



ISCR Case No. 07-09842

Applicant for Security Clearance

For Government: Braden M. Murphy, Esquire, Department Counsel
Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

July 31, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On March 16, 2007, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 21, 2008, and requested a hearing before an administrative judge. On April 9, 2008, DOHA assigned the case to me and issued a Notice of Hearing on May 7, 2008. The case was heard on May 29, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 16 into evidence without objection. Applicant testified and offered Exhibits (AE) A through H into evidence without objection. At the conclusion of the hearing, I left the record open until June 13, 2008, to give Applicant an opportunity to submit additional information. On June 12, 2008, Applicant submitted 15 additional exhibits that were marked AE I through W, and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on June 11, 2008.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in Paragraph 1 of the SOR, except ¶¶ 1.b, 1.l and 1.m. He denied the falsifications allegations contained in Paragraph 2 and offered explanations in support of his position. Those admissions are incorporated into the following findings of fact:

Applicant is 53 years old and has been married to his second wife for 19 years. He has three children with her, ages 18, 14 and 8, and one from his prior marriage, age 31. He enlisted in the Air Force in May 1973 and worked as a firefighter. He was honorably discharged in October 1980. After leaving military service, he joined a federal agency as a firefighter. In August 1985, he began working as a dispatcher/security officer for his current employer, a federal contractor. He has worked for the federal government for 30 years and held a security clearance for most of that time, beginning with his time in the Air Force. (Tr. 73). Over the course of his employment, he has submitted at least two applications for a security clearance: one in October 1995 and one in March 2007.

Applicant has a history of arrests, many of which involved alcohol. In August 1979, he was arrested and charged with Driving Under the Influence (DUI). In June 1981, he was arrested and charged with a DUI. In July 1985, he was arrested and charged with Driving While Intoxicated. In June 1987, he was arrested and charged with Failure to Control, after being involved in an automobile accident. In August 1987, he was arrested and charged with a DUI. In March 1988, he was arrested and charged with Misdemeanor Fraud for Writing Bad Checks. In February 1998, he was arrested and charged with a DUI.

In November 1987, Applicant was admitted to a veteran's hospital where he was diagnosed and treated for alcohol dependence. In 1997, he again received in-patient treatment for alcohol dependence. He has not consumed alcohol for 11 years. (Tr. 38).

Financial Considerations

Applicant has experienced financial difficulties since the 1980's. Those difficulties include vehicle repossessions in 1986, 2005 and 2006, a garnishment for child support

payments from 1985-1989, numerous delinquent debts, some of which were charged off, judgments entered in July 1999 and November 2002, and a tax lien filed in 2007. (Tr. 74; Answer).

In September 2004, Applicant and his wife filed a petition for a Chapter 7 bankruptcy that was granted in January 2005, discharging approximately \$66,644 in unsecured debts, including a \$49,000 student loan.¹ (GE 16). After the bankruptcy his financial problems continued, some of which resulted because he paid his mother's living expenses before she died. (Tr. 37, 139, 141). In February 2006, he entered into a credit counseling agreement to manage the bills he accrued. In August 2007, he encountered problems with the company handling his debts and terminated the agreement. (Tr. 118; GE 3 at 122). On June 11, 2008, he executed another debt repayment plan that anticipates resolving all of his delinquent debts within 41 months. The amount included in the plan is \$14,127. (AE U & V).

The SOR alleged that Applicant has failed to pay 12 delinquent debts, totaling \$34,537. The status of those debts is as follows:

1. Three debts are paid: ¶ 1. b for \$155 (AE E); ¶ 1.c for \$656 and ¶ 1.d \$768 are duplicates (AE A); and ¶ 1.k for \$477 (AE D).
2. The mortgage listed in ¶ 1.i for \$5,985 has been refinanced and is current. (AE C).
3. Two debts were discharged in the 2005 bankruptcy order: ¶ 1.e for \$601 and ¶ 1.j for \$3,693. (GX 16).
4. One debt is being disputed through litigation: ¶ 1.f for \$12,212. (Tr. 43, 82; AE B).
5. Two debts were included in the 2006 repayment plan: ¶ 1.g for \$1,056 and ¶ 1.h for \$4,570. (Tr. 44, 83). The debts were recently incorporated into the repayment plan executed in June 2008. (AE U & V).
6. Two debts are unresolved: ¶ 1.l for \$50 that he intends to pay and ¶ 1.m for \$3,314 that may be his deceased mother's debt. He is attempting to resolve both. (Tr. 85-86).

In October 2007, Applicant submitted a budget that is current today. (Tr. 120). He and his spouse have a net monthly income of about \$4,500 and expenses of \$1,724, leaving a \$1,400 remainder, although that may be less because of some additional expenses. (GE 3 at 117; Tr. 120). He acknowledges his history of financial difficulties, but believes his financial position has improved. (Tr. 144). He does not use credit cards

¹Five years prior to this bankruptcy, Applicant's wife filed bankruptcy. (Tr. 77).

and is current on all of his obligations. (Tr. 121-122). In summary, all of the alleged debts are resolved, except two that total \$3,364.

Personal Conduct

The SOR alleged in Paragraph 2 that Applicant falsified information submitted to the Government in eleven separate instances (§§ 2.a to 2.k). Applicant denied all of those allegations.

In October 1995, Applicant completed a National Agency Questionnaire (NAQ) and obtained a Secret security clearance in 1996. In a heading box, at the top of page 3 of the NAQ, the form advises that “Answers to questions in Items 18 through 22 are **NOT** limited to the 5, 10 or 15 years, but pertain to your entire life. (See DETAILED Instructions.)”

Question 18 of the NAQ asked: “Arrests: a) Have you ever been arrested, charged, cited, held, or detained by a Federal, State, or other law enforcement or juvenile authorities regardless of whether the charge was dropped or dismissed or you were found not guilty?” In response to that question, Applicant answered “No,” and did not disclose the arrests and charges from August 1979, June 1981, July 1985, June 1987, August 1987, and March 1988. (GE 14). Applicant testified that he thought the question was limited to the past seven years. (Tr. 66).) (SOR ¶ 2.h)²

Question 19 on the NAQ pertains to one’s credit history. Question 19(b) inquired, “Have you ever had your wages garnished or anything repossessed?” Applicant answered “No,” and did not disclose a 1986 automobile repossession or a garnishment of his wages for child support that was effective from 1985 to 1989. (SOR ¶ 2.i)

Question 19(d) asked, “Do you have any judgments against you which have not been paid?” Applicant answered “No,” and did not disclose a tax judgment for \$477 that was entered in October 1993 and not satisfied until June 1999. (GE 14). He did not have any clear recollection of the reason he did not disclose the requested information. (Tr. 67-70). (SOR ¶ 2.j)

Question 20(d) on the NAQ inquired about “Drug/Alcohol Use and Mental Health: Has your use of alcohol beverages (such as liquor, beer, wine) ever resulted in the loss of a job, disciplinary action, arrest by police, or any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism).” Applicant answered “No,” and did not disclose the 1979, 1981, 1985, and two 1987 arrests, all of which involved alcohol, nor the 1987 hospital admission and treatment for alcohol abuse. (GE 14). (SOR ¶ 2.k)

In September 1996, a government investigator interviewed Applicant about his answers on the NAQ. During the interview, Applicant disclosed the June 1987 arrest,

²The allegations in this Decision are referenced by chronology and not by their sequence in the SOR.

the March 1988 arrest. He did not mention the 1985 or August 1987 arrests. He also told the investigator he spent 30 days in alcohol rehabilitation. He acknowledged that he had a car repossessed in 1986 and that a \$480 judgment was entered against him for outstanding state taxes. (GE 10).

The investigator asked Applicant the reason he did not disclose the above information on the NAQ. In a written statement, Applicant noted, "Concerning the reason I failed to answer yes to questions on my paperwork (NAQ) dated 3 Nov 95 regarding arrests, garnishments, repossessions, tax lien, use of alcohol, was due to the fact that someone, who is no longer a NASA employee, who I don't want to reveal his name, told me that the information wouldn't be checked thoroughly." (GE 10). During his testimony, he could not clearly recall the interview. He did not write the statement, but admitted that he signed it and initialed three pages of it. (Tr. 110-111).

In a follow-up November 1996 interview, Applicant disclosed additional information about his financial delinquencies and the 1987 DUI. He did not disclose that information during the September interview because he had forgotten about it. (GE 11).

In March 2007, Applicant completed another security clearance application, an e-QIP. He asserted that he never read the e-QIP, but instead completed it with the assistance of someone in his employer's security office, who read the questions to him and inserted his answers into the computer per his instruction. That person allegedly told him that he was only required to disclose information within the past seven years for all questions. (Tr. 56-57; 114-115). He claimed he did not have an opportunity to review the document before signing and submitting it. (Tr. 118).

Section 23 of the e-QIP requested information pertaining to one's criminal history. It stated: "Your Police Record: 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." Question 23(d) specifically asked: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Applicant answered "No," and did not disclose his five alcohol-related arrests and charges, including the 1998 incident, because they were outside the seven-year time period. (Tr. 89). (SOR ¶ 2.c)

Section 27 of the e-QIP posed questions related to "Your Financial Record." Question 27(a) asked: "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?" Applicant answered "No," and did not disclose his 2004 bankruptcy because he did not remember the date. He said he made a mistake and should have included it. (Tr. 116-118; GE 1 at 26). (SOR ¶ 2.d)

Question 27(b) asked: "In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?" Applicant answered "No," and did not disclose his 2005 and 2006 automobile repossessions. (GE 1 at 27). He believed the

2005 was not reportable because he voluntarily surrendered the automobile, although he learned that the bank considered it a repossession before he completed the e-QIP. (Tr. 59-60). He is litigating the 2006 repossession and did not believe it was reportable. (Tr. 61). (SOR ¶ 2.e)

Question 27(d) asked: "In the last 7 years, have you had any judgments against you that have not been paid?" Applicant answered "No," and did not disclose the November 2002 judgment for \$3,693. (GE 1 at 27). He did not mention that judgment because it was discharged in the 2004-2005 bankruptcy. (Tr. 58-61). (SOR ¶ 2.f)

Section 28 of the e-QIP raised questions regarding "Your Financial Delinquencies." Question 28(a) asked: "In the last 7 years, have you been over 180 delinquent on any debt(s)?" Applicant failed to disclose eight delinquent debts listed in the SOR, and a charged off account. He thought he was not required to disclose any of the debts because they were being paid through a repayment plan and not delinquent. (Tr. 64). (SOR ¶ 2.g)

In October 2007, Applicant completed a set of Interrogatories Concerning Alcohol Consumption and Finances, in follow-up to his March 2007 e-QIP. Question 2 asked: "Have you ever received any medical treatment, counseling or supportive treatment from a drug or alcoholic rehabilitation center or other organization due to the use of alcohol?" Applicant disclosed the 1997 hospitalization and treatment for alcohol dependence, but not the 1987 hospitalization. His probation officer helped him complete the Interrogatories. He did not include the 1987 treatment because it was more than seven years old. (Tr. 55; 91). (SOR ¶ 2.b)

Question 5 of that set of Interrogatories asked: "Have you ever been arrested, charged or held by any law enforcement authorities for any reason?" Applicant disclosed the 1998 arrest, but not the 1979, 1981, 1985, 1988, or two 1987 arrests because they were outside the seven-year time period. (Tr. 53). (SOR ¶ 2.a)

Question 9 of that set of Interrogatories further asked: "On your security clearance application you answered no to the following questions. Please indicate why you answered the way you did." The questions related to the 2004 bankruptcy, an unpaid judgment, debts delinquent more than 180 and 90 days, and all alcohol related incidents. The Applicant answered that he did not disclose the 2004 bankruptcy because he did not remember that it was filed in 2004 and discharged in 2005. He did not disclose the tax judgment because he paid it. He did not mention the financial accounts over 90 and 180 days delinquent because they were being paid by a credit counseling company. He admitted he had been charged with an alcohol-related incident in 1998, but did not disclose all of the previous incidents because they were "not within 7 years." (GE 3 at 114).

Applicant submitted four letters of recommendation from colleagues, who have known and worked with him over the years. His project manager considers him to be a valued member of the security team. (AE I). The emergency management coordinator

stated that Applicant is “reliable, trustworthy, and dependable.” (AE J). The captain of security for the company praised Applicant as “one of the most knowledgeable, dependable and professional people [he] has ever worked with.” (AE K). A special agent for the security management and safeguards office has known Applicant for 11 years and has no reservations in recommending him for a security clearance. (AE L). Over the past couple years he received various awards and special training. (AE M, N, O, Q and R). In October 2007, he received a certificate for completing a course in security office fundamentals. (AE P).

Policies

When evaluating an Applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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. Likewise, I have avoided drawing 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, 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. 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.”

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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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 guideline notes several conditions that could raise security concerns, two of which are potentially applicable in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant has experienced financial problems since the 1980's, resulting in a significant amount of delinquent debt that he has been unable to manage or pay. Those difficulties continue into the present, despite having discharged a large amount of debt through a bankruptcy in 2005. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 provides six conditions that could mitigate security concerns arising from financial difficulties:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant's financial difficulties started in the 1980s and continue into mid-2008. Because the problems have been ongoing for many years and subsequent to a discharge of a significant amount of debt in a 2005 Chapter 7 bankruptcy, AG ¶ 20(a) cannot apply.

Some of Applicant's debts accrued subsequent to the 2005 bankruptcy because he provided support for his ill mother and could not pay both his bills and his mother's bills. Those circumstances were outside of his control. Subsequently, he attempted to manage his debts through a debt reduction program that he executed in 2006. I find AG ¶ 20(b) has some application.

Applicant resolved \$31,173 of the \$34,537 delinquent debts alleged in the SOR through payments, repayment plans, dispute process, or discharge in bankruptcy. He intends to resolve the remaining two debts. According to his budget and testimony, he is managing his financial obligations and not incurring additional ones. The evidence supports the partial application of AG ¶ 20(c) and AG ¶ 20(d), as his financial problems are under control through his good-faith efforts to resolve or pay his delinquent debts. Because resolution of those debts has occurred only recently and he has not established a sufficient track record of fiscal responsibility to offset his long history of financial mismanagement, full application of these mitigating conditions is not warranted.

Applicant presented sufficient evidence to prove that he has disputed through litigation one of the larger debts related to an automobile repossession, and to trigger the application of AG ¶ 20(e). There is no record evidence to support the application of AG ¶ 20(f).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to the guideline 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 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.

The Government alleged in Paragraph 2 that Applicant falsified material facts in eleven separate instances during the security clearance process, constituting a potential disqualification under this guideline. AG ¶ 16 describes seven conditions that could raise a security concern, one of which may be disqualifying in this case:

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

Applicant denied all eleven allegations.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's 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 state of mind at the time the omission occurred. (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))).

Based on the evidence, the Government established a disqualification for SOR ¶¶ 2.a, 2.b, 2.c, 2.d, 2.e, 2.h, 2.i, 2.j. and 2.k. It did not establish a disqualification for SOR ¶¶ 2.f and 2.g.

SOR ¶ 2.a alleged that Applicant disclosed a 1998 arrest on his Response to the October 2007 Interrogatories, but deliberately failed to disclose six other arrests. SOR ¶ 2.b alleged that he disclosed treatment for alcoholism in 1997 on said Response, but deliberately failed to disclose in-patient treatment for alcohol dependence in 1987. Applicant asserted that he was told that he was only required to disclose information that occurred within the past seven years of the time he completed the form. I do not find his explanation credible for two reasons. First, the set of Interrogatories was mailed to him after he completed the March 2007 e-QIP and clearly alerted him to the fact that the Government was not satisfied with his e-QIP answers on these two subjects. Second, both questions begin with the words, "Have you **ever been**" and do not mention a time frame. (Emphasis added) Third, he disclosed the 1998 arrest and 1997 treatment, both of which were outside the seven-year window that he claimed he

relied on while answering the questions. I find that the Government established the above disqualification.

SOR ¶ 2.c alleged that Applicant deliberately falsified the March 2007 e-QIP because he failed to disclose five arrests and charges. I do not find his explanation that he relied on the interpretation of someone from his office credible. That question clearly states “Have you ever been charged with or convicted of any offense related to alcohol or drugs.” Anyone one reading it aloud should have noted the “ever” qualifier and Applicant had an obligation to verify the accuracy of his answers. I find that the Government established the above disqualification.

SOR ¶ 2.d alleged that Applicant deliberately falsified the e-QIP because he failed to disclose the 2004-2005 bankruptcy. Applicant claimed he made a mistake. I do not find his defense credible because in response to SOR ¶ 1.e and 1.j he denied owing the debts that were discharged in a bankruptcy, which he claims he forgot. Furthermore, the bankruptcy occurred approximately two years prior to his completion of the e-QIP, and well within his seven-year defense. I find that the Government established the above disqualification.

SOR ¶ 2.e alleged that Applicant deliberately falsified the e-QIP because he failed to disclose a 2005 and 2006 automobile repossession. That question referenced a seven-year time frame. Applicant did not disclose either repossession because he voluntarily surrendered both vehicles and did not consider them repossessions. However, he admitted that after he surrendered the automobiles, he learned, prior to completing the e-QIP, that the banks considered the actions to be repossessions, and yet failed to disclose the information. I find that the Government established the above disqualification.

SOR ¶ 2.f alleged that Applicant deliberately falsified the e-QIP because he failed to disclose an unpaid judgment that had been entered within the past seven years. Applicant presented proof that the judgment had been satisfied, prior to completing the e-QIP, and thus, he was not required to disclose it. This allegation is found in Applicant’s favor.

SOR ¶ 2.g alleged that Applicant deliberately falsified the e-QIP because he failed to disclose specific debts that were more than 180 days delinquent. Applicant provided evidence that the debts were either paid, in a repayment plan or discharged in bankruptcy. His explanation on this matter is credible. This allegation is found in Applicant’s favor.

SOR ¶¶ 2.h through 2.k alleged that Applicant deliberately falsified the September 1995 NAQ. SOR ¶ 2.h alleged that he failed to disclose six previous arrests. SOR ¶ 2.i alleged that he failed to disclose a 1986 vehicle repossession and a 1985-1989 garnishment. SOR ¶ 2.j alleged that he failed to disclose an unpaid 1993 judgment. SOR ¶ 2.k alleged that he failed to four alcohol-related

arrests and charges, and a 1987 hospital admission and treatment for alcohol dependence. Prefacing all of these questions was language clearing stating that no time limit applied to an applicant's answers. When confronted about his omissions in September 1996, Applicant told a government investigator that he failed to disclose the requested information because he believed the government would not check his history thoroughly. During his testimony, he did not acknowledge or affirm that answer, and instead had some difficulty remembering the interview and evaded answering questions about it. I find that his September 1996 signed statement is credible evidence and that he deliberately falsified the 1995 NAQ.

AG ¶ 17 provides seven conditions that could mitigate security concerns raised under this guideline. I considered four of them as potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Although Applicant admitted all of the facts underlying the SOR allegations, he never made any effort to correct his omissions until he was confronted with the facts during both clearance processes. Hence, AG ¶ 17(a) does not apply. Applicant attributed his failure to disclose information to conversations he had with a person, who assisted him in filling out the e-QIP and Interrogatories. However, he did not produce any evidence, other than his testimony, to substantiate his assertions that some person told him to answer every question within a seven-year time limitation. Said evidence is necessary for the application of AG ¶ 17(b). Because the falsification offenses are not minor and occurred in 1995 and again in 2007, they cast doubt on his trustworthiness and good judgment, and prevent the application of AG ¶ 17(c). Applicant never acknowledged that he intentionally withheld information from the government, thus, AG ¶ 17(d) is not applicable.

“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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

(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) 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include an overall common sense 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. Applicant is a 53-year-old man, who served his country for seven years in the Air Force and was honorably discharged. After leaving military service, he continued working for the federal government for 30 years and has held a security clearance for most of that time. His colleagues and supervisors are impressed with his work. He recognizes his long history of financial problems and appears to be committed to making progress in that area. All of these factors, in addition to the mitigating conditions that have application, lead me to conclude that he mitigated the security concerns raised under the Financial Considerations guideline.

However, those factors are not sufficient to mitigate Applicant's history of non-disclosure of adverse information over the years. In October 1995, he completed a NAQ and did not include one negative incident from his past. In September 1996, he truthfully admitted, during an interview that the reason that he did not disclose his arrests and charges, financial problems, and alcohol treatment was his belief that the government would not uncover the negative information. Two months later, he was again interviewed about other information he left off the NAQ. In March 2007, he submitted another application for a security clearance (e-QIP). Despite several questions that sought adverse background information, he did not disclose any information about his criminal history, alcohol treatment, or financial problems. He excused his omissions by claiming all incidents fell outside a seven-year time period that he was told applied. In his response to October 2007 Interrogatories, he maintained that position, despite specific questions that used the word “ever” and did not mention seven years as a cut-off period. In two responses to the Interrogatories, he disclosed information that was

outside the seven-year requirement, which he consistently asserted as his defense. His explanations for omitting information are neither credible nor persuasive. Applicant has consistently shown a pattern of deception and intentional omissions of relevant information requested by the Government to make a security clearance determination. His explanations for his omissions are disingenuous and unbelievable. He knew or should have known (having gone through the same process ten years earlier) that the Government was seeking all adverse information in his history. I find his decisions to intentionally withhold information a serious security concern.

Overall, the record evidence pertaining to personal conduct leaves substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For the reasons stated above, I conclude Applicant mitigated the security concerns arising under financial considerations, but not those arising under personal conduct.

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 F:	FOR APPLICANT
Subparagraphs 1.a through 1.r:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	Against Applicant
Subparagraphs 2.f and 2.g:	For Applicant
Subparagraphs 2.h through 2.k:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge