



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 07-17783
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

August 12, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated the security concern pertaining to financial considerations, but has not mitigated security concerns pertaining to criminal conduct, drug involvement, and personal conduct. Clearance is denied.

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 30, 2006. On September 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines J (criminal conduct), H (drug involvement), F (financial considerations), and E (personal conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on November 13, 2008, and requested a hearing before an administrative judge. DOHA received his response on November 17, 2008. Department Counsel was prepared to proceed on February 5, 2009, and I received the case assignment on February 6, 2009. DOHA issued a notice of hearing on March 4, 2009, scheduling the hearing for April 6, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 14, which were received without objection. Applicant offered Applicant Exhibits (AE) A through CC, which were received without objection. Applicant testified on his own behalf. I held the record open until April 27, 2009, to afford Applicant the opportunity to submit additional evidence. Applicant timely submitted AE DD through AE RR. DOHA received the hearing transcript (Tr.) on April 15, 2008.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a. through 1.e., 2.a., 3.q., and 3.r. with explanations, and denied SOR ¶¶ 3.a. through 3.p., and 4.a. through 4.c. His admissions are accepted as findings of fact.

Applicant is a 33-year-old technical service representative, who has been employed by a defense contractor since October 2004. GE 1, Tr. 27-28. He testified that obtaining a security clearance was a condition of continued employment. Tr. 30.

Applicant did not graduate from high school, but did complete his GED in April 1996. Tr. 23-24. Although he has no formal education beyond his GED, he has completed several work-related courses. Tr. 28-29. He served in the Army from April 1996 to April 1999, and was honorably discharged as a specialist (pay grade E-4). During his Army service, he successfully held a secret security clearance for 11 months while deployed to South Korea. Tr. 26-27. He has never married and has no dependents. GE 1, Tr. 30.

Criminal Conduct

The SOR alleged five separate incidents under this concern. The first incident occurred in June 1996. The fifth and most recent incident occurred in June 2006. Summarized they are:

- (1) In June 1996, Applicant was arrested and charged with theft by shoplifting. (SOR ¶ 1.e.) Applicant was 20 years old and in the Army. Having just completed basic training, he was “feeling out in the world, seasoned and invincible.” He went into a department store and “was amused at what seemed to be a feeble security system.” He shoplifted a \$20 item “just to show them,” and got caught. Response to SOR, GE 5, Tr. 77-80.

- (2) In August 2003, Applicant was charged with Drive with License Suspended/Revoked/Cancelled, Stop Sign Violation, Failure to Produce Evidence of Financial Responsibility, and Violation of Promise to Appear. He was driving and pulled over for running a stop sign in a construction zone, which he said was not there. In October 2003, he pled guilty to Drive with License Suspended/Revoked/Canceled and the other charges were dismissed. He was sentenced to pay a fine. (SOR ¶ 1.d.) He failed to appear because “the court again was pretty far away and I didn’t have a ride to it.” Response to SOR, GE 10, GE 11,Tr. 76-78.
- (3) In July 2004, Applicant was arrested and charged with Threatening and Intimidating. (SOR ¶ 1.c.) Applicant explained this event occurred during “the hardest time in my life. I had no job, no money, living in a slum with no air conditioning and facing eviction.” Applicant and his former fiancé had a yard sale and raised \$80. His fiancé then drove to a convenience store and while there mistakenly left her wallet in the store. When she returned to retrieve it, all her money was gone. She returned home and informed Applicant, who called the store and threatened a male clerk answering the telephone, “You better give me my \$80, you (expletive deleted).” Applicant told the clerk he would be at the store in ten minutes and blow his head off if he did not get his money back. Applicant called the store a short time later and a told a female clerk answering the telephone that he would “blow off that (expletive deleted)’s head” if the money was not returned. Both clerks were frightened and did not know what the Applicant was talking about because the wallet incident occurred before their shift. They called the police, the police investigated the allegations, and were unable to substantiate that anyone stole the money. Their investigation did, however, result in Applicant being arrested. Applicant subsequently pled guilty to the charge and was fined \$150. Response to SOR, GE 9, Tr. 72-78.
- (4) In February 2005, Applicant was charged with Drive with License Suspended, Failure to Appear and Failure to Produce Evidence of Financial Responsibility. (SOR ¶ 1.b.) Applicant’s former fiancé was driving the two of them around town at night and she became ill. Applicant took the wheel and was pulled over “because my license plate wasn’t properly illuminated.” He pled guilty to Drive with License Suspended and Failure to Appear. The Failure to Produce Financial Responsibility charged was dismissed, and he was fined. Response to SOR, GE 8, Tr. 69-72.
- (5) In June 2006, Applicant was arrested and charged with Dangerous Drugs/Equipment for Manufacturing, a felony. In May 2007, he pled guilty to the amended charge of Attempted Possession of Chemicals or Equipment, or both, for the Purpose of Manufacturing a Dangerous

Drug, a felony. He was sentenced to two years probation, and a \$1,000 fine and other costs. (SOR ¶ 1a.) Applicant stated that he read an article about the ease of producing methamphetamine, and claimed that because of his obsessive compulsive disorder (OCD) and not having taken his medication (Effexor), he “decided” to collect the ingredients to manufacture methamphetamine. “[B]laming” the police for his “agonized state of mind,” he decided to embarrass them and purchase methamphetamine ingredients on line. He ordered and received the ingredients. “[A]bout two months later,” the police arrived, questioned him, searched his apartment, and ultimately arrested him. Applicant testified and stated in his Response to SOR that he pled guilty even though he was not guilty to avoid a possible lengthy prison sentence. His defense counsel, a public defender, “suggested” that he have a competency hearing, and also offered to get him another attorney. Applicant declined both offers and eventually pled guilty “to preserve my freedom and get on with my life.” Applicant testified that his attorney submitted a request to the court for an early release of his probation and reduce his felony charge to a misdemeanor. After his hearing, Applicant did submit court documents reflecting that his probation had, indeed, been terminated in March 2009, but the documents did not reflect his felony had been reduced to a misdemeanor. Response to SOR, GE 2, GE 4, GE 6, GE 7, AE CC, AE NN, AE OO, AE PP, AE QQ. AE RR, AE PP, Tr. 31, 44-69.

Drug Involvement

The allegation under this concern, (SOR ¶ 2.a.), is cross-alleged under criminal conduct, (SOR ¶ 1.a.). The facts regarding this allegation discussed *supra* are incorporated under this concern.

Financial Considerations

The SOR alleges 18 debts approximating \$16,700. (SOR ¶¶ 3.a.-3.r.) He admitted two of those debts approximating \$6,600. (SOR ¶¶ 3.q., 3.r.) At his hearing, Applicant did not provide any documentation warranting application of any mitigating conditions under this concern. Tr. 96-97.

After his hearing, he submitted documentation that he paid debts alleged in SOR ¶¶ 1.a.-1.o. He was unable to locate the creditor in SOR ¶ 1.p., he made payment arrangements for the \$5,463 debt (automobile loan) of \$209 per month for three years for the debt in SOR ¶ 1.q., and he is disputing the debt in SOR ¶ 1.r. AE II, AE JJ, AE KK, AE LL, AE MM. The majority of debts were medical co-pay amounts that Applicant consolidated and settled for a lesser amount.

He submitted a list of monthly expenses supporting the premise that he is living within his means. Applicant’s annual salary is \$52,000, he is current on all his bills, and

he has low monthly living expenses because he is currently living with his mother. Response to SOR, Tr. 96-130, GE 2, GE 3, AE DD, AE EE, AE FF, AE GG.

Personal Conduct

The allegation in SOR ¶ 4.a. is cross-alleged under criminal conduct, (SOR ¶ 1.a.). The facts regarding this allegation discussed *supra* are incorporated under this concern.

In his January 2006 e-QIP, Applicant disclosed, as stated in SOR ¶ 1.d., a February 2003 driving on a suspended license. He failed to disclose his July 2004 arrest for Threatening/Intimidating in response to Section 23, regarding his police record (asking whether in the last seven years he had been arrested for, charged with, or convicted of any offenses not listed in sections a – e).

In the same e-QIP, Applicant answered “No” to Section 28(a) and 28(b) (asking whether in the last seven years he had been 180 days delinquent on any debts, and whether he was currently 90 days delinquent on any debts, respectively). SOR ¶ 4.c. alleged he failed to list debts as stated in SOR ¶¶ 3.a., 3.c., and 3.p.

When asked by Department Counsel why he failed to provide complete answers to Section 23 and Sections 28(a) and (b), he responded, “I forgot, “ and “I forgot that too. I didn’t remember some of those things,” respectively. Tr. 131. In his Response to SOR, he added that his failure to disclose information *supra* was not deliberate.

Character evidence

Applicant submitted numerous e-mails documenting his church involvement, genealogy assistance, and assistance provided to church members and non-church members. AE A-AE W. He submitted employee performance evaluations from 2004 to 2008 that indicate he meets or exceeds employer goals and “is a valued member of [employer’s] organization.” AE X through AE BB.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 an Applicant’s 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 overarching 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 [A]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

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). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Conclusions

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are raised under Guidelines J (criminal conduct), H (drug involvement), F (financial considerations), and E (personal conduct) with respect to the allegations set forth in the SOR.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "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."

AG ¶ 31 describes six conditions that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

AGs ¶¶ 31(a) and 31(c) apply. Applicant most recently was convicted of a drug-related felony in May 2007. He was also convicted of at least four misdemeanors in 1996, 2003, 2004, and 2005, discussed *supra*.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

- (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;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (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.

Applicant's five skirmishes with the law began in 1996 with a shoplifting arrest to "test" store security. In 2003, he was arrested for driving-related offenses. In 2004, he was arrested for threatening and intimidating a store clerk, and in 2005, he was arrested for driving-related offenses. In 2006, he was arrested and convicted of Attempted Possession of Chemicals or Equipment, or both, for the Purpose of Manufacturing a Dangerous Drug. Although granted an early release from probation in March 2009, he still remains convicted of a felony. This coupled with his ten-year history of arrests precludes application of any potential mitigating conditions under this concern. Applicant's past conduct clearly calls into question his ability or willingness to comply with laws, rules, and regulations, and falls short of what is expected of those entrusted with a security clearance.

Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes eight drug involvement-related conditions that could raise a security concern and may be disqualifying. Two drug involvement disqualifying conditions could raise a security concern and may be disqualifying in this particular case: "(a) any drug abuse,"¹ and "(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant's guilty plea to attempted possession of chemicals or equipment, or both, for the purpose of manufacturing a dangerous drug² warrants full application of AG ¶25(c). When arrested, he had ingredients to manufacture methamphetamine. The authorities did not accept his explanation that he was "testing" the police and held him accountable. Although he was released from probation early, he still remains convicted of a drug-related felony.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

¹AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

²AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

The evidence does not involve any drug abuse, but rather is limited to attempted possession of chemicals or equipment, or both, for the purpose of manufacturing methamphetamine. The particular facts of this case preclude application of any mitigating conditions involving drug use.

Concerning AG ¶ 26(a), there are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."³

³ ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle change and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel

AG ¶ 26(a) does not apply. Applicant's drug-related arrest occurred in June 2006, 14 days before he completed his e-QIP on January 30, 2006, and his May 1, 2007 drug-related conviction was two years before this hearing. Although the drug involvement in question is limited to one incident, it was a drug-related felony conviction. I consider Applicant's early release from probation in March 2009, one month before his hearing, as recent and an insufficient period of time to evaluate his conduct.

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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 ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is documented in his credit reports, and his SOR response. At the time of Applicant's hearing, he had submitted no mitigating evidence. Based on evidence presented and Applicant's admissions, the government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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;

the Administrative Judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The Administrative Judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

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

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(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.

After the hearing, Applicant's made a concerted effort to clean up his credit history and come to terms with his creditors. He apparently was able to contact all of his creditors except one, and paid, settled, or arranged payment plans. Such notable efforts warrant full application of AG ¶¶ 20(d) and 20(e). The remaining mitigating conditions under this concern are not applicable.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant disclosed only one of his criminal offenses—his 2003 arrest and conviction for driving on a suspended license. He did not disclose his 2004 arrest for threatening/intimidating (SOR ¶ 1.c.). Furthermore, he did not disclose any debts over 180 days delinquent or currently over 90 days delinquent. AG ¶¶ 16(a) and 16(b) both apply.⁴

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's

⁴Deliberate and materially false answers on a security clearance application may violate 18 U.S.C. § 1001. The Supreme Court defined “materiality” in *United States v. Gaudin*, 515 U.S. 506, 512 (1995) as a statement having a “natural tendency to influence, or [be] capable of influencing, the decision making body to which it is addressed.” See also *United States v. McLaughlin*, 386 F.3d 547, 553 (3d Cir. 2004). If Applicant had provided accurate answers on his security clearance applications, his accurate answers are capable of influencing the government to deny his security clearance. His criminal offenses are sufficiently serious to potentially jeopardize approval of his security clearance. Making a false statement under 18 U.S.C. § 1001 is a serious crime, a felony (the maximum potential sentence includes confinement for five years and a \$10,000 fine). In light of my ultimate decision, and the absence of an alleged violation of 18 U.S.C. § 1001 in the SOR, it is unnecessary for me to decide whether or not Applicant actually violated 18 U.S.C. § 1001.

reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions fully apply. Applicant's explanations for his omissions were that he forgot to list them and that his omissions were not deliberate. I do not find his testimony or explanations credible regarding his state of mind when he completed his security clearance application. I note that he recalled the 2004 threatening/intimidating incident with great clarity during his testimony and in his pre-hearing responses. I do not accept his explanation that he forgot to list it on his e-QIP, but did remember his 2003 traffic-related arrest. Furthermore, given the state of his financial history, I do not find his explanation credible that he forgot to list any indebtedness on his e-QIP. Simply put, his statement at his hearing about his reasons for not disclosing his arrest history and indebtedness is not credible. He was well aware of more than one offense and that he owed creditors money. He knowingly and deliberately chose not to disclose full information about the extent of his criminal past or his indebtedness.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

The comments in the Analysis section of this decision are incorporated in the Whole Person Concept. Applicant receives credit for his Army service and having successfully held a security clearance for 11 months while in the Army. He has also shown significant community service through his volunteer work with his church and on his own. His efforts to address his past due bills after his hearing are noteworthy. His duty performance with his employer is good. Aside from the SOR allegations, no other disciplinary or security-related problems surfaced. His record of favorable employment weighs in his favor. There is some compelling evidence of his responsibility, rehabilitation, and mitigation. I am convinced that he is loyal to his company, his church and his country.

Applicant's 2006 felony drug-related arrest and deliberate failure to disclose information on his security clearance application are serious, recent, and not mitigated. His misdemeanor arrests coupled with his recent felony arrest establish a ten-year history of failure to comply with the law. He was not candid about why he failed to provide full and complete information on his e-QIP. I have serious questions about his current ability or willingness to comply with laws, rules and regulations. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude that he has mitigated security concerns pertaining to financial considerations, but he has not mitigated security concerns pertaining to criminal conduct, drug involvement, and personal conduct.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors" and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information

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: Subparagraphs 1.a. through d.:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline H: Subparagraph 2.a.:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline F: Subparagraphs 3.a. through r.:	FOR APPLICANT For Applicant
Paragraph 4, Guideline E: Subparagraphs 4.a. through c.:	AGAINST APPLICANT Against Applicant

Conclusion

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 eligibility for a security clearance for Applicant. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge

