



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-08023

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

June 3, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists eight delinquent debts totaling \$132,916. He paid or settled six debts. Financial considerations concerns are mitigated. However, he intentionally failed to disclose derogatory information on his June 20, 2007 security clearance application. Personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 20, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On October 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued an 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) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations) and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked (HE 2).

On November 24, 2010, Applicant responded to the SOR and requested a hearing. (HE 3) On January 25, 2011, DOHA assigned Applicant's case to me. On April 5, 2011, Applicant's hearing was held using video teleconference. At the hearing, Department Counsel offered ten exhibits (GE 1-10) (Tr. 21), and Applicant offered 33 exhibits. (Tr. 25-35; AE A-AG) There were no objections, and I admitted GE 1-10 and AE A-AG. (Tr. 22, 35) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) The record was held open until April 12, 2011, to permit Applicant to submit additional evidence. (Tr. 49, 83-84, 112, 123) After the hearing, Applicant provided eight pages of documents, which were admitted. (AE AH) On April 12, 2011, I received the hearing transcript.

Findings of Fact¹

Applicant's SOR response addressed each SOR allegation in ¶ 1 stating: 1.a (denied); 1.b and 1.c (admit, but debt is resolved); 1.d (admit—explained to investigator); 1.e and 1.f (deny because unaware of debt); and 1.g and 1.h (deny because debt paid). He admitted the allegations in SOR ¶¶ 2.a, 2.b, 2.c, 2.d, and 2.g. In connection with SOR ¶¶ 2.e and 2.f, he stated that he admitted the allegation, but understood that the two convictions were removed from his record. (HE 3) His admissions are accepted as factual findings.

Applicant is a 38-year-old trainer working for a defense contractor. (Tr. 8, 36) He graduated from high school in 1991. (Tr. 8) He has not attended college. (Tr. 8) He served in the Marine Corps from 1995 to 1997, and he received a general discharge under honorable conditions. (Tr. 8-9) He married in 1999, and he has three children who are 7, 10, and 11 years old. (Tr. 9)

Applicant has worked for his employer for four years, and his primary function is training personnel on how to counter improvised explosive devices. (Tr. 37) He served one year in Iraq and two years in Afghanistan. (Tr. 39) His six-page resume provides a detailed description of his qualifications, education, training, certifications, work experience, awards, honors, and security clearance. (AE U)

Financial Considerations

Applicant worked for the same employer from 1997 to 2007, prior to receiving employment with his current employer in 2007. (Tr. 41-43) When he went to work for his

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

current employer in 2007, his annual pay increased from about \$30,000 to about \$100,000. (Tr. 43, 74-75) He has never been unemployed. (Tr. 42) He encountered financial difficulties in 2000 after his second child was born, and his spouse could not work outside their home. (Tr. 40-41) He made some poor financial decisions; however, he emphasized he was working diligently to resolve his financial issues. (Tr. 73)

Applicant's SOR lists eight delinquent debts totaling \$132,916. The status of the eight debts listed on Applicant's SOR is as follows:

SOR ¶ 1.a debt (\$140)—PAID. On March 23, 2011, Applicant paid the creditor \$148. (Tr. 45; AE B)

SOR ¶ 1.b debt (\$356)—PAID. Applicant paid this debt in 2006. (Tr. 46-47; AE AH at 4)

SOR ¶ 1.c car loan (\$11,163)—PAID. In 2004, Applicant purchased a van, and the creditor voluntarily repossessed it that same year.² (Tr. 50-51) He did not pay the delinquency because he believed it was charged off, and the creditor was not pursuing collection. (Tr. 51) On March 23, 2011, the creditor offered to settle the debt for \$7,000. (AE A at 3) In 2011, Applicant borrowed \$10,000 on his truck, which did not have a lien on it. (Tr. 71-72) On March 25, 2011, Applicant paid \$7,000 to the creditor in SOR ¶ 1.c, resolving this debt. (Tr. 52; AE A at 1-2)

SOR ¶ 1.d mortgage loan (\$120,000)—REFUTED. In 2002, Applicant purchased a residence. (Tr. 57) In 2006, his mortgage company foreclosed on his residence. (Tr. 56) His initial mortgage was for \$120,000. (Tr. 59) He did not know whether there was a deficiency after the house was foreclosed. (Tr. 59) After the hearing, Applicant provided an account statement showing that in 2006 there was a transaction amount of \$115,173. (Tr. 60; AE AH at 3, 6-8) The "Principal Paid" column shows \$115,173 followed by zeros. *Id.* The "Current Balances" section shows zero owed for principal and interest. (AE AH at 6)

² Section 27b of Applicant's 2007 SF 86 seeks information about "property repossessed for any reason" in the last seven years. (GE 1) Applicant did not disclose his repossessed vehicle and foreclosure in SOR ¶¶ 1.c and 1.d. (Tr. 69-70; GE 1) The SOR did not allege that he failed to provide this derogatory financial information on his 2007 SF 86. 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.

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)). In light of the lack of notice in the SOR about his failure to disclose this derogatory financial information on his SF 86, I decline to consider this derogatory information for any purpose.

SOR ¶ 1.e medical debt (\$52)—PAID. On March 24, 2011, Applicant paid \$71 to the creditor in SOR ¶ 1.e, resolving this debt. (Tr. 60-61; AE C, AE AH at 2) The debt is not on Applicant's current credit report. (Tr. 61)

SOR ¶ 1.f medical debt (\$1,105)—TRANSFERRED. On March 22, 2011, the creditor in SOR ¶ 1.f wrote that the creditor no longer possessed the debt. (Tr. 61-62; AE D at 1-2) The creditor's letter and SOR did not provide notice of the subsequent holder of this debt.

SOR ¶¶ 1.g and 1.h checks (\$55 and \$45)—PAID. In 2004, Applicant wrote bad checks to two gas stations. (Tr. 66) The same collection company is seeking payment of both debts. He thought the debts were previously resolved. (Tr. 66) On March 23, 2011, Applicant paid \$329 to the creditor in SOR ¶¶ 1.g and 1.h, resolving these two debts. (Tr. 65-67; AE E-F)

Applicant's 2010 personal financial statement (PFC) includes monthly net income (\$6,743), monthly expenses (\$1,300), monthly debt payments (\$2,129), and monthly net remainder (\$3,314). (Tr. 73-74; GE 2 at 36) His assets total \$47,519, including \$27,619 in a 401K account. *Id.* As of the date of his hearing, his net income is down to about \$5,700, his expenses and debt payments have increased, and his current monthly remainder is substantially less. (Tr. 77-83)

Personal Conduct

In 1991 when Applicant was 18 years old, he and a friend stole an envelope containing \$8,000 from the family of his girlfriend. (Tr. 86-87) Applicant was arrested and charged with larceny over \$100, a felony. (Tr. 84-85; SOR ¶ 2.a) He was sentenced to 11 days in jail, to 36 months of probation, to community service, and to pay a fine and restitution. (Tr. 84-85) Applicant's parents paid restitution to the victim. (Tr. 88) In 2009, Applicant completed reimbursement of the restitution that he received from his parents. (Tr. 88-89)

In about May 1996, Applicant drove while impaired by alcohol, the police apprehended him, and he missed formation because he was still detained by the police. He received non-judicial punishment (NJP) for being absent from his appointed place of duty and for physically controlling a passenger car while impaired by alcohol, in violation of Articles 86 and 111, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 886 and 911. (Tr. 89-92; GE 8; SOR ¶ 2.b) His commander imposed punishment of forfeiture of \$400, reduction to pay grade E-2 (suspended for six months), and 60 days restriction. *Id.*

In about October 1996, Applicant was charged with wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. (Tr. 89-90; GE 9; SOR ¶ 2.c) He said he had no idea why he came up positive for cocaine on the urinalysis test. (Tr. 92) He denied knowingly using cocaine. (Tr. 92-94) He admitted that he told the judge under oath during the providence inquiry that he knowingly used cocaine. (Tr. 105-06) He said he had to tell the judge that he "snorted the cocaine" in order to have his guilty plea

accepted. (Tr. 106) This was the first time he was ever involved with cocaine. (Tr. 107) In October 1996, he pleaded guilty at a special court-martial and was sentenced to forfeiture of \$300.00 pay per month for three months, to 30 days confinement to run concurrently with 30 days restriction, and to reduction to pay grade E-2. (GE 9)

In about April 1997, Applicant was involuntarily processed for administrative separation from the U.S. Marine Corps. (Tr. 94; SOR ¶ 2.d) He received a general discharge, and the narrative reason for his discharge was “misconduct.”

Applicant’s June 20, 2007 SF 86 asked, “23: Your Police Record—For this item, report information regardless of whether the record in your case has been ‘sealed’ or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. Answer the following questions. a. Have you ever been charged with or convicted of any felony offense? (Include those under Uniform Code of Military Justice).” Applicant answered “No” to this question. (Tr. 95-96) Applicant said he was only 18 when he committed the offense, and he thought his conviction in 1991 for larceny over \$100 was going to be “erased—gone” after he completed his sentence. (Tr. 96-97, 109-110) He thought, “[i]t can go away.” (Tr. 96; SOR ¶ 2.e)

Section 23d of Applicant’s June 20, 2007 SF 86 also asked, “Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?” Applicant answered “No” to this question, even though he was convicted of using cocaine at a court-martial in 1996. He said he did not list the offense because the judge told him he could “still survive,” and he “could still move on in life.” (Tr. 98, 111-12) He completed his punishment and wanted to put it behind him. (Tr. 98-99) He attempted to remember his thought process or mental state in 2007 when he completed his SF 86; however, he concluded that he could not remember why he did not disclose his court-martial conviction. (Tr. 101) His violation of Article 111, UCMJ (driving while impaired by alcohol) is not pertinent to this question because an NJP allegation is not a “charge” under the MCM, 2008, R.C.M. 307.

Applicant’s June 20, 2007 SF 86 asked, “19: Your Military Record—Answer the following question. Have you ever received other than an honorable discharge from the military?” (SOR ¶ 2.g) He said he answered “No” to this question because “[i]t was still—it wasn’t other than honorable, it was a general discharge under honorable conditions.” (Tr. 101)

Applicant’s colleagues, subordinates, and supervisors lauded his performance and character in their statements. (AE G-Q, AE AF, AE AG) He shows initiative, integrity, and attention to detail. *Id.* He is a very professional and dedicated trainer. *Id.* He is honest, prompt, reliable, ethical, loyal, professional, responsible, steadfast, patriotic, and diligent. *Id.* He is an asset to his team, company, and country. *Id.* On March 13, 2009, he received a commander’s award for civilian service in Afghanistan. (AE R) On September 26, 2009, he received a certificate of appreciation from a unit maintenance control officer. (AE S) On December 17, 2010, he received his instructor

certification from a community college. (AE T) His employee evaluations show that he is a diligent, responsible, and professional employee. (AE V-Y) The security officer at Applicant's company and various certifications indicate Applicant has been compliant with security and training requirements, cooperative, and security oriented. (AE Y to AE)

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

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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), § 3.1. 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 about 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 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) 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 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 credit reports, SOR response, and his statement at his hearing. Applicant's SOR lists eight delinquent debts totaling \$132,916. 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; 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.

AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply. Applicant did not receive financial counseling, and he did not disclose an extraordinary reason, such as unemployment or divorce, to explain his delinquent debts. He did not provide documentation showing he disputed any delinquent debts.

AG ¶ 20(d) applies. Applicant has a good understanding of how to resolve his debts. He acted in good faith with respect to all SOR debts.³ He paid six of them, he has taken steps to determine the status of his mortgage debt, and one debt was transferred. He may not owe anything on his mortgage because his mortgage company

³The 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].

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) (internal citation and footnote omitted)).

has not seen fit to pursue the debt, and the 2006 account statement may indicate the debt is resolved. His residence may have been sold for the amount of his mortgage. His track record of financial responsibility shows sufficient effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations concerns.

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 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 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.

All five conditions apply. In 1991, Applicant and a friend stole \$8,000 from his girlfriend's family, and he was convicted of a felony-level larceny offense. In May 1996, he drove while impaired by alcohol and was late for formation the next day, resulting in NJP. In October 1996, he used cocaine and pleaded guilty to cocaine use. I do not believe his initial statement at the hearing that he did not know why he tested positive on the urinalysis test for the presence of cocaine in his body. His statement under oath at his providence hearing that he snorted cocaine is more credible than his denial of knowing cocaine use. When he completed his SF 86, he falsely denied that he had a felony-level conviction, a drug-related offense, and that he received less than an honorable discharge.

AG ¶ 17 provides seven conditions that could mitigate security concerns including:

(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.

AG ¶¶ 17(a), 17(b), 17(d), 17(e), and 17(g) do not apply to a sufficient degree to mitigate any SOR allegations. AG ¶ 17(c) applies to the information in SOR ¶¶ 2.a to 2.d. The most recent event was in April 1997, 14 years ago. These offenses no longer cast doubt on Applicant's trustworthiness. AG ¶ 17(f) applies to SOR ¶ 2.g. Applicant believed that his general discharge under honorable conditions did not have to be disclosed because his discharge was under honorable conditions.

Applicant's deliberately false statements on his 2007 SF 86 about his felony-level larceny conviction and his court-martial conviction for using cocaine are not mitigated. He was not credible at his hearing about why he did not disclose this information. No one misled him into thinking this information should not be reported on his SF 86. The questions are clear, and his resume and good character evidence, for example, show that he is an intelligent and detail-oriented person. His false statements on his SF 86 are serious and relatively recent. Personal conduct concerns are 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.

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). I have incorporated my comments under Guidelines F 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.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his access to classified information. He served in the Marine Corps from 1995 to 1997. In 1999, he married, and has three young children. He is a 38-year-old

trainer, who has worked for a defense contractor for the last four years, including three years in combat zones, where he trained personnel on countering improvised explosive devices. His security officer, personnel evaluations, supervisors, colleagues, and subordinates laud his dedication, performance and character. He received a commander's award for civilian service in Afghanistan and several certificates of appreciation. There is no evidence of security violations. There is every indication that he is loyal to the United States and his employer. I give Applicant substantial credit for explaining and mitigating his financial circumstances. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial. He has not mitigated his deliberate and intentional falsification of his 2007 SF 86. He knew he should have disclosed his felony-level larceny and court-martial conviction for using cocaine on his SF 86, and he chose not to do so. His explanations are not credible.

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 financial considerations concerns are mitigated; however, personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

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 through 1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2d:	For Applicant
Subparagraphs 2.e and 2.f:	Against Applicant
Subparagraph 2.g:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

MARK HARVEY
Administrative Judge