



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



In the matter of:)	
)	
)	ISCR Case No. 08-08873
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: Pro Se

January 20, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on March 17, 2008. On July 1, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations; Guideline G, Alcohol Consumption; Guideline E, Personal Conduct; and Guideline J, Criminal 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 August 27, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 7, 2009. The case was assigned to me on October 16, 2009. On October 23, 2009, a Notice of Hearing was issued scheduling the hearing for November 12, 2009. The hearing was held as scheduled. The government offered ten exhibits which were admitted as Government Exhibits (Gov) 1 – 10 without objection. Applicant testified, and offered eight exhibits which were admitted as Applicant Exhibits (AE) A – H without

objection. The record was held open until November 30, 2009, to allow Applicant the opportunity to submit additional documents. He timely submitted a seven-page document that was admitted as AE I. Department Counsel's response to AE I is marked as Hearing Exhibit (HE) I. The transcript was received on November 19, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits the SOR allegations in ¶¶ 1.a, 1.d, 1.e, 1.g, 1.i, 1.m, 2.a, 2.b, 2.c, 2.e, and 4.a. He denies the SOR allegations in ¶¶ 1.b, 1.c, 1.f, 1.h, 1.i, 1.j, 1.k, 1.o, 3.a, and 4.b. He initially denied SOR ¶ 2.d, but admitted the allegation at the beginning of the hearing. (SOR ¶ 2.d)

Applicant is a 31-year-old engineer with a Department of Defense contractor who seeks a security clearance. He has been employed with his company since September 2007. He earned a bachelor of science degree in ocean engineering in December 2003. This is his first time applying for a security clearance. He is single and has no children. (Tr at 6-7; Gov 1)

Financial Considerations

Applicant's background investigation revealed that he had the following delinquent accounts: a \$1,307 medical account, placed for collection in September 2002 (SOR ¶ 1.a: Gov 5 at 1); a \$51 telephone account placed for collection in March 2008 (SOR ¶ 1.b: Gov 2 at 5; Gov 3 at 1; Gov 4 at 26, 30; Gov 5 at 2); a \$61 debt owed to an apartment complex placed for collection in March 2004 (SOR ¶ 1.c: Gov 2 at 7; Gov 3 at 1; Gov 4 at 26; Gov 5 at 2); a \$39 medical account placed for collection in September 2002 (SOR ¶ 1.d: Gov 2 at 5; Gov 3 at 1; Gov 4 at 27; Gov 5 at 2); a \$218 cable television account placed for collection in March 2004 (SOR ¶ 1.e: Gov 2 at 3; Gov 3 at 1; Gov 4 at 27; Gov 5 at 2); and an \$802 medical account placed for collection in September 2002 (SOR ¶ 1.f: Gov 2 at 3; Gov 3 at 1; Gov 4 at 25; Gov 5 at 2).

Additional delinquent accounts include: a \$453 medical account placed for collection in September 2002 (SOR ¶ 1.g: Gov 2 at 4, 6; Gov 3 at 2; Gov 4 at 19, 31; Gov 5 at 2); a \$3,743 student loan account placed for collection in September 2006 (SOR ¶ 1.h: Gov 2 at 10; Gov 3 at 2; Gov 4 at 23; Gov 5 at 2); a \$2,839 student loan account placed for collection in September 2006 (SOR ¶ 1.i: Gov 2 at 10; Gov 3 at 2; Gov 4 at 24; Gov 5 at 2); a \$609 credit card account that was charged off in October 2007 (SOR ¶ 1.j: Gov 2 at 2, 11; Gov 3 at 1; Gov 4 at 18); a \$23 fitness gym account placed for collection in April 2007 (SOR ¶ 1.k: Gov 2 at 4; Gov 4 at 29); a \$70 satellite television account placed for collection in March 2008 (SOR ¶ 1.l: Gov 2 at 5; Gov 4 at 30); a \$221 insurance account placed for collection in June 2007 (SOR ¶ 1.m: Gov 2 at 5, 11; Gov 4 at 30); and a \$150 medical account placed for collection in September 2007 (SOR ¶ 1.o Gov 2 at 3; Gov 3 at 1).

On June 13, 2008, Applicant was interviewed for his background investigation. The debts alleged in the SOR were discussed during the interview. Applicant did not recall many of the accounts and indicated that he intended to investigate the accounts after the interview. (Gov 4 at 7-9)

After graduating from college, Applicant testified that he experienced three periods of unemployment. On each occasion he was unemployed for several months. (Tr at 51) On his security clearance questionnaire, Applicant listed periods of unemployment from May 2000 to December 2003, when he was a college student and from August 1998 to September 1999. He did not list any periods of unemployment after graduation. (Gov 1, Section 11)

Applicant provided proof that the following debts are paid: SOR ¶ 1.b, \$51 telephone collection account, resolved on October 27, 2009 (AE D); SOR ¶ 1.e, \$218 cable television collection account, resolved on November 5, 2009 (AE B); SOR ¶ 1.l, \$70 satellite television collection account, resolved on November 5, 2009 (AE I at 2); and SOR ¶ 1.m, \$221 insurance account placed for collection, resolved on November 4, 2009 (AE C).

Applicant recently completed a loan rehabilitation program for the two delinquent student loan accounts alleged in SOR ¶¶ 1.h, \$3,743 and 1.i, \$2,839. He admits losing track of the two student loan accounts. The loans were transferred from the rehabilitation program in October 2009. (Tr at 32-44; AE E; AE F; AE G) He also rehabilitated some additional delinquent student loans that were not alleged in the SOR. (Gov 4 at 12-14; AE F; AE H at 2) He claims that all of his student loan accounts are now in good standing. He currently pays \$50.31 a month towards the student loans alleged in the SOR. He pays \$108.57 a month towards the other student loans that he rehabilitated. He provided a statement, dated October 3, 2009, that indicated that he had not made his payment for September 2009, and was one month past due. (Tr at 32-44, 61-66; AE E; AE F; AE G; AE H; Gov 4 at 12-14)

The status of the remaining accounts alleged in the SOR are:

SOR ¶¶ 1.a, 1.d, 1.f, and 1.g medical debts in the amounts of \$1,307, \$39, \$802, \$453: Applicant claims the debts all relate to treatment received at a medical center in 2002. He believes that some of the accounts may be duplicates. He is in the process of arranging a payment plan. He intends to resolve these accounts as soon as he can, but no payment plan had been arranged at the close of the record. The debts are unresolved. (Tr at 53-57)

SOR ¶ 1.c, \$61 collection debt owed to an apartment complex: Applicant states this debt is from an apartment that he and a co-worker shared when he worked as a field engineer for a previous employer. He denies that he is responsible for the debt. He claims that his former employer is responsible for paying the debt. He claims he has been trying to contact the human resources department at his former employer to arrange to have them pay the debt. The debt is unresolved. (Tr at 58-60)

SOR ¶ 1.j, \$609 charged off credit card account: Applicant denies this account. He is not familiar with the account. He claims that he contacted the company and they were not aware of the account's status and they do not have an account in his name. He did not dispute the account with the credit reporting agencies and provided no corroboration from the company that he does not have an account. The debt is unresolved. (Tr at 66-68)

SOR ¶ 1.k, \$23 fitness account placed for collection: Applicant states that the account is from a gym that he belonged to several years ago. He claims he called the collection agency and they did not have an account in his name. He has no documentation to corroborate that he does not have an account. He has not disputed the account with the credit reporting agencies. The debt is unresolved. (Tr at 68-69)

SOR ¶ 1.o, \$150 medical debt placed for collection: Applicant believes this debt is related to the medical bills incurred during treatment in 2002. He admits the debt is unresolved. A credit report, dated April 3, 2008, shows that this debt was opened in April 2007, in the state where Applicant was residing at the time. In 2002, Applicant lived in another state. This debt is not related to Applicant's medical treatment received in 2002. The debt is unresolved. (Tr at 71; Gov 2 at 3)

Applicant is unaware of having any other delinquent accounts. (Tr at 72) He is current on his federal and state taxes. He has an extension for filing his state and federal taxes for tax year 2009. He is not sure when the extension expires. (Tr at 82) He testified that he had no credit cards other than a business credit card. He also testified that he paid off some of his debts using a credit card over the phone. Under cross examination, he admitted using his business credit card to pay off the personal expenses. He claimed that his supervisor gave him permission to use his business credit card to pay off some of his debts. (Tr at 77-79)

Applicant's current annual salary is \$63,000. His net monthly income is \$3,100. His monthly expenses include: \$1,050 rent; \$400 groceries; \$150 utilities; car payment \$405; student loans \$400. Applicant has not driven his car for the past year, but recently opened a car insurance account which will be \$150 monthly. He claims that he has between \$300 to \$400 left over each month after expenses. On the day of the hearing, he had \$2,000 in his checking account. He has no savings. He claims that he used his pension funds to pay off debts. He has not attended financial counseling. (Tr at 73-83; see also Gov 4 at 3)

Personal Conduct

Applicant answered, "no" in response to section 28 on his security clearance application, dated March 17, 2008, which asks applicants whether they have had any delinquent debts over 180 days with the past seven years, or are currently 90 days delinquent on any debts. He omitted the debts alleged in SOR ¶¶ 1.a – 1.o. Applicant claims that he did intend to deceive the government about his delinquent accounts. He

claims that he was unaware of his delinquent accounts. He was not diligent about keeping track of his bills. (Tr at 72-73)

Alcohol Consumption

The SOR alleges and Applicant admits that he had four alcohol-related arrests between July 2, 2000, and October 28, 2006.

On July 2, 2000, Applicant was arrested and charged with Driving Under the Influence of Alcohol, Failure to Maintain a Single Lane, and Driving While License Suspended. Applicant was a waiter at a restaurant. He went out for a few drinks after work. He was driving home when the police pulled him over around 7:30 am. The police report indicates that people in another car called police after observing Applicant's erratic driving. Applicant failed a field sobriety test. His blood alcohol content was .218 and .222. He was driving on a suspended license for failure to pay a fine or insurance. On January 19, 2001, Applicant pled guilty to Driving Under the Influence and Driving While License was Suspended or Revoked. He was sentenced to pay court costs of \$341 and fined \$500. He was given 12 months probation. He was required to attend DUI school; his driver's license was suspended for nine months; and he was ordered to perform 75 hours community service. (Tr at 84-89; Gov 6; Gov 7)

On May 7, 2004, Applicant was arrested and charged with Disorderly Intoxication. Applicant went out drinking with a friend and his friend got into a fight. He and his friend were arrested. He thinks the charge was dismissed. The disposition of this charge is unknown. (Tr at 90-91; Gov 6 at 1)

On December 13, 2004, Applicant was arrested and charged with felony battery. After a night out, Applicant got into a fight with his girlfriend. He hit her in the face ultimately breaking her nose. Applicant admits to drinking that night but claims he was not intoxicated. The police report states that Applicant's girlfriend stated that he was extremely intoxicated. They got into an argument when his girlfriend asked him why he was always getting so drunk. Applicant got mad at her, told her to go home, and pushed her out of bed. Mutual pushing and shoving continued until Applicant hit her and her nose started bleeding. Applicant's girlfriend stayed with him all weekend. She went to the hospital on Monday because her face was not getting better. Her nose was broken. On May 18, 2004, Applicant pled to the lesser offense of misdemeanor battery, and adjudication was withheld. Applicant was placed on 12 months probation. He was ordered to pay \$1,035 restitution to his girlfriend. He attended anger management as part of his sentence. (Tr at 91-93; Gov 8);

On August 11, 2006, a neighbor called the police around 4 am because they saw Applicant sleeping in his driveway. Applicant had been drinking that evening. He testified that he drank about a six-pack of beer. He went outside to call his girlfriend and fell asleep while talking to her on the phone. He was not arrested. (Tr at 94-95, 104; Gov 9)

On October 28, 2006, Applicant was arrested and charged with Driving Under the Influence. He was at a Halloween party and offered to drive some girls downtown. He was stopped by police and failed a field sobriety test. On April 6, 2007, he was found guilty of the offense and sentenced to community service, 12 months probation, ordered to attend a Mothers Against Drunk Driving seminar, and fined \$500. (Tr at 95-96; Gov 10 at 2)

Applicant has not been arrested since October 28, 2006. He attended Alcoholics Anonymous (AA) classes in conjunction with each DUI sentence. He never attended AA on his own. He does not believe that he has a drinking problem. He believes he made some poor decisions when he was younger. He has never attended alcohol counseling or treatment. His drinking pattern is having a few beers with friends about once a week. He anticipates about six drinks would make him intoxicated. The last time he was intoxicated was at a Halloween party on October 31, 2009. He has not driven after consuming alcohol since his 2006 arrest. He has never experienced black outs. (Tr at 100-103; Gov 4 at 6-7)

Criminal Conduct

Applicant's alcohol-related arrests alleged in SOR ¶¶ 2.a, 2.b, 2.c, and 2.e were also alleged under criminal conduct. Applicant's alleged intentional falsification of his security clearance application alleged in SOR ¶ 3.a is also alleged under criminal conduct. If the omission of his delinquent debts on his security clearance application is found to be intentional, his conduct would be a criminal violation of Title 18, United States Code, § 1001.

Whole Person Factors

Applicant's supervisor wrote a letter on his behalf. Applicant has been assigned to his team for over a year. Applicant's responsibilities include protecting a wide variety of controlled unclassified documents, business sensitive, and industry proprietary documents. He has performed responsibly and reliably in all of these assigned functions. The supervisor notes that Applicant has demonstrated he is a very professional member of the team. (AE A) Applicant was given an overall rating of "meets/occasionally exceeds expectations" in his 2009 annual performance appraisal. His appraisal indicated that he requires little oversight and is a self starter. Applicant has good work habits and is a team player. (AE I at 3-7)

Policies

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 used 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.

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 to obtain 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 relating to the guideline for Financial Considerations 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. From 2002 to 2008, Applicant incurred 14 delinquent accounts, an approximate total balance of \$10,586.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept, 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. While Applicant provided proof that four of his debts with low balances were paid, the debts were paid between October 27, 2009, and November 5, 2009, a few weeks before his hearing. Some of the debts were paid with a credit card. His student loan accounts were recently rehabilitated. However, eight delinquent accounts remain unresolved. While Applicant has taken steps to demonstrate that he is financially responsible, concerns remain based on his eight-year history of ignoring delinquent accounts. His failure to develop a plan for resolving his remaining delinquent accounts continues to raise questions about his reliability, trustworthiness, and judgment.

FC MC ¶ 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. While Applicant testified that he had three periods of unemployment after he graduated from college, he did not list any periods of unemployment on his security clearance application other than when he was a college student. Even if he encountered periods of unemployment, he has been employed in his current position since September 2007. He continued to incur delinquent accounts while in his current job. His payment of four debts with low balances appears to be a last minute gesture rather than a demonstration that he now behaves responsibly towards his debts. I cannot say that he acted responsibly under the circumstances. It was and is within his discretion to take control of his financial situation.

FC MC ¶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) does not apply. Applicant has not attended financial counseling. Eight delinquent debts remain unresolved. Given his past history of financial neglect, it is unlikely that his financial situation will be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with to the debts alleged in SOR ¶¶ 1.b, 1.e, 1.l, and 1.m. Applicant provided proof that these accounts were paid. The delinquent student loans alleged in SOR ¶¶ 1.h and 1.i are found for Applicant because he provided proof that he rehabilitated the student loan accounts and they are now current. However the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, 1.g, 1.j, 1.k, and 1.o are unresolved and Applicant has no plan as to how he intends to resolve these accounts. A promise to pay in the future is not sufficient to demonstrate a good-faith effort to repay overdue debts. He took no steps towards resolving his remaining eight delinquent accounts even though each debt's balance is relatively low and within his means to resolve.

FC MC ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) has the potential to apply with regard to the debts alleged in SOR ¶¶ 1.c, 1.j, and 1.k because Applicant disputes that the debts are his responsibility. However, he provided no additional evidence to substantiate the basis for the dispute or provided evidence for actions taken to resolve the issue such as formally disputing the debts with the credit reporting agencies. FC MC ¶ 20(e) does not apply.

While Applicant's recent payments of four of his debts and his recent rehabilitation of his delinquent student loan accounts provide some mitigation under financial considerations, it is not enough to overcome the concerns raised by Applicant's eight-year history of financial irresponsibility. Applicant has not mitigated the concerns raised under Guideline F.

Guideline G, Alcohol Consumption

The security concern relating to the guideline 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 trustworthiness.

The guideline notes several disqualifying conditions that could raise security concerns. The following disqualifying conditions are relevant to Applicant's case:

Alcohol Consumption Disqualifying Condition (AC DC) ¶ 22(a) (alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent) applies. From July 2000 to October 2006, Applicant was involved in five alcohol-related incidents. He has two DUI convictions, a disorderly conduct arrest, and a battery conviction which occurred after a night of consuming alcohol. Although he was not arrested, the police were called to his home in the early morning hours of August 11, 2006, because concerned neighbors observed him passed out in his driveway.

AC DC ¶22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the person is diagnosed as an alcohol abuser or alcohol dependent) applies. Applicant's history of alcohol-related incidents indicate that he drinks alcohol to the point of impaired judgment. While the record evidence does not contain any formal diagnosis of alcohol abuse or alcohol dependence, Applicant's alcohol-related incidents raise security concerns.

The guideline also includes examples of conditions that could mitigate security concerns arising from alcohol consumption.

Alcohol Consumption Mitigating Condition (AC MC) ¶ 23(a) (so much time has passed, or the behavior was so infrequent, or it happened under such unusual 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. While Applicant testified that he no longer drinks and drives, he continues to consume alcohol to the point of intoxication. The last time he drank to the point of intoxication was on October 31, 2009, at a Halloween party, less than two weeks before the hearing. While there is insufficient record evidence to conclude Applicant is an alcohol abuser or alcohol dependent, his past history of demonstrated poor judgment while drinking alcohol raises a concern. The fact that he still drinks alcohol to the point of intoxication does not mitigate the concern. Applicant's alcohol use still casts doubt on his current reliability, trustworthiness, and good judgment.

Applicant did not mitigate the security concerns raised under alcohol consumption. Guideline G is found against Applicant.

Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in 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.

On his security clearance questionnaire dated March 17, 2008, Applicant answered, "No" in response to question 28a, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28b, "Are you currently 90 days delinquent on any debt(s)?" even though he had delinquent debts as alleged in SOR ¶¶ 1.a – 1.o. Applicant testified that he was unaware of his delinquent accounts when he completed the security clearance questionnaire. He was not deliberately trying to hide the fact that he had delinquent accounts from the government. He was just not diligent about keeping track of his bills. Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) potentially applies to Applicant's case. I find that it does not apply because Applicant did not intentionally falsify his security clearance questionnaire by omitting his delinquent accounts. I find Applicant's testimony that he did not list the delinquent accounts because he was unaware of them to be credible. His inattention to detail is what created his financial problems. Guideline E is found for Applicant.

Criminal Conduct

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Revised Adjudicative Guidelines:

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 SOR alleges four arrests and charges which were previously alleged under the alcohol consumption concern. There are several Criminal Conduct Disqualifying Conditions (CC DC) which apply to Applicant's case, CC DC ¶ 31(a) (a single serious crime or multiple lesser offenses) and CC DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). As mentioned in the alcohol consumption section, above, Applicant was arrested and charged with criminal offenses on four occasions from July 2000 to August 2006. He has two DUI convictions, the first occurring in July 2000, and the second conviction in August 2006. He had a May 2004 arrest and charge of Disorderly Intoxication, the disposition of that offense is unknown. In December 2004, he was arrested and charged with felony battery after he broke his girlfriend's nose during an argument. He pled to misdemeanor battery.

The following Criminal Conduct Mitigating Conditions (CC MC) are relevant to Applicant's case:

CC MC ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) and CC MC ¶ 33(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) apply. More than three years have passed since Applicant's last arrest on October 28, 2006. He has had no further criminal violations. He currently has a good employment record. There is evidence of successful rehabilitation with regard to Applicant's past criminal conduct.

I find for Applicant with respect to the allegation in SOR ¶ 4.b which alleged criminal conduct because Applicant deliberately falsified his security clearance questionnaire by omitting his delinquent debts in response to section 28. I found he did not intentionally falsify his security clearance questionnaire. As a result, there is no violation of Title 18 U.S.C. § 1001, a federal criminal statute.

The Criminal Conduct concern is mitigated.

Whole Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past history of alcohol-related offenses, financial irresponsibility, and criminal conduct. I considered the favorable comments of his supervisor and his favorable evaluation report. While Applicant rehabilitated his delinquent student loan accounts and resolved four of his accounts, eight debts remained unresolved. Applicant did not provide sufficient evidence to show that he was taking steps to resolve those accounts. The criminal

conduct concern is mitigated because Applicant has not been arrested and charged with a criminal offense in over three years. Alcohol conduct concerns are not mitigated because Applicant still drinks alcohol to the point of intoxication. The last time he drank to intoxication was less than two weeks before the hearing. His past history of alcohol-related incidents and the fact that he continues to drink to intoxication does not mitigate the alcohol consumption concerns. He did not intentionally falsify his security clearance application when he omitted his delinquent accounts. Applicant's history of financial irresponsibility and alcohol-related incidents raise serious issues about his ability to protect classified information. Personal Conduct and Criminal Conduct concerns are found for Applicant. Financial Considerations and Alcohol Consumption are found against Applicant.

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
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant

Paragraph 2, Guideline G:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant

Paragraph 3, Guideline E:	FOR APPLICANT
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Subparagraph 3.a:	For Applicant
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Paragraph 4, Guideline J:

FOR APPLICANT

Subparagraph 4.a:

For Applicant

Subparagraph 4.b:

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.

ERIN C. HOGAN
Administrative Judge