DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 08-07766
	)	
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

July 30, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the hearing transcript, pleadings, and exhibits, I conclude that Applicant failed to mitigate security concerns under Guideline J, Criminal Conduct, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP) on January 29, 2008. On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, Criminal Conduct, and Guideline 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.

On April 8, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on June 9, 2009. I convened a hearing on July 6, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf. He called one witness and offered seven exhibits, which were marked Ex. A through G, and admitted to the record without objection. Because Applicant's Ex. B, a letter of character reference, was undated and unsigned, I kept the record open for one week, until close of business on July 13, 2009, so that he could provide a signed and dated version of Ex. B if he wished to do so. Applicant also asked to include in the record a copy of a handwritten employment application he filed in about October 2007, and I granted his request to do so. DOHA received the transcript (Tr.) of the hearing on July 15, 2009. By memorandum dated July 23, 2009, Department Counsel reported that Applicant failed to submit any post-hearing documents.

Findings of Fact

The SOR contains six allegations of disqualifying conduct under AG J, Criminal Conduct (SOR ¶¶ 1.a. through 1.f.), and three allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 2.a. through 2.g.). In his Answer to the SOR, Applicant admitted five Guideline J allegations (SOR ¶¶ 1.a. through 1.e.) and provided additional information. He denied the three Guideline E allegations (¶¶ 2.a. through 2.c.), and he did not address SOR ¶ 1.f., which alleged that the information set forth in ¶¶ 2.a. through 2.c. violated 18 U.S.C. § 1001 and was felonious criminal conduct. Applicant's admissions are admitted herein as findings of fact. (Answer to SOR; Tr. 21, 35; Ex. D.)

Applicant, who is 39 years old and employed in telecommunications by a federal contractor, seeks a security clearance. He attended college for about 2 ½ years, but did not complete a degree. He married in 1998. His wife is a citizen of Japan. His three children, ages 10, 8, and 5, are dual citizens of the United States and Japan. (Ex. 1; Tr. 140-141.)

At the time of his hearing, Applicant had been unemployed for approximately three months. His employer had suspended him from duty pending the adjudication of his eligibility for a security clearance. (Tr. 35-38, 76.)

The SOR alleged that Applicant was responsible for criminal conduct occurring between 1990 and 2008. In March 1990, when he was 19 years old, Applicant's vehicle[1] was broken into. For protection, he purchased a sawed-off shotgun from a

[1] In his Answer to the SOR, Applicant stated that he purchased the gun for protection after his apartment was broken into. In his response to DOHA interrogatories, he stated that he purchased the gun for protection after his truck was broken into. (Answer to SOR at 2; Ex. 2 at 2.)

friend.[2] He and a friend took the weapon to a sporting goods store at a mall, where he attempted to purchase ammunition for the gun. An employee of the store notified police. Applicant was arrested and charged with Possession/Manufacturing/Selling a Dangerous Weapon, a felony. Applicant pled guilty to the charge and was given 36 months of summary probation. In December 1991, he violated his probation and was sentenced to 90 days in jail. He served 31 of the 90 days in jail. (SOR ¶ 1.a.; Answer to SOR; Ex. 2 at 2; Ex. 3 at 3; Tr. 46-47, 83-90, 93.)

In May 1990, Applicant allowed a young woman to reside in his apartment for about two months. Applicant thought she would pay him rent, but she did not do so. He was behind in his rent and he pressured her to pay her share of the rent. Applicant knew she did not have enough money in her account to write a valid check, and if she wrote a check to him and he cashed it, it would be returned for insufficient funds. Nevertheless, he drove her to a bank, she made out a check to him, and he cashed it. The check the woman gave to Applicant was drawn on a third person's account. Applicant was arrested and charged with Forgery. He admitted in open court that he was guilty of the crime, but, on the advice of his court-appointed attorney, he pled no contest to conspiracy to commit Forgery. He was found guilty of the crime and sentenced to three days in jail and 24 months of probation. (SOR ¶ 1.d.; Answer to SOR; Ex. 2 at 2; Ex. 3; Ex. 4; Tr. 47-48, 90-93.)

In 1997, Applicant was pulled over by police in City A of State X and given a ticket for speeding. His automobile insurance had expired. He was ordered to appear in court and provide evidence of valid automobile insurance. Applicant did not appear in court as ordered, his license was suspended by operation of law, and a warrant was issued for his arrest. He was subsequently arrested in July 1997, charged with Failure to Appear, fined, and detained in jail for 24 hours. His father provided money to pay his fine and secure his release, and he also gave Applicant money to purchase automobile insurance. (SOR ¶ 1.c.; Answer to SOR; Ex. 2 at 3; Ex. 3; Ex. 4; Tr. 48-50, 99-103.)

One year later, in July 1998, Applicant was arrested in City B of State X and charged with (1) Failure to Appear, (2) Possession of Stolen Property, and (3) Traffic Offense. Charge (1) was dropped when City B learned that Applicant had appeared and answered that charge in City A one year earlier. Charge (2) was also dropped when Applicant provided evidence of a valid driver's license, valid automobile insurance, and valid license plates. Applicant pled guilty to the traffic offense charge and paid a fine of $270. (SOR ¶ 1.b.;Answer to SOR at 1; Ex. 3; Ex. 4; Tr. 50-52, 103-107.)

Applicant played poker regularly with a group of about two dozen people. Applicant believed that one of the individuals in his poker group, Mr. X, spoke with some of the other players and accused Applicant of cheating. This made Applicant angry. In February of March 2007, the poker group met at Mr. X's house to play poker. Applicant confronted Mr. X and asked him why he had told other players that he was cheating. Mr.

[2] The sawed-off shotgun, an illegal weapon, was confiscated by the police and destroyed. (Tr. 89.)

X denied talking about Applicant and telling others that he cheated. (Ex. 2 at 7; Tr. 113-114.)

During a break in the game, Applicant took Mr. X's credit card, which was sitting on a rack in his kitchen. He considered taking the card as a "practical revenge joke." Applicant used the credit card to purchase snacks and beer for the poker game, and he told the other players that he had purchased the food. Two or three days later, Applicant again used the credit card to purchase snacks for another poker game. He estimated he charged approximately $150 to $200 on the stolen card. After he used Mr. X's credit card for the second time, Applicant reflected on his actions and decided he had made a mistake. He estimated he had possession of the credit card for about one week. Then, he threw Mr. X's credit card in a trash can at a gas station. Some unknown person then acquired the card and charged approximately $900 more on Mr. X's credit card account, bringing the total charges to about $1,100. Applicant denied that he was responsible for the additional charges, but he paid all of the unauthorized charges made to the credit card account. (Ex. 2 at 7-8; Tr. 42-46, 113-119.)

Mr. X learned that the card had been taken and he reported the theft to the police. He accused Applicant of stealing the card. In April 2007, Applicant was arrested and charged with (1) Credit Card Theft, a felony, and (2) Identify Fraud, a felony. As the result of a plea bargain, he pled guilty to credit card larceny, a felony offense that did not require jail time. He received a sentence of six months in jail, suspended, and was sentenced to one year of probation. His year of probation ran from November 2007 to November 2008. An unknown individual informed Applicant's employer of his arrest. Applicant told an authorized investigator from the Office of Personnel Management (OPM) that he thought Mr. X was the person who reported this information to his employer. As a result, Applicant told the authorized investigator and the police detective who arrested him that his employer fired him for committing the crime. At his hearing, Applicant denied he was fired by his employer for committing the crime, and he asserted that he had resigned voluntarily. In light of his previous statements, Applicant's denial was not credible. (SOR ¶ 1.a.; Ex. 2 at 7-9; Ex. 3; Ex. 4; Ex. 5; Ex. A; Tr. 107-111, 120-124.)

On January 29, 2008, Applicant executed an e-QIP. Section 23 of the e-QIP asks about an Applicant's police record. Section 23a asks: "Have you ever been charged with or convicted of any felony offense? (Include those under the Uniform Code of Military Justice.)" Section 23b asks: "Have you ever been charged with or convicted of a firearms or explosives offense?" An individual responding to these questions is advised to "report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607."

Applicant answered "yes" to the questions posed in Sections 23a and 23b of the e-QIP. He listed his 1990 conviction of Possession/Manufacture/Selling a Dangerous Weapon. However, he deliberately failed to disclose his arrest and conviction in 2007

for the felony crime of Credit Card Theft, as alleged in SOR ¶1.a. (SOR ¶ 2.a.; Ex.1; Ex. 2; Ex. 3; Ex. 4; Ex. 5; Ex. A 3; Ex. 4; Ex. 5; Tr. 126-127.)

Section 22 of the e-QIP requests information on an applicant's employment record. Specifically, section 22 asks:

> Has any of the following happened to you in the last 7 years?
>
> 1. Fired from a job.
>
> 2. Quit a job after being told you'd be fired.
>
> 3. Left a job by mutual agreement following allegations of misconduct.
>
> 4. Left a job by mutual agreement following allegations of unsatisfactory performance.
>
> 5. Left a job for other reasons under unfavorable conditions.

Applicant responded "No" to all five questions in Section 22.[3] (SOR ¶ 2.b.; Ex. 1.)

After executing the e-QIP on January 29, 2008, Applicant signed a certification which reads as follows: "My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code.)" (Ex. 1.)

The SOR also alleged that Applicant deliberately falsified material facts in an interview with an OPM authorized investigator by telling the investigator that he used the stolen credit card two times to purchase items totaling $150 to $200, when, in fact, he knew and sought to conceal that he had used the credit card at least six times and had spent about $1,200. (SOR ¶ 2.c.) Applicant denied the allegation. The OPM investigative report relies on information provided by Applicant. The OPM report states that the stolen credit card had been used multiple times at multiple locations, and that Applicant was either working or on travel when some of the charges were made. Additionally, Applicant provided a letter from the detective whose investigation resulted in his arrest for felony credit card theft. In his letter the detective stated that Applicant initially denied involvement in the theft of the credit card but then admitted taking and fraudulently using Mr. X's credit card. The detective reported that Applicant "acknowledged the severity of his mistake and was fully cooperative during the remainder of the investigation and court proceedings. [Applicant] offered to repay the $1071.84 in fraudulent charges, despite believing several of the charges were not made by him." (Answer to SOR; Ex. A; Ex. 2; Tr. 109-112.)

[3] Applicant's witness was unable to corroborate that Applicant was not fired from the job. (Tr. 157-158.)

The SOR alleged that the Guideline E allegations constituted felonious conduct under 18 U.S.C. Section 1001. (SOR ¶ 1.f.)

Applicant provided information on his community service activities. The president of a community service organization to which Applicant belonged wrote a letter of character reference on his behalf and stated that he believed Applicant to dedicated, civic-minded, and reliable. He stated that he considered Applicant to be "a friend and valued member of our club and the community." (Ex. C.)

Applicant also provided letters of appreciation from customers he served as a federal contractor. Two customers praised his "can-do" approach and dedication to mission. (Ex. D; Ex. E.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "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 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.

When evaluating an applicant's suitability for a security clearance, an 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 useful 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense 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 in seeking 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 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 J, Criminal Conduct

Under the Criminal Conduct guideline "[c]riminal 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 ¶ 30.

Applicant admits a criminal history that spans 17 years. In 1990, he was arrested, charged, and convicted of Possession/Manufacturing/Selling a Dangerous Weapon, a felony offense for which he was sentenced to 36 months of summary probation. In December 1991, he violated his probation and was sentenced to 90 days in jail. He served 31 of the 90 days in jail.

In 1990, he was also arrested, charged, and found guilty of Forgery. He was sentenced to three days in jail and 24 months of probation. In 1997, Applicant did not appear in court on another matter as ordered, his license was suspended by operation of law, and a warrant was issued for his arrest. He was subsequently arrested in July 1997, charged with Failure to Appear, fined, and detained in jail for 24 hours. In 1998, Applicant was arrested for Failure to Appear, Possession of Stolen Property, and Traffic Offense. The Failure to Appear and Possession of Stolen Property offenses were

dismissed when it was determined that Applicant had satisfied them in a municipal jurisdiction that, through administrative oversight, then failed to convey this information to a second municipal jurisdiction within the same state.

In 2007, Applicant was arrested and charged with Credit Card Theft. He was found guilty of the charge, sentenced to six months in jail, suspended, and one year of probation. After learning of his arrest, his employer fired him. Applicant's year of probation ran from November 2007 to November 2008.

Applicant completed and certified an e-QIP on January 29, 2008, while he was serving his probation for the felony crime of Credit Card Theft. He failed to report this crime, as required, in response to Section 23 on the e-QIP. Additionally, he failed to report in response to Section 22 on the e-QIP that he had been fired by his employer as the result of his arrest. While Applicant denied at his hearing that he was fired, two sources, the OPM investigation report and the letter from the detective who investigated the charges of credit card theft, corroborated Applicant's earlier statements that he had been fired after he was arrested. These facts, and the record as a whole, suggest that Applicant deliberately failed to disclose his conviction for credit card theft and his termination from his employment because of that conviction. He had reason to know that, if he listed these facts on his e-QIP, he might not be awarded access to classified information. His denial at his hearing that he had not been fired, after he had revealed that information to two investigators, raises concerns about his truthfulness and reliability. I conclude that Applicant's falsification of his answers to Sections 22 and 23 was willful, deliberately false, and a violation of 18 U.S.C. Section 1001.

Applicant also told the OPM investigator that he used the stolen credit card two times to purchase snacks totaling between $150 to $250. He denied using the credit card several more times to charge items totaling about $1,200 and concealing this information from an authorized investigator. The record reflects that Applicant provided this same information to the detective who arrested him for credit card theft, and the detective's letter corroborates that Applicant personally repaid all fraudulent charges on the account. I conclude that the record evidence is insufficient to establish that Applicant's statements to the OPM investigator on this issue were willful, deliberately false, and a violation of 18 U.S.C. Section 1001.

Applicant's 17-year criminal history and his deliberate falsification of that history on his security clearance application raise concerns under AG ¶ 31(a) and AG ¶ 31(c). AG ¶ 31(a) reads: "a single serious crime or multiple lesser offenses." AG ¶ 31(c) reads: "allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

Two Criminal Conduct mitigating conditions might apply to Applicant's case. If "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," AG ¶ 32(a) might apply. If "there is evidence of successful rehabilitation, including but not limited to the passage of

time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive involvement," then AG ¶ 32(d) might apply.

The record demonstrates that Applicant's criminal behavior began in 1990, 19 years ago. From 1998 until 2007, Applicant was not involved in criminal behavior. However, his criminal behavior resumed in 2007, and it was serious and substantial. Applicant's past supervisors and colleagues praised his personal attributes and his professional skills. He demonstrated constructive involvement in his community. However, the record does not provide assurances that Applicant's criminal behavior is unlikely to recur.

In 2008, Applicant deliberately falsified his e-QIP by concealing and failing to report his criminal behavior in 2007 and his termination from his job in 2007. His unwillingness or inability to inform the government about this past criminal behavior raises concerns about his reliability, trustworthiness, and good judgment. Additionally, his deliberate falsifications suggest a failure in rehabilitation. I conclude that while AG ¶ 32(a) and AG ¶ 32(d) apply in part to mitigate Applicant's criminal conduct between 1990 and 1998, they do not apply to his more recent criminal conduct and his deliberate falsification of his e-QIP in 2008.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

> 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.

When Applicant completed and certified his e-QIP in 2008, he failed to report his past criminal behavior[4] involving a felony conviction for credit card theft and the fact that

[4] The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

he had been fired from his job in 2007 when his employer learned of his felony conviction. In his answer to the SOR, he denied that his failure to disclose this information was deliberate falsification of material facts. The OPM report and the detective's report state that Applicant stated he had been fired from his job in 2007. At his hearing, he denied telling the OPM investigator and the detective that he had been fired from his job after his employer learned of his arrest for credit card theft. The record as a whole reflects Applicant's lack of candor on these issues and suggests he deliberately concealed information that he feared would cause the government to deny him access to classified information.

The allegations in the SOR raise a security concern under AG ¶ 16(a), which reads: "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."

Several Guideline mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(a) if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." If "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 process" and "[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely," then AG ¶ 17(b) might apply. If "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not case doubt on the individual's reliability, trustworthiness, or good judgment," then AG ¶ 17(c) might apply.

AG ¶ 17(d) might apply if "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." AG ¶ 17(e) might apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

I closely observed Applicant at his hearing and I listened to his testimony carefully. I conclude that Applicant deliberately falsified material facts on the e-QIP that he executed and certified as true in January 2008. Nothing in the record suggests that he took prompt good-faith action to correct the omissions, concealments or falsifications before he was confronted with the facts. (AG ¶ 17(a).) Nothing in the record suggests

---

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

that his failure to report his criminal behavior was caused or significantly contributed to by improper or inadequate advice specifically about the security clearance process from authorized individuals or legal counsel. (AG ¶ 17(b).) When he executed his security clearance application, Applicant knew he had been convicted of felony credit card theft and was, at that time, serving a term of probation for the crime. As a mature adult, he knew that his criminal behavior was not minor, so remote in time, so infrequent, or had occurred under such unique circumstances that it would not seriously impact his eligibility for a security clearance. (AG 17(c).) Applicant failed to provide documentation that he obtained counseling or had taken other positive steps that might alleviate the circumstances that caused his unreliable conduct and, as a result, such behavior was unlikely to recur. (AG ¶ 17(d).) Nothing in the record suggests that Applicant took positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress that his behavior caused. (AG ¶ 17(e).) I conclude, therefore, that none of the applicable personal conduct mitigating conditions applies to the facts of Applicant's case.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult who has been recognized by his supervisors and co-workers as dedicated and responsible. He is appreciated by others in his community as a valued volunteer. He is married and the father of three young children. These actions suggested successful rehabilitation.

However, after nine years of no reported criminal behavior, he became involved in serious criminal behavior in 2007. In 2008, he completed an e-QIP and deliberately failed to report his past criminal behavior and termination from his job, thereby creating a situation that could seriously mislead the government about his honesty, reliability,

and trustworthiness. His falsifications were not minor: they went to the heart of his capacity for truthfulness, a critical qualification for one who would hold a security clearance. Applicant's failure to be truthful was deliberate. He made no effort to correct his falsifications before the government confronted him with his lack of candor. His deliberate falsifications are recent.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his criminal conduct and personal conduct.

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.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	For Applicant

Conclusion

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

_____

Joan Caton Anthony
Administrative Judge