DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-05093
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Joseph O'Connell, Esquire

October 21, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant committed several motor vehicle offenses between 1984 and 2004, including operating under the influence of alcohol (OUI) and driving while his operator's license was suspended. His failure to timely pay surcharges led to suspension of his driving privileges for over 20 years, and accumulated debt of about $24,079.22 to the division of motor vehicles. As of April 2008, he had paid $11,071 of the debt but was behind in his payments. He also owed about $8,314 in delinquent consumer credit debt that he did not disclose on his security clearance application. Alcohol consumption concerns are mitigated by the absence of any alcohol-related incident since he completed court-ordered counseling in 2005, but financial considerations and personal conduct concerns persist. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 10, 2008. On January 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Guideline G, and Guideline E that 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 February 21, 2009, Applicant answered the SOR and he requested a hearing. The case was assigned to me on April 2, 2009, to decide whether it is clearly consistent to grant or continue a security clearance for Applicant. Counsel for Applicant entered his appearance on April 27, 2009. On June 2, 2009, I scheduled a hearing for June 30, 2009.

I convened the hearing as scheduled. The government's case consisted of eight exhibits (Ex. 1-7, 9) and the testimony of a government investigator. Department Counsel had court records marked as Exhibit 8 but then withdrew the document. Applicant submitted 12 exhibits, which were entered without any objections, and he testified on his behalf. A transcript (Tr.) of the hearing was received on July 9, 2009.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that as of July 22, 2008, Applicant owed unpaid judgments of $1,100 (SOR 1.a) and $11,975 (SOR 1.b) to a state division of motor vehicles, a $997 judgment from 1992 (SOR 1.d), and $10,398 in delinquent credit card debt (SOR 1.c, 1.e-1.h). Under Guideline G, alcohol consumption, Applicant was alleged to have been arrested on drunk driving charges in August 1984 (SOR 2.a), November 1988 (SOR 2.b), and December 2004 (convicted of refusal to consent to breathalyser) (SOR 2.d), and been cited in March 1996 for drinking on a facility (SOR 2.c). Guideline E, personal conduct, was alleged because Applicant's motor vehicle license had been suspended from October 1984 to April 1985, November 1985 to February 2004, and February 2005 to February 2007, because of his motor vehicle violations (SOR 3.a), and because he had been convicted of a January 2004 unlicensed driver offense (SOR 3.b). DOHA also alleged under Guideline E that Applicant had falsified his January 2008 e-QIP by failing to disclose some of his delinquent debts (SOR 3.c) and the January 2004 unlicensed driver offense (SOR 3.d).

Applicant admitted that he had owed the delinquent debts in SOR 1.a-1.e and 1.h. He had made payments arrangements on the debts in SOR 1.a, 1.b, and 1.e, and had proposed a repayment plan on the judgment in SOR 1.d. He had paid the credit card debts in SOR 1.c and 1.h. Applicant averred that the debt in SOR 1.g was a duplicate of that in SOR 1.e, and he also denied SOR 1.f because it had been resolved. Applicant admitted the allegations SOR 2.a-2.d under Guideline G and SOR 3.a and 3.b under Guideline E. He denied the alleged falsifications (SOR 3.c and 3.d) of his e-QIP. After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 45-year-old network engineer, who has been employed by a defense contractor since January 2008. His duty station is on a military installation, and he requires a secret clearance for his work securing wireless networks for the military (Tr. 67-68).

Applicant was arrested for OUI in his home state (state X) in August 1984, when he was 20 years old. He pleaded guilty, and was sentenced to pay fines and court costs of $365. Applicant was assessed a separate $3,000 surcharge by the state in addition to the court fine and costs (Tr. 185), and his driver's license was suspended by state X for six months until April 1985.

Applicant's operator's license was suspended by state X in November 1985 as a result of additional traffic violations or failure to pay the surcharge imposed for his first OUI.[1] Over the next 18 years,[2] he repeatedly drove while his license was suspended (Tr. 187), including in November 1988, when he committed his second OUI offense. He pleaded guilty to the OUI charge in March 1989 and was sentenced to fines and costs totaling $615. The state again assessed a $3,000 surcharge that he did not pay (Tr. 185). On November 15, 1994, state X was awarded a $11,975 judgment against Applicant for unpaid fines and surcharges (Ex. 7).

On April 28, 1992, the lender of a key machine for his family's business obtained a judgment of $997 against Applicant (Ex. 7, Tr. 137). Applicant made no effort to repay the debt until after it became an issue for his clearance.

In March 1996, Applicant was caught with an open container of beer on a train (Tr. 97). He was convicted in May 1996 of a public drinking charge (drinking on a facility) and fined $50. From May 1996 until 2001, Applicant worked as a night manager at a bar in state X (Ex. 1). Toward the end of that employment, he began to rely on consumer credit to pay expenses. Between 1999 and 2001, he opened the credit card accounts in SOR 1.c, 1.e (duplicate debt in 1.g), 1.f, and 1.h.

[1]DOHA alleged, and Applicant admitted, that his operator's license was suspended from November 1985 to February 2004, and again from February 2005 to February 2007, as a result of a number of traffic violations he committed, including driving while license suspended/revoked, speeding, improper turn, refusal to submit to chemical test, failure to comply with countermeasures program, nonpayment of insurance surcharge, failure to appear, operating under the influence, and failure to comply with court install order. Applicant testified that his license was suspended automatically when he missed one installment payment of state X motor vehicle surcharges, including $3,000 assessments for each drunk driving offense (Tr. 100). It is unclear why his license was suspended in November 1985. He admitted at his hearing that he had repeatedly driven a vehicle while his license was suspended between November 1985 and February 2004 (Tr. 187).

[2]Available information indicates that his license was not restored until February 2004.

In about 2000 or 2001, Applicant moved to his current state of residence (state Y) and began undergraduate studies in information sciences networking (Tr. 66).[3] Applicant worked part-time as a bartender while in college, and his income was not sufficient to meet all his expenses (Ex. 9). In January 2001, he stopped paying on his credit card account in SOR 1.h. He did not pay on the credit card debts in SOR 1.c, 1.e, and 1.f after the May/June 2001 time frame (Ex. 5). In 2003, he began receiving debt collection notices that he ignored (Ex. 9).

In January 2004, Applicant was charged with being an unlicensed driver in state X. He was found guilty of the charge in March 2004 and ordered to pay fines and costs of $386. He paid the fines the next day (Answer).

In June 2004, Applicant earned his Bachelor of Science degree (Ex. 1). He elected to continue his education toward a Master of Business Administration, and he financed his master's degree with additional student loans (Exs. 4, 5). He was awarded his M.B.A. in about February 2006 (Ex. 1). During graduate school, he held some positions in the information services sector,[4] worked seasonal employment for the postal service in 2004 and 2005, and was a banquet bartender for a local hotel (Ex. 1, Tr. 90). He testified that he was in and out of different jobs while in school and could not keep up with his obligations (Tr. 89), but he took a pleasure trip to Ireland in August 2004 (Ex. 1).

On December 23, 2004, Applicant pulled off the road onto an off-ramp while driving from state Y to state X for the holidays, and he fell asleep. Applicant testified he was not intoxicated but he was too tired to drive. He denied he had consumed any alcohol that evening to a state trooper who had come upon his vehicle, but also testified that he submitted to four breathalyser tests. Applicant was charged with OUI, failure to possess a license, and refusal to take a breathalyser because he had not performed the tests correctly (Tr. 168-69). Because of the passage of time since his last OUI, it was considered a second rather than third drunk driving offense by state X (Tr. 172-73). On February 14, 2005, he pleaded guilty to the refusal charge on the advice of his attorney. He was found not guilty of the remaining charges. He was fined $739, ordered to attend an alcohol awareness program, and his license was suspended for 24 months (Answer, Tr. 170-71). He was also assessed another $3,000 surcharge by state X (Tr. 185). In August 2005, the division of motor vehicles in state X obtained a $1,100 judgment against Applicant (Ex. 7), and the state issued a $1,100 tax lien against him (Ex. 5) for his failure to pay fines and surcharges. In July 2006, state X issued a tax lien of $1,100 against Applicant for his failure to pay fines and surcharges (Exs. 4, 5).

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[3]Applicant indicated on his e-QIP that he started his education in state Y in November 2001 (Ex. 1). However, his February 2008 credit report (Ex. 4) shows that he took out his first student loans from state Y in July 2000 for $2,625 and $2,667. He also took out a $2,200 loan through the university in December 2000.

[4]Applicant testified that he worked in some internship positions (Tr. 90). Among employments listed on his e-QIP are an information systems networking specialist position with a medical imaging company from March 2005 to June 2005, a compliance manager consultant position from June 2005 to January 2006, and a wireless network sales/installation technician position from June 2005 to October 2007 (Ex. 1). The record before me for review contains no specifics about his earned income for these positions.

Applicant attended twelve sessions of court-ordered counseling from July 11, 2005, to October 13, 2005. He completed the program free of substance abuse and, at discharge on October 14, 2005, he was given a diagnosis of alcohol abuse in partial remission (Ex. H).

In August 2007, Applicant consolidated most of his student loan accounts into two separate loans of $37,909 and $37,176, which were deferred. As of late 2007, Applicant owed unpaid collection balances of $973 on SOR 1.c, $4,561 on SOR 1.e (updated balance of 1.g[5]), and $1,556 on SOR 1.f. His account with the lender in SOR 1.h was past due 180 days in the amount of $226 (Ex. 5).

In January 2008, Applicant began working for his current employer at an annual salary of $60,000 (Tr. 145). Applicant was asked to apply for a security clearance, and he completed an electronically submitted e-QIP at home on January 10, 2008 (Ex. 1, Tr. 70). In response to whether he had ever been charged with any offense related to alcohol or drugs, he listed only the December 2004 refusal to submit to a breathalyser. He did not disclose his January 2004 unlicensed driver conviction in response to question 23.f, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than $150 unless the violation was alcohol or drug related.)." He testified credibly, albeit mistakenly, that he recalled the fine as less than $150 and neither alcohol nor drugs was involved. Concerning financial delinquencies, Applicant responded "Yes" to question 28.a, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" but he disclosed only a $213.29 cellular phone debt that he satisfied in January 2008. He knew that he had old delinquent credit card debts (Tr. 113) and did not disclose them in response to question 28.a or 28.b ("Are you currently over 90 days delinquent on any debt(s)?" He responded "No" to questions 28.b, 27.c ("In the last 7 years, have you had a lien laced against your property for failing to pay taxes or other debts?") and 27.d ("In the last 7 years, have you had any judgments against you that had not been paid?"), even though he owed several credit card debts in collection and state X had acquired tax liens and judgments against him for failure to pay motor vehicle surcharges. Applicant claims it was because he did not have the information about the accounts before him at the time ("There were so, I knew there were so many, I didn't have the documentation in front of me and, as I said, I should have pulled the credit report and entered that information first." Tr.116).

According to Applicant, shortly after he submitted his e-QIP, he obtained his credit report that confirmed the outstanding delinquencies ("I had the credit report from the credit reporting agency stating all this open information that was on there."). It prompted him to contact his security manager the day after he submitted the e-QIP, and he informed her that he had omitted some adverse credit information (Tr. 72, 116-17). His security manager does not recollect that conversation with him (Tr. 121).

[5]Applicant's February 7, 2008 credit report (Ex. 5) lists a $3,081 debt balance placed by the original lender for collection as of March 2003 (SOR 1.g). The assignee in SOR 1.e is collecting for the lender in SOR 1.g, so they are likely the same debt.

Alerted to the delinquent credit card debts through a check of Applicant's credit on February 7, 2008 (Ex. 5), or February 27, 2008 (Ex. 4), or both, a government investigator interviewed Applicant on February 25, 2008, about his debts. Applicant disclosed at the beginning of the interview that he had informed his security officer about his adverse credit information and that he had been directed to hold onto the information until he was interviewed. (Tr. 33). Applicant explained that sometime between 2001 and 2002, he was unable to make the minimum payments due on his credit cards. He indicated that he had not used any credit cards or made any attempts to pay any of his overdue balances since about 2001 or 2002. Starting in 2003, he was notified that accounts were in collection but he did not respond to those notices. Applicant also told the agent that he obtained a copy of his credit report in January 2008 to determine the status of his accounts and that most of his accounts were reported as charged off. Applicant interpreted it to mean that he was no longer responsible for repaying the debt (Ex. 9, Tr. 34). The agent then went through the debts listed on the credit report with Applicant (Tr. 37). Applicant did not dispute the debts in SOR 1.c, 1.e, 1,f and 1.h. He indicated he did not intend to repay them since they had been charged off and would be removed from his credit record. He explained that the debts had been omitted from his e-QIP "by mistake." (Ex. 9).

As of March 21, 2008, Applicant had paid $11,071 toward his $24,079.22 in total judgment debt that had been awarded state X for unpaid motor vehicle surcharges and fines, but he was behind in his installment payments. On March 21, 2008, state X notified Applicant that his driving privileges would be indefinitely suspended on May 11, 2008, if he failed to pay $1,118 in full by April 5, 2008 (Ex. B). On or before July 16, 2008, Applicant promised to pay $326.45 to restore from default his surcharge account (Ex. 2).[6] As of November 28, 2008, Applicant was making $100 monthly installment payments toward an outstanding judgment balance of $12,430.54. With subsequent installment payments, he had reduced the debt to $11,998.78 as of June 5, 2009 (Ex. B). But his operating privileges had not been restored in state X (Tr. 189). He denies operating a vehicle within state X without a valid license after his arrest in December 2004 (Tr. 191).

In response to DOHA interrogatories, Applicant provided a personal financial statement dated July 21, 2008. He calculated a net monthly remainder of $929.15, which included $625 in anticipated monthly income from seasonal employment with a local NFL franchise that he did not always earn (Tr. 157). Applicant was making payments of $225 per month on a VISA credit card account. He indicated he was paying $455.35 per month toward his consolidated student loan balance of $88,794.87[7] and $40 toward $2,637.40 in an additional student loan debt owed his former college (Ex. 2).

[6]Applicant owed outstanding debt to a local hospital that was not alleged in the SOR. On July 8, 2008, he paid $1,037.71 to settle his debt to a local hospital (Ex. 2).

[7]Recent credit reports (Exs. 2, 3) confirm that Applicant refinanced his student loan debt in April 2008 through two loans of $49,982 and $38,253, to be repaid at $258 and $197 per month.

On or before September 30, 2008, Applicant settled the debt in SOR 1.f (Ex. A). As of October 2008, Applicant was current in his consolidated student loans, which had balances of $47,659 and $36,475, and on his loan debt with his former college, which had a balance of about $900 (Tr. 155). He was current on an open credit card account, which had a balance of $11,271 (Ex. 3). On February 10, 2009, he settled the debt in SOR 1.c (Ex. L), and he paid $150 to settle the debt in SOR 1.h (Ex. F). On March 4, 2009, he settled the debt in SOR ¶ 1.e (duplicate in 1.g) with a payment of $3,800 (Ex. E, Tr. 141). The money came from his income tax refund for 2008 (Tr. 159). On or before June 8, 2009, Applicant paid $500 in compromise settlement of the judgment debt in SOR ¶ 1.d. (Ex. D).

As of late June 2009, Applicant's annual salary from his work with the defense contractor was about $61,000 (Tr. 145). He had made no payments on his student loans in about one year (Tr. 155). They were in deferment since he had returned to school pursuing a degree in systems engineering. He was paying for his studies from his income (Tr. 153-54).

Applicant testified initially on direct examination that he has "minimized his lifestyle," and operates on "basically a cash basis" (Tr. 89). As of June 2009, Applicant was paying $300 per month on his open credit card account, which had a current balance of $13,000 (Ex. 6). The debt balance had been $10,724 in July 2008 (Ex. 2). Some of the debt was incurred for car repairs (Tr. 160-63). Applicant currently drinks on a social basis, depending on the circumstances. He does not want a recurrence of his "past alcohol indiscretions" and does not drive after drinking (Tr. 192).

Applicant has performed in an outstanding manner as a key member of an engineering support team upgrading a military wireless LAN. He has the support of the military branch chief (Ex. I) and supervisory personnel who work for the defense contractor and evaluate his performance (Exs. J, K).

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). 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 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 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

Guideline F, Financial Considerations

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

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

Applicant incurred $24,079.22 in judgment debt because of his failure to pay motor vehicle surcharges. Another creditor obtained a $997 judgment against him in April 1992 that went unpaid until June 2009. Applicant stopped paying on some consumer credit card obligations in about 2001 and delinquent balances totaling over $8,000 were placed for collection. 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," cannot reasonably be applied in mitigation. Applicant's debt to state X is due to his poor judgment in violating the state's laws against OUI and operating after his license was suspended, and in failing to timely pay surcharges imposed for his offenses. He was behind in his installment payments on the surcharges as recently as July 2008, and has paid only half of the total debt despite the passage of more than four years since his last offense. Moreover, he ignored collection notices on consumer credit card debts until it became clear to him that his failure to resolve them could cost him his security clearance. He apparently took a pleasure trip overseas in 2004 while those delinquencies went unpaid.

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," does not apply. The motor vehicle surcharges were incurred because of his own irresponsibility. His reliance on consumer credit to pay expenses while he was pursuing his bachelor's degree ("I got behind and I had to make almost a Sophie's Choice of whether to pay the rent, keep the lights on." Tr. 89), was likewise within his control. To the extent that insufficient income contributed to his financial problems, it does not extenuate his failure to take prompt action to repay his consumer credit delinquencies once he began working for the defense contractor at an annual salary of $60,000.

As of February 2008, Applicant did not intend to repay those credit card debts which had been charged off. He has an M.B.A. degree and cannot credibly claim a good faith belief that he did not have to repay those debts that were knowingly incurred and charged off, or placed for collection, or both, due to nonpayment. Some accounts were still reported as being in open collection status as of July 2008 (Ex. 2).

Applicant made no effort to resolve his consumer credit card delinquencies, or the judgment debt in SOR 1.h, until the fall of 2008, when he settled the debt in SOR 1.f. Between February 2009 and June 2009, he settled the remaining credit card debts and the judgment in SOR 1.h. But it is difficult to fully apply AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," because of the recency of these payments and his history of missed payments to state X on the judgments for unpaid surcharges.

Applicant still owes about $11,998.78 to state X for the motor vehicle surcharges. While he was making his monthly installment payment of $100 as of June 2009, his record of missed payments, including in March 2008 and July 2008, when he was earning about $60,000 a year, continues to cast doubt on his financial judgment. With interest continuing to accrue on the balance, Applicant had reduced the debt by only $431.76 since November 2008. Applicant chooses to pay for additional schooling when he has yet to fulfill his obligation to state X. He is also paying about $300 a month on a credit card debt balance of $13,000. While this account is not delinquent, his balance is about $2,300 higher than it was in July 2008. It undermines his testimony somewhat

that he has minimized his lifestyle and is operating basically on a cash basis (Tr. 89). Although his student loans are currently in forbearance, he will have to resume repayment of some $88,235 in debt at some point. He has shown a preference to paying on his student loans over his motor vehicle surcharges in the past. Under the facts presented, it would be premature to apply AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control."

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out in AG ¶ 21: "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 untrustworthiness." Applicant's drunk driving offenses from 1984 and 1988, and his citation for a public drinking offense in 1996, implicate AG ¶ 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." While he was charged with OUI in December 2004, and his refusal to consent to a breathalyser was considered by state X to be an alcohol offense, the available evidence does not prove he was under the influence.

He was ordered by the court as a result of the December 2004 incident to complete an alcohol awareness program, where he was diagnosed with alcohol abuse. The hearing record contains a one page, unsigned discharge summary that contains nothing about the qualifications of the clinician who rendered the diagnosis. So despite the diagnosis, neither AG 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence," nor AG 22(e), "evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program," are implicated.

In mitigation, there has been no recurrence of any abusive drinking in over four years. While the evidence does not prove that Applicant was under the influence of alcohol when he was arrested in December 2004, it is difficult to believe that he did not engage in abusive drinking at some point after the 1988 offense, given the diagnosis of alcohol abuse in 2005. On his discharge summary, it was noted that Applicant already been in partial remission when he entered treatment in July 2005. There is no evidence of any recent alcohol abuse, and Applicant intends to avoid his "past alcohol indiscretions." Mitigating conditions AG ¶ 23(a), "so much time has passed or the behavior was so infrequent, or it 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," and AG ¶ 23(b), "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)," apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in Guideline E, ¶ 15 of the adjudicative guidelines:

> 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's operator's license was suspended by state X from October 1984 to April 1985 following his first OUI. When he failed to pay motor vehicle surcharges, it was suspended again in November 1985. DOHA alleged, and Applicant admitted, that his operator's license was not restored before February 2004 due to numerous motor vehicle violations, including driving while license suspended/revoked, speeding, improper turn, failure to comply with countermeasures program, refusal to submit to chemical test, non-payment of insurance surcharges, OUI, failure to appear, and failure to comply with court install order. He was caught driving without a license in January 2004, but that was not the only occasion on which he operated a vehicle while his license was suspended over those 18 plus years. His serious disregard of state X's motor vehicle laws raises security concerns under AG ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations."

In addition to the security concerns raised by his pattern of rule violations, Applicant has demonstrated behavior implicating 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 of Applicant's completion of his January 2008 e-QIP, he was delinquent more than 180 days on the credit card debts in the SOR, and had outstanding judgments against him. Yet he listed only one cellular phone debt that he had satisfied. He likely knew that state X had been awarded judgments against him, including as recently as 2007. But even if he was unaware of the judgments, he knew that he had a history of late payments on the surcharges resulting in his license being suspended again in 2005 until at least

February 2007.[8] He admitted that he was aware of old credit card debt which he claims he assumed had been charged off. His omissions were knowing and willful, and not extenuated by the fact that he may have been unaware of the account numbers or balances. A good-faith effort to comply would require at a minimum that he disclose generally that he had fallen seriously past due on credit card balances within the past seven years, and that he owed surcharges to state X that continued to mount because of his history of late payments.

DOHA's case for deliberate falsification or omission was not established with respect to Applicant's failure to disclose his January 2004 unlicensed driver offense, however. Applicant was required to list the offense in response to question 23.f on the e-QIP concerning any arrests, charges, or convictions in the last seven years not otherwise listed, unless it was not alcohol or drug related and involved a traffic fine of less than $150. Applicant denies that the incident was alcohol or drug related, and there is no evidence to show otherwise. The government alleged, and Applicant admitted, that he was ordered to pay "fines/court costs of $386." It is unclear how much of that amount represents fines as opposed to costs. Assuming a fine of $150 or more, Applicant testified credibly that he recollected the fine to be less than $150 (Tr. 102). In view of his disclosure of his more recent December 2004 offense, I accept his denial of any intentional concealment concerning his arrest record.

The personal conduct concerns raised by his years of demonstrated disregard of state X's motor vehicle laws are not fully mitigated by AG ¶ 17(c), "the offense is so minor, or so much times 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." Applicant denies that he has operated a motor vehicle in state X without a valid license since his arrest in December 2004 (Tr. 191), but reform is incomplete without a track record of compliance with the sanctions imposed. He was in default of his surcharge payments in March 2008 and again in July 2008. Since November 2008, he had reduced his obligation by only $431.76. A lengthier track record of timely installment payments is warranted before I can conclude that the personal conduct concerns are fully mitigated.

Concerning potential mitigation of his concealment of known delinquent debts, Applicant submits that he notified his security manager of his omission of debt information. His security manager apparently has no recollection of any such conversation with him. However, the government investigator interviewed Applicant on February 25, 2008, testified that Applicant started the interview by disclosing "information about the financial situation that we had developed," including that he had informed his security officer of the information and was directed to hold onto it until he was interviewed (Tr. 33). As the investigator's report (Ex. 9) shows, Applicant also admitted early on that he had stopped making payments on his credit cards between 2001 and 2002, and that he did not respond to collection notices. AG ¶ 17(a), "the

[8]Applicant's operator's license was ordered suspended for 24 months for the December 2004 refusal to submit to a breathalyser offense. It is unclear when, or if, it was restored after February 2007. His driving privileges to operate within state X were suspended as of June 2009 (Tr. 189).

individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," applies. But reform is incomplete without meaningful acknowledgment of his behavior, and in this regard Applicant falls short. Applicant testified that it was only in hindsight, after he obtained his credit report, that he realized he made a "mistake" and should have disclosed his delinquencies on his e-QIP (Tr. 117-18). He subsequently acknowledged that he knew he had old debts when he completed the e-QIP (Tr. 119), but he attributed his omission of debt information to not having the account information available. Applicant later acknowledged that he had known that he owed an outstanding balance to state X when he filled out his e-QIP, but when asked why he did not disclose it, he responded, "Right, I didn't put that in that, it's just brought that up now." After it was pointed out that $24,079 in surcharge debt would tend to suggest a history of delinquency and accumulation of interest due to nonpayment, Applicant acknowledged that the debt should have been reported on his e-QIP based on the information he knew at the time (Tr. 136). His denials of any intent to conceal are not credible, and they undermine his case in reform. AG ¶ 17(d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur," does not apply.

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.

The DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases stating, in part, "an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.'" ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is credited with settling his consumer credit card delinquencies, but the concerns in this case are not fully mitigated by resolution of those debts. As recently as July 2008, he had to pay a restoration fee to resume installment payments on his delinquent judgments to state X. Applicant has not provided a credible excuse for his recent failure to fully comply with his repayment obligation.

Applicant has shown good judgment in avoiding a recurrence of the drunk driving and operating after suspension behaviors. He has earned two college degrees, and commenced a promising career in information services network technology. His work performance during his first year on the job was valued by his supervisors and the military customer. But Applicant put his personal interest ahead of his obligation of candor when he did not disclose the surcharges or consumer credit card delinquencies on his January 2008 e-QIP, and he continues to demonstrate a tendency to act in self-interest. Based on his living expenses and the fact that he is not paying on his deferred student loans, Applicant should be able to afford more than $100 each month toward the surcharge debt. Concerns persist about his judgment in part because of his failure to make repaying his surcharge debt a priority.

Applicant's efforts in reform of the financial considerations and personal conduct concerns are recent in time and must be considered in light of his many years of exhibited poor judgment involving several different aspects of his life (repeated drunk driving and operating after license suspended, disregard of legitimate financial obligations for some seven years, and lack of candor on his January 2008 e-QIP about his financial situation). I am unable to conclude at this time that it is clearly consistent with the national interest to grant him eligibility 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Paragraph 3, Paragraph E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant

Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	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