



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-14599
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

November 13, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), J (Criminal Conduct), and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on November 9, 2006. On May 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines F, J, and E. 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 an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 17, 2008, and the case was assigned to me on September 22, 2008. DOHA issued a notice of hearing on September 29, 2008, scheduling the hearing for October 20, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 12 were admitted in evidence without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I granted Applicant's request to keep the record open until October 27, 2008, to submit additional documentary evidence. He timely submitted AX G, which was admitted without objection. Department Counsel's comments regarding AX G are attached to the record as Hearing Exhibit I. The record closed on October 27, 2008. DOHA received the transcript (Tr.) on October 28, 2008.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations in SOR ¶¶ 1.a-1.z under Guideline F, admitted the allegations in SOR ¶¶ 2.b-2,e under Guideline J, and denied the allegations of falsifying his security clearance application alleged in SOR ¶¶ 3.a and 3.b under Guideline E. His admissions are incorporated in my findings of fact.

Applicant is a 27-year-old test electrician employed by a defense contractor. He has worked for his current employer since April 2006. He served on active duty in the U.S. Navy from March 2000 to October 2002, and he received a security clearance while in the Navy.

While in the Navy, Applicant became involved with a woman who wanted to rent an off-base apartment. Applicant testified he did not like the apartment and refused to rent it. He believes the woman forged his name on a lease, lived in the apartment for a while, failed to pay the rent, and then left after causing significant damage. The unpaid judgments alleged in SOR ¶¶ 1.s through 1.v resulted (Tr. 52-54). ). Applicant testified and presented evidence that the unpaid judgments were satisfied by garnishments of his pay (AX B through F; Tr. 79-80).

While still in the Navy, Applicant subsequently met another woman and they were married. While deployed, he learned that his wife was having an affair, and his commanding officer started receiving letters indicating that his wife was not paying the household bills (Tr. 69-70). Applicant received nonjudicial punishment at a captain's mast in October 2002, for violating an order by riding in a vehicle while ashore in a foreign country. He testified his disobedience of an order was the catalyst for his discharge before completing his enlistment. He testified his commander told him he would not "hammer" him because of all the things he had done, but he did not specify what "all the things" were. Shortly after his nonjudicial punishment, he received a general discharge under honorable conditions (Tr. 71).

Applicant was unemployed after his discharge until March 2003. He worked temporary jobs from March to June 2003, was unemployed from June to September 2003, and was employed at various entry-level jobs from September 2003 until April 2006, when he began his current job.

Some of the debts alleged in the SOR were incurred during Applicant's marriage, e.g., the delinquent debts for furniture alleged in SOR ¶¶ 1.k and 1.l (Tr. 51). After he and his wife jointly purchased and financed a car, his wife left him and took the car. He told the dealership to repossess the car because he did not know where it was. The delinquent debt of \$9,163 alleged in SOR ¶ 1.m resulted from the repossession (Tr. 86-88).

In September 2002, Applicant was involved in a domestic disturbance with his wife (GX 7). This incident arose when his wife brought her boyfriend to his house (GX 5 at 3). He testified he grabbed her wrist and pushed her onto a sofa when she attacked him with a knife (Tr. 59-61). The record does not reflect that Applicant was arrested or charged. He testified he was told by the police to leave the house and he complied. He did not believe he was arrested or charged (Tr. 60-61). He divorced his wife in October 2006 (Tr. 76).

At some time after September 2002, Applicant became involved in a relationship with the woman who is now his fiancée. They have two children, ages 3 and two months, and his fiancée has two children from a previous relationship, ages 7 and 6 (Tr. 77). In September 2004, Applicant was charged with assault and battery after a domestic dispute with his fiancée. The case was disposed of by nolle prosequi on the prosecution's motion when his fiancée failed to appear in court (GX 9; Tr. 103).

In May 2006, Applicant was again charged with assault and battery after a dispute with his fiancée. This charge arose from a domestic argument when Applicant grabbed his fiancée's arm and shook her to stop her from annoying him. The court found the facts sufficient to find guilt, but deferred adjudication and placed Applicant on probation (GX 10). His probation included a requirement to attend 12 weeks of anger management classes. The charges were dismissed in July 2007 (GX 5 at 9).

In July 2006, Applicant was charged with assault and battery on a 16-year-old boy. This incident occurred when Applicant's 16-year-old neighbor, while intoxicated, came to his door at 3:00 a.m. and confronted him about a dispute he had with Applicant's fiancée. Applicant testified the boy attacked him and a scuffle ensued. He did not know the boy's age until he was charged (GX 5 at 9-10). In January 2007, the court found the evidence sufficient to find guilt but continued the case without entering a verdict, conditioned on Applicant's good behavior. In July 2007, the charges were dismissed (GX 11).

In September 2006, Applicant was charged with failure to appear in court. An arrest warrant was issued on September 21, 2006. Applicant testified he turned himself in when he learned about the warrant (Tr. 112). In January 2007, he pleaded not guilty,

but he was found guilty of contempt of court and fined \$25 (GX 12). He testified his failure to appear was the court clerk's error because he was summoned to appear in two courtrooms at the same time (Tr. 62-63). He also testified he paid the fine "just to get it out of the way" even though he did not believe he was at fault (Tr. 114).

In January 2007, Applicant was again arrested for assault and battery on his fiancée. He testified this incident occurred when his fiancée threatened him with a knife and he forcefully took it from her (Tr. 115). The charges were disposed of by nolle prosequi (Tr. 116). This incident is not alleged in the SOR, and it occurred after he submitted his security clearance application.

Applicant testified that he does not anticipate any more domestic violence even though the offenses in September 2004, May 2006, and January 2007 involved the woman he intends to marry in November 2008. He testified they are older and have more responsibility, especially after the birth of their daughter two months ago, and they don't talk to each other the way they used to (Tr. 134).

When Applicant submitted his security clearance application in November 2006, he answered "no" to question 23c, asking if there were currently any charges pending against him for any criminal offense. He did not disclose his two arrests in May 2006 or the charge of failing to appear in court, all of which were pending. He also answered "no" to question 23f, asking if he had been arrested for, charged with, or convicted of any offenses not listed elsewhere on his application, and he did not disclose any of his arrests and charges. In his answer to the SOR, Applicant stated he did not remember being arrested in September 2002. He also stated his probation officers told him he was not required to disclose his arrests because they would not be reflected on his record, and that he attempted to contact DOHA when he realized he had answered some questions incorrectly.

When Applicant was interviewed by a security investigator in April 2007, he disclosed his arrests in May and July 2006, but not his arrests in September 2004 and September 2006. He told the investigator he had not committed any other related offenses (GX 5 at 10). In response to DOHA interrogatories on February 19, 2008, Applicant verified the accuracy of the investigator's record of their interview and provided additional information about his arrests in September 2004, May 2006, July 2006, and September 2006 (GX 5 at 2-3).

The SOR alleges 26 delinquent debts totaling more than \$30,000. Applicant admitted all the debts, and his admissions are corroborated by his credit reports. Ten of the debts are medical bills totaling about \$7,000. The medical bills were incurred after Applicant left the Navy and before he had medical insurance.

Applicant applied for a debt consolidation loan of \$22,000 in June 2006, but his application was rejected (GX 4 at 15). In September 2008, he retained an attorney to "audit and verify the status of his credit reports," because he believed some of the accounts were inaccurate, invalid, or unverifiable (AX A). In his post-hearing submission

Applicant submitted evidence he had paid the judgment for unpaid rent alleged in SOR ¶ 1.q (AX G).

In November 2007, Applicant submitted a personal financial statement in response to DOHA interrogatories, reflecting net monthly income of \$1,226.60, expenses of \$1,617.62, and a monthly shortfall of \$281.02 (GX 4 at 5). His weekly pay stubs for the period from September 14 to October 28, 2008 reflect that his net weekly pay varied between \$456.70 and \$989.80, depending on the amount of overtime he worked and the amounts deducted from his pay because of garnishments (AX B through F). He frequently works 12-hour days to generate overtime pay. He walks to work because he does not own a car (Tr. 97). He has no active credit cards (Tr. 100).

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The SOR alleges 26 delinquent debts, including six unpaid judgments totaling more than \$30,000. Applicant admitted all the delinquent debts, but he presented evidence that the judgments in SOR ¶¶ 1.q through 1.v had been satisfied. The concern under this guideline is set out in AG ¶ 18 as follows:

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.

Several disqualifying conditions under this guideline are relevant. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” Applicant’s financial history raises these three disqualifying conditions.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An

applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was “so long ago,” or “so infrequent,” or “occurred under such circumstances that it is unlikely to recur.” If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct “does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”

The first two prongs of AG ¶ 20(a) are not established because Applicant’s delinquent debts are numerous and many are not yet resolved. Some of the debts were incurred under circumstances unlikely to recur, such as the unpaid judgments for the apartment rented by Applicant’s girlfriend (SOR ¶¶ 1.r-1.v), the delinquent car loan caused when Applicant’s wife left him and took their new car but did not make the payments (SOR ¶ 1.m), and the uninsured medical expenses incurred before he had medical insurance (SOR ¶¶ 1.a, 1.d-1.g, 1.n, 1.w-1.z). The final prong (“does not cast doubt”), however, is not established because of the number and dollar amounts of Applicant’s remaining debts make him vulnerable to coercion, duress, or exploitation. I conclude AG ¶ 20(a) is not established.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, *i.e.*, conditions beyond the persons’s control and responsible conduct, must be established. Applicant’s premature discharge from the Navy and subsequent period of unemployment were not due to conditions beyond his control, because they were caused by his own behavior. His subsequent periods of unemployment and underemployment, his divorce, the car repossession precipitated by his wife’s misconduct, the fraudulent lease executed by a former girlfriend, and the uninsured medical expenses were beyond his control. He has resolved some of his debts, but is constrained by his limited income. He works 12-hour days to generate overtime pay. He appears to live frugally. He has done all that can be reasonably expected on his limited income. I conclude AG ¶ 20(b) is established for the debts alleged in SOR ¶¶ 1.a, 1.d-1.g, 1.m, 1.n, and 1.r-1.z.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(c). This condition is not established because Applicant has not sought or received credit

counseling and his problem is not being resolved. He has retained a lawyer, but only for the limited purpose of challenging entries on his credit report.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). The evidence reflects that the unpaid judgment for back rent (SOR ¶ 1.q) was entered against Applicant in January 2007 and he paid it in full in February 2007. Although Applicant testified that his pay was garnished to pay the unpaid judgments in SOR ¶¶ 1.s-1.v, it appears that the unpaid judgment in SOR ¶ 1.r also was covered by the same garnishment, because it involves the same creditor, a similar amount, and the same judgment date. Applicant’s pay stubs reflect that the last deduction from his pay pursuant to the garnishment was on September 14, 2008, after \$3,451 had been collected. I conclude AG ¶ 20(d) is established for the unpaid judgments alleged in SOR ¶¶ 1.q-1.v, but not for the other unpaid debts.

Security concerns under this guideline also can be mitigating by showing “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.” AG ¶ 20(e). Although Applicant has hired a lawyer to “audit and verify” his adverse credit report entries, this mitigating condition is not established because he has not identified which credit report entries are questionable or the basis for challenging them.

### **Guideline J, Criminal Conduct**

The SOR alleges three arrests for domestic violence, one arrest for assault and battery on a 16-year-old boy, and a charge of failure to appear in court. The evidence presented in support of SOR ¶ 2.a, the alleged arrest in September 2002, fails to establish that an arrest occurred, and the evidence of the underlying conduct fails to establish criminal conduct by Applicant. I resolve SOR ¶ 2.a in Applicant’s favor. Although Applicant testified he was wrongly convicted of contempt of court (SOR ¶ 2.e), he pleaded not guilty, was convicted, and paid his fine. I conclude there is substantial evidence to support the allegations in SOR ¶¶ 2.b-2.e.

The concern raised by criminal conduct is that it “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.” AG ¶ 30. Conditions that could raise a security concern and may be disqualifying include “a single serious crime or multiple lesser offenses” and “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.” AG ¶¶ 31(a) and (c). The evidence is sufficient to raise AG 31(a) and (c).



Applicant's arrest for assault and battery charges in January 2007 was not alleged in the SOR. However, conduct not alleged in the SOR may be considered: "(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3." ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered Applicant's arrest in January 2007 for these limited purposes.

Security concerns under this guideline may be mitigated by evidence that "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." AG ¶ 32(a). Applicant's latest incident of domestic violence occurred in January 2007. Like all his incidents of domestic violence, it arose from an argument that became physical. Although he testified he and his fiancée have matured and changed their way of communicating, it is too soon to tell whether their physical altercations will recur. I conclude this mitigating condition is not established.

Security concerns based on criminal conduct also may be mitigated if "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." AG ¶ 32(d). As noted above, it is too soon to determine whether he has changed his behavior with respect to domestic violence. The evidence is insufficient to establish "successful rehabilitation."

### **Guideline E, Personal Conduct**

The SOR alleges Applicant falsified his security clearance application by not disclosing that his charge of failure to appear in court was pending (SOR ¶ 3.a), and failing to disclose his arrests in 2002, 2004, and 2006 (SOR ¶ 3.b). It also alleges Applicant was discharged from the Navy for a "pattern of misconduct" (SOR ¶ 3.c). No documentary evidence of his discharge or the basis for it was presented by Department Counsel. The record does not reflect whether Applicant was performing his duties poorly because he was distracted and depressed by his marital problems, or whether he manifested his mental distress by other misconduct in addition to the one incident that resulted in a captain's mast. I conclude the allegation of a "pattern of misconduct" is not supported by substantial evidence, and I resolve SOR ¶ 3.c in Applicant's favor.

The concern under this guideline is set out in AG ¶ 15 as follows:

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 relevant disqualifying condition pertaining to SOR ¶¶ 3.a and 3.b is “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.” AG ¶ 16(a).

Applicant testified he did not disclose the September 2002 arrest because he did not believe he was arrested. He testified did not disclose the arrests in September 2004, May 2006, September 2006 because they had been resolved and he believed, based on advice from a probation officer, that he was not required to disclose them. He did not explain his failure to disclose that the charge of failing to appear in court was pending.

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not 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 of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). Applicant has given no plausible explanation for not disclosing his pending charges for failure to appear in court in his response to question 23c. His explanation for not disclosing the September 2002 arrest in his response to 23f is plausible, credible, and supported by the record. His explanation for not disclosing his domestic violence arrests in response to question 23f is plausible and credible, but the plain language of question 23f required him to disclose his arrest for failure to appear in response to question 23f if he did not disclose it in response to question 23a. His failure to disclose the charge of failure to appear in response to either question 23a or 23f raises AG ¶ 16(a).

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” AG ¶ 17(a). Security concerns based on false or misleading answers also may be mitigated by showing that “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.” This mitigating condition is not established unless, “[u]pon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.” AG ¶ 17(b).

In his response to the SOR, Applicant stated he tried to contact the security specialist who signed the SOR when he realized he had answered question 23f incorrectly. His attempts to contact the security specialist are not corroborated by any

other evidence, but his statement was not refuted by any evidence offered by Department Counsel at the hearing. He also asserted he received bad advice from a probation officer, but he did not assert any bad advice regarding his failure to disclose his pending charge for failing to appear. When he was interviewed by a security investigator in April 2007, he disclosed his arrests in May and July 2006, but not his arrests in September 2004 and September 2006, and he told the investigator he had not committed any other related offenses. I conclude AG ¶¶ 17(a) and (b) are not established, because Applicant did not fully disclose his arrest record in his security interview or in response to DOHA interrogatories.

Security concerns based on personal conduct also can be mitigated if “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.” AG ¶ 17(c). Applicant's omissions from his security clearance application were not minor, and they were recent. He repeated some of the omissions in his security interview in April 2007. His omissions were not the product of unique circumstances, and they cast doubt on his reliability, trustworthiness, and good judgment. I conclude AG ¶ 17(c) is not established.

The government's failure to prove that Applicant's discharge from the Navy was based on a “pattern of misconduct” does not end the inquiry under Guideline E. The disqualifying condition in AG ¶ 17(c) is raised where there is “credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.” Applicant's difficulties in the Navy, his financial situation, his record of domestic violence, and his lack of candor during the security clearance process, when considered as a whole, raise this disqualifying condition. None of the enumerated mitigating conditions, including those discussed above, are established.

### **Whole Person Concept**

Under the whole person concept, an 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. An administrative judge should consider 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines F, J, and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a sincere young man who appears to have finally found a rewarding job. His personal life has been tumultuous. He is working hard to overcome his past, but he has limited income, and he has not yet demonstrated that his record of domestic violence is behind him. His lack of candor on his security clearance application and during the ensuing security investigation raises questions about his reliability and trustworthiness. After weighing the disqualifying and mitigating conditions under Guidelines F, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations, criminal conduct, and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.p:	Against Applicant
Subparagraphs 1.q-1.v:	For Applicant
Subparagraphs 1.w-1.z:	Against Applicant

Paragraph 2, Guideline J (Criminal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.e:	Against Applicant

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

Subparagraphs 3.a-3.b:	Against Applicant
Subparagraph 3.c:	For Applicant

## **Conclusion**

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

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LeRoy F. Foreman  
Administrative Judge