DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-02565
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

February 17, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was incarcerated in 1998 following his felony drug conviction for the manufacture and delivery of LSD. After his parole ended in 2001, he continued to exhibit a disregard for the law by repeatedly operating a vehicle while his license was revoked or suspended, and by using illegal drugs in 2004 and 2006. He lost a job in 2002, due in part to his abuse of alcohol. He owes about $11,463 in delinquent debt that is only partially attributed to a motorcycle accident. Applicant's omission of arrest record information from his security clearance application was unintentional, but serious concerns persist about his judgment and reliability. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 26, 2007. On June 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline J, criminal conduct; Guideline H, drug involvement; Guideline F, financial considerations; and Guideline E, personal conduct; which provided the basis for its preliminary decision to deny him a security clearance and refer

the matter to an administrative judge. 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) effective within the Department of Defense as of September 1, 2006.

On June 25, 2009, Applicant answered the SOR and he requested a hearing. The case was assigned to me on July 17, 2009, to decide whether it is clearly consistent to grant or continue a security clearance for Applicant. On August 11, 2009, I scheduled a hearing for September 17, 2009.

I convened the hearing as scheduled. Seven government exhibits (Exs. 1-7) and one Applicant exhibit (Ex. A) were admitted without any objections, and Applicant testified, as reflected in a transcript (Tr.) received on September 25, 2009.

Findings of Fact

DOHA alleged under Guideline J, criminal conduct, that Applicant was charged in May 1996 with operating to endanger (SOR 1.a); with operating after license revocation in about October 1996 (SOR 1.b) and in about 1998 (SOR 1.f); and with operating on a suspended license in about December 1996 (SOR 1.c), and in about January 1997 (SOR 1.d), all charges dismissed. Also under Guideline J, DOHA alleged that Applicant was sentenced to eight years in prison for an October 1997 charge of manufacture or delivery of LSD (SOR 1.e); was arrested in July 2002 for violating the Abuse Prevention Act (SOR 1.g); was convicted and placed on probation for operating after suspended license in 2003 (SOR 1.h); and pleaded guilty and paid restitution on charges of operating after suspended license, leaving the scene of property damage, and use without authority filed in January 2005 (SOR 1.i).

Under Guideline H, drug involvement, DOHA alleged that Applicant used cocaine from about February 2004 to at least August 2006 (SOR 2.a) and ecstasy from February 2004 to at least August 2004 (SOR 2.b); that he "made" and used LSD in at least 1997 (SOR 2.c); and that he was sentenced to eight years in prison for the October 1997 charge of manufacturing or delivering LSD (SOR 2.d).

Under Guideline F, financial considerations, Applicant was alleged to owe delinquent medical debt totaling $7,333 (SOR 3.a-3.c, 3.e-3.f) and two other debts in collection totaling $4,130 (SOR 3.d, 3.g).

Under Guideline E, personal conduct, DOHA alleged that Applicant falsified a Questionnaire for National Security Positions (his e-QIP) by deliberately not disclosing the charges filed against him in July 2002, 2003, and 2005 (SOR 4.a); that Applicant was dismissed from his employment in about July 2002 for unsatisfactory performance due in part to alcohol consumption (SOR 4.b); and that a civil restraining order was filed against him in about April 2002 (SOR 4.c).

Applicant admitted the criminal conduct allegations with the exception of 1.i, which he denied on the basis of a not guilty finding. He admitted the drug involvement and financial indebtedness. Concerning the personal conduct allegations, Applicant acknowledged he had not reported his most recent arrests on his e-QIP, but he had misread the question and not intended to omit the information. Applicant admitted that he had been dismissed from a job in 2002 in part due to alcohol, and that a civil restraining order had been filed against him in 2002. Concerning the restraining order, Applicant added, "she wanted to punch me for finding out she was cheating."

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

Applicant is 33 years old, and he has been employed by a defense contractor since September 2007. He installs material to seal off radiation ("poly install") (Ex. A). He seeks his first security clearance (Ex. 1).

Applicant was ticketed for driving to endanger in May 1996. He and a friend in another vehicle were observed swerving on the road. Applicant contended that he was trying to avoid raised manhole covers in the roadway, but the judge was not persuaded by his explanation and he had to pay the ticket (Tr. 30).[1]

Applicant's driver's license was revoked for receiving multiple speeding tickets. He was cited for driving on a revoked or suspended license in October 1996, December 1996, January 1997, and May 1998 (Ex. 6). He admits that he drove without a valid license, but the charges were dismissed (Tr. 30-31).

In January 1997, Applicant began attending a technical institute located in another state (Ex. 1). He was without a valid driver's license and unable to find a job nearby that would give him the income he needed to support himself. He had a roommate who "knew a couple of things," and they began to manufacture and distribute LSD early in the summer of 1997. Applicant, who occasionally smoked marijuana, began using LSD as well (Tr. 65). By October 1997, Applicant wanted to get out of the drug business, and he planned to start fresh back home. Unbeknownst to him, the drug activities of the Applicant and his roommate had been under investigation. In early October 1997, Applicant was caught with "1,440 hits" of mescaline (Tr. 32). He was arrested and charged with manufacturing and distributing LSD or an analog, a class X felony offense (Exs. 1, 2, 5, Tr. 32).

In late May 1998, Applicant pleaded guilty to the felony drug charge, and he was sentenced to eight years in prison. He was incarcerated initially in that state's

[1]The charge was disposed of as a civil infraction under Chapter 277, Section 70C (Ex. 6). Pertinent state law provides for a violation of a municipal ordinance, a bylaw, or a misdemeanor offense to be treated as a civil infraction not liable to punishment by incarceration. The court can, in such cases, impose a fine of not more than $5,000. An adjudication of responsibility shall neither be used in the calculation of second and subsequent offenses under any chapter, nor as the basis for the revocation of parole or of a probation surrender. An adjudication of responsibility under this section may include an order of restitution.

penitentiary, and then in a "boot camp" correctional facility for first time offenders with no violent crimes (Ex. 2, Tr. 32-33, 87-90). While he was in prison, he attended court ordered Narcotics Anonymous (NA) meetings (Tr. 60). Applicant spent the final weeks of his incarceration in a halfway house pending processing of his paperwork, and he was released on parole in late January 1999. He returned to his home state where he had to report to a probation officer once a week until his parole ended in 2001 (Ex. 2, Tr. 90-91).

Applicant was employed by a woodworking company on his release from incarceration, and then he went to work as a technician for an auto dealer (Ex. 1). Applicant cohabited with a girlfriend from June to November 2001, until they broke up and Applicant moved out (Ex. 1). In April 2002, she obtained a civil restraining order against him (Ex. 6), although Applicant denies that he abused her (Ex. 2, Tr. 34). In early July 2002, Applicant was charged criminally with violation of the state's Abuse Prevention Act (Ex. 6) when his former girlfriend apparently complained to the police that he had violated the restraining order. Applicant denies that he called her (Ex. 2, Tr. 35), and the charge was continued without a finding and then dismissed after he paid court costs (Ex. 6).

Applicant enjoyed the freedom to come and go as he pleased, and over the June to July 2002 time frame, he drank beer at a bar after work on a daily basis. He left the bar usually before he had consumed too many drinks to drive safely, but he continued to drink at home until he fell asleep. Most nights he consumed close to 30 beers (Ex. 2), and he reported to his job the next day at times with a hangover or wearing sunglasses (presumably to cope with the effects of drinking). He eventually lost his job as an automotive technician in July 2002, due to his drinking and unsatisfactory performance (Exs. 1, 2, Tr. 40-41).[2]

Applicant began attending Alcohol Anonymous (AA) meetings with his ex-girlfriend's father during the latter half of 2002. Applicant stopped attending AA meetings after six months because he was feeling fine and he had reduced his alcohol consumption to a couple beers with friends once a week (Tr. 60-61). He thought he might have been a "functional alcoholic" over the month or so that he had been drinking to excess (Ex. 2).

Applicant was unemployed for over a year, until about September 2003. When his unemployment benefits ran out, he began working as a meat clerk for a supermarket (Tr. 51). A friend, who had started sleeping at his apartment, introduced him to the "wrong crowd." From February 2004 to August 2004, Applicant snorted cocaine and ingested ecstasy in pill form on the weekends when socializing with his new friends (Exs. 1, 2, Tr. 33, 64-65). Applicant told a government investigator in January 2008 that he bought the cocaine and ecstasy at clubs (Ex. 2), but he clarified at his hearing that

[2]Concerning his termination, Applicant testified, "I was having a bad couple of years after the breakup with my fiancee and was trying to make myself feel a little better with the bottle and I lost my job over it. The deal was he let me go, rather than fire me, that way I could collect unemployment and get some help with my alcohol problem" (Tr. 40-41).

his friend purchased the drugs with money he gave him (Tr. 63-64). At Applicant's request, this friend eventually moved out, and Applicant ceased his illegal drug use (Tr. 37-38).

In late October 2004, Applicant was out to a club with a female friend. He maintains that he left the club with someone else, and that his companion, who had been drinking, left her car in the road following an accident (Ex. 2, Tr. 36-37). Yet she called the police and complained that he had taken her car without her permission (Tr. 92). Applicant was arraigned in January 2005 on charges of operating after his license had been suspended, leaving the scene of an accident with property damage, and use without authority. Applicant told a government investigator in January 2008 that he pleaded guilty, paid a $3,500 fine, and his case was continued without a finding (Ex. 2). He now claims that he pleaded no contest on legal advice.[3] Criminal records show that in August 2005, he admitted sufficient facts to operating after license suspended, leaving the scene of property damage, and use of a motor vehicle without authority. He was ordered to pay restitution of $2,515.88 to be paid within three months in three installments, and his case was continued without a finding for one year and then dismissed after payment of restitution and assessments (Exs. 6, 7).

In May or June 2005, Applicant was fired from his job at the supermarket (Exs. 1, 2). Applicant had been suspended without pay for making a comment off the job about a coworker. Applicant was terminated when he failed to show for scheduled work hours (Ex. 2).

Over the next two years, Applicant worked as a kitchen manager at a restaurant and as a technician at an automobile body shop (Ex. 1). Following the death of a close friend, he "went on a bender for the night" and used cocaine while intoxicated at a house party in August 2006 (Exs. 1, 2, Tr. 33, 65, 67).

In September 2007, Applicant began working for his present employer (Ex. A). On September 26, 2007, Applicant completed an e-QIP on which he disclosed his felony drug conviction, and his use of ecstacy and cocaine on multiple occasions between February 2004 and August 2004, and cocaine once in August 2006 when he was intoxicated. Applicant did not disclose that he had been charged with violation of the Abuse Prevention Act in 2002, with operating after license suspended in 2003 and 2005, and with leaving the scene of an accident with property damage in 2005, because he believed only convictions had to be listed (Ex. 2, Tr. 40, 75). Applicant listed one delinquent debt of $781.70 owed a utility company since June 2005 (SOR 3.g) (Ex. 1).

Available credit reports (Exs. 3, 4) showed Applicant also owed delinquent medical debts of $331 from September 2003 (SOR 3.f), $560 from February 2004 (SOR 3.c), and $6,279 from March 2004 (SOR 3.e). In September 2007, a consumer credit card debt of $2,218 was placed for collection (SOR 3.d). Applicant had fallen behind on this credit card account in the past. He took out a loan and paid off the balance. After

[3]Applicant explained that by the court hearing, his female friend was eight months pregnant, and that she was going to be believed over him in spite of the truth (Tr. 37, 93).

the card was reinstated, he again fell seriously behind in his payments and his account went into collection (Tr. 43).

Although he already possessed two trucks, for which he was paying insurance, Applicant was pressured by the woman he was dating into buying a new motorcycle in July 2008 (Tr. 49-50). He financed the purchase through a loan of $20,528, to be repaid at $365 per month (Ex. 4). Applicant has been current on those payments for the most part.[4]

As of May 2009, Applicant had not resolved the delinquent debt balances listed in the SOR. With interest continuing to accumulate, he owed $3,349 on the retail credit card account in SOR 3.d, despite a claim of minor payments on the account in 2008 (Tr. 43-44). Additional medical debt of $81 (SOR 3.a) and $82 (SOR 3.b) from May 2008 had been placed for collection (Ex. 4).

Applicant was unable to repay his delinquent debts in part because of a motorcycle accident in April 2008 (Tr. 38). Applicant was hit head on by a car who had crossed into his lane. He suffered a fracture, and incurred orthopedic and physical therapy costs that became his priority (Tr. 38-39, 57). After paying $750 in out-of-pocket medical costs over the past year, he owes the physical therapist just under $300 and the orthopedic surgeon about $360. He has ongoing prescription costs of about $10 per week (Tr. 57-58). Applicant rejected an insurance settlement that would have covered his medical expenses plus paid him $2,000 for his pain and suffering. He has not sought any legal help to negotiate with the insurance company (Tr. 59-60, 82). Applicant plans to use future settlement proceeds to pay off his delinquent debt (Tr. 83).

In September 2009, Applicant contacted the creditor of SOR 3.d and he promised to pay $75 per month on the debt starting in early October 2009 (Tr. 44). Applicant was one month behind on a credit card account that he opened in June 2009 to rebuild his credit (Tr. 46-48), despite a reported "couple hundred bucks" in discretionary income each month (Tr. 54) on an hourly wage of $21.84 (Ex. A). Applicant's income tax refund for tax year 2008 was $1,200 or $1,300. He spent about $800 of the refund on a camping vacation that he took with friends in June 2009 (Tr. 55-56).

During an interview with a government investigator in January 2008, Applicant had denied any current association with persons who use illegal drugs. He expressed an intent to refrain from illegal drug use in the future (Ex. 2). But at his hearing in September 2009, Applicant admitted that at a couple of barbecues over the last few summers, he had been at social gatherings of friends or family members (sister) where others were smoking marijuana. Applicant elected not to smoke the drug himself and he went outside (Tr. 68, 78). To Applicant's knowledge, his sister smokes marijuana once a week or once a month. He has asked her to refrain from using marijuana in his presence (Tr. 79).

[4]Applicant testified that he always paid his motorcycle loan on time (Tr. 48). As of May 2009, Equifax was reporting no past due balance but also that the account was 30 days past due as of March 2009 (Ex. 4).

Applicant consumes alcohol at party settings, such as family cookouts, when he does not have to work the next day. Since July 2002, he has consumed about 16 beers at a sitting once or twice a month, which for him is the minimum amount "to even feel a buzz" (Ex. 2). As of September 2009, Applicant was sharing about 30 beers with a friend once a month (Tr. 62, 84). At a pig roast in August 2009, Applicant drank 20 beers over the course of the entire day (from about 1000 hours to 2200 hours). Applicant rode his motorcycle home because he did not feel that he was intoxicated (Tr. 83-84). Applicant does not think that he has a drinking problem (Tr. 63). Applicant has been ticketed for moving violations, including speeding, within the past two years, including in late August or early September 2009 (Tr. 58).

Applicant's work performance with the defense contractor has been fully satisfactory since he started in September 2007. He had one disciplinary incident between March 2008 and September 2008 that was discussed with his supervisor, but it did not affect the quality of his work (Ex. A).[5]

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or

[5]The available record contains no detail about the incident that led to the disciplinary action.

proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Criminal Conduct

The security concern about criminal conduct is set out in Guideline J, AG ¶ 30:

> Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

The May 1996 charge of operating to endanger was disposed of as a civil infraction. However, AG ¶ 31(a), “a single serious crime or multiple lesser offenses,” and AG ¶ 31(c), “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” apply because of Applicant’s repeated operation of a motor vehicle after his driver’s license had been suspended or revoked, and because of his felony conviction, albeit dated, for manufacture and distribution of LSD in 1997.

Applicant served his sentence and his parole, apparently without incident. But after he completed his parole, he violated the drug laws by abusing cocaine and ecstasy multiple times in 2004 and by using cocaine at least once in August 2006. He was placed on probation for operating a motor vehicle in May 2003 after his license had been suspended. The available evidence fails to substantiate the July 2002 violation of the Abuse Prevention Act, but while he also denies any culpability with respect to the January 2005 charges, court records indicate that sufficient facts were found to sustain findings that he operated a motor vehicle while his license was suspended, left the scene with property damage, and used a motor vehicle without authority. His case was ultimately dismissed without a finding, but not until after he had paid $2,515.88 in restitution. Even if I accept Applicant’s testimony that he did not drive his friend’s car in October 2004 without a license and without authority, AG ¶ 32(a), “so much time has elapsed since the criminal behavior happened, or it happened under such unusual

circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," cannot reasonably be applied, given his record of criminal violations. Furthermore, AG ¶ 32(c), "evidence that the person did not commit the offense," has limited applicability in this case only to the allegations of domestic abuse. It would not mitigate his admitted drug manufacture and distribution, or his repeated operation of a vehicle while his license was suspended or revoked.

Applicant's good work performance in his defense contractor employment is some evidence of reform under AG ¶ 32(d), "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education; good employment record, or constructive community involvement." It has been four plus years since Applicant was charged criminally, and three years since he last used an illicit drug. Yet, insufficient reform in his personal life, evidenced most recently by speeding, excessive drinking at times, and continuing association with illegal drug users, preclude me from concluding that his criminal conduct is safely in the past.

Drug Involvement

The security concern about drug involvement is set out in Guideline H, AG ¶ 24:

> Use 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.
>
> (a) Drugs are defined as mood and behavior altering substances, and include:
>
> (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;
>
> (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Applicant went off to college without a valid operator's license because of his repeatedly driving after suspension or revocation. When he could not find a job nearby, he and his roommate began manufacturing and distributing LSD (and apparently mescaline) in the summer of 1997. Applicant began using LSD as well, and he continued his drug involvement until he was arrested in October 1997. Afforded a fresh start after he was paroled, Applicant returned to his old drug using habits in February 2004. Over the next seven months, Applicant used cocaine and ecstasy on weekends when socializing with friends. Then in August 2006, he snorted cocaine while drinking on at least one occasion. AG ¶ 25(a), "any drug abuse," and AG ¶ 25(c), "illegal drug

possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," are implicated.

Applicant's illegal drug involvement, when viewed as a whole, cannot reasonably be considered as "so long ago," or as "so infrequent" to qualify for mitigation under AG ¶ 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." Although I find Applicant credible when he denies any intent to use illegal drugs in the future, it is not enough to satisfy AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future." He continues to associate with friends and family members (sister) who use illegal drugs, so AG ¶ 26(b)(1), "disassociation from drug-using associates and contacts," is not satisfied. Applicant has been at a couple of barbecues in the past few summers where others have smoked marijuana. While he exhibited good judgment by not using the drug himself on those occasions (*See* AG ¶ 26(b)(2), "changing or avoiding the environment where drugs were used"), he has been susceptible to peer influence in the past, as when he used cocaine on multiple occasions in 2004 after some experience with NA and AA, and seven years of abstinence from illegal drugs. He used cocaine on at least one more occasion, in August 2006. His present three years of abstinence is not long enough to qualify as an "appropriate period of abstinence" under AG ¶ 26(b)(3), given his history of drug involvement and ongoing association with known illegal drug users.

Financial Considerations

The security concern about finances is set out in Guideline F, AG ¶ 18:

> Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

As of his e-QIP in September 2007, Applicant was seriously delinquent on a retail charge account (SOR 3.d), on some medical debts (SOR 3.c, 3.e-3.f),[6] and on a utility account (SOR 3.g). He incurred additional medical debt following a motorcycle accident in 2008. While he has been making payments to his orthopedist and physical therapist, a couple of medical debts from 2008 totaling $163 were placed for collection (SOR 3.a-3.b). Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," does not apply in

[6]Applicant's largest medical debt (SOR 3.e) was reportedly placed for collection in September 2006 after there had been no activity on the account since March 2004 (Ex. 4).

mitigation. Accounts were placed for collection as recently as May 2009, and Applicant had made little effort to address his old delinquencies as of September 2009.

AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," is implicated in part. Applicant's April 2008 motorcycle accident was outside of his control. While most of his delinquent medical debt predated the accident, out-of-pocket payments for prescriptions, and for orthopedic and physical therapy services from the accident, impacted his ability to repay his delinquent debts. However, AG ¶ 20(b) does not mitigate his questionable financial decisions. After he used loan proceeds to pay off a delinquent balance on his account with the creditor in SOR 3.d, he ran up new charges on his reinstated account that he then failed to pay. In July 2008, he financed the purchase of a new motorcycle taking out a loan of $20,528 when delinquent debts remain unpaid. About $800 of his income tax refund for tax year 2008 was spent on a camping vacation instead of delinquent debt repayment.

Applicant testified credibly that he contacted the creditor in SOR 3.d in September 2009 and arranged to pay $75 per month toward the debt starting in October 2009. This belated effort to address his debt is not enough to apply either AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," or AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant expects to receive sufficient funds from an insurance settlement to cover his delinquent obligations. But the evidence of record is insufficient to mitigate the financial concerns.

Personal Conduct

The security concern about personal conduct is set out in Guideline E, AG ¶ 15:

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

Applicant failed to indicate on his September 2007 e-QIP that he had been charged in July 2002 with violating the Abuse Prevention Act; that he had been found guilty of operating a vehicle in May 2003 after license suspension; or that he had been charged in January 2005 with operating a vehicle after suspension, leaving the scene of property damage, and use of a vehicle without authority. These charges fell within the scope of question 23.f concerning any arrests within the last seven years. Applicant has consistently denied any intentional concealment, maintaining that he misread the question as pertaining to convictions only. The 2002 and 2005 charges were continued

without a finding, although Applicant had to pay substantial restitution for the 2005 leaving the scene with property damage charge. The 2003 operating a vehicle after suspension charge was dismissed, but only after he had been placed on probation. The e-QIP inquiry at issue ("In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed. . . .") is clearly stated, but Applicant's disclosures of his dated yet very serious felony drug offense, of his employment terminations, and of his recent drug use lead me to conclude that Applicant lacked the willful intent required for AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

As alleged in SOR 4.b, Applicant's abuse of alcohol led to a loss of his employment at a car dealership in July 2002. AG ¶ 16(c), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information," is implicated.[7] Applicant reported to work with hangovers from drinking the night before, and he wore sunglasses at times to conceal that he had been drinking to excess. There is no evidence that he has allowed alcohol to negatively effect his present employment, and seven years have passed since Applicant was dismissed from a job due in part to drinking. But I am unable to fully mitigate the judgment concerns under AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." As recently as August 2009, Applicant consumed 20 beers at a pig roast. He and a friend share about 30 beers once a month and he sees no need to change that behavior. Concerns persist for his judgment and reliability given his binge drinking.

Applicant does not dispute the issuance of a civil restraining order against him in April 2002 (SOR 4.c), but he denies any factual basis for the order ("it was all fiction," Tr. 34). AG ¶16(e), "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing," is potentially applicable because the issuance of a restraining order could negatively affect Applicant's reputation. But the available record evidence did not sufficiently establish that Applicant abused his former girlfriend, or that he

[7]Despite Applicant's abuse of alcohol on occasion, the government did not allege Guideline G, alcohol consumption. In the absence of any evidence to indicate that Applicant was intoxicated or impaired on the job, or drinking on the job, it would not qualify as an alcohol-related incident under Guideline G, AG ¶ 22(b), "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent." So the loss of his job, due in part to his off-duty drinking, would not be explicitly covered under Guideline G.

contacted her in violation of the protection order. AG ¶ 17(f), "the information was unsubstantiated or from a source of questionable reliability," applies to mitigate the issuance of the restraining order.

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

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

Applicant made a serious error in judgment in becoming involved in LSD manufacture and distribution in 1997. After he was paroled, he took steps toward becoming a productive member of society, but he showed immaturity and disregard of the law in repeatedly operating a motor vehicle after his license had been suspended or revoked. He turned to alcohol after he and his fiancee broke up in 2002, and drank to excess on a daily basis in June and July 2002. In 2004, he succumbed to peer influence and used cocaine and ecstacy on the weekends for about seven months. Sufficient facts were found to sustain findings that he had operated a friend's car without a valid license and without her permission, and left the scene of an accident involving property damage in October 2004, although he denies any involvement. In August 2006, he snorted cocaine while out drinking with a friend. A motorcycle accident in April 2008 set him back financially. Yet, he exhibited poor financial judgment by financing a new motorcycle for $20,528 in July 2008, when he owed delinquent debts in collection. Applicant has abstained from illegal drugs since August 2006, but he risks his sobriety by binge drinking and by continuing to associate with illegal drug users. He has performed his duties with a defense contractor in a fully satisfactory manner since his hire in late September 2007. However, he has yet to demonstrate that he possesses the good judgment, reliability, and trustworthiness required 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: AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant
Subparagraph 3.f:	Against Applicant
Subparagraph 3.g:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraph 4.b:	Against Applicant
Subparagraph 4.c:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge