



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 09-04187
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: Michael W. Boardman, Personal Representative

October 29, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns under Guideline F (financial considerations), but failed to mitigate security concerns under Guideline E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On November 20, 2007,¹ Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations) and 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs after September 1, 2006.

¹ Applicant updated his November 20, 2007 e-QIP on September 8, 2009. (GE 2.) He had previously submitted a Questionnaire for Public Trust Positions (SF-86) on October 19, 2007. (GE 1.)

Applicant answered the SOR on November 30, 2009. Department Counsel was prepared to proceed on May 3, 2010. The case was assigned to me on May 6, 2010. DOHA issued a notice of hearing on May 6, 2010, scheduling the hearing for May 20, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 10, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through O, which were received without objection, and he testified on his own behalf. I held the record open until June 4, 2010, to afford the Applicant the opportunity to submit additional evidence. Applicant timely submitted AE P through R, which were received without objection. DOHA received the hearing transcript (Tr.) on June 3, 2010. The record closed on June 4, 2010.

Procedural Issue

Amendment of SOR

Before the hearing, the Government moved to amend the SOR by adding SOR ¶ 2.g.:

You falsified material facts on a Questionnaire for Public Trust Positions (Standard Form SF-85P) executed by you on or about October 19, 2007 in response to the following question: "16. YOUR MILITARY HISTORY a. Have you ever served in the United States Military? List all of your military service below, including service in the Reserve, National Guard, and U.S. Merchant Marine. Start with the most recent period of service (# 1) and work backward. If you had a break in service, each separate period should be listed." You answered "YES" and disclosed your service in the U.S. Army from about May 1989 to about May 1993, but you deliberately failed to disclose your additional service in the U.S. Army from about January 1994 to July 1997.

Without objection from the Applicant, I granted the Government's request to amend the SOR by adding ¶ 2.g. (Tr. 15-16.)

At the hearing, the Government moved to withdraw the reference to SOR ¶ 1.m. (purported judgment) contained in SOR ¶ 2.e., which was an apparent drafting error. Without objection from the Applicant, I granted the Government's motion. (Tr. 120.)

Findings of Fact

Applicant admitted SOR ¶¶ 1.c. through 1.i., 1.n., 1.p. through 1.s., 2.b. through 2.c., and 2.f. through 2.g. He denied SOR ¶¶ 1.a. through 1.b., 1.j. through 1.m., 1.o., 2.a., and 2.d. through 2.e. His admissions and denials were accompanied with explanations. His admissions are accepted as findings of fact.

Background Information

Applicant is a 41-year-old warehouse specialist, who has been employed by a defense contractor since September 2007. (GE 1, GE 2.) He currently has an interim secret security clearance and seeks a permanent clearance, which is a requirement of his continued employment. (Tr. 37-38.)

Applicant attended high school from August 1983 to May 1987, but did not graduate. He was awarded his GED in February 1994.² He served in the U.S. Army from May 1989 to May 1993, and was honorably discharged as specialist 4 (pay grade E-4). He reenlisted in the Army in January 1994 and was discharged as a private (pay grade E-1) with an other than honorable (OTH) discharge in lieu of trial by court-martial in July 1997. He had been in an absent without leave status (AWOL) from December 5 1995 until he was apprehended by civilian authorities on April 23, 1997, discussed *infra*. At the time he went AWOL, he held a secret security clearance which was revoked upon his return to military jurisdiction. (GE 5 – 10.)

Applicant was married from March 1992 to December 1996. That marriage ended by divorce. He has three children from that marriage -- two daughters ages 17 and 16, and an 11-year-old son. Applicant pays child support to his former spouse, who has custody of their three children. Applicant remarried in March 2003, and has a 12-year-old stepson as well as a five-year-old son from his second marriage. His current wife is a homemaker. (Tr. 103-105, GE 1, GE 2.)

Financial Considerations

Applicant's background investigation included a review of his financial situation. The portion of the investigation that pertains to his financial situation included the review of his October 2007 SF-85P, his September 2009 e-QIP, his August 2009 Responses to DOHA Interrogatories, as well as his December 2007 and July 2009 credit reports. (GE 1 – GE 5.)

Applicant's indebtedness consists of 19 separate debts to include one repossession, one past-due account, three judgments, three charged-off accounts, and 11 collection accounts. The debts as alleged approximated \$18,594 and have been in various states of delinquency for a number of years. Applicant's indebtedness is directly attributable to the divorce from his first wife, underemployment and unemployment. It was not until he began his current job that he was able to earn a "living wage" and make substantial headway in addressing his debt. (GE 1, GE 2, GE 5, Tr. 22-23, 61-88, 101-103, 113-115.)

² There is a discrepancy regarding the information Applicant provided regarding his educational background. On his October 2007 SF-85P, he indicated that he attended high school from August 1983 to May 1987, and was awarded his GED in February 1994. On his November 2007 e-QIP, he indicated that he attended high school from August 1983 to May 1987, and was awarded a diploma in May 1987. I consider his first response that he was awarded a GED to be more accurate. (GE 1, GE 2.)

Applicant appeared at his hearing well prepared to discuss his debts and demonstrated that he has paid, is making payments, has successfully disputed, or is attempting to contact all his creditors. The status of the debts alleged in the SOR is as follows:

SOR ¶ 1.a. (judgment filed against Applicant in 2003 for \$399) - debt removed from credit report (Tr. 69, 105-106, 120);

SOR ¶ 1.b. (judgment filed against Applicant in 2006 for \$575) - paid (Tr. 69-70, 106-107, AE D);

SOR ¶ 1.c. (charged-off account for \$1,170) - made contact with creditor and attempting to settle (Tr. 71, 107-108);

SOR ¶ 1.d. (collection account for \$186) - paid (Tr. 71, 108, AE E);

SOR ¶ 1.e. (collection account for \$249) - paid (Tr. 72, 108, AE F);

SOR ¶ 1.f. (repossession with deficiency owed of \$8,033) - making payments (Tr. 72-74, 108-109, AE G);

SOR ¶ 1.g. (charged-off account for \$1,196) - made contact with creditor and attempting to settle (Tr. 74-76, 109);

SOR ¶ 1.h. (collection account for \$2,265) - disputed and removed from credit report (Tr. 75-76, 109-110, AE H);

SOR ¶ 1.i. (collection account for \$80) - paid (Tr. 77, 110, AE I);

SOR ¶ 1.j. (collection account for \$376) - disputed and removed from credit report (Tr. 78, 110-111, AE H);

SOR ¶ 1.k. (collection account for \$61) - paid (Tr. 78-79; 111, AE J);

SOR ¶ 1.l. (judgment filed against Applicant in 2001 for \$550) - made contact with creditor and attempting to settle (Tr. 79-80, 111);

SOR ¶ 1.m. (collection account for \$403) - made contact with creditor and attempting to settle (Tr. 80, 111);

SOR ¶ 1.n. (past-due account for \$1,296) - made contact with creditor and attempting to settle (Tr. 81-82, 111);

SOR ¶ 1.o. (collection account for \$191) - disputed and removed from credit report (Tr. 82-83, 112, AE O);

SOR ¶ 1.p. (collection account for \$730) - paid (Tr. 83,113, AE K);

SOR ¶ 1.q. (collection account for \$197) - paid (Tr. 83, 113, AE L);

SOR ¶ 1.r. (collection account for \$543) - made contact with creditor and attempting to settle (Tr. 84, 111); and

SOR ¶ 1.s. (charged-off account for \$94) - paid (Tr. 84-85, 113, AE Q).

Applicant's gross monthly pay is approximately \$3,600. He submitted a recent budget that reflects he is current on all of his monthly bills, which include a mortgage, car payments and related costs, and child support payments for his three children from his first marriage. Additionally, he is current on all of his state and federal income taxes. (Tr. 43-45, 85-88, AE A, AE M, AE P, AE R.)

Personal Conduct

On April 23, 1997, Applicant surrendered to his local police department after learning they "needed to see [him]." Upon reporting to his local police department, he was informed that he was wanted by the military authorities for being AWOL since January 5, 1996. His local police department turned him over to a local military facility for further processing. Applicant ultimately received an OTH discharge from the Army for being AWOL. Applicant stated that if he had to do it over again, he would have finished his service in the Army. (SOR ¶ 1.a., Response to SOR, Tr. 66-67, GE 5-GE10.)

In October 2007, Applicant completed an SF-85P. In response to question 16 inquiring whether he had served in the U.S. military, he disclosed his Army service from May 1989 to May 1993. He failed to disclose his additional Army service from January 1994 to July 1997, for which he received an OTH discharge, discussed *supra*. (SOR ¶ 2.g.)

Approximately one month later in November 2007, Applicant completed an e-QIP. In response to question 16 inquiring again whether he served in the U.S. military, Applicant again disclosed his Army service from May 1989 to May 1993, and failed to disclose his additional Army service from January 1994 to July 1997. (SOR ¶ 2.b.) In the same November 2007 e-QIP, Applicant was queried whether he received other than an honorable discharge from the military to which he answered "no." (SOR ¶ 2.c.) Applicant did, in fact, serve in the Army from January 1994 to July 1997, and as noted *supra*, was awarded an OTH discharge in lieu of trial by courts-martial.

On the same November 2007 e-QIP, Applicant answered "no" to questions 27.b., inquiring whether in the last seven years he ever had his wages garnished or had property repossessed for any reason; 27.d., inquiring whether in the last seven years he had any unpaid judgments against him; and 28.a. and b., inquiring whether in the last seven years he had ever been over 180 days delinquent on any debts, and whether he was currently over 90 days delinquent on any debts. A review of Applicant's SOR and

his Response to SOR demonstrates that these answers are clearly wrong. (SOR ¶¶ 2.d. – 2.f.)

Applicant explained that, “At the time I was really excited and happy that I was getting into the position that I was seeing [with his current employer].” (Tr. 89.) He added, “And I was scared because of things that I had done in my past that it would keep me from obtaining a position with [his current employer]. It was not my intention to totally deny that it happened, I never meant to intentionally falsify and say that it never happened. I did intentionally hide the fact that I had prior service that I was discharged other than honorable. It was an honest mistake, I know I screwed up.” (Tr. 89-90.) He added, “I was actually afraid that I would not be hired on the position that I received had I disclosed the fact that I had prior debts or a discharge.” (Tr. 90.)

In Applicant’s Response to SOR, he denied intentionally falsifying his response regarding past repossessions because he “voluntarily returned the vehicle in question to the dealer who sold it to me. I acknowledge the debt, did not consider this [to be] a ‘repossession.’” Applicant denied intentionally falsifying his response regarding past judgments against him because, “I had no knowledge of the judgments listed in [pertinent SOR paragraphs].” Applicant admitted that he failed to acknowledge the delinquent debts as alleged in SOR ¶¶ 1.d., 1.e., 1.g., and 1.n.; denied knowledge of the debt alleged in SOR ¶ 1.c.; and noted there is no SOR ¶ 1.t. (Response to SOR.)

In his November 2007 e-QIP, Applicant did report that his wages were being garnished in response to question 27.b. for back child support. When answering this question, he drew a distinction between voluntary versus involuntary repossession and did not consider the circumstances under which he voluntarily returned his car to the dealer as qualifying as a repossession as envisioned by the question. In retrospect, he acknowledged that his failure to list his “voluntary” repossession was “poor judgment” on his part, but that his failure to list his “voluntary” automobile repossession was not deliberate. (Tr. 119-120.) When further queried about his failure to list accounts that had been over 180 days delinquent in the last seven years and accounts currently over 90 days delinquent, Applicant testified that his failure to list pertinent accounts was caused by a lack of proper guidance. He added that his failure to list pertinent accounts was not deliberate and caused by his “state of mind” because the only debt he thought was past due over 180 days was child support, which he listed. (GE 1, Tr. 121-122.)

Character Evidence

Three character witnesses testified on Applicant’s behalf -- a senior company supervisor; his father, who is his company’s human resources manager; and a long-time personal friend. The collective testimony of these witnesses supports the notion that Applicant is a trustworthy and responsible individual. The senior company supervisor discussed Applicant’s 2008 employee performance evaluation and confirmed the grade of “exceeds expectations” in the 12 listed categories as an accurate assessment of his performance. His father spoke of Applicant’s personal growth and discussed his positive qualities as a father and husband. His personal friend confirmed the testimony of

Applicant's father, especially when referring to his positive qualities as a father and husband. (Tr.27-58, AE C.)

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that relevant security concerns exist sunder Guidelines F (financial considerations) and E (personal conduct).

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and the evidence presented. As indicated in SOR ¶¶ 1.a. to 1.s., he had 19 delinquent debts approximating totaling \$18,594 that have been in various states of delinquency for a number of years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. Therefore, his debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debts "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."

Under AG ¶ 20(b), he receives full credit because his separation and divorce, and underemployment and unemployment, were largely beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds for full repayment, he did remain in contact with his creditors during this timeframe.³

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. He has, however, produced evidence that reflects he is living within his means and has regained financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).⁴ Applicant has paid, is paying, is attempting to pay, or

³ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

⁴ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of

has otherwise resolved his debts. AG ¶ 20(e) is applicable because Applicant has established that several of the debts alleged are not his.

Personal Conduct

AG ¶ 15 articulates 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 describes two conditions that could raise a security concern and may be disqualifying in this case:

(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 . . . ; and

(3) a pattern of dishonesty or rule violations.

good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant went AWOL during his second term of Army service from December 1995 to April 1997, for which he received an OTH discharge. He also failed to list his second term of Army service and subsequent OTH discharge. Applicant failed to disclose certain aspects of his financial history to include an automobile repossession, past judgments, current debts over 90 days, and past debts over 180 days delinquent when completing his security clearance applications. The Government established through the evidence presented the disqualifying conditions in AG ¶¶ 16(a), 16(b), and 16(d).⁵

AG ¶ 17 provides seven conditions that could potentially mitigate security concerns about his personal conduct:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) 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 clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

⁵ Deliberate and materially false answers on a security clearance application violate 18 U.S.C. § 1001. The Supreme Court defined "materiality" in *United States v. Gaudin*, 515 U.S. 506, 512 (1995): as a statement having a "natural tendency to influence, or [be] capable of influencing, the decision making body to which it is addressed." See also *United States v. McLaughlin*, 386 F.3d 547, 553 (3d Cir. 2004). If Applicant had provided accurate answers on his security clearance applications, his accurate answers are capable of influencing the Government to deny his security clearance. His failure to disclose financial problems and Army service that ended under adverse circumstances are sufficiently serious to potentially jeopardize approval of his security clearance. Making a false statement under 18 U.S.C. § 1001 is a serious crime, a felony (the maximum potential sentence includes confinement for five years and a \$10,000 fine).

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The SOR alleges that Applicant deliberately provided false information or omitted required information on his November 2007 e-QIP. Although he admitted preparing his e-QIP, and answering certain questions incorrectly, his explanations that he did not deliberately intend to falsify past information are plausible, particularly given the fact that he did provide adverse financial history of his wages being garnished for child support arrearages. A statement is false when it is made deliberately -- knowing and willfully. An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported. I conclude in Applicant's favor with respect to SOR ¶¶ 2.d. – 2.f. Also, I conclude in Applicant's favor with respect to SOR ¶ 2.a. I find that mitigating condition AG ¶ 17(c) is applicable to the underlying facts alleged in SOR ¶ 2.a. Applicant's AWOL from the Army and subsequent OTH discharge occurred 13 years ago, his behavior was infrequent, and occurred under circumstances that it is unlikely to reoccur.

I do not, however, reach the same conclusion with respect to SOR ¶¶ 2.b., 2.c., and 2.g. I do not believe that Applicant forgot, inadvertently overlooked, misunderstood, or genuinely thought information about his past military service and OTH discharge did not need to be reported. It is clear from his testimony that his intention was to hide his second term of Army service, that he went AWOL, and that he received an OTH discharge. He believed if he told the truth about his adverse military record, he would not have successfully vetted for his current position. Regardless of the accuracy of that supposition, the process does not allow for applicants to pick and choose which answers they will answer correctly. When applicants lie on their security clearance applications, they seriously undermine the process as Applicant did in this case. With regard to SOR ¶¶ 2.b., 2.c., and 2.g., I find that none of the mitigating conditions fully apply.⁶

⁶ 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.

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

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 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.

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. AG ¶ 2(c).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. Applicant has made substantial progress in achieving financial responsibility. He is a responsible husband, father, and member of the community. His efforts to overcome the unfortunate ending of his second term of Army service are noteworthy. However, his deliberate falsifications, if relied upon, could have affected or influenced the security clearance adjudication process to the detriment of the Government.

Applicant's deliberate failure to disclose information on his security clearance application is serious, recent, and not mitigated. As such, I have concerns about his current ability or willingness to comply with laws, rules, and regulations. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has not mitigated security concerns pertaining to personal conduct.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has not fully mitigated or overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. - 1.s.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraphs 2.b. – 2.c.:	Against Applicant
Subparagraphs 2.d. – 2.f.:	For Applicant
Subparagraph 2.g.:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

Robert J. Tuidier
Administrative Judge