DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-12019
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

June 11, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was cited 19 times between November 2001 and April 2007 for driving while his license was revoked, and he continues to operate a motor vehicle without a valid operator's license. He was convicted in April 2001 at a general court martial for assault, but his culpability for a March 2006 misdemeanor larceny was not established. He owes more than $52,000 in delinquent debt, and disclosed no past due debts on his security clearance application. The criminal conduct, financial considerations, and personal conduct concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 20, 2006. On June 5, 2009, the Defense Office of Hearings and Appeals (DOHA) 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, that provided the basis for its preliminary decision to deny him a security clearance. 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 adjudicative guidelines (AG) effective within the Department of Defense as of September 1, 2006.

Applicant responded to the SOR on June 19, 2009, and requested a hearing. The case was originally assigned to a DOHA administrative judge on August 3, 2009. On October 5, 2009, the case was transferred to me because Applicant was on temporary duty in my jurisdiction. On November 9, 2009, I scheduled a hearing for December 9, 2009.

I convened the hearing as scheduled. Sixteen Government exhibits (Ex. 1-16) were entered into evidence, Exhibit 9 over Applicant's concerns about relevance. Applicant testified, as reflected in a transcript (Tr.) received on December 17, 2009.

Findings of Fact

The SOR alleged under Guideline J, Criminal Conduct, that Applicant was charged in September 2000 with domestic assault, dismissed with domestic counseling to be provided on post (SOR 1.a); that he was convicted at a general court martial in April 2001 of striking a superior officer, of assault, and of communicating a threat, and sentenced to six months confinement and a reduction in rank (SOR 1.b); and that he was charged in March 2006 for felony larceny, which was dismissed when the complainant failed to appear in court (SOR 1.c). Applicant was alleged under Guideline F, Financial Considerations, to owe eight delinquent debts totaling $53,425 (SOR 2.a-2.h). Under Guideline E, Personal Conduct, Applicant was alleged to have falsified his November 2001 e-QIP by not disclosing the April 2001 court-martial proceeding (SOR 3.a) or any delinquent debts (SOR 3.b), and to have been cited for several motor vehicle infractions between August 2001 and April 2007, including 18 times for driving while his license was suspended or revoked (SOR 3.c-3.v). Applicant denied the SOR allegations with the exception of SOR 1.b (court-martial conviction), 3.b (omission of delinquent debts), and 3.c (operating a motor vehicle without insurance in August 2001).

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

Applicant is a 31-year-old divorced father of two children, who works for a defense contractor on tactical communications systems platforms for new military vehicles. (Tr. 130.) He previously served on active duty in the United States military from July 1997 until July 2001. In January 1999, he married a member of the military. A son was born to the couple in December 1999. (Ex. 11.)

In September 2000, Applicant was arrested by the military police and charged with domestic assault on a female (then his spouse). They argued over the keys to the vehicle when he wanted to leave with their son, and he called the police. She complained to the police that he had struck her in the head and pushed her to the ground. (Tr. 46.) Applicant denies that he hit his spouse (Tr. 54.), although he was

charged in state court for domestic assault. (Ex. 1.) Pending his court appearance, he received domestic abuse counseling on base. (Tr. 54-55.) In November 2000, the charge was dismissed. (Ex. 2.)

By December 2000, Applicant and his spouse had separated, and a military mediator was involved to work out custody issues. After Applicant's spouse picked up their son on a day that he was supposed to have custody of their child, military social work services set up a meeting between Applicant and his spouse in December 2000. At the meeting, Applicant became upset with the discussion and with the lack of support from his unit. When told that he could not leave, he reacted "inappropriately." (Tr. 48-49.) Military records show he pushed his spouse into a file cabinet, struck a superior noncommissioned officer who attempted to stop the assault, and threw a chair against the wall, causing damage to government property. (Ex. 3.) Applicant asserts that he only bumped his spouse and the staff sergeant, and pushed the chair back against the wall in an effort to push past them to get to the door. (Tr. 49-50.) He was arrested for two counts of assault and one count of damage to government property. (Ex. 3.) In April 2001, he was sentenced in a general court martial to a reduction in rank (E-4 to E-1), and 180 days confinement for striking a superior noncommissioned officer, assault consummated by battery, and communicating a threat (two counts). (Ex. 4.) Applicant did not serve the full 180 days. He was given an honorable discharge in July 2001, and was recalled to the active reserve from June 2003 to August 2004. (Ex. 11, 13, 15.)

Between July 2001 and June 2006, Applicant held a succession of civilian jobs in the area, as a sales representative for a car dealer, as a loader at a retail distribution center, as a loss prevention officer, and then as a manager. (Ex. 11.) Applicant was cited on 17 different occasions for various motor vehicle infractions or offenses, including 16 times for driving with a revoked or suspended license[1] (SOR 3.d-3.s). He testified that

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[1]Section 20-28 of the pertinent state's general statutes provides as follows:

> Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.
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> The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.
> (a1) Driving Without Reclaiming License. - A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:
> (1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5 ; and
> (2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or
> b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5 ; or

it stemmed from another state suspending his right to operate a vehicle indefinitely for failure to answer a speeding charge filed against him at age 18.[2] (Tr. 120-22.) A guilty finding was entered only for operating without insurance in August 2001 (SOR 3.c). The other charges filed by civilian authorities were dismissed, several of them after Applicant had paid fines imposed by the court. (Ex. 14, 15, 16, Tr. 118.) On November 23, 2002, and again on June 29, 2003, Applicant was charged by military police with operating on post while his license was suspended. The available record does not reflect the disposition of charges filed against him, which included the criminal offenses of driving while license revoked or disqualified. (Ex. 14, 15.) In March 2006, he was charged with misdemeanor larceny when a female friend complained to the police that he had taken her cellular phone and refused to return it. (Ex. 6.) The charge was dismissed when she failed to appear in court. Applicant denies that he took her cell phone. (Tr. 50-51.)

In June 2006, Applicant began working as a common access card operator for a defense contractor on the military installation. (Ex. 11.) He was cited in August 2006, in September 2006, and again in April 2007, for driving while his license was revoked (SOR 3.t-3.v). As of December 2009, he still did not have a valid operator's license because he had about $2,300 in fines yet to pay, having paid about $6,000 in fines plus legal fees for three attorneys since 1998. (Tr. 127.)

Applicant and his spouse were divorced in August 2006. (Ex. 11.) Applicant took custody of their son. His ex-wife pursued custody through the court, and she and Applicant were awarded joint custody, although she became the primary custodial parent. Applicant and his ex-wife continue to have disputes over the custody of their son, but they have not risen to the level of police involvement. (Tr. 57-59.)

On November 20, 2006, Applicant completed his e-QIP, from which a Questionnaire for Sensitive Positions (Ex. 11) was prepared. He responded "No" to whether there had been any military disciplinary proceedings against him in the last seven years, to whether he was over 180 days delinquent on any debts in the last seven years, and to whether he was currently over 90 days delinquent on any debts. (Ex. 11.) Applicant was aware that he had delinquent debt in his name, but he did not have the information to provide the accurate responses he knew were required. (Tr. 71-74.) He

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> (3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein. In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

[2]Applicant testified that he bought a sports car out of high school and received a ticket just before he was scheduled to deploy overseas. After he returned, he did not think about the ticket, and the state suspended his license indefinitely for failure to appear in court. He was issued a driver's license in the state where he was living, and he continued to operate a vehicle on what he believed to be a valid operator's license until he had a car accident on the military installation. He learned that license was invalid because of the indefinite suspension in the other state, but he continued to operate a vehicle anyway because he had a job and had to maintain a household. (Tr. 122-23.)

had no idea when the debts became delinquent. (Tr. 76.) Applicant sought no guidance or assistance in how he should answer the financial questions. (Tr. 73.)

A check of Applicant's credit on December 14, 2006, revealed several accounts where balances had been charged off or placed for collection, or both. A credit union had charged off a $690 balance as of April 2006 (not alleged in SOR). In June 2001, a joint account for a computer bought by his then wife in August 2000, was placed for collection with a $1,443 past due balance (SOR 2.g). (Tr. 92.) Applicant also owed a $6,090 charged-off balance on an individual automobile loan taken out in September 1999 for $15,440 (SOR 2.d). The car was totaled in an accident and Applicant disputed any ongoing responsibility for the debt. (Tr. 83-84.) A joint automobile loan opened in May 2000 for $13,503 was in collection with a $7,807 past due balance (SOR 2.h). Applicant's ex-wife kept the car, and he later learned that it had been repossessed. (Tr. 95.) He was left owing a deficiency balance that he did not pay. (Tr. 96-97.) By January 2005, Applicant had voluntarily surrendered a mobile home that had been damaged in a 2002 storm. (Tr. 86.) He owed $19,996 on a $27,947 mortgage loan that he had taken out for the home in March 2000 (SOR 2.e). His insurance did not pay the claim, and he had to choose between paying the mortgage for his damaged mobile home and the rent on the townhouse that he and his family lived in after the storm. (Tr. 88-90.) As of December 2006, wireless telephone service debts of $328 and $144 were in collection (not alleged in SOR), but he took care of those debts (Tr. 104.). (Ex. 10.)

On January 23, 2007, Applicant was interviewed by a government investigator about his previously undisclosed arrest in December 2000. He indicated that his ex-wife had picked up their son from daycare on a day that he was scheduled to have their son. Angry with her, he went to her place of duty where they argued. Reportedly in the process of getting his son and the car seat away from his spouse, he "accidentally hit" a staff sergeant in the face. He maintained that the incident was reported to his unit commander a week later, and that the investigating officer had recommended a special court martial for the offenses.[3] As for his failure to list the offense on his e-QIP, Applicant maintained that he had disclosed the court-martial information when he initially filled out the form, and that he was told some days later to complete it again for some unknown reason. He did not have the court-martial information available so he responded negatively to the question concerning any court martial or other military proceedings. (Ex. 13.)

On May 29, 2008, Applicant was interviewed by a government investigator about the March 2006 misdemeanor larceny charge. He explained that a female friend accused him of stealing her cellular telephone after a party at his house. He denied taking the cellular phone, and indicated that the charge was dismissed when she failed to appear. Applicant explained that he had not disclosed the charge on his e-QIP because he thought he was not required to list dismissed charges. (Ex. 5.)

[3]The military police report (Ex. 3) shows that Applicant was more aggressive. He grabbed his then spouse and threw or pushed her into a file cabinet, he struck the superior officer in the face, and he threw a chair against the wall and slammed a door. (Ex. 3). The confinement order indicates that he was convicted at a general court martial. (Ex. 4.)

Subsequent checks of Applicant's credit on September 9, 2007 (Ex. 9.), October 10, 2008 (Ex. 8.), and May 11, 2009 (Ex. 7.), showed little progress toward resolving his delinquent debt. Instead, recent credit checks showed new past due debt in collection of $104 since June 2007 (SOR 2.f), $481 since December 2006 (SOR 2.b), and $504 for a cable box (Tr. 97.) since September 2008 (SOR 2.a). (Ex. 7, 8, 9.) As of April 2009, he also owed about $17,000 in student loan debt that was in default (SOR 2.c). (Ex. 7.)

As of December 2009, Applicant was paying $216 per month toward his student loan debt. The creditor started garnishing his wages in April or May 2009 to collect the debt. (Tr. 99.) He has been paying $51 or $59 per month on another student loan for the past year. He had been behind on his payments on that loan. Applicant is unaware of the current balance of that student loan. (Tr. 101-02.) Applicant intends to resolve his debts, excluding the student loans and the vehicle debt in SOR 2.d, through debt consolidation. (Tr. 94, 116.) In late summer or early fall 2009, Applicant gave a debt consolidation firm a power of attorney to obtain financial information about his accounts. (Tr. 94.) He expects that reducing the amount spent on restaurant meals and other lifestyle changes will give him the $230 he needs per month to pay the debt consolidation company. (Tr. 116.)

Applicant's annual take-home income after tax is about $36,000. He pays $416 per month in child support. He had been delinquent in his child support payments in the past but was current as of December 2009. (Tr. 106-07.) He earns enough to pay his current bills, but has had to juggle payments on some debts when he has had unexpected expenditures, such as for vehicle tires. (Tr. 108.) Around September 2009, Applicant spent $800 for tires for a friend's truck that he was driving, even though he did not have a valid operator's license. Applicant gave no reason for why he was driving without a license.[4] (Tr. 137.) His employer is aware that he does not have a valid license, so he is not allowed to drive the company's vehicles. (Tr. 130-31.) Applicant pays $109 per month for a storage unit and was two months behind in his payments as of December 2009. (Tr. 112.) Applicant opened one new checking account in the last couple of years, on which he has regularly had an $800 balance to hold hotel rooms for work. (Tr. 114-15.)

Applicant has on average about $300 in his checking account. He has a savings account that may have some funds on deposit one day and none the next. (Tr. 109.) He pays $200 per month for wireless phone services (cellular phone lines for himself and his girlfriend, and mobile Internet). Applicant lives with his current girlfriend and their child. Applicant's girlfriend does not work outside the home. (Tr. 111.)

[4]When questioned by Department Counsel about whether he was still driving, Applicant responded, "No. I get rides as much as I can. We have company vehicles, I ride with them." Asked how he got to court for his hearing, Applicant stated, " I rode with someone." (Tr. 123.) But in response to my inquiries about the purchase of tires in September or October 2009 for $800, Applicant admitted he bought them for a friend's truck because he primarily drove the vehicle. (Tr. 136.)

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 overarching 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 when seeking 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 the 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

Criminal Conduct

The security concern for criminal conduct is set out in Guideline J, 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.

Concerning the September 2000 domestic assault charge in SOR 1.a, dismissed charges can be considered in evaluating an applicant's security suitability under AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." Applicant does not deny a domestic incident over the car keys, so AG ¶ 31(c) applies, even if I accept his claim that he did not strike his spouse with his closed hand as was reflected in the police report. AG ¶ 31(a), "a single serious crime or multiple lesser offenses," applies because of the December 2000 assault of his spouse and of the military superior who attempted to stop the assault (SOR 1.b). His conviction and sentence of imprisonment at a general court martial in April 2001 substantiate the assaults described in the police report of the incident. But the more recent charge of misdemeanor larceny in March 2006 is not corroborated in the available record. Applicant denies he took the cellular phone and the complainant failed to appear in court.

With the passage of almost nine years since the December 2000 assaults, Applicant would appear to satisfy mitigating condition AG ¶ 32(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." The absence of any recurrence is evidence of reform under AG ¶ 32(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 cannot fully apply either AG ¶ 32(a) or ¶ 32(d) in light of his deliberate misrepresentations on his November 2006 e-QIP (*see* Guideline E), which is felonious conduct under 18 U.S.C. § 1001.[5] Furthermore, his

[5]Title 18, Section 1001 of the United States Code provides as follows:

> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B,110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years. (b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding. (c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to - (1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or (2) any investigation or review, conducted pursuant to the authority of any

continued disregard of pertinent state law by driving without a valid license is punishable as a misdemeanor.

Financial Considerations

The security concern for finances 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.

Applicant defaulted on about $17,000 in student loan debt (SOR 2.c). He stopped paying on the mortgage for a mobile home after it was damaged in a storm. Although the mobile home was repossessed, the creditor is pursuing Applicant for $19,996 of the mortgage balance (SOR 2.e). Applicant told the lender that he was not going to pay the debt because he felt the insurance should have covered it, although he recognizes it as a valid debt. (Tr. 91.) Similarly, he stopped paying on an automobile loan after the car was totaled in an accident since the insurance company was to have sent the lender a check (SOR 2.d). The lender pursued him for a debt of $6,090 for the car, which he does not intend to pay, but it remains on his credit record as a debt in collection. He failed to pay the $1,443 balance for a computer that his then spouse purchased on his name (SOR 2.g). He is also being held responsible for a $504 cable television debt for a cable box that was not returned (SOR 2.a), and for a $7,807 deficiency balance on a loan for a car used by his ex-wife (SOR 2.h). He acknowledges that the car was in his name. Applicant does not recognize collection debts of $481 and $104 (SOR 2.b and 2.f) that are on his credit record. Excluding those two debts, his delinquent debt totaled about $52,840. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Concerning the potentially mitigating conditions, AG ¶ 20(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" cannot apply in light of the Applicant's lack of demonstrated attempts to resolve the debts. The first prong of AG ¶ 20(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)," would be pertinent in that weather caused such damage to the mobile home that he and his family had to move to rental premises. But it also appears that after insurance would not cover the cost of repairs, he simply walked away from the property. Even if I found it was reasonable for him to do so under the

committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

circumstances, he has no valid explanation for defaulting on his student loans, or for failing to timely address the computer or cable television debts.

AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is pertinent to the extent that he worked with one of his student loan lenders when he was behind. The majority of his student loan debt is being repaid at $216 per month since about April or May 2009, but repayment in response to garnishment action is not entitled to the same weight in mitigation had he contacted the lender and made repayment arrangements on his own. About three months before his hearing, he initiated contacts with a debt consolidation firm, which would qualify as a good-faith effort, albeit belated, to resolve his debts. Yet, there has been no recent follow up on his part that would demonstrate a credible willingness to resolve his debts in the near future.

Moreover, it would be premature to apply AG ¶ 20(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." Having paid $6,000 in fines for his driving offenses, with about $2,300 yet to pay, Applicant does not have funds available to put toward his delinquent debts. He indicates that he should be able to reduce discretionary spending on restaurant meals, but he has yet to accumulate any savings.

Applicant disputes the car debt in SOR 2.d, but it remained on his credit record as a debt in collection as of April 2009. (Ex. 7.) He presented no documentation about the accident or the extent of his insurance coverage that could lead me to conclude that the debt is not valid. AG ¶ 20(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," is not satisfied. The financial concerns have not been sufficiently mitigated.

Personal Conduct

The security concern for personal conduct is set out in Guideline E, 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 court-martial convictions or his financial delinquencies when he completed his e-QIP in November 2006. He denies any intentional falsification, claiming that he had listed the court martial on a previous iteration of the form that was returned to him for corrections or additions, and that while he knew he owed delinquent debt, he lacked sufficient information about the accounts to report accurately about the debts. Applicant understood that he was required to be

truthful and complete in his responses on the e-QIP, and that his responses could affect whether or not he obtained a security clearance. (Tr. 73.) Had Applicant acted reasonably and in good faith, he would have responded affirmatively to the court-martial and financial delinquency questions, and added that he did not know the details, or in the alternative left blank the sections for additional detail. Furthermore, Applicant's overall credibility is suspect in light of his inconsistent testimony about whether he was operating a motor vehicle without a license. Applicant denied to Department Counsel that he was driving, and he asserted that he relied on others for rides. But when questioned about his purchase of tires for $800 in September or October 2009, Applicant admitted he bought the tires for a truck that he was driving without a valid license. AG ¶ 16(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," applies because of his knowing, false statements on his e-QIP.

Applicant's record of 19 separate citations for driving while his license was revoked between November 2001 and April 2007 (SOR 3.d–3.v) reflects an ongoing disrespect for the law that could have been alleged under Guideline J. Under Guideline E, this pattern of violations implicates AG ¶ 16(d):

> Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:
>
> (3) a pattern of dishonesty or rule violations.

None of the mitigating conditions apply, given the extent, seriousness, and recency of the Guideline E concerns. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," does not mitigate his e-QIP falsifications. During his interview of January 23, 2007, about the previously undisclosed arrest for assault in December 2000 leading to the general court martial, Applicant asserted that the incident occurred at his spouse's unit where he went to take custody of their son from her. While he may not have recalled that the incident took place during a meeting set up by military social work services personnel, he was not completely forthright about his misconduct on that occasion. He indicated that he got into a verbal argument with his spouse, took their son from her because it was his day to have custody, and in the process of attempting to get the car seat away from her, he accidentally hit a staff sergeant in the face with his elbow. Even assuming that his misconduct was less serious than it appears in the police report, I cannot apply AG ¶ 17(a) where Applicant failed to candidly disclose in January 2007 that he had assaulted his spouse.

Despite the passage of three years since his e-QIP falsifications and of two-plus years since his last citation for driving while license revoked, I cannot apply either 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," or AG ¶ 17(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." Reform of the personal conduct concerns is undermined by his ongoing efforts to downplay the seriousness of his past assaultive behavior, as evidenced by his claim at his hearing that he had "bumped" the staff sergeant in December 2000, by his continued operation of a motor vehicle without a license, and by his false testimony when asked by Department Counsel whether he was still driving.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant displayed poor judgment in several different aspects over the last decade. While there has been no recurrence of assaultive behavior since the breakup of his marriage, he concealed his conviction at a general court martial when he applied for a security clearance. He also denied any delinquent debts when he knew his mobile home had been repossessed around October 2004 for failure to pay the mortgage, and he was being held responsible for a $19,996 balance. He continues to operate a motor vehicle despite several citations and substantial fines for driving without a license. Fines and attorney fees for the driving violations have placed added stress on his finances. While his defaulted student loans are now being addressed as a result of a wage garnishment, and he has some stability in his family life and employment, concerns persist about his judgment, reliability, and trustworthiness.

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:	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:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Paragraph 3, Guideline E:	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
Subparagraph 3.i:	Against Applicant
Subparagraph 3.j:	Against Applicant
Subparagraph 3.k:	Against Applicant
Subparagraph 3.l:	Against Applicant
Subparagraph 3.m:	Against Applicant
Subparagraph 3.n:	Against Applicant
Subparagraph 3.o:	Against Applicant
Subparagraph 3.p:	Against Applicant
Subparagraph 3.q:	Against Applicant
Subparagraph 3.r:	Against Applicant
Subparagraph 3.s:	Against Applicant
Subparagraph 3.t:	Against Applicant
Subparagraph 3.u:	Against Applicant
Subparagraph 3.v:	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.

Elizabeth M. Matchinski
Administrative Judge