷⁾ At the time of his marriage, his wife had a young daughter.⁽⁸⁾ He and his wife had two children.⁽⁹⁾ They separated in April 2001, and divorced in July 2005.⁽¹⁰⁾ He is engaged to be married.⁽¹¹⁾ His supervisor describes him as reliable and professional, as well as a valuable team member.⁽¹²⁾ His performance evaluations reflect an above average performance.⁽¹³⁾ His most recent evaluation indicates his timely arrival for work on a daily basis, and an improvement in his skills performance.⁽¹⁴⁾

At the age of 16, the police arrested Applicant for fighting at school, and charged him with disorderly conduct.⁽¹⁵⁾ The juvenile court placed him on 10 days of house arrest, which he completed.⁽¹⁶⁾ One year later, the police again arrested him and charged him with attempted breaking and entering.⁽¹⁷⁾ The juvenile court placed him on one year probation, and required him to serve 100 hours of community service, which he did.⁽¹⁸⁾

Upon his graduation from high school, Applicant joined the Navy. In his first year in the Navy, he and friends took unauthorized leave for 34 days.⁽¹⁹⁾ His punishment is unknown.⁽²⁰⁾ Again, within his first year or so, while on shore leave, he drank too much, and got into a fight. The police arrested him, and returned him to the ship where he went to Captain's Mast, an Article 15 procedure under the Uniform Code of Military Justice (UCMJ).⁽²¹⁾ He received a punishment, but he does not remember what it was.⁽²²⁾ In 1993, while in port in Cartagena, Columbia, he and his friends bought cigars, and smoked them.⁽²³⁾ The next day they were ordered to take a drug test, which they failed because, unknown to them, the cigars were laced with cocaine.⁽²⁴⁾ He was charged with wrongful use of drugs under the UCMJ.⁽²⁵⁾ His case was dismissed on appeal.⁽²⁶⁾ Neither his arrest for drinking and fighting nor his failure of this drug test are listed as military offenses in the Navy's discharge documents.⁽²⁷⁾

In September 1994, pursuant to Article 86 of the UCMJ, the Navy charged him with unauthorized absence from August 23, 1994 to September 2, 1994.⁽²⁸⁾ As a non-judicial punishment, he received a reduction in grade to E-3, which was suspended for six months contingent upon six months of good behavior, pay forfeiture of \$500.00, restriction for 21 days, and extra duty for 21 days.⁽²⁹⁾ Three months later, in December 1994, pursuant to Articles 86 and 91 of the UCMJ, the Navy charged him with unauthorized absence for being late to morning muster one day, and disrespectful language to his Chief Petty Officer because when questioned about the reason for his lateness, he argued with the Chief Petty Officer.⁽³⁰⁾ As non-judicial punishment, he received a reduction in grade to E-2, pay forfeiture of \$461.00 each month for two months, restriction for 45 days, and extra duty for 45 days.⁽³¹⁾

In 1996, after just being transferred, he decided he did not want to be in the Navy anymore because his then wife was expecting a baby, and he preferred to be with her.⁽³²⁾ He decided to go on unauthorized leave.⁽³³⁾ However, in March 1996, before leaving, he attended a party with friends and smoked some marijuana.⁽³⁴⁾ He has not smoked marijuana again.⁽³⁵⁾ The next day he failed a drug test.⁽³⁶⁾ When he returned from his unauthorized leave, the Navy charged him with violations of Articles 86, 91, and 112a of the UCMJ based on unauthorized absence from April 15, 1996 to May 15, 1996, failure to obey a lawful order, and wrongful use of marijuana.⁽³⁷⁾ As non-judicial punishment, he received a reduction in grade to E-2, pay forfeiture of \$250.00 per month for two months, restriction for 45 days and extra duty for 45 days.⁽³⁸⁾ A few days later, the Navy recommended administrative separation because of a pattern of misconduct, and discharged him under other than honorable conditions in June 1996.⁽³⁹⁾ His violations of the UCMJ constitute criminal misconduct in the military, but did not result in any criminal convictions. None of his military criminal offenses are listed as part of the Federal Bureau of Investigation's criminal record on him.⁽⁴⁰⁾

In January 2001, Applicant and his then wife, a member of the military, got into an argument.⁽⁴¹⁾ She pushed him, then threw a bottle at him.⁽⁴²⁾ He slapped her.⁽⁴³⁾ Because they lived on a military base, she called the military police.⁽⁴⁴⁾ He met the police outside the house.⁽⁴⁵⁾ The police detained him as a suspect, and drove him to the police station without handcuffs.⁽⁴⁶⁾ The police did not lock him up or fingerprint him, but did charge him with simple assault, gave him a document he describes as a citation, then read him his Miranda rights.⁽⁴⁷⁾ The police escorted him home where he picked up a few things, and left the house for 24 hours.⁽⁴⁸⁾ The police also charged his wife with simple assault.⁽⁴⁹⁾ Both were released on their own recognizance, and given information for victims and witnesses of crimes.⁽⁵⁰⁾ The record does not indicate that he appeared before any legal tribunal to answer the charges, but he attended a Navy family advocacy program following this incident.⁽⁵¹⁾ Shortly after this incident, he and his wife separated.⁽⁵²⁾ They have a much better relationship now that they do not live together.⁽⁵³⁾

In November 2001, Applicant, who lived in State A, returned home to visit family and friends in State B.⁽⁵⁴⁾ On November 20, 2001, he drove to a friend's house for a visit with high school friends he had not seen in 10 years.⁽⁵⁵⁾ At this time and unknown to him, his high school buddies were the focus of a criminal investigation by the local police.⁽⁵⁶⁾ While at his friend's house, they argued and he left.⁽⁵⁷⁾ Another friend asked to ride with him in his truck, a Ford Explorer, to another house owned by a mutual friend.⁽⁵⁸⁾ One block later the police pulled him over.⁽⁵⁹⁾ His rider ran

away, but he stayed. (60) The police asked if he had a gun in his truck. (61) When he said yes, they handcuffed him and arrested him. (62) The gun was under the back seat. (63) At the police station, the arresting officers booked him for trespassing and improper handling of a firearm. (64) In court the next day, the prosecutor dropped the improper handling of a firearm charge as the gun in his car was properly registered, and had not been used in any criminal activity. (65) The prosecutor, however, changed the trespassing charge to aggravated burglary and aggravated robbery, felony charges. (66) Since he lived out of state, the court remanded him to jail until he was indicted. (67) After 90 days, the police released him and all charges were dismissed without prejudice. (68) The police told him that the dismissal was as if it never happened and had been wiped off his record. (69)

Since his arrest in November 2001, Applicant has not returned to State B, even though his sister still lives there. (70) She now visits him. (71) He has not had any contact with his former high school friends or any individuals involved with the police investigation. (72)

Applicant's current annual salary is \$34,320.00, plus an undetermined amount for overtime. (73) His net monthly income averages \$2,100.00 without overtime. (74) His monthly expenses are: \$800.00 for rent, \$865.00 for child support, \$140.00 to \$180.00 for an education loan, and the remaining for utilities, food, and gas for his car. (75) These expenses total at least \$2,100.00 per month. He regularly works overtime, which helps pay expenses. (76) He has recently been pre-approved for a mortgage. (77)

Applicant's debts listed in the SOR are as follows:

| SOR ¶ | TYPE OF DEBT | AMOUNT | CURRENT STATUS |
|-------|-----------------------|-----------------|--------------------------|
| 2.a. | automobile loan (78) | \$5,000.00 (79) | Unpaid (80) |
| 2.b. | credit card debt (81) | \$1,155.00 (82) | Unpaid (83) |
| 2.c. | store account (84) | \$ 102.00 (85) | Paid March 19, 2006 (86) |
| 2.d. | credit card debt (87) | \$1,917.00 (88) | Unpaid (89) |

(90)

When he was in jail, his Ford Explorer truck was repossessed because he did not make the monthly payments. On two separate occasions, he spoke with the note holder about resolving his debt.⁽⁹¹⁾ The note holder requested a lump sum payment of \$5,000.00, and refused to consider a monthly payment plan.⁽⁹²⁾ The debts listed in the SOR have not been paid while he and his former wife finish negotiating the equitable distribution aspect of their divorce.⁽⁹³⁾ In October 2005, the court received a list of his individual debts from his marriage.⁽⁹⁴⁾ This list included the automobile debt and two credit debts.⁽⁹⁵⁾ Although he is unsure if the store debt is his or his former wife's, he recently paid the debt.⁽⁹⁶⁾ He currently makes monthly payments on an education loan, which had previously been in default, but is not paying on the automobile or credit card debt.⁽⁹⁷⁾

On December 30, 2002, Applicant began his security clearance application, which he completed and signed on January 2, 2003. He answered "no" to each of the following questions in the SOR:⁽⁹⁸⁾

Question 22. Your Police Record - Firearms/Explosives Offenses

Have you ever been charged with or convicted of a firearms or explosives offense? For this item, ***report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record.*** The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. (emphasis supplied)

He did not list his November 2001 criminal charge for improperly handling a firearm in a car.⁽⁹⁹⁾

Question 25. Your Police Record - Military Court

In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? Include non-judicial, Captain's mast, etc.) For this item, ***report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record.*** The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. (emphasis supplied)

He did not list the non-judicial punishment imposed on him by the Navy in May 1996.⁽¹⁰⁰⁾

Question 26. Your Police Record - Other Offenses

In the last 7 years, have you ever been arrested for, **charged with**, or convicted of any offense not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. (emphasis supplied)

He did not list his arrest in November 2001 and detention in January 2001. [\(101\)](#)

Question 27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.) or prescription drugs?

He did not list his use of marijuana in March 1996. [\(102\)](#)

Question 35. Your Financial Record Repossessions

In the last 7 years, have you had any property repossessed for any reason?

He did not list the repossession of his Ford Explorer while he was in jail in 2001. [\(103\)](#)

Question 38. Your Financial Delinquencies - 180 days

In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?

Question 39. Your Financial Delinquencies - 90 Days

Are you currently over 90 days delinquent on any debt?

He did not list his unpaid credit card debts, automobile loan, and store account for either

Question 38 or Question 39. [\(104\)](#)

Applicant testified that he did not intentionally falsify his answers. He states, that when the police from State B released him from jail after his arrest in November 2001, they told him that since the charges had been dropped, his record had been wiped clean and it was as if nothing ever happened. [\(105\)](#) Based on this information, he believed that he did not have to list this offense on any application because it never existed. [\(106\)](#)

Concerning his non-judicial punishment in May 1996 and his marijuana use in March 1996, he did not know the exact dates, but since it was close to seven years, he said no. [\(107\)](#) He did not acknowledge the repossession of his Ford Explorer because he did not want anything to keep him from getting his current job. [\(108\)](#) As to the other two financial questions, he states that he did not read them carefully and did not pay careful attention to the questions. [\(109\)](#)

He did not believe that he was arrested in January 2001 because the police did not handcuff him, fingerprint him or lock him up after they took him to the police station. [\(110\)](#) The police report indicates that he was a suspect and does not reflect that he was arrested. [\(111\)](#)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. [\(112\)](#)

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. [\(113\)](#) The government has the burden of proving controverted facts. [\(114\)](#) The burden of proof is something less than a preponderance of the evidence. [\(115\)](#) Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. [\(116\)](#) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(117\)](#)

No one has a right to a security clearance, [\(118\)](#) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." [\(119\)](#) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. [\(120\)](#) Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. [\(121\)](#) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Criminal Conduct - Guideline J: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline J. Over a period of 13 years, Applicant has been arrested for assault, battery, drinking, fighting, breaking and entering, disorderly conduct, and violation of the UCMJ, and detained for assault in a domestic violence situation. His criminal conduct raises Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2. (*A single serious crime or multiple lesser offenses*).

Applicant's first two arrests occurred more than 17 years ago, when he was a juvenile and for youthful misconduct. These arrests are not recent, and are not public record. While in the military, he received several non-judicial punishments for unauthorized absence, oversleeping, disrespect to a senior non-commissioned officer, failure to obey a lawful order, and unlawful use of marijuana. His last offense in the military occurred 10 years ago. His behavior in the

military which led to his misdemeanor criminal charges clearly showed a lack of maturity and poor judgment. Since leaving the military, he has significantly improved his ability to be on time for work and is considered a valuable member of his work team. He has not been arrested for drug-related charges since 1996. Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1. (*The criminal behavior was not recent*) applies to allegations 1.c. though 1.g.

The January 2001 incident with his wife arose not because of a decision to act illegally, but as the result of a mutually combative argument. The police detained, not arrested, both as suspects. Upon completion of their investigation, they charged both for simple assault, and provided both with information for victims of domestic violence. This incident arose out of an argument when both Applicant and his wife allowed their anger and emotions to get out of control, not because of a pattern of abusive conduct by him. As he has never been arrested or detained by the police for domestic violence at any other time, and he and his wife have divorced, this isolated domestic violence incident is not likely to occur in the future. CC MC E2.A10.1.3.2. (*The crime was an isolated incident*), and CC C E2.A10.1.3.4. (*The person...or the factors leading to the violation are not likely to reoccur*) apply to allegation 1.b.

Finally, his arrest in November 2001 is a result of being in the wrong place, not because of criminal conduct on his part. The prosecutor dropped the charge for improper handling of a fire arm because the police had established that the gun was legally registered and had not been used in any criminal activity. While the circumstances surrounding his arrest were investigated, Applicant sat in jail for three months, simply because he lived out-of-state. Once the police completed their investigation of him, they released him from jail and the prosecutor dropped all charges. Since his arrest, he has refused to return to this state, even to visit family, and does not associate with these old high school friends. He has not been arrested for anything in more than four years, and has developed a more mature attitude towards his work responsibilities. CC MC E2.A10.1.3.6. (*There is clear evidence of successful rehabilitation*) applies to allegation 1.a.

From 1987 until 2001, Applicant has been arrested and charge with a variety of criminal acts. As a juvenile, he was arrested twice and punished by the courts. He was not been involved in any other criminal behavior in the civilian criminal justice system until 2001, when he was arrested for assault, battery, and improper handling of a firearm, charges which were dismissed without an indictment. However, while in the military, he regularly went AWOL (absence without leave), a misdemeanor criminal offense under the UCMJ. This continual and ongoing conduct directly lead to a decision by the military to discharge him under other than honorable conditions, but never involved jail time. Given the UCMJ's characterization of AWOL as criminal, Applicant's decisions to go AWOL reflects a pattern of conduct, which stopped when he left the military. He has changed his attitude towards work and its responsibilities. He goes to work every day, where he is considered a reliable employee and team member.

Because the assault charge in January 2001 arose out of an emotionally driven situation unique to families, and not because of a criminal intent or a pattern of domestic violence, it is not sufficient to show a continued pattern of intentional criminal conduct. In the nearly ten years since leaving the military, Applicant has not been arrested for drug or alcohol-related conduct. His most recent arrest occurred because he did not know about the criminal activities of high school friends he had not seen for 10 years, not because he actively or intentionally sought to be involved in illegal activities. He has mitigated the government's case under Guideline J.

The government has established its case under Guideline F. Applicant's credit report reflects four unpaid debts. He has not paid these debts for some time. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*) and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply.

Even though he did not believe that the store debt is his, Applicant recently paid it. Thus, this allegation is found in favor of the Applicant. The other three debts remain unpaid. In good faith, he contacted the holder of the automobile note on two separate occasions to work out a monthly payment plan. The note holder rejected his offer, and demanded a one-time payment in full, which he could not make. He did not ignore this debt. Payment of the two remaining unpaid debts is currently being negotiated with his former wife as part of the equitable distribution of the marital debts. They are currently waiting for a decision from the family court on the equitable distribution of their debt. Based on the information provided to the court, he will be responsible for payment of the credit card with a balance of \$1,155.00, and his wife will be responsible for the other debt. His recent credit reports indicate timely payments on current debts. Although old debt still exists, he has taken responsibility for payment of some of his old debt. As to the two credit cards debts from his marriage, he is waiting for the court to decide which bills are his responsibility. Since he regularly receives overtime, he has the ability to make modest payments on his old debt once a court determination is made. Thus, Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control*); FC MC E2.A6.1.3.4. (*The . . . and there are clear indications that the problem is being resolved or is under control*), and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply. He has mitigated the government's concerns under Guideline F.

Under Guideline E, the government alleges that Applicant deliberately falsified material facts on his latest security clearance application when he answered "no" to Questions 22, 25, 26, 27, 38, and 39, and should have answered "yes". He denies intentionally falsifying his answers. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. ⁽¹²²⁾ For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*) to apply, the government must establish that Applicant's omission, concealment or falsification in his answers related to a relevant and material fact and was deliberate.

The government has established its case under guideline E. When he was released from jail in early 2002 following his November 2001 arrest, the police told Applicant all charges had been dropped, and his case had been dismissed without prejudice. The police informed him that the effect of this action was as if the arrest never occurred and his record had been wiped clean. Given that Question 26 specifically informs an applicant that criminal court cases which have been stricken must be included, he lied when he answered "no" to this question. Allegation 3.b. is found against Applicant.

As to Questions 25, 26, and 27, Applicant concluded that six years and nine months was the same as seven years. His decision to equate this time as equal reflects an intent to avoid answering "yes" to these questions which would then

raises questions about his security worthiness.

Regarding the January 2001 charge for simple assault, he did not list this incident because he had not been arrested. He attended a counseling class, but based on the record evidence, he never appeared before an adjudicatory body. Since he readily acknowledges that he was charged with simple assault after fighting with his wife, his statement that he read the question as far as the word "arrest" and stopped is not credible, particularly in light of his other falsifications. Thus, allegations 3.c. through 3.e. are found against Applicant.

Applicant has admitted that he intentionally falsified his answer to Question 35, when he failed to admit his Ford Explorer had been repossessed when he was in jail. While he has denied that he intentionally falsified his answers to Questions 38 and 39, his explanation that he did not read the questions carefully and did not pay attention to the content of the questions is not credible. At the time he answered these questions, he knew that he had unpaid credit card bills, which were several years overdue. His conduct clearly falls within Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement . . .*). In addition, his discharge from the Navy under other than honorable conditions raises security concerns under PC DC E2.A5.1.2.1. (*Reliable, unfavorable information provided by associates, employers, co-workers, neighbors, and other acquaintances*).

When he first entered the Navy, Applicant behaved in a manor which reflected his immaturity. He decided to leave his duty station without asking for leave and for no reason. He drank too much, fought, got arrested, and received punishment for this conduct at a Captain's Mast. Even as he grew older, he did not seem to mature and take responsibility for his work and attendance. He continued with his conduct by being absent without authorization, oversleeping or just leaving his duty station. In 1996, he decided that he wanted to leave the military, so he left on the last of his unauthorized absences. Upon his return, the Navy disciplined for his conduct and administratively separated him with an other than honorable discharge. Since this time, he arrives at work on time every day. He has worked regularly, except for the three months he was detained in jail while waiting for an indictment which never materialized, and has accepted responsibility for his family. In terms of his family and work responsibilities, he has matured. Most of his problems in the Navy resulted because of his immaturity and poor attitude towards his work which resulted in unauthorized absences from his duty station. As he matured, he changed his attitude about work and has proven himself a reliable, good employee. He has not been involved with drugs since his discharged in 1996. Even though he has improved his attitude and behavior, his other than honorable discharge negatively impacts the determination on his judgment, trustworthiness or reliability. PC DC E2.A5.1.3.1 applies. Allegation 3.a. is found against Applicant.

Applicant has a history of using poor judgment in multiple situations. As he has matured, his judgment has improved in certain situations, but not all. By answering "no" to the questions regarding his personal finances, he continues to use poor judgment and a lack of candor in his decision making, which raises a security concern. In addition, while I have found that his lack of attention to detail in calculating the seven years is insufficient to show intentional conduct, it does raise a security concern about his reliability in paying attention to detail. Likewise, his failure to carefully read the questions in his security clearance application also reflects an inattentiveness to detail, which is important in matters of security. He has not mitigated the government's concerns as to allegations 3.f. through 3.h. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

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 (Criminal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Paragraph 2, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: Against Applicant

Subparagraph 3.e: Against Applicant

Subparagraph 3.f: Against Applicant

Subparagraph 3.g: Against Applicant

Subparagraph 3.h: Against Applicant

DECISION

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 a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Applicant Exhibit F is a signed performance evaluation form, dated February 27, 2006. Applicant Exhibit G, consisting of two pages, contains a copy of the store account in allegation 2.c. and a copy of a money order dated March 19, 2006, for the full amount of the bill. Applicant Exhibit H is a copy of the most recent education loan account statement, and his payment check dated March 14, 2006. Applicant Exhibit I is the Equitable Distribution Inventory Affidavit, dated October 31, 2005, and submitted to the court.

2. Applicant's Response to SOR, dated October 12, 2005, at 1-4.

3. Government Exhibit 1 (Applicant's security clearance application, dated December 30, 2002) at 1-2.
4. *Id.* at 3.
5. *Id.* at 5.
6. Government Exhibit 4 (Navy documents regarding Applicant's discharge) at 1, 5.
7. Government Exhibit 1, *supra* note 3, at 4.
8. Tr. at 34.
9. *Id.*
10. *Id.*; Applicant Exhibit I, *supra* note 1, at 1.
11. Tr. at 96.
12. Applicant Exhibit B (Letter, dated February 7, 2006) at 1.
13. Applicant Exhibit F, *supra* note 1, at 2.
14. *Id.*
15. Government Exhibit 5 (Page from government job application) at 1-2; Tr. at 41.
16. *Id.*
17. Government Exhibit 5, *supra* note 15, at 1-2; Tr. at 40-41.
18. Government Exhibit 5, *supra* note 15, at 1-2.
19. Tr. at 72.
20. *Id.*; Government Exhibit 4, *supra* note 6, at 3-4.
21. Tr. at 39.
22. *Id.*
23. *Id.* at 73.
24. *Id.*
25. *Id.*
26. *Id.*
27. Government Exhibit 4, *supra* note 6, at 3.
28. *Id.*
29. *Id.*; Tr. at 38-39.
30. Government Exhibit 4, *supra* note 6, at 3; Tr. at 37-38.
31. *Id.*

32. Tr. at 35.
33. *Id.*
34. *Id.*
35. *Id.* at 50.
36. *Id.*
37. Government Exhibit 4, *supra* note 6, at 4.
38. *Id.*
39. Government Exhibit 4, *supra* note 6, at 1-2.
40. Government Exhibit 7 (United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information sheet, dated February 4, 2003) at 2.
41. Government Exhibit 6 (Military incident report, dated January 12, 2001)at 4-5; Tr. at 32-34.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. Government Exhibit 6, *supra* note 41, at 5.
50. *Id.* at 4-5.
51. Tr. at 34.
52. Applicant Exhibit I, *supra* note 1, at 1.
53. Tr. at 34-35.
54. *Id.* at 26-32.
55. *Id.* at 26-32, 62-63.
56. *Id.* at 26-32.
57. *Id.*
58. *Id.*
59. *Id.*

60. *Id.*; He later learned that his rider had a criminal record. Tr. at 60-61.
61. Tr. at 26-32.
62. *Id.*
63. *Id.* at 26-32, 61-62.
64. *Id.*
65. *Id.* at 26-32, 61-62, 66.
66. *Id.* at 26-32, 65.
67. *Id.* at 26-32.
68. *Id.*
69. *Id.* at 51, 55, 85-86.
70. *Id.* at 26-32.
71. *Id.*
72. *Id.*
73. Applicant Exhibit D (Employer document showing salary increase, dated August 27, 2005) at 1.
74. Tr. at 95.
75. *Id.*; Applicant Exhibit H, *supra* note 1, at 1.
76. Tr. at 97.
77. Applicant Exhibit C (Letter from mortgage lender, dated February 20, 2006) at 1.
78. Government Exhibit 2 (Credit Report, dated June 28, 2005) at 1.2
79. *Id.*
80. Tr. at 45.
81. Government Exhibit 2, *supra* note 78, at 1.
82. *Id.*
83. Tr. at 45.
84. Government Exhibit 2, *supra* note 78, at 1.
85. *Id.*
86. Applicant Exhibit G, *supra* note 1, at 2.
87. Government Exhibit 2, *supra* note 78, at 1.

88. *Id.*
89. Tr. at 45.
90. *Id.* at 41.
91. *Id.* at 42.
92. *Id.*
93. *Id.*
94. Applicant Exhibit I, *supra* note 1, at 1.
95. *Id.*
96. Tr. at 44-45, 56; Applicant Exhibit G, *supra* note 1, at 2.
97. Tr. at 94; Applicant Exhibit H, *supra* note 1, at 1.
98. Government Exhibit 1, *supra* note 3, at 1, 6-8.
99. Government Exhibit 7, *supra* note 40, at 2.
100. Government Exhibit 4, *supra* note 6, at 4.
101. Government Exhibit 7, *supra* note 40, at 2; Government Exhibit 6, *supra* note 41, at 1-9.
102. Government Exhibit 4, *supra* note 6, at 4.
103. Tr. at 41.
104. Government Exhibit 2, *supra* note 78, at 1-2.
105. Tr. at 51, 55, 85-86.
106. *Id.*
107. Tr. at 49, 50, 52.
108. *Id.* at 56.
109. *Id.* at 57.
110. *Id.* 33, 53-55.
111. Government Exhibit 6, *supra* note 41, at 4.
112. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
113. ISCR Case No. 96-0277 (July 11, 1997) at 2.
114. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
115. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
116. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

117. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

118. *Egan*, 484 U.S. at 531.

119. *Id.*

120. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

121. Executive Order No. 10865 § 7.

122. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).