



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



In the matter of:)	
)	
)	ISCR Case No. 08-12167
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T, Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

April 20, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on June 18, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, J, and E on August 12, 2009. 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 adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 1, 2009. He answered the SOR in writing on October 1, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 30,

2009, and I received the case assignment on January 14, 2010. DOHA issued a notice of hearing on February 2, 2010, and I convened the hearing as scheduled on February 24, 2010. The Government offered exhibits (GE) 1 through 10, which were received and admitted into evidence without objection. Applicant objected to pages 4 and 5 of GE 11. Except for pages 4 and 5, GE 11 was received and admitted. Applicant testified on his own behalf. He submitted eight exhibits (AE) A through H, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 11, 2010. I held the record open until March 26, 2010, for Applicant to submit additional matters. He timely submitted AE I through R, without objection. The record closed on March 26, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b-1.e, 1.g, 1.i-1.l, 1.n, 2.a-2.h, 3.a-3.f, 3.h, and 3.i of the SOR, with explanations. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.f, 1.h, 1.m, 3.g, 3.i, and 3.j of the SOR.¹ After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 35 years old, works as a web analyst teaching soldiers how to maintain their weapons. He began his employment with a Department of Defense contractor in May 2008. His employer rated his performance as average or above average for the last two evaluations. His employer describes him as a valuable leader, effective communicator, and professional. He works well with team members and successfully completes tasks ahead of time.²

Applicant became a father when he was 17 years old and his wife was 15 years old. They married at ages 20 and 18, respectively. In addition to their 17-year-old son, they have an 11-year-old daughter. Applicant enlisted in the United States Army in 1995 at age 20. The Army honorably discharged him in 2007 at the rank of Sergeant First Class. While in the Army, he deployed to Bosnia and Iraq. He also received numerous medals and awards for his military service. Applicant currently attends college part-time. He needs 15 credits to complete a degree in operations management.³

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

²GE 1; GE 10; AE A; Tr. 31.

³GE 1; GE 8; Tr. 30-31.

Financial issues

When their financial problems became unmanageable, Applicant and his wife filed a Petition for Bankruptcy under Chapter 13 of the Bankruptcy Code in 2001. With the assistance of the court, they developed a wage earner's payment plan. They complied with the payment terms of their plan and the court discharged their bankruptcy in September 2006.⁴

Applicant left the Army in April 2007 and began attending college full-time. He used the GI Bill, his disability benefits, and unemployment benefits to pay his living expenses until May 2008, when he began his current employment. His wife did not find employment until more than six months after he left the military. During this time, Applicant lacked sufficient funds to pay all his bills. As a result, he incurred new unpaid debts.⁵

After reviewing the credit reports dated January 8, 2005, June 18, 2008, May 10, 2009, February 4, 2010, February 8, 2010, March 17, 2010, and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:⁶

SOR ¶	Type of Debt	Amount	Status	Evidence
1.a	Medical bill	\$ 2,554.00	Disputed, removed credit report	AE B; AE C; AE J
1.b	Public Works	\$ 316.00	Paid	AE I; AE J
1.c	Cable bill	\$ 212.00	Disputed; Paid	GE 8 at 5; AE K; Tr. 35-37
1.d	Bank credit card	\$ 625.00	Paid	AE C; AE J at 24; AE N
1.e	Medical bill	\$ 165.00	Paid	AE C; AE D; AE J at 26
1.f	Credit account	\$ 2,028.00	Disputed, removed credit report	AE B; AE C; AE J; Tr. 40
1.g	Bank card	\$ 984.00	Paid	AE B; AE C; AE G; AE J at 21-22; AE M; Tr. 41

⁴GE 8; GE 10 at 25; Tr.31-32.

⁵Tr. 32-34.

⁶GE 7; GE 8; GE 9; AE B; AE C; AE J.

1.h	Store account	\$ 854.00	Disputed, removed credit report	AE B; AE C; AE J
1.i	School debt	\$ 1,770.00	Paid	AE O; Tr. 41
1.j	Credit union	\$ 169.00	Paid	AE F
1.k	Loan	\$21,000.00	Payment plan, \$250 a month	AE H; AE L
1.l	Cable	\$ 322.00	Paid	AE B; AE C; AE E
1.m	Telephone	\$ 84.00	Unpaid (possible duplicate)	GE 8

At the hearing, Applicant stated that he planned to use his tax refund to pay the school debt alleged in SOR ¶ 1.i and he did. Applicant began paying the smaller SOR debts in June 2009 and had resolved many of these debts by the hearing date. He developed a repayment plan for his largest debt, made his first payment in December 2009, and has made three additional monthly payments. He plans to increase his monthly payment to \$400 in June 2010 after paying other debts. His personal financial statement indicated that his household net income totals \$4,713 and his monthly expenses total approximately \$4,500. His net remainder is \$213. He estimated many of his monthly expenses. He has sufficient income to meet his expenses.⁷

Applicant challenged the validity of four debts listed in the SOR. He did not retain a copy of his challenge a year ago to three debts. These three debts have been removed from his credit reports, which also reflect a dispute about another debt not listed in the SOR. The disputed debts listed in SOR allegations 1.a and 1.f are shown on the May 10, 2009 and June 18, 2008 credit reports with a date of last activity in 2007. Applicant believes that the debt alleged in SOR ¶ 1.m is the same as the debt alleged in SOR ¶ 1.j. He has not provide sufficient proof that these debts are the same.⁸

Applicant credibly testified that he now understands that his debts must be paid and that good credit is important. He talks with the soldiers he trains and with his children about debts and credit.⁹

⁷GE 10; AE H; AE L; AE O; AE P; Tr. 41-42.

⁸GE 8; AE B; AE C; AE J; At the hearing, Applicant objected to the submission of a court record showing a judgment on the grounds that he was not the individual against whom the judgment had been obtained because he did not have a middle name or initial. The government withdrew this document. GE 11 at 4-5; Tr. 22-24.

⁹Tr. 33, 58, 92.

Criminal Conduct

On February 25, 2001, the police arrested and charged Applicant with driving while impaired (DWI) after the arresting officer observed Applicant weaving in the road. The police officer administered a breathalyzer test, which showed a .18 level of alcohol. The state trial court dismissed the charges and fined Applicant \$50. The state police reported his arrest to the military base where he was assigned. The Army prepared and submitted a report to his command. The Army suspended his post driving privileges for one year.¹⁰

In 2002, the police arrested Applicant on four occasions. The police first arrested Applicant on January 17, 2002, charging him with driving while license revoked and a window tinting violation. The court dismissed these charges seven months later. On January 25, 2002, the police arrested Applicant on a second DWI charge, plus charges for driving while license revoked and civil revocation of driver's license. Applicant believed his original trial date occurred when he had been deployed out-of-state on training. He did not appear for the first court date as he thought his attorney had resolved the matter of his appearance. On April 17, 2002 the police charged him with driving while licensed revoked and a window tinting violation. The court dismissed these charges a year later. On November 7, 2002 the police arrested and charged him with a failure to appear on his January 2002 DWI arrest and other charges. In December 2002, the court dismissed all charges related to his January 2002 and November 2002 arrests. Although the Army received notice of the failure to appear arrest, Applicant's command took no disciplinary action against him.¹¹

The Army transferred Applicant to another base in a different state by 2005. In March 2005, the military police at his new base arrested Applicant for DWI. He pled no contest to the charges. The magistrate's court sentenced him to probation before judgment, fined him \$250, placed him on probation for 18 months, directed community service, and ordered an alcohol evaluation. Applicant attended the alcohol education, but did not complete the program as he appeared one day with alcohol on his breath.¹²

The state police arrested Applicant for DWI on September 4, 2006. Applicant pled guilty to the DWI charge and the prosecutor nolle prossed the driving on a suspended out-of-state license charge. On April 5, 2007, the court sentenced him to one year in jail, with 11 months suspended, and fined him \$145. Applicant served one month in jail, which he described as a wake-up call. He realized he did not want to return to jail and decided not to drink alcohol. He also promised his family he would stop consuming alcohol and has kept his promise. He consumed his last alcoholic beverage

¹⁰GE 4.

¹¹GE 3; GE 5; GE 6; GE 10; Tr. 51-53.

¹²Tr. 51.

in April 2007. The police cited him for driving with a suspended license and violation of license restriction in January 2007. The court dismissed the citation.¹³

Following this DWI arrest and trial, the Army reviewed Applicant's past records regarding his drinking and other arrests. The Army concluded that Applicant had a pattern of misconduct. Applicant waived his right to a hearing in return for an honorable discharge and the associated benefits, which he received in April 2007.¹⁴ Although his military career ended, Applicant opined that the time in jail changed his life. He is grateful that this experience happened. He made positive lifestyle changes and learned from the experience.¹⁵

Personal Conduct

When Applicant completed his e-QIP in May 2008, he answered "no" to the following questions:

1. Section 23d. Police record: have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?
2. Section 25. Use of alcohol: In the last 7 years, have your use of alcoholic beverages resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?
3. Section 27a. Your Financial Record: In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?
4. Section 28 a. Your financial Record: In the last 7 years, have you been over 180 days delinquent on any debt(s)?
5. Section 28b. Your Financial Record: Are you currently over 90 days delinquent on any debt(s)?

Applicant admitted that he failed to provide information about his arrests, his bankruptcy, his alcohol treatment programs while in the Army, his Chapter 13 bankruptcy, and his finances. He acknowledged that he knew he needed to provide this information because he had completed security clearance applications while in the Army and that his past conduct and his finances could result in a denial of a security clearance. In his response to interrogatories, Applicant stated that he did not list his bankruptcy filed in December 2001, as it had been filed more than seven years before he completed his e-QIP. At the hearing, he stated that since his bankruptcy had been

¹³GE 10; GE 11; Tr. 44-50.

¹⁴After two years, assuming the Army needs soldiers with his qualifications, he could re-enlist. Tr. 81-82.

¹⁵GE 10; Tr. 80-82

discharged, he did not think he needed to list it. He stated that he had no explanation for his failure to list his debts or alcohol treatment. He stated that he was afraid of losing his job and decided not to provide truthful answers. He felt he could explain his situation in person when he met with the investigator, giving the investigator an opportunity to evaluate him as a changed person.¹⁶

Applicant met with a security investigator on July 16, 2008. They discussed his finances, his traffic violations, his bankruptcy, and his alcohol-related arrests through March 2005. The interview summary contains no information about Applicant consuming alcohol on duty with the Army in November 24, 2006 (actual date November 21, 2006) or his DWI arrest on September 4, 2006. The investigator did not confront him with this information and he did not volunteer any information on these incidents during the interview. Shortly after this meeting, he recalls receiving papers and listing his 2006 DWI, although the record does not contain any reference to this information.¹⁷

Before it issued the SOR, DOHA mailed interrogatories to Applicant. Applicant submitted an answer with attachments on June 4, 2009. His attachments included a report from the Army about his participation in the Army's alcohol and substance abuse programs (ASAP). This report mentioned that his "SM BAT" on November 21, 2006 was .04 when he was on duty. Applicant denies consuming alcohol on duty, but admits that he drank heavily one night before going to work and that when he arrived at work in the morning, his command smelled alcohol on his breath. His command performed a breathalyzer test and the results showed a .04 alcohol level. Applicant listed his September 2006 DWI arrest, provided a copy of the court docket sheet, and listed his January 2007 citation.¹⁸

Applicant denied receiving a citation for a window tinting violation on March 31, 2004 and June 17, 2004. The court records reflected that he received a citation on each date and that the prosecutor voluntarily dismissed the citation. He also received a similar citation on August 6, 2005. Applicant explained that when he first had his car windows tinted, it was not illegal. The laws changed, but he did not have the tinting removed even after his first citation. At that time, he thought himself invincible, which he now knows is not true. He finally had the tinting removed. He drove on a suspended license because he did not want others to know that his licence had been suspended.¹⁹

In his answer to the SOR and at the hearing, Applicant stressed that he has changed his behavior and fully understand how he should have and must conduct himself. He acknowledges his past "missteps" and accepts full responsibility for his behavior. He states that he was not making any excuses for his behavior. In summing

¹⁶GE 10; Tr. 59-61.

¹⁷GE 10; Tr. 84-91.

¹⁸*Id.*

¹⁹GE 6; Tr. 83.

up his conduct, he states that it took him awhile, may be too long, but “I finally got the message”. He is taking his life in a better direction.²⁰

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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. 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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for 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 an 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.

²⁰Tr. 67-68.

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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant filed a Chapter 13 bankruptcy petition in 2001. After completing their payment plan and the discharge of their debts in 2006, Applicant and his wife incurred additional unpaid debts, which he was unable to pay for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s financial problems have been ongoing for a long time and continue to the present. This mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where “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.” After he completed his bankruptcy payment plan and the court discharged his debts, Applicant received an honorable discharge from the Army and returned to the civilian workforce. He attended school full-time while he sought full-time employment, which took a year. His wife did not find employment for six months. He received unemployment benefits and \$674 in disability benefits, as well as money under the GI bill for his education. His income was insufficient to cover all his bills during his year of unemployment. His ability to find a job took a year, a factor beyond his control. Since returning to work two years ago, he has

worked towards the resolution of his debts. He did not incur unnecessary debts during the year he did not work. He simply could not pay all his expenses. This mitigating condition partially applies in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant has not received financial counseling for his new debt situation. However, Applicant paid eight of the debts listed on the SOR. He pays monthly on his largest debt. He did not pay an \$84 debt, as he thought this debt was part of another. He has made strong strides in resolving his unpaid debts. His current bills are under control. This mitigating condition applies as his financial issues are resolved and under control.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant contacted the creditor for the largest debt listed in the SOR. He developed a payment plan for this debt and has made the required monthly payments since December 2009. This mitigating condition applies to SOR allegation 1.k.

If an “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”, security concerns may be mitigated under AG ¶ 20(e). After receiving the interrogatories listing all the debts which raised a concern about his finances, Applicant began an investigation. He disputed four of these debts with the credit reporting agencies. Although he provided proof of one dispute, the removal of the other three debts from his credit reports is the result of his challenges because the debts are recent, would not have automatically dropped off his credit reports for age, and his credit reports reflect another unresolved disputed debt. This mitigating condition applies to SOR allegations 1.a, 1.f, and 1.h.²¹

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes conditions that could raise a security concern and the following may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses; and

²¹AG ¶ 20(f) is not applicable in this case.

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

The police arrested and charged Applicant with DWI on multiple occasions between February 2001 and September 2006. During this same period of time, the police charged him with driving without a driver's license, window tinting violations, violations of license restriction, and expired registration or tags. The police also arrested him on a failure to appear warrant. AG ¶¶ 31(a) and 31(c) apply in this case.

Under AG ¶ 32, the following conditions may mitigate security concerns in this case:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant drank alcohol to excess. His alcohol consumption resulted in four DWI arrests. Until his last arrest in September 2006 and subsequent time in jail, the court system and the Army did not significantly penalized him for his behavior. He not only continued to drink, but he felt empowered to violate other rules, such as driving on a suspended license and window tinting. His behavior lead to his discharge from the Army. After spending a month in jail, Applicant realized he needed to change his behavior as he did not want to return to jail. He stopped drinking alcohol three years ago. As a result, he has not been arrested for any misconduct. He changed his attitude and his behavior. As he said at the hearing, "I finally got the message." He works towards improving his behavior and has kept his promise to his family about not drinking alcohol. He has mitigated the security concerns about his past criminal conduct.

Guideline E, Personal Conduct

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

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

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

(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;

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

(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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

For AG ¶ 16(a) to apply, Applicant's omission, concealment or falsification in his answer must be deliberate. Applicant admitted that he deliberately falsified his answers on his e-QIP. In light of his admission, the Government has established its case under this disqualifying condition as to SOR allegations 3.a, 3.b ,3.c, 3.d., and 3.e

. Under AG ¶ 16(b), Applicant must have deliberately provided false or misleading information concerning relevant facts to the security investigator during their interview. Applicant clearly did not advise the security investigator during their July 2008 meeting about his DWI arrest in 2006. He was well aware of this arrest. The Government has established this disqualifying condition as to SOR allegation 3.f.

SOR ¶ 3.g alleges that Applicant drank on duty based on a sentence in the summary report of Applicant's substance abuse treatment. Applicant denies drinking alcohol while on duty, but freely admits that he consumed alcohol in such a quantity the night before he reported to duty on November 24, 2006 that when he reported to duty at 6:30 a.m, his superiors smelled alcohol on his breath and ordered a breathalyzer test. This allegation is not established as Applicant did not drink alcohol on duty, but before he arrived for duty. SOR allegation 3.g is found in favor of Applicant.

The record contains many incidents where Applicant failed to follow the rules of the road and laws. Once he learned that it was against the law to drive with tinted windows, he decided to ignore the legal requirements and continued to drive his car with tinted windows, resulting in several citations. He drove his car when his driver's license had been suspended because he did not want anyone to know that his license had been suspended. Driving while intoxicated violated the criminal laws, and in doing so, Applicant showed a disregard for the welfare of the general public. AG ¶ 16(d)(4) applies to SOR allegations 3.h, 3.i, 3.j, and 3.k.

AG ¶ 17 provides conditions that could mitigate security concerns and the following may be applicable in this case:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

In 2007, Applicant realized his alcohol consumption was having a negative effect on his life. He made a conscious decision to stop drinking alcohol and to change his behavior. Since then, he has not consumed any alcohol, has complied with the rules of the road and driving laws, and has not been arrested for any reason. He had the tinting removed from his car windows. He understands that his past conduct was wrong and corrected both his behavior and attitude. Applicant has mitigated the security concerns in allegations 3.h, 3.i, 3.j and 3.k under AG ¶¶ 17(d) and 17(e).

When Applicant met with the security investigator in July 2008, he did not raise the issue of his 2006 DWI arrest and the investigator did not present any evidence to him concerning this arrest. A DOHA adjudicator mailed Applicant interrogatories sometime in April or May 2009. The criminal conduct section of the interrogatories lists four DWIs between 1995 and 2005. In his answer, Applicant listed his 2006 DWI and his January 2007 charge of driving with a suspended license. Until it received Applicant's interrogatory answers, the Government was unaware of his 2006 DWI arrest. Because

Applicant corrected the omission of this information on his own volition and before being confronted with the facts of his arrest by the investigator or at the hearing, I find that his response reflects an effort by him to correct the facts. Applicant has mitigated the security concerns in allegation 3.f under AG ¶ 17(a).

Applicant, however, has not mitigated the security concerns raised by his deliberate falsification of five questions in his e-QIP. Applicant knew he was falsifying his answers. His fear of losing his job, wanting the investigator to know him personally, and stating his bankruptcy had been discharge so he did not need to list it are insufficient reasons to mitigate security concerns, as he understood the need to provide this information from his past experience with the security application process.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to applicant under the whole person concept is less substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In assessing an Applicant's mitigation under the whole-person, the Appeal Board provided the following guidance in evaluating Guideline F cases in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. BD. Mar. 1, 200). However, 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. BD. Jun. 5, 2006). 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.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a)(“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant and his wife complied with the terms of their bankruptcy payment plan. They incurred bills after Applicant left from the Army and did not immediately find employment. His arrest for DWI necessitated the need for an attorney and the associated legal fees, which impacted his ability to pay his other bills. Applicant has assumed responsibility for his unpaid debts. He has resolved all the SOR debts, except for one small \$84 debt. He developed a payment plan for his largest debt, and given his positive track record while in bankruptcy, he will continue to pay this debt as long as he is gainfully employed. He paid some debts before the SOR was issued and some just before his hearing. He successfully challenged several debts which he did not believe he owed. He has shown that he is being responsible for his old debts and his current expenses. His old debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While his largest debt remains unpaid in full, he has a payment plan. This debt is insufficient to a raise security concern. (See AG ¶ 2(a)(1).)

Applicant’s criminal conduct arises from a time when he drank alcohol to excess. His time in jail changed his attitude about drinking alcohol. He no longer consumes any alcohol, and as a result, he has not been arrested for any criminal conduct in over three years. Likewise, he no longer violates the rules of the road and other laws related to the use of a motor vehicle. Even though he ignored certain civil and criminal rules, the record contains no evidence that he ever violated the rules and procedures for handling classified information. He has matured and moved his life in a new direction. His change in attitude and behavior has resulted in a more positive lifestyle.

With all that Applicant has done to correct his past mistakes, his decision to provided false information on his e-QIP in 2008 reflects a serious lapse in judgment. He knew he needed to provide all information, including negative information, when he completed his e-QIP, as he had filled out security clearance applications in the past. His reasons for doing so, fear of losing his job and wanting the investigator to know him through a personal interview, do not mitigate his intentional falsification of his e-QIP. He knows he what he did was wrong. Even with this knowledge, questions about his judgment remain. I find that he had not mitigated all of the Government's security concerns.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances and criminal conduct, but he has not mitigated the security concerns arising from his 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 F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For 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
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant

Subparagraph 2.h:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant
Subparagraph 3.f:	For Applicant
Subparagraph 3.g:	For Applicant
Subparagraph 3.h:	For Applicant
Subparagraph 3.i:	For Applicant
Subparagraph 3.j:	For Applicant
Subparagraph 3.k:	For Applicant

Conclusion

In light of all of the circumstances presented by 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.

MARY E. HENRY
Administrative Judge