



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



In the matter of:)
)
-----) ISCR Case No. 09-04836
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. Delaney, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2012

Decision

HARVEY, Mark, Administrative Judge:

Appellant has a history of delinquent debt, and he did not make sufficient progress resolving 14 delinquent debts, totaling \$60,947. He disclosed his use of numerous illegal drugs during drug treatment. He did not provide accurate information during the security clearance process about his illegal drug use and arrests. Drug involvement concerns are mitigated because they are not recent. Financial considerations and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 24, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86). (GE 1) On September 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations), H (drug involvement), and E (personal conduct). (Hearing Exhibit (HE) 3) The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On October 7, 2011, Applicant responded to the SOR. (HE 4) On January 31, 2012, Department Counsel indicated he was ready to proceed on Applicant's case. On February 9, 2012, DOHA assigned Applicant's case to me. On March 1, 2012, DOHA issued a hearing notice, setting the hearing for March 27, 2012. (HE 2) On March 28, 2012, an amended hearing notice was issued, setting the hearing for March 29, 2012. Applicant's hearing was held as scheduled. At the hearing, Applicant waived his right to 15 days' notice of the date, time, and place for his hearing. (Tr. 13-14) Department Counsel offered 14 exhibits (GE 1-14) (Tr. 18-19), and Applicant did not offer any exhibits. (Tr. 10, 19-20) Applicant noted that he wanted to explain or clarify some of the contents of the government's exhibits. (Tr. 19) With Applicant's caveat in mind, there were no other objections, and I admitted GE 1-14. (Tr. 19) Additionally, I admitted the hearing notice, amended hearing notice, SOR, and Applicant's response to the SOR. (HE 1-4) On April 13, 2012, I received the transcript.

Findings of Fact¹

Applicant's SOR response admitted the following SOR allegations: ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, 1.i - 1.k, 1.m - 1.r, 2.a, 2.b.iii (Valium use in March 1990 only), 2.b.ix (Hydrocodone use in 2002 was prescribed by a physician), 2.b.x (OxyContin use in 2002 was prescribed by a physician), 2.c, 2.d, 2.i, 2.k (included in Applicant's response to 2.j), 2.l, 3.b, 3.e (Applicant states he misinterpreted the scope of the question on his SF-86), and 3.g (Applicant states he misinterpreted the scope of the question on his SF-86). His admissions are accepted as factual findings.

Applicant is a 50-year-old employee of a major defense contractor. (Tr. 5) He is an information technology system administrator. (Tr. 22, 90) He has worked for the same employer for over two years. (Tr. 21) He was continuously employed for the three years prior to his hearing. (Tr. 22) In 1979, he graduated from high school. (Tr. 5) In 1992, he earned an associate's degree in electronics. (Tr. 5-6) He has not served in the military. (Tr. 6) He was married from 1990 to 2001. (Tr. 21; GE 1 at 30) In 2002, he married his current spouse. (Tr. 20-21) He has a 20-year-old daughter, who does not live with Applicant. (Tr. 21) He has held a security clearance intermittently since 1994. (Tr. 6-7) His current position requires him to hold a security clearance. (Tr. 22-23)

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Financial considerations

Applicant's SOR lists 20 delinquent debts, totaling \$64,646 as follows: 1.a is a judgment filed in 2004 for \$8,279; 1.b is a collection account for \$74; 1.c is a telecommunications collection account for \$783; 1.d is a collection account for \$50; 1.e is a telecommunication collection account for \$501; 1.f is a collection account for \$716; 1.g is a student loan account for \$30,825; 1.h is a telecommunications collection account for \$2,351; 1.i is a clothing store account for \$1,308; 1.j is a department store collection account for \$1,110; 1.k is a collection account for \$40; 1.l is a bank collection account for \$5,704; 1.m is a department store collection account for \$424; 1.n is a department store collection account for \$3,400; 1.o is a jewelry store collection account for \$3,164; 1.p is a collection account for \$126; 1.q is a bank collection account for \$2,133; 1.r is a collection account for \$1,458; 1.s is a medical collection account for \$1,400; and 1.t is a medical collection account for \$800. (HE 3) He denied responsibility for the debts in SOR ¶¶ 1.c, 1.f, 1.h, 1.l, 1.s, and 1.t. (Tr. 25; HE 4)

Applicant disputed his responsibility for the debt in SOR ¶ 1.c (\$783), and he believes it will be removed from his credit report because of his dispute. (Tr. 25-26) Applicant said he paid the debt in SOR ¶ 1.f (\$716). (Tr. 27) He did not provide any documentation supporting his dispute of the debt in SOR ¶ 1.c or proving he paid the debt in SOR ¶ 1.f.

Applicant said he did not owe the debt in SOR ¶ 1.h for \$2,351, and he had not communicated with the credit report companies or the creditor for three or four years. (Tr. 28) He did not have any documentation regarding this debt. (Tr. 28-29)

The debt in SOR ¶ 1.l for \$5,704 should be about \$3,000, and Applicant was disputing the amount of the debt. (Tr. 29-30; GE 6 at 2; GE 7; GE 8) He is not disputing that he owed money to the creditor, and that the debt is delinquent. (Tr. 29-30) He did not provide any documentation showing any payments to the creditor. (Tr. 30) His most recent payment to the creditor was 14 to 18 months ago. (Tr. 31)

In the last six months, Applicant paid two medical debts owed to the same creditor as described in SOR ¶¶ 1.s and 1.t for \$1,400 and \$800. (Tr. 31-32; GE 1 at 50, 52, and 53) He did not have documentation showing these two debts were paid. (Tr. 31)

Applicant said in the last six months he paid about \$2,000 to address his delinquent SOR debts. (Tr. 88) He said he was unable to pay his debts because of the costs of daily living and his spouse did not work outside their home. (Tr. 32) He has some financial counseling from a debt consolidation service. (Tr. 33) He did not provide any documentation about his financial counseling. From 2004 until 2009, Applicant was either unemployed or underemployed. (Tr. 34) Several of Applicant's delinquent debts became delinquent more than five years ago, and one became delinquent in 2000 and another became delinquent in 2002. (Tr. 35; GE 7 at 5)

In about 2003, Applicant sued his physician, and he received a settlement of between \$10,000 and \$30,000. (Tr. 89) He conceded that he should have used the

settlement to pay his delinquent SOR debts; however, he used the funds for paying other non-SOR debts. (Tr. 90) Applicant's February 2010 personal financial statement (PFS) shows net monthly income of \$3,400; total monthly expenses of \$3,300; monthly debt payments of \$400 (a \$400 payment to address one \$10,000 debt); and net monthly remainder of negative \$300. (GE 2 at 7) His PFS did not indicate any payments to any SOR creditors. (GE 2 at 7) Applicant took full responsibility for being a "bad money manager." (Tr. 35)

Drug involvement

Marijuana—SOR ¶ 2.a(i)

Applicant said he used marijuana three to five times in his life, and he denied that he was a frequent marijuana user. (Tr. 36, 38) However, he admitted using marijuana from age 16 to age 21. (Tr. 36; GE 12 at 39) He said his most recent marijuana use was in February 1990. (Tr. 37) In high school, he occasionally purchased marijuana and he smoked marijuana every month or so. (Tr. 37)

Applicant denied that he used marijuana in August 2001, while holding a security clearance. (Tr. 62-74; SOR ¶ 2.f) He admitted using marijuana after being granted a security clearance. (Tr. 64) Applicant believed his security clearance was in inactive status when he used illegal drugs because his employment did not require access to classified information. (Tr. 63) Later, he admitted, "I used illegal drugs while holding a clearance." (Tr. 66)

In October 2001, Applicant was admitted into a drug treatment program. (GE 9) He said during drug treatment that he used cocaine two nights before the admission and marijuana two or three times in the previous year. (Tr. 65; GE 9 at 59)² At his hearing, Applicant said that he lied to the drug treatment personnel in October 2001 about using marijuana, and he insisted that he only used marijuana three to five times in his life and those marijuana uses were during his teenage years. (Tr. 65)

²A 1990 Chemical Use Timeline from Applicant's drug treatment records indicates that in the last two years, Applicant used cocaine once or twice a month, barbiturates once a month, LSD two or three times, and mushrooms three times about once a year. (GE 12 at 21) Applicant stated in the 1990 treatment records, "I've been using barbiturates since I was 17 or 18. My mom was my pharmacy." *Id.* However, a March 2, 1990 history in his drug treatment records reads, "[he] says he has been abusing crack cocaine, [fre]e basing it for about one year and most recently on a daily basis as often as he can get it and has led himself into financial ruin." (GE 12 at 27) He uses Zanax or Valium to help with withdrawal. *Id.* Another 1990 treatment record indicates he used Xanax, Valium, Percodan (once or twice until 1984), LSD (10 hits as recently as 1983), hashish (on a daily basis for two years until 1983), marijuana (intermittent use from age 16 to 21), opium (rare experimental use until 1980), Librium (six or seven times until 1983), Tylenol #3, Dalmane (used until supply exhausted as recently as 1980), marijuana, cocaine (for eight years, two or three grams, three or four times per week), Talwin (years ago) and Amphetamine or speed (once a month as recently as 1986). (GE 12 at 33, 36, 38, 39) On March 5, 1990, during drug treatment, he said he used marijuana on a daily basis in high school, and he abused "acid, hash, opium" and cocaine as well as Valium, Zanax, and Tyleonol 3 with Codeine. (GE 12 at 83)

Barbiturates—SOR ¶ 2.a(ii)

Applicant denied that he ever used barbiturates, such as Xanax and Valium. (Tr. 38-39) However, when Applicant was a patient at drug treatment center, he disclosed that he used barbiturates on average once a month. (Tr. 39-40; GE 12 at 21) Applicant said he exaggerated the extent of his drug use to obtain treatment for cocaine abuse at the drug treatment center. (Tr. 40-42) He said that he lied to obtain drug treatment. (Tr. 43)

Opiates—SOR ¶ 2.a(iii)

Applicant denied that he used opiates. (Tr. 43) However, he disclosed at a drug treatment center that he smoked opium on an experimental basis on rare occasions, with his most recent use in 1980. (Tr. 43; GE 12 at 39) In October 2001, Applicant received about three days of drug treatment, and he was diagnosed with opioid-type dependency. (Tr. 73; SOR ¶ 2.i; GE 9 at 7, 8, 11, 23) After he was released, he resumed his drug abuse until December 2001. (Tr. 74)

Hashish—SOR ¶ 2.a(iv)

Applicant denied that he used hashish. (Tr. 44) However, he disclosed at a drug treatment center that he used hashish between 1978 and 1979 up to 1983. (Tr. 44; GE 12 at 39) In his SOR response, he said he used hashish between 1978 and 1979. (Tr. 45; HE 4)

Cocaine—SOR ¶ 2.a(v)

Applicant said that he used cocaine in 1989 for about a month before he went into treatment and a month or two before seeking treatment in 2003. (Tr. 46, 60) When Applicant was admitted to the drug treatment center in 1990, a urinalysis test was positive for the presence of the cocaine, diazepam, Valium and Librium metabolites in his urine. (Tr. 41-42, 61; GE 12 at 39)

As part of his admission for treatment in 1990, he said he used cocaine, snorting and freebasing it, for about eight years, three or four times each week. (Tr. 46-47) Applicant told the doctor that he had been freebasing cocaine for about one year, and had increased his cocaine use to a daily basis. (Tr. 47; see n. 2, *supra*) His cocaine use has led him into financial ruin. (Tr. 47; GE 12 at 47) He was diagnosed with cocaine dependence, alcohol abuse, and barbiturate abuse. (Tr. 61; SOR ¶ 2.e; GE 12 at 28) Applicant denied that he ever had an alcohol problem. (Tr. 62) He said he exaggerated his drug use to the doctor to obtain treatment. (Tr. 48)

On October 12, 2001, Applicant provided a urine sample for drug testing, and the drug screen revealed that Applicant tested positive for cocaine, opiates, and marijuana. (Tr. 67-68; see n. 2, *supra*) Applicant said his physician provided him with marijuana and cocaine to assist him in obtaining drug treatment. (Tr. 68) His physician was

subsequently convicted of prescription fraud, and he filed a lawsuit against his physician and obtained a substantial settlement.

Lysergic acid diethylamide (LSD)—SOR ¶ 2.a(vi)

Applicant denied any LSD use. (Tr. 48) However he admitted LSD use during admission to a drug treatment center in 1990. (Tr. 48; GE 12 at 21, 39; see n. 2, *supra*)

Psilocybin mushrooms—SOR ¶ 2.a(vii)

Applicant denied any use of psilocybin mushrooms. (Tr. 48) However, he disclosed that he used psilocybin mushrooms upon admission to a drug treatment center in 1990. (Tr. 48; see n. 2, *supra*)

Amphetamines—SOR ¶ 2.a(viii)

Applicant denied any use of amphetamines. (Tr. 48-49) However, he disclosed that he used amphetamines from 1987 to 1990 during his admission to a drug treatment center in 1990. (Tr. 49; see n. 2, *supra*) He said when he admitted using amphetamines during his 1990 drug treatment that he exaggerated about using amphetamines to obtain treatment. (Tr. 49)

Abuse of prescription drugs—SOR ¶ 2.b

The SOR alleges that Applicant abused ten prescription drugs as follows: (i) Dalmane (Flurazepam), from at least 1977 to at least 1980; (ii) Tylenol 3 with Codeine, from at least 1977 to at least 1990; (iii) Valium, from at least 1979 to at least 1990; (iv) Elavil (Amitryptaline), in at least 1982; (v) Percodan, from at least 1982 to at least 1990; (vi) Librium, at least seven times prior to 1983; (vii) Xanax, from at least 1988 to at least 1990; (viii) Talwin, in at least 1989; (ix) Lortab/Vicodin (Hydrocodone), to at least 2001; and (x) OxyContin, to at least 2002.

Applicant denied that he abused Dalmane, Tylenol 3 with Codeine, and Elavil. (Tr. 50-52, 54-55) However, he disclosed that he abused Dalmane, Tylenol 3 with Codeine, Percodan, Librium, Talwin, Lortab, Vicodin, hydrocodone, and Elavil when he was admitted for drug treatment in 1990. (Tr. 50, 58; GE 12 at 33, 38, 39, 83; see n. 2, *supra*)

Several prescription drugs or painkillers were overprescribed for Applicant in 2001 to 2002, including Lortab, OxyContin, Percocet, and Vicodin. (Tr. 59-60; GE 9 at 10, 12) Applicant subsequently filed a lawsuit against his physician for malpractice.

Applicant said he took Valium in March 1990, as shown in the urinalysis test that detected Valium before he began drug treatment. (Tr. 52-53) However, during drug treatment in 2001 he disclosed that he used Valium from 1979 to 1990 and Xanax from 1988 to 1990 when available. (Tr. 52, 57; GE 12 at 8, 21, 83)

In March 1990, Applicant received in-patient drug treatment. (SOR ¶ 2.c) Upon entry into the drug treatment program, he tested positive for the Benzodiazepine Metabolite (e.g., Valium, Librium) and the Benzoyllecgonine Cocaine Metabolite. (SOR ¶ 2.d; GE 12 at 99) While in substance abuse treatment, he was diagnosed with (1) cocaine dependence, continuous, (2) alcohol abuse, continuous, and (3) barbiturate abuse, continuous. (SOR ¶ 2.e)

Abuse of illegal drugs after approval of his security clearance—SOR ¶ 2f-2h

The SOR alleges that after Applicant's security clearance was approved in 1994, he used marijuana in or about August 2001; he used cocaine in or about October 2001; and he illegally used prescription medications until at least October 2001. (SOR ¶ 2.f-2.h) These allegations are substantiated.

Diagnosis, urinalysis tests, and drug treatment in 1990 and 2001—SOR ¶ 2.j-2.l

SOR ¶ 2.i indicates between approximately October 2001 and September 2003, Applicant sought in-patient treatment for chemical dependency; however, due to space limitations he was unable to receive admission to the drug treatment program. Actually, from October 11-13, 2001, Applicant received in-patient treatment for substance abuse. (SOR ¶ 2.j; GE 9) Upon entry into the drug treatment program, he tested positive for the cocaine, opiates, and marijuana metabolites, and he was diagnosed with Opioid-Type dependence, continuous use. (SOR ¶¶ 2.k and 2.l; GE 9 at 7, 35)³ Aside from his statement on his SF-86 about receiving drug treatment after using cocaine, there is no evidence that he received drug treatment after October 13, 2001. From his discussion on his SF-86, it appears that he was referring to his drug abuse and treatment in 2001 and not 2003. (GE 1 at 44)

Miscellaneous allegation of continuing drug use after December 2001—SOR ¶ 2.n

SOR ¶ 2.n alleged that Applicant continued to use Opioids, with varying frequency from at least December 2001 to at least February 2010; however, Applicant denied that he abused any prescriptions after December 2001. (SOR response) There is no credible evidence supporting his illegal drug use after December 2001.

³Medical records from Applicant's October 2001 admission for drug treatment reveal that he used Lortab for back pain, cocaine two days before his admission, and marijuana two months before being admitted. (GE 9 at 59) He told treating medical personnel that he uses marijuana about twice a year. (GE 9 at 59) However, on his March 24, 2009 SF-86 he only admitted to using a "small amount of cocaine" and abuse of Tylenol 3, Vicoden, Percocet, and OxyContin; and he confused the year of his drug use and treatment, indicating 2003 instead of 2001 (GE 1 at 44)

Personal Conduct

2001 arrest for prescription fraud—SOR ¶¶ 2.m and 3.f; 2004 termination of employment for failing to disclose prescription fraud arrest—SOR ¶ 3.d

In 2001, Applicant's physician prescribed a progression of Tylenol 3, Lortab, Percocet, and OxyContin for Applicant's back pain. (Tr. 70) Applicant became dependent upon these progressively more powerful pain killers. (Tr. 70) On about three occasions, Applicant illegally kicked back prescription drugs to his physician. (Tr. 72) Applicant knew his conduct was illegal. (Tr. 73) On December 17, 2001, Applicant was arrested for possession of stimulants, depressants, and prescription fraud. (Tr. 68-69, 71, 88; SOR ¶ 2.m) He was not charged with any drug offense because he was a witness against the physician who provided the prescription drugs to him. (Tr. 69) Applicant's physician was convicted of an offense relating to writing prescriptions for patients and then having the patients split the prescription drugs with him. (Tr. 72)

Applicant admitted that he was terminated from his employment for failing to disclose his arrest for prescription drug fraud. (SOR response) However, he was not aware that he was arrested, and he did not believe he had to disclose the prescription fraud arrest because he was never charged with an offense. (SOR response)

Responses on Applicant's March 24, 2009 SF-86—SOR ¶¶ 3.b and 3.c and 1998 and 2003 arrests and charges for Domestic Battery—SOR ¶¶ 3.e and 3.g

On Section 22 of Applicant's March 24, 2009 SF-86, he failed to disclose his arrest and charge for domestic battery in May of 2003. (Tr. 75; GE 1 at 41-43; SOR ¶¶ 3.b and 3.e) Applicant admitted the omission was a mistake; however, he said he did not disclose the arrest and charge because the charge was dropped. (Tr. 75-76) Applicant did disclose a May 1998 arrest for domestic battery on his May 24, 2009 SF-86, even though that charge was subsequently dismissed. (Tr. 76; GE 1 at 42; SOR ¶ 3.g) He provided an alternative explanation for failing to report his May 2003 domestic battery, when he explained the omission was an unintentional oversight. (Tr. 77) I conclude that Applicant deliberately omitted his May of 2003 arrest for domestic battery from his March 24, 2009 SF-86 in an attempt to deceive security personnel to retain his security clearance.

On Section 23b of Applicant's March 24, 2009 SF-86, he denied that he used illegal drugs while possessing a security clearance. (GE 1 at 43; SOR ¶ 3.c) Applicant admitted that he used marijuana in or about August 2001; he used cocaine in or about October 2001; and he illegally used prescription medications until at least October 2001. He acknowledged that this illegal drug use was after his security clearance was approved; however, he denied that he knew that he was in possession of a security clearance when he used illegal drugs. I conclude that Applicant deliberately omitted his illegal drug use while holding a security clearance from his March 24, 2009 SF-86 in an attempt to deceive security personnel to retain his security clearance.

Responses on Applicant's February 3, 1994 Department of Defense National Agency Questionnaire (DD Form 398-2)—SOR ¶¶ 3.h and 3.i; 1980 and 1982 driving while under the influence (DWI) of alcohol arrests—SOR ¶¶ 3.j and 3.l

Sections 22a and 22c of Applicant's February 3, 1994 DD Form 398-2, reads:

Section 20: Drug/Alcohol Use and Mental Health. ("YES" answers must be explained in accordance with DETAILED INSTRUCTIONS)

a. Have you ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), or any mind-altering substance (to include glue or paint), even one time or on an experimental basis, except as prescribed by a licensed physician?"

c. Have you ever misused or abused any drug prescribed by a licensed physician for yourself or for someone else?"

In response to section 22a, Applicant answered, "Yes," and disclosed cocaine use for a 45-day period from January to February of 1989. (GE 10) He indicated that he has been "clean and sober," after completing a 30-day drug treatment program in February 1989. (GE 10) In response to section 22c, he answered "No." (GE 10)

Applicant admitted that he did not fully disclose the extent of his illegal drug use on his February 3, 1994 DD Form 398-2 because he did not describe his marijuana use. (Tr. 78-79) He continued to deny that he abused prescription drugs. (Tr. 80-81) I conclude that Applicant deliberately understated the extent of his illegal drug use from his February 3, 1994 DD Form 398-2 in an attempt to deceive security personnel to obtain a security clearance.

Section 20d of Applicant's February 3, 1994 DD Form 398-2 asked about alcohol-related arrests, and he disclosed a 1980 arrest for DWI. (Tr. 80-81, 84-86; GE 10) Applicant was also arrested and charged with DWI in April 1982. (Tr. 81; SOR ¶ 3.j) He explained that he did not disclose the 1982 DWI arrest⁴ and charge because he was

⁴The SOR did not allege that Applicant's February 3, 1994 DD Form 398-2 intentionally omitted his 1982 DWI arrest. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

not actually drunk and the charge was dropped. I conclude that Applicant deliberately failed to disclose his 1982 DWI arrest use from his February 3, 1994 DD Form 398-2 in an attempt to deceive security personnel to obtain a security clearance.

Responses on February 24, 2010 DOHA interrogatories—SOR ¶ 3.a

On February 24, 2010, Applicant denied in his response to Question 4 that he ever participated in any drug and/or alcohol rehabilitation. (Tr. 75; GE 2 at 5) Applicant explained that his failure to disclose his drug and alcohol treatment was an oversight. (Tr. 75) Question 5 of the February 24, 2010 DOHA interrogatories asks Applicant to provide a copy of his treatment file from a particular drug and alcohol rehabilitation center, and a memorandum from Applicant attached to the DOHA interrogatories briefly describes some drug treatment he received. (GE 2 at 16) Applicant's signed release for the documentation from the drug treatment center was also provided. (GE 2 at 42) This allegation is unsubstantiated.

Burglary—forced entry—non-residence—SOR ¶ 3.k

Applicant admitted that he broke a window in 1980. In November 1980, Applicant was arrested and charged with burglary—forced entry—non-residence. (Tr. 82; GE 8) Applicant explained that he voluntarily went to the police station where he was fingerprinted and booked. (Tr. 83; GE 11 at 4) Applicant paid restitution for breaking a window. (Tr. 82-83) He denied that he was charged, and he was not convicted. (Tr. 82-83) The SOR does not allege that Applicant failed to disclose the 1980 arrest for burglary—forced entry—non-residence on his security clearance applications in 1994 and 2010.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have limited my consideration of evidence supporting any non-SOR derogatory information to the five reasons listed in the quotation above.

applied in conjunction with an evaluation of the whole person. An administrative judge's overarching 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.

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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant 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 therein 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, I conclude the relevant security concerns are under Guidelines F (financial considerations), H (drug involvement), and E (personal conduct) with respect to the allegations set forth in the SOR.

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 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." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his SF-86, credit reports, his SOR response, and his hearing record. Applicant's SOR alleges 20 delinquent debts, totaling \$64,646. Some debts have been delinquent more than five years. Applicant's PFS indicates that he does not have sufficient income to make payments to his SOR creditors. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 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;⁵ 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 in resolving his debts does not warrant full application of any mitigating conditions. Applicant stated that he successfully disputed the debt in SOR ¶ 1.c (\$783), and that he paid the debts in SOR ¶¶ 1.f (\$716), 1.s (\$1,400), and 1.t (\$800). Although he did not provide any proof that he paid or resolved these four debts, I am crediting him with mitigating them. They are relatively modest debts, and it is reasonable for him not to have documentation showing resolution. He said he was unable to pay his debts because of the costs of daily living and his spouse did not work outside their home. He has some financial counseling from a debt consolidation service. From 2004 until 2009, Applicant was either unemployed or underemployed.

Applicant disputed the debts in SOR ¶¶ 1.h (\$2,351) and 1.i (\$5,704). These are substantial debts, and he did not provide documentary evidence of any payments or demonstrate that he reasonably disputed these two debts. He showed some good faith when he admitted responsibility for some of his SOR debts on his SF-86, in his SOR response, and at his hearing.

Applicant has not taken reasonable actions to resolve most of his SOR debts. He did not provide documentation that he maintained contact with any of his SOR creditors, and he did not provide any documentation showing his attempts to negotiate payment plans with his SOR creditors.⁶ His PFS does not include any payments to any SOR

⁵The 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 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)).

⁶"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

creditors, and it shows a negative balance available to pay his SOR creditors. There is insufficient evidence that his financial problem is being resolved and is under control. He did not establish his financial responsibility.

Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Eight drug involvement disqualifying conditions in AG ¶ 25 could raise a security concern and may be disqualifying in this case:

- (a) any drug abuse;⁷
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

AG ¶¶ 25(a) to 25(e), and 25(g) apply. Applicant used and possessed numerous drugs beginning in high school and continuing until December 2001.⁸ He tested positive

whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁷AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

⁸AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including:

in 1990 and 2001 for the presence of illegal drugs in his body. I find the most credible descriptions of his drug use to be the statements he made to obtain drug treatment in 1990 and 2001. He repeatedly admitted extensive abuse of numerous illegal and prescription drugs. He was diagnosed with drug abuse and dependence at two different drug treatment programs. He possessed the illegal drugs before he used them. His security clearance was granted in 1994, and he used illegal drugs on numerous occasions until December 2001.

AG ¶ 26 provides for potentially applicable drug involvement mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;
 - (3) an appropriate period of abstinence; and
 - (4) a signed statement of intent with automatic revocation of clearance for any violation.
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. There are no "bright line" rules for determining when such conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd.

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c).

Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."⁹

Applicant states he has refrained from using illegal drugs and abuse of prescription drugs since December 2001. There is no evidence to contradict Applicant's statement about ending his illegal drug use. AG ¶ 26(a) applies to his illegal drug-related conduct.¹⁰ He has not used or possessed illegal drugs or abused prescription drugs for more than 10 years, which is "an appropriate period of abstinence." He has broken his patterns of drug abuse, and he has changed his life with respect to illegal drug use. AG ¶ 26(b) applies.

AG ¶¶ 26(c) and 26(d) are not applicable because Applicant did not abuse drugs after being issued a prescription that is lawful under federal law. His back pain did not merit such extensive use of pain killers. Some of the prescription drugs he received were part of a fraudulent scheme to split the drugs with his physician. He did not provide proof of satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

⁹ ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, affirmed the administrative judge's decision to revoke an applicant's security clearance after considering the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

¹⁰In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

In conclusion, Applicant ended his drug abuse in December 2001, more than 10 years ago. The motivations to stop using illegal drugs are evident. He now understands the adverse consequences from illegal drug use.¹¹ He has shown or demonstrated a sufficient track record of no drug abuse to eliminate drug involvement as a bar to his access to classified information.

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 describes five 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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

(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

¹¹Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.

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 . . . ; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

AG ¶ 16(a) and 16(b) apply. In Section 22 of Applicant's March 24, 2009 SF-86, he deliberately omitted his arrest and charge for domestic battery in May of 2003.

AG ¶ 16(e)(1) applies because his extensive drug involvement up until December 2001 creates a vulnerability to exploitation, manipulation, or duress, and such conduct adversely affects Applicant's professional standing as an employee of a Department of Defense contractor.

AG ¶¶ 16(c) and 16(d) do not apply. As indicated under the financial considerations guideline, there is credible adverse information that is sufficient for an adverse determination under Guideline F. His deliberate falsification of his 2009 SF-86 is sufficient for an adverse security determination under Guideline E. All of his relevant security-related conduct is covered under various Guidelines. For example, his false statements are covered under Guideline E; his criminal conduct under SOR ¶¶ 3.e, 3.g, 3.j, and 3.l are covered under Guideline J; and his drug use is covered under Guideline H. However, his personal conduct in SOR ¶¶ 3.e to 3.j and 3.j to 3.l does raise an issue about his judgment. AG ¶ 15 indicates that poor judgment can cause reliability and trustworthiness concerns, resulting in disqualification under the personal conduct guideline. Judgment issues as indicated in SOR ¶ 3.f under the personal conduct guideline are addressed in this case under the drug involvement guideline. There is substantial evidence of AG ¶¶ 16(a), 16(b), and 16(e)(1), and further inquiry about the applicability of mitigating conditions is required.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(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

(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.

None of the mitigating conditions apply to all of the disqualifying conditions. However, AG ¶ 16(e)(1) is mitigated by AG ¶ 17(e) because his extensive drug involvement is documented in his medical and security records. His decisions to end his illegal drug use and the disclosure of his extensive illegal drug use in his medical records have eliminated his vulnerability to exploitation, manipulation, or duress. I do not believe that anyone could use Applicant's history of illegal drug involvement to coerce him into compromising classified information.

The allegation in SOR ¶ 3.a that Applicant failed to disclose his drug treatment in his February 24, 2010 DOHA interrogatories is mitigated under AG ¶ 17(f) because it is unsubstantiated. The allegations in SOR ¶¶ 3.h and 3.i that he intentionally failed to disclose derogatory information about his use of illegal drugs on his February 3, 1994 DD Form 398-2 are substantiated. However, the security related conduct occurred 18 years ago and is mitigated by the passage of time.

The criminal offenses described in SOR ¶¶ 3.e, 3.j, 3.k, and 3.l as well as his termination from employment in 2004 are not recent and are mitigated by the passage of time.

Applicant admitted that he failed to disclose his arrest and charge in May 2003 for domestic battery on his March 24, 2009 SF-86 (SOR ¶ 3.b). Applicant said the omission was a mistake, and he did not disclose the arrest and charge because the charge was dropped. Applicant did disclose a May 1998 arrest for domestic battery on

his May 24, 2009 SF-86, even though that charge was dismissed. He provided an alternative explanation for failing to report his May 2003 domestic battery, when he explained the omission was an unintentional oversight as opposed to an intentional omission because the charge was dismissed. I did not believe his explanations. I find that he knowingly and intentionally failed to disclose his 2003 arrest for domestic battery.

Applicant failed to disclose that he used illegal drugs while holding a security clearance on his March 24, 2009 SF-86. (SOR ¶ 3.c) After he was granted a security clearance in 1994, he used marijuana in or about August 2001; he used cocaine in or about October 2001; and he illegally used prescription medications until at least October 2001. He acknowledged that this illegal drug use was after his security clearance was approved; however, he denied that he knew that he was in possession of a security clearance when he used illegal drugs. Later in his hearing, he admitted that he was in possession of a security clearance when he used illegal drugs. He did not provide any evidence that his security clearance was suspended or revoked between 1994 and October 2001. I find that he knowingly and intentionally failed to disclose that he used illegal drugs while holding a security clearance.

In conclusion, SOR ¶¶ 3.b and 3.c are found against Applicant. The other allegations under SOR ¶ 3 are found for Applicant. His intentional falsification of his March 24, 2009 security clearance application is recent, serious and not 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 have incorporated my comments under Guidelines F, H, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant was in high school when he was introduced to using illegal drugs. He served his country as an information technology administrator and has contributed to national defense while working for the Defense contractor. His medical treatment records described his drug abuse and treatment received in 1990 and 2001. He used numerous illegal drugs and abused numerous prescription drugs. He stopped using illegal drugs and abusing prescription drugs in 2001. He is 50 years old, and I am confident that he has the ability to abstain from future illegal drug use. He knows the consequences of illegal drug possession and use. He has successfully abstained from illegal drug use for more than 10 years, and drug possession and use are no longer of security concern. He resolved four SOR debts, totaling \$3,699. Some circumstances beyond his control, such as insufficient income, underemployment, and unemployment adversely affected his financial circumstances. There is no evidence of disloyalty or that he would intentionally violate national security. His character and work performance are important evidence of his responsibility, rehabilitation and mitigation.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant failed to mitigate 16 delinquent SOR debts, totaling \$60,947. He has been consistently employed for three years, and he should have made greater progress resolving and documenting resolution of his SOR debts. Applicant failed to disclose his arrest and charge in May 2003 for domestic battery, and he failed to disclose that he used illegal drugs while holding a security clearance on his March 24, 2009 SF-86. I did not believe his explanations that his omissions were unintentional oversights or that he misunderstood the scope or meaning of the questions. He is an intelligent and articulate person who had no difficulty at the hearing understanding all questions posed to him and expressing himself. I find that he knowingly and intentionally failed to disclose his 2003 arrest for domestic battery and his extensive illegal drug use while holding a security clearance. His failure to fully disclose negative information on his 2009 SF-86 and his failure to be candid about extensive drug use and reasons for omissions on his 2009 SF-86 at his hearing show lack of judgment and "raise[s] questions about [Applicant's] reliability, trustworthiness and ability to protect classified information." See AG ¶ 15.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude drug involvement concerns are mitigated; however, financial considerations and personal conduct concerns are not mitigated. 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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g to 1.r:	Against Applicant
Subparagraphs 1.s and 1.t:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a(i) to 2.a(viii):	For Applicant
Subparagraphs 2.b(i) to 2.b(x):	For Applicant
Subparagraphs 2.c to 2.n:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraphs 3.b and 3.c:	Against Applicant
Subparagraphs 3.d to 3.l:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge