



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-17387
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

January 30, 2009

Decision

WESLEY, Roger C., Administrative Judge:

Statement of Case

On August 5, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on September 19, 2008 and requested a hearing. The case was assigned to me on October 21, 2008, and was scheduled for hearing on December 16, 2008. A hearing was held as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of 18 exhibits; Applicant relied on one witness (himself) and three exhibits. The transcript (R.T.) was received on December 24, 2008. Based

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

Summary of Pleadings

Under Guideline J, Applicant is alleged to have been arrested for 11 separate offenses between October 1995 and May 2007. Under Guideline F, Applicant is alleged to have accumulated 17 delinquent debts exceeding \$25,000.00. And under Guideline E, Applicant is alleged to have falsified his security clearance application (e-QIP) of April 2007 by understating his alcohol/drug-related arrests.

For his answer to the SOR, Applicant admitted his criminal charges and accumulated debts, but denied falsifying his security clearance application. He claimed to have avoided recurring episodes of anger, domestic violence and alcoholism with the aid of pastoral and professional assistance. He claimed his covered offenses in the SOR were attributable to mistakes due to a lack of maturity and responsibility. He claimed to have taken positive steps with a debt consolidation company to eliminate his listed debts.

Findings of Fact

Applicant is a 35-year-old cable technician for a defense contractor who seeks to retain his security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant is a high-school graduate. He has been married three times, and he divorced each of his spouses. He has two children with his current fiancé, and they reside with him and receive his financial support (R.T., at 35).

Applicant enlisted in the Marine Corps in August 1993. He did not adjust well to military life and was discharged for other than honorable reasons in August 1993 (see ex. 1; R.T., at 36). He was introduced to alcohol at the age of 16. For most of his adult life, beer has been his drink of choice. Although, he did sometimes turn to hard liquor during his years of spousal turmoil with his last wife.

Applicant's arrest history

Between October 1995 and May 2007 Applicant was arrested on 11 separate occasions for assorted alcohol and drug-related offenses, domestic violence incidents, soliciting for prostitution, and traffic-related offenses. He admits each of these listed offenses and attributes most of his arrests over the past two years to alcohol abuse, anger problems, and a rough childhood (R.T., at 41-43, 59). Four of his covered arrests were alcohol-related (see exs. 13 through 17).

Domestic issues with his last wife adversely affected his job performance with his last employer. Arguments with his wife caused him to miss a lot of work with this employer and directly contributed to his termination from another employer in June 2006 (see ex. 3).

Applicant's most recent arrest occurred in May 2007 and was for possession of marijuana, driving on a suspended license for a prior Dul conviction, no headlamps, and no seatbelt (see exs. 3, 14 and 15; R.T., at 38-40). He was found guilty of marijuana possession and driving on a suspended license in July 2007, and was sentenced to 45 days in jail (suspended) on the following conditions: pay a fine of \$1,935.00, complete a multiple offender state counseling program, abstain from drinking while his license suspension remained in effect, and abstain from drinking for three years and attend 20 Alcoholics Anonymous (AA) meetings per month (see ex. 15; R.T., at 39-40).

Applicant has since completed most of his court-ordered conditions and still attends AA meetings every two weeks (R.T., at 40). His court-ordered program did not include random testing for drugs and alcohol. The only time he has ever been tested for drugs is at work, and in that test, he tested negative for any illegal substances (R.T., at 53-54). His court-imposed abstinence has more than a year to run.

Before his May 2007 arrest, Applicant was arrested in December 2006 and charged with being an unlicensed driver (no alcohol or drugs cited). Prior to being cited for this traffic-related offense, he was arrested in October 2006 for Dul. Preceding his October 2006 Dul arrest, Applicant consumed five beers and was pulled over by police while driving home from a nightclub gathering. When administered a Breathalyzer, Applicant reported a .14 per cent blood-alcoholic content (BAC) (see exs. 3 and 14).

Applicant has made progress in controlling his emotions and avoiding alcohol through spiritual healing and personal acceptance of responsibility (R.T., at 44-46). He was introduced to alcohol at the age of 16 (beer). For most of his adult life, beer has remained his drink of choice. Although, he did turn to hard liquor during his years of domestic quarreling and turmoil (R.T., at 43).

Since December 2006, Applicant has carefully avoided alcohol and illegal drugs of any kind (see ex. C; R.T., at 49-50). He has regularly attended AA meetings and intends to continue to attend these meetings (R.T., at 40, 46). He works with AA's 12-step program and has completed the step that asks for help (R.T., at 47-49). He is helped in the maintenance of his sobriety by his own confessions and those of his fellow AA members (R.T., at 47). He has an AA sponsor, who is his pastor (R.T., at 49). Applicant has no AA chips to commemorate his sobriety at present, but assures he is eligible to receive his one-year chip, and has no intention to return to alcohol (R.T., at 45, 49-50). Without corroborative support for his assurances, they cannot be afforded the full weight that Applicant seeks. In the meantime, he remains under court order to abstain from alcohol, and provides no progress reports or updates from his counselors or probation officers.

Applicant's finances

Applicant accumulated 17 delinquent debts (exceeding \$25,000.00) between 2000 and 2008 (see exs. 4 through 7 and 18). Creditor 1.m represents the largest listed debt. Opened in 2001, the account was charged off for non-payment in 2003 (see ex. 7). Applicant assures he has contacted a debt consolidation service and bankruptcy consultant in 2008 to address his debts (R.T., at 79-80, 84-85). Applicant provides no documentation, though, of any communications or start-up fee payments with a debt consolidation service or bankruptcy consultant. Without some documentation, his claims cannot be fully assessed or validated (see ex. C). He provides no documentation either as to how he intends to resolve his debts.

While Applicant continues to consider petitioning for Chapter 13 bankruptcy relief, to date he has taken no action. He is concerned it could hurt his credit, and will initiate bankruptcy only as a last resort (see ex. 2; R.T., at 82-85). He has not taken any tangible steps either to obtain financial counseling or address his creditors individually. (R.T., at 83-84). His listed debts remain outstanding without any tangible attention devoted to resolving them. He has no savings or net monthly remainder to allot to his individual creditors and no visible means of paying his listed creditors (R.T., at 86-87). Applicant is committed first to taking care of his family with his available resources (R.T., at 87).

Applicant's e-QIP omissions

Asked to complete an e-QIP in April 2007, Applicant omitted his alcohol-related arrests of October 2006 and February 1999 when responding to question 23d. He attributes his omission of his 1999 arrest to memory lapse (see ex. C; R.T., at 110-11). Because the charges arising out of his 2006 Dul arrest had not yet resulted in any conviction, he asked his facility security officer (FSO) at the time for advice on how to address this arrest in his e-QIP (R.T., at 105-07). She passed away before she could get back to Applicant with an answer (R.T., at 107). Without professional advice to guide him, Applicant interpreted the question on his own and omitted his October 2006 arrest for the lack of a conviction at the time he executed his e-QIP in April 2007 (R.T., at 107-08).

In a follow-up interview with an investigator from the Office of Personnel Management (OPM) in August 2007, the investigator reviewed Applicant's arrests with him. Before she could ask him any questions about his October 2006 Dul arrest, he told her of the arrest and the pending charges against him (R.T., at 101, 109-11). The investigator proceeded to ask him about his 1999 Dul arrest, which he indicated he had forgotten about when completing his e-QIP (see ex. 3; R.T., at 95-96, 110-11).

Applicant has consistently insisted that he could not recall being arrested for Dul in February 1999 (R.T., at 75-76). His 1999 Dul arrest is fairly dated (see ex. 17) and conceivably could have been forgotten when he completed his e-QIP in April 2007 due to the number of arrests involved. His omission of his October 2006 Dul is more difficult

to reconcile with the clear instructions in question 23d about providing details about arrests and charges, not just convictions (see ex. 1). But Applicant assures he sought advice from his FSO about the 2006 arrest, and volunteered details of the arrest in his follow-up OPM interview before the agent could confront him with it. The summary of interview does not contradict Applicant in any way on his claims, and his affirmative response to question 23d and overall credibility sufficiently shows he was not trying to hide his arrests to avoid embarrassment and the potential loss of his clearance. Applicant's explanations enable him to avert inferences of knowing and wilful falsification.

Applicant is supported in his clearance application by his FSO and his mother (see exs. A and B). Both find him worthy of obtaining a clearance.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

The Concern: 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. Adjudication Guidelines (AG) ¶ 30.

Financial Considerations

The Concern: "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. AG ¶ 18.

Personal Conduct

The Concern: “Conduct involving questionable judgment, untrustworthiness, unreliability, 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.” AG ¶ 15.

Drug Involvement

The Concern: “Improper or illegal involvement with drugs raises questions regarding an individual’s willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.” AG ¶ 24

Alcohol Consumption

The Concern. “Excessive alcohol consumption often leads to the exercise of questionable judgment, or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” AG ¶ 21.

Burden of Proof

By virtue of the precepts framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is an employed defense contractor with a considerable history of arrests and convictions, most involving domestic violence issues and drug/alcohol-related offenses. Security concerns are also raised over a number of debt delinquencies (17 in all) that exceed \$25,000.00 and omissions of two of his alcohol-related offenses in the e-QIP he completed in April 2007. Raised drug and alcohol concerns are associated with his arrest history.

Criminal conduct offenses

Applicant's history of multiple arrests and convictions involving domestic violence charges and drug/alcohol-related offenses warrant consideration of two disqualifying conditions of AG ¶ 30. DC ¶ 31(a), "a single serious crime or multiple lesser offenses," and DC ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged," have application. Applicant's arrests and convictions comprise 11 separate incidents over a 10-year period between October 1995 and May 2007. Among his arrest/convictions are four alcohol-related offenses, three domestic violence offenses, one soliciting/prostitution offense, and one drug possession offense. With the aid of the lessons he acquired in his most recent anger management counseling, he has developed better control mechanisms for dealing with potential domestic violence and alcohol issues. Divorced with two children to support (while living with his fiancé), Applicant faces new parental challenges and has accepted parental responsibilities. However, he has been able to develop any seasoned track record yet for making safe predictions about the future.

Because of the severity and recurrent nature of Applicant's arrest history over the past 10 years, it is too early to afford him any reliance on MC ¶ 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." His own testimonials about his maturation process and the support he has drawn from his FSO, AA meetings, and his mother are helpful, but not enough at this time to enable him to take advantage of any of the mitigating conditions covered by AG ¶ 32. Based on a consideration of the applicable guidelines, Applicant's efforts to date are insufficient to enable him to mitigate the criminal conduct specifically associated with his multiple arrests and convictions.

To his credit, Applicant has shown considerable responsibility and care for the welfare of his fiance and her children he supports. His compliance with his probation conditions and continued AA participation reflects positively on his commitment to accept more responsibility and honor the laws and rules of civil society.

Whole person assessment of Applicant's arrest history and mitigating efforts include an evaluation of the following considerations: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the adequacy 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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Applicant's covered actions must be balanced against all of the material circumstances surrounding the criminal conduct at issue and steps he has taken to prevent recurrence.

Taking into account all of the facts and circumstances developed in the record, Applicant's covered arrests and convictions still leave residual security concerns after crediting him with the corrective steps he has taken in his work and personal life. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.k of the SOR.

Applicant's financial issues

Security concerns are also raised under the financial considerations guideline of the AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts (17 in all) and his past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Since receiving the SOR, Applicant has no documented efforts to resolve his delinquent debts that exceed \$25,000.00. His claims of contacting a debt consolidation firm and bankruptcy consultant are not documented and cannot be corroborated in this record.

Neither extenuation nor mitigation credit are available to Applicant. His failure to provide any documented proofs of extenuating circumstances associated with his debts or good faith repayment efforts and/or counseling initiatives preclude him from relying on any of the available mitigating conditions under AG ¶ 20.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and improper influence, judgment and trust concerns are implicit in financial cases (as here).

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and his lack of any documented steps taken to resolve them, the support he has received from his FSO, AA meetings and his mother, and his own personal account of the changes in his lifestyle to ensure more personal responsibility in his personal affairs, Applicant provides too little probative evidence of progress with his debts to mitigate security concerns related to his proven debt delinquencies. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.q of the SOR.

Applicant's alcohol history

Applicant's four alcohol-related arrests covered in the SOR raise major concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DC) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 22(a), "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent," and DC ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

To Applicant's credit, he acknowledges his excessive alcohol consumption and the adverse effects that his abuse of alcohol played in his family and in his use of public roads and highways over a 10-year stretch spanning 1995 and 2006. His abstinence assurances are entitled to some weight, but are open to some uncertainties about the quality of his sobriety and AA participation without corroboration from his sponsor and/or fellow AA members and chips commemorating his sustained abstinence. Further, he has never sought an evaluation from a credentialed physician or licensed substance abuse counselor and provides no corroborative support of the lessons he claims from his anger management and counseling courses.

Applicant's failure to provide any corroborative support of his AA and abstinence commitments are important considerations in determining what weight to assign to Applicant's rehabilitation claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579, at 5 (App. Bd. Apr. 14, 2004). With over a year to run on Applicant's court-imposed three-year abstinence requirement, uncertainties abound over Applicant's ability to maintain his sobriety.

Still troubling and of ongoing security concern is Applicant's history of recurrent alcohol-related arrests, the absence of any professional diagnoses and prognoses, and his lack of a more extended period of sustained abstinence. While Applicant provides assurances of his sincere commitment this time to maintain his current track of sobriety with the help of AA, his sustained abstinence efforts are still relatively new (about two years). Moreover, Applicant's probation conditions include three years of sustained abstinence. This sustained abstinence condition will not expire for another year and a

half. This is not to suggest his renewed commitments to sobriety do not reflect positive changes in behavior supportive of sobriety.

Faced with similar recurrent alcohol-related arrests over a considerable period of time, our Appeal Board has expressed reluctance to make safe predictive judgments about an applicant's ability to avoid abusive incidents in the future without strong probative evidence of sustained recovery, aided by positive professional reinforcements. See ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007). Applicant's circumstances do not enable him to differentiate these guides forged by the Appeal Board in addressing alcohol-related arrests.

Taking into account both Applicant's history of alcohol abuse, his strong work record, the applicable guidelines and a whole person assessment of his most recent sobriety efforts, conclusions warrant that his overall efforts, while encouraging, do not reflect sufficient evidence of sustained commitment to AA and its tenets of sobriety to convince he is no longer at risk to recurrence. In the past, he has enjoyed considerable periods of sobriety only to return to episodic drinking that involved alcohol-related incidents away from work. Because of this recurrent abuse problem, his earlier incidents cannot be considered isolated and unrelated to a pattern of abuse, despite their comparative age when considered separately.

Considering the record as a whole, Applicant fails to make a convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol. Without a more sustained record of sobriety to rely on, Applicant's mitigation efforts are simply not enough at this time to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the allegations covered by the alcohol guideline of the SOR.

Implications of Applicant's drug-related arrest

Applicant's documented involvement with illegal substances are minimal. His only proven association with drugs is the marijuana possession imputed him by his May 2007 drug possession arrest/conviction. This arrest alone is not enough to establish any pattern of drug abuse.

Still, Applicant's recent documented drug possession is sufficient to invoke two of the disqualifying conditions of AG ¶ 24, *i.e.*, DC ¶ 25(a), "any drug abuse," and DC ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution, or possession of drug paraphernalia." Neither of these conditions require any minimal pattern of abuse.

Applicant has not used or possessed marijuana or any other illegal substance since his first and only drug-related arrest in May 2007. To be sure, misconduct predictions (to include return to illegal drug use), generally, may not be based on supposition or suspicion. See ISCR Case No. 01-26893 (App. Bd. October 2002); ISCR

Case No. 97-0356 (App. Bd. April 1998). The Appeal Board has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used illegal drugs since his last recorded use, or based on his past use he is likely to resume drug usage in the future. See ISCR Case No. 02-08032 (Appeal Bd. May 2004).

Based on the absence of any developed record of recurrent drug abuse by Applicant, there are no prudent reasons to infer that he has used marijuana or any other drug on other occasions, (prior or subsequent to his May 2007 arrest/conviction). Accordingly, Applicant may claim the mitigation benefits of one of the mitigating conditions of the Guidelines for drugs: MC ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."

Applicant's limited involvement with illegal drugs and his assurances that his marijuana possession is a thing of the past are convincing. Considering all of the developed evidence of record, Applicant mitigates security concerns associated with his isolated possession of marijuana. Favorable conclusions warrant with respect to subparagraph 4.a that is covered by Guideline H.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's multiple omissions of his alcohol-related arrests in the security clearance application he completed in April 2007, and in his withholding of his arrest/charges arising out of his October 2006 and February 1999 incidents. So much trust is imposed on persons cleared to see classified information that deviation tolerances for candor lapses are gauged very narrowly.

Applicant's October 2006 alcohol-related arrest was followed by filed charges of Dul. On these charges, Applicant was scheduled to appear in court to respond just days after he completed his April 2007 e-QIP. Concerned about how to answer the pertinent question covering his alcohol-related arrests, he went to his FSO at the time for guidance. Before she could get back to him with helpful instructions, she suddenly passed away. Pressed to complete and return his completed e-QIP, Applicant omitted his 2006 Dul arrest, along with his February 1999 Dul arrest (this one for reasons of memory lapse).

By omitting his October 2006 and February 1999 Dul arrests, Applicant initially raises the question of whether he failed to satisfy minimum standards of candor covered by AG ¶ 15. DC ¶ 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,” has some initial application to Applicant’s situation.

By itself, Applicant’s confusion explanation for his 2006 arrest omission is difficult to accept. His prompt, good faith correction of the omission in his ensuing OPM interview helps to fortify his explanation for his initial omission, and mitigate any candor concerns about his answers.

In the past, the Appeal Board has denied applicants availability of the predecessor mitigating condition of MC ¶ 17(a) “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” where the applicant has waited many months to timely correct a known omission. *Compare* ISCR Case No. 97-0289 (App. Bd. January 1998) with DISCR Case No. 93-1390 (App. Bd. January 1995).

Applicant’s correction of his 2006 e-QIP omission was made both promptly and voluntarily in Applicant’s case, and enable him to convincingly mitigate security concerns over this omission. Weighing all of the circumstances surrounding his e-QIP omission of his October 2006 arrest/charge, and his proven prompt, good faith correction, Applicant’s claims satisfy the necessary probative showing to avert drawn conclusions that he knowingly and deliberately withheld material background information about his prior arrest/charge.

Applicant’s memory lapse claims covering his earlier 1999 Dul arrest are plausible enough to enable him to avert inferences of knowing and wilful omission of this charge, and convincingly demonstrate that the falsification allegation covering his 2006 arrest is not proven. This allegation is concluded to be unsubstantiated.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E2.(a) factors), unfavorable conclusions warrant with respect to subparagraph 3.a of Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the E2 (a) factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE J: (CRIMINAL CONDUCT):	AGAINST APPLICANT
Sub-paras. 1.a through 1.k:	AGAINST APPLICANT
GUIDELINE F (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT

Sub-paras. 2.a through 2.q:	AGAINST APPLICANT
GUIDELINE E: (PERSONAL CONDUCT):	FOR APPLICANT
Sub-para. 3.a:	FOR APPLICANT
GUIDELINE H: (DRUGS):	FOR APPLICANT
Sub-para. 4.a:	FOR APPLICANT
GUIDELINE G: (ALCOHOL CONSUMPTION):	AGAINST APPLICANT
Sub-para. 5.a:	AGAINST APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

