



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



In the matter of: )  
)  
) ISCR Case No. 10-00444  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

June 29, 2011  
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**Decision**  
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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on May 12, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on October 20, 2010, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, that provided the basis for its preliminary decision to deny him a security clearance. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on November 11, 2010. He answered the SOR on November 29, 2010 and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on March 2, 2011. I received the case assignment on March 4, 2011. DOHA issued a notice of hearing on March 18, 2011, and I convened the hearing as scheduled on April 4, 2011. The Government offered exhibits marked as GE 1 through 15, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE G, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 14, 2011. I held the record open until May 4, 2011, for Applicant to submit additional matters. Applicant timely submitted AE H through AE P, without objection. The record closed on May 4, 2011.

### **Procedural and Evidentiary Rulings**

#### **Notice**

Applicant received the hearing notice on March 24, 2011, less than 15 days before the hearing. (Tr. 10) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (*Id.*)

#### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.c- 1.j, 2.a, 2.b, 2.e, and 2.h of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.b, 2.c, 2.d, 2.f, 2.g, 2.i, 2.j, and 2.k of the SOR<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 53 years old, works as a seaman for a Department of Defense contractor. He began working for his current employer in October 2008 and is currently not working because of his security clearance issues. His supervisors rated him satisfactory or higher, and one recommended him for promotion in his 2010

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

performance evaluation. They describe him as dependable, steady and hard working. He makes an effort to teach less experienced members in his department. He has successfully completed many training courses required for his position and is a licensed seaman.<sup>2</sup>

Applicant left high school after the tenth grade and later completed his General Educational Development program (GED). He received training as a heavy equipment operator in the Job Corps, then joined the National Guard. After 20 months of National Guard service, he enlisted in the United States Army in September 1978. He received an honorable discharge from the Army in March 1987. His military records reflect that he served in Germany from August 1982 through August 1984 and for three months just before he separated from the Army in 1987. While in the Army, he received two good conduct medals, his marksman and sharpshooter badges, and several service ribbons.<sup>3</sup>

After his discharge from the Army, he worked as a cook. He then developed, owned, and operated a lawn and handyman service. He retired from this business around 2006. A friend approached him about a career as a merchant seaman when he was 46 years old. Since he was closing his business, he decided to train as a seaman and enrolled in a training program in 2005, which he completed. He began working as a merchant seaman in 2006 and continued to attend training programs until 2008.<sup>4</sup>

Applicant married his first wife in 1984, and they divorced in 1994. He married his current wife in 1995. He does not have any children, but he has two step-children from his second marriage. When he was in seaman school, doctors diagnosed his wife with lupus. She has been unable to work since her diagnosis. Because his initial wages as a seaman were low, and his wife could not work, he was unable to pay all his bills. He paid his mortgage and utilities and other bills as he could until his income increased.

## **Finances**

The SOR identified 10 purportedly continuing delinquencies as reflected by credit reports from 2009, 2010, and 2011, totaling approximately \$28,467. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

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<sup>2</sup>GE 1; AE M; AE N; Tr. 24.

<sup>3</sup>AE K; AE L; Tr. 24.

<sup>4</sup>GE 1; Tr. 24-27.

In 2008, Applicant obtained his current job, which pays him a good salary. When he works as a seaman, he earns \$130 a day. His 2010 earnings statement indicated that between January 23, 2010 and April 21, 2010, he worked 89 days, earning \$17,656 in gross income and \$11,769 in net pay. Based on this information, his net monthly income averages just under \$4,000. His wife receives \$850 a month in disability income. His monthly expenses total approximately \$3,000. Since Applicant is not currently working, he receives unemployment benefits, and his monthly income is substantially lower.<sup>5</sup>

Applicant purchased a house in February 2000. In October 2010, Applicant paid the final payment on his mortgage, and the mortgage holder released the deed of trust and real estate note on his property.<sup>6</sup>

SOR ¶ 1.a involves a debt (\$2,632) from a collection company unknown to Applicant. At the hearing, he indicated that he believed this account was the same as the account in SOR ¶ 1.d. After the hearing, he contacted the creditor and determined the source of the debt. The current creditor purchased two accounts from other creditors not listed in the SOR. The first account has a balance due of \$6,279. On November 16, 2010, the previous collection company made a settlement offer to Applicant, which he was unable to accept at that time. The second account is a credit card and has a balance of \$2,723. This debt is not paid.<sup>7</sup>

Concerning the debt in SOR ¶ 1.b (\$13,157), Applicant leased a car and returned the car, when his wife was unable to work, and he could not continue with the monthly payment. He believed this occurred in the late 1990s, but the May 28, 2009 credit report shows that this account was opened in February 2002, and that he last made a payment in early 2005. Applicant returned the car with improvements and does not believe he owes any additional money on this account.<sup>8</sup>

SOR ¶ 1.c is a store credit account with an unpaid balance of \$1,684. Applicant contacted this creditor and reached an agreement to settle the account for approximately \$1,180. He began paying \$98 a month in November 2010 and included this payment in his current reduced budget.<sup>9</sup>

Applicant contacted the creditor in SOR ¶ 1.d (\$2,605) and reached a settlement agreement. Applicant paid this debt. SOR ¶ 1.g (\$1,454) involves a second account with a different account number with this creditor. Applicant denied a second account with

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<sup>5</sup>GE 12; Tr. 51-55.

<sup>6</sup>AE J; Tr. 96-97.

<sup>7</sup>AE H; AE O; Tr.31-34, 38.

<sup>8</sup>GE 7; GE 10; GE 11; GE 13; GE 14; GE 15; Tr. 39-41, 90-92.

<sup>9</sup>AE B; Tr. 34-36, 92-93.

this creditor and believes he resolved all his debts with the creditor when he settled the debt in SOR ¶ 1.d. He did not provide any documentation from the creditor, showing he had only one account, thus, the debt in SOR ¶ 1.g is not resolved.<sup>10</sup>

SOR ¶¶ 1.e (\$796) and 1.f (\$4,567) relate to a deposit and an unsecured loan with his local bank. Applicant contacted the creditor and reached an agreement to pay the unsecured loan for \$3,800. He paid this amount for the debt in SOR ¶ 1.f in November 2010. He will pay the remaining debt when he returns to work.<sup>11</sup> The credit reports reflect that Applicant has had several loans with his bank and that he has paid these loans as required. The bank manager wrote a letter of recommendation on behalf of Applicant.<sup>12</sup>

The debt in SOR ¶ 1.h (past due \$403) is now \$5,494. He received an offer to settle the account, but cannot pay the settlement offer as he is not working. Applicant also contacted the creditors in SOR ¶¶ 1.i (\$643) and 1.j (\$526) and reached a settlement agreement for each debt. He paid these debts in July 2010 and November 2010 respectively. Applicant also paid one other collection account not listed in the SOR.<sup>13</sup>

## **Personal Conduct**

While serving in the Army, Applicant was involved in several alcohol and criminal matters. After consuming beer in July 1979,<sup>14</sup> the police stopped Applicant, while he was driving. The police arrested and charged Applicant with driving under the influence of alcohol (DUI). He spent one night in jail, then later pled no contest to the charges in court. The court fined him \$350 and placed him on probation for six months or one year. His military command was aware of his arrest.<sup>15</sup>

Five months later, on December 1, 1979, the military police charged Applicant with assault following an altercation involving his then girlfriend. The military police report does not indicate that Applicant was arrested. His command resolved this matter through non-judicial punishment procedure. He was charged under the Uniform Code of

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<sup>10</sup>GE 7; GE 10; GE 11; GE 13; GE 14; GE 15; AE C; Tr. 34-39, 92-93.

<sup>11</sup>At the hearing, Applicant indicated that the largest debt (SOR ¶ 1.f) owed to the bank was his truck loan. Applicant paid his truck in full in May 2010, and the bank released the lien on his truck on June 1, 2010. Thus, the loan in SOR ¶ 1.f was not his truck loan, but another loan from the bank that he has paid. Tr. 43-44, 94.

<sup>12</sup>GE 7; GE 10; GE 11; GE 13; GE 14; GE 15; AE A; AE D; AE I; Tr. 43-44.

<sup>13</sup>GE 11; GE 13; GE 14; GE 15; AE E; AE G; Tr. 48-51.

<sup>14</sup>Applicant listed the date of this incident as July 1978 on his e-QIP. GE 12.

<sup>15</sup>GE 12; Tr. 79.

Military Justice (UCMJ). He was found guilty, reduced one grade in rank and served him 10 days of extra duty.<sup>16</sup>

In May 1982, in State A while he was stationed at military base A, Applicant drank a significant quantity of alcohol, then decided to take a ride on his motorcycle. As a result of this decision, he drove his motorcycle off a cliff and sustained physical injuries. He regained consciousness in the hospital three days later. The Army gave him 14 days of convalescent leave. After his leave, he returned to training, which he completed. In August 1982, his duty assignment took him overseas for two years. The military police investigated the accident and charged Applicant with DUI and a traffic accident involving a vehicle and an object.<sup>17</sup> He was given an oral admonition and his post driving privileges were suspended.<sup>18</sup>

Applicant volunteered that he was arrested for DUI in State B, when he was stationed at military base B. Although he believed this arrest occurred in 1982, I find that this arrested occurred after he returned from his overseas assignment in 1984 because in 1982, he was stationed at military base A, not military base B. As a result of his conviction for DUI, he served 45 days in jail and paid a fine of an unknown amount. This arrest is not listed on the Federal Bureau of Investigation (FBI) criminal records report.<sup>19</sup>

The FBI criminal record reflects that Applicant was arrested or received charges for fight noise offensive words and inflicting corporal injury on spouse co-habitant on June 22, 1986. The court convicted Applicant of the charge and sentenced him to four days in jail. Applicant does not remember this incident.<sup>20</sup>

On December 31, 1986, while at a local bar, Applicant identified himself as a CID agent after someone set off firecrackers in the bar. An argument ensued and an individual received a knife cut. The military police detained Applicant for these incidents, which he denied. The record evidence does not indicate that the police arrested him, although charges for aggravated assault and impersonating an official were placed against him. His command disciplined him through nonjudicial punishment by reducing him in rank and placing him on 30 days restriction.<sup>21</sup>

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<sup>16</sup>GE 2 ; Tr. 55-57.

<sup>17</sup>The record evidence does not reflect that the military police arrested him. GE 3.

<sup>18</sup>GE 3; Tr. 57-58, 61, 65. The SOR alleges that he was incarcerated for 45 days as a result of the May 1982 accident. When an individual is disciplined through the non-judicial punishment process, he will not be incarcerated.

<sup>19</sup>GE 12; Tr. 63, 68, 81, 88.

<sup>20</sup>GE 8; Tr. 62-63.

<sup>21</sup>GE 4; Tr. 69-71.

In his response to the Interrogatories mailed to him by the Government, Applicant volunteered that in 1987, the police in State B arrested and charged him with aggravated assault. This incident involved an altercation with his supervisor. Applicant acknowledges that he poked his supervisor with a “frog gig”, which is a fish spear. The court sentenced him to 14 days in jail and placed him on probation for two years. This incident is not listed in his FBI criminal record.<sup>22</sup>

The FBI criminal record indicated that Applicant was arrested twice in 1991. The first arrest occurred on July 5, 1991, when the police arrested and charged him with battery. He was cited and released. No further information about this arrest is shown in the report. The police arrested him a second time and charged him with assault with a deadly weapon and fighting in a public place on December 17, 1991. The record indicated that the court sentenced him to 10 days in jail and placed him on probation for one year. Applicant adamantly denies these incidents, stating that he had moved to State C in 1990. Applicant believes the second incident is the incident with his supervisor in 1987, which he acknowledged occurred. The record contains a document from the local Sheriff’s Department in State B, indicating that Applicant was arrested on December 12, 1991 on a warrant and released from jail on December 23, 1991. No other information on this arrest is provided in this document except a penal code number.<sup>23</sup>

The record contains conflicting evidence concerning Applicant’s arrests in 1991 and 1987. Applicant fully acknowledged an incident with his supervisor, which involved a “frog gig”. Based on a review of the evidence, I find that the 1987 and December 1991 incident are the same, regardless of which date is correct. At the hearing, Applicant’s memory for dates was not always accurate, including the date when he moved to State C. As for the July 1991 arrest, I credit the FBI criminal report, as it is a public document.

On December 21, 1998, Applicant and friends fished for the day. On their way home from fishing, they stopped their vehicle at a store. Applicant and one friend stepped out of the vehicle and began arguing. The argument escalated on both sides and resulted in Applicant stabbing his friend in the arm with a fish knife. The police arrested both of them and suggested charging Applicant with aggravated assault with a deadly weapon. Upon review, the prosecutor rejected the felony charge against Applicant and reclassified the case as an assault Class A.<sup>24</sup> Applicant appeared for his court date, and the prosecutor told him to go home. He never received any additional information from the court. The criminal record sheet indicated that the prosecutor never proceeded forward with its case. Applicant admitted the incident, but denied knowledge that it was a felony.<sup>25</sup>

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<sup>22</sup>GE 12; Tr. 73-74, 81.

<sup>23</sup>GE 5; GE 8; Tr. 73-81.

<sup>24</sup>GE 6, p. 6.

<sup>25</sup>GE 6; GE 9; Tr. 81.

When Applicant completed his security clearance application, he answered “no” to the following question:

Section 22: Police Record

- c. Have you EVER been charged with any felony offense? (Include those under Uniform Code of Military Justice)

The SOR alleges that Applicant intentionally failed to list his felony arrests in December 1991 (¶ 2.h) and December 1998 (¶ 2.i), but did not allege that Applicant falsified his e-QIP when he did not list the other criminal arrests discussed in this decision.<sup>26</sup> Applicant denies intentional falsification. He states that he was not charged with a felony in 1998 and that he provided information to the best of his recollection. When he answered the interrogatories from the Government, he identified two arrests not presented to him or discussed with him by the Office of Personnel Management (OPM) investigator.<sup>27</sup>

The SOR also alleges that Applicant deliberately failed to provide information about his DUI arrest in 1982 (¶ 2.c) when he answered “yes” to the following question:

Section 22: Police Record

- c. Have you EVER been charged with any offense(s) related to alcohol or drugs?

In his response to the SOR, Applicant indicated that the information in SOR ¶ 2.c was incorrect because he had no recollection that he served 45 days in jail for this accident. He forgot about this incident and the 1984 alcohol incident when completing

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<sup>26</sup>Applicant did not believe that any of the criminal offense with which he was charged while he was in the Army involved felony charges because he was not subject to court-martial proceedings. Under the Uniform Code of Military Justice, many criminal offenses are resolved through nonjudicial punishment. MCM, 2008, Part V, ¶ 1e states:

e. *Minor Offenses.* Nonjudicial punishment may be imposed for acts or omissions that are minor offenses under the punitive articles. . . . Whether an offense is minor depends on several factors: the nature of the offense and the circumstance surrounding its commission; the offender’s age, rank, duty assignment, record and experience; and the maximum sentence imposable for the offense if tried by general court-martial. Ordinarily, a minor offense is an offense which the maximum sentence imposable would not include a dishonorable discharge or confinement for longer than 1 year if tried by general court-martial. The decision whether an offense is “minor” is a matter of discretion for the commander imposing nonjudicial punishment. . .

Applicant’s offenses while in the military were resolved through nonjudicial punishment. Thus, his command determined that his conduct involved minor offenses.

<sup>27</sup>SOR; Response to SOR; GE 12.



his e-QIP. When he answered the Interrogatories from the Government, he identified a DUI arrest not presented to him or discussed with him by the OPM investigator.<sup>28</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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<sup>28</sup>SOR; Response to SOR; GE 12.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems when he enrolled in seaman school and did not work for a period of time. At the same time, his wife was unable to work for health reasons. He paid some of his monthly bills, but he failed to pay other bills. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following 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; and

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

In 2005, Applicant decided to enroll in school to train for a new career as a seaman. While his education limited his ability to earn an income for a year, his wife worked, and he was not concerned. During his training program, his wife became ill and could not work. Doctors eventually diagnosed her with lupus. She has not been able to return to work because of her illness. She eventually received a monthly disability benefit. The loss of her steady income impacted their ability to pay their monthly expenses and resulted in accumulated credit card debt. In 2006, Applicant began working as a seaman, earning low wages. He used his income to pay his mortgage and utilities. He also paid as many bills as he could pay. However, his low income prevented him from paying his old bills. In 2005, he returned the leased car, as he could no longer pay the monthly payment. He was not attempting to pay his bill; rather he believed he was eliminating an unaffordable and unnecessary expense. As his income increased, he worked to resolve his debts. He paid his mortgage and truck loan in full in 2010, and he used his increased income to resolve several of his SOR debts. He contacted some creditors and responded to settlement offers from other creditors. As a result of these efforts, he resolved and paid \$8,341 of his debts. He developed a payment plan for the \$1,684 debt, and under the plan, he pays \$98 a month to resolve this debt. His current finances are under control, and his monthly living expenses are paid. He has not received credit counseling, but he plans to continue resolving his debts when he returns to work. AG ¶¶ 20(b), 20(c), and 20(d) are applicable.

### **Guideline E, Personal Conduct**

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

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

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

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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;

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his May 2009 e-QIP, when he failed to acknowledge a 1982 DUI arrest and two arrests in 1991 and 1998. This information is material to the evaluation of Applicant's trustworthiness and honesty. In his response, he admitted the facts set forth in SOR allegation 2.h, but denied that he was charged with aggravated assault with a deadly weapon. He denied an intent to hide information from the Government about his long ago conduct when he completed his e-QIP, nor did he acknowledge such an intent at the hearing. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>29</sup>

Applicant did not deliberately fail to provide information about the incident involving his supervisor (SOR ¶ 2.h), as he forgot about the incident. Likewise, he did not intentionally fail to disclose his arrest in December 1998 (SOR ¶ 2.i) as this arrest did not involve a felony charge. The prosecutor rejected the attempt by the police to charge Applicant with a felony, as a result of the argument with and stabbing of his friend following a day of fishing. The prosecutor dismissed the misdemeanor charges against him, after telling Applicant to go home when Applicant appeared in court.

Concerning his failure to list the 1982 DUI charges on his e-QIP, Applicant also forgot about this alcohol incident, which occurred while he was stationed at Base A, and about an alcohol incident that occurred while he was stationed at Base B. Applicant credibly testified that he failed to remember the 1982 incident. He voluntarily admitted the 1984 incident when he answered the interrogatories sent to him by the Government. His willingness to provide the 1984 negative information supports the credibility of his denial that he intentionally forgot to list his 1982 DUI charges arising from his motorcycle accident.

Concerning the remaining allegations under Guideline E, the Government argues that these minor criminal matters are evidence of rules violations and questionable judgment. Individuals are required to comply with the laws and the rules of society.

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<sup>29</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's involvement in these criminal matters is sufficient to establish the Government's case under AG ¶ 16(c).

AG ¶ 17 provides conditions that could mitigate security concerns:

(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.

Even if I were to find that he intentionally failed to list the December 1991 arrest, I find that he voluntarily provided the information about this arrest in his response to the Interrogatories and thus, would mitigate any security concerns under AG ¶ 17(a) as the 1987 and December 1991 arrest are the same. Applicant's willingness to provide information on two serious criminal matters in his response to interrogatories reflects his honesty about matters detrimental to him and supports his testimony that he forgot about these incidents when he completed his e-QIP. The allegations of falsification in SOR ¶¶ 2.h and 2.i are found in favor of Applicant.

Applicant's last arrest occurred over 12 years ago. All but one of the misconduct issues raised by the Government occurred between 1979 and 1991. Since this time, Applicant has matured. He has changed his behavior and attitude. He complies with the laws. His last arrest for DUI occurred in 1984, more than 25 years ago. He no longer involves himself in arguments which lead to fighting and arrests for criminal conduct. Given the change in his conduct and behavior, his long ago negative conduct does not reflect on his current judgment, trustworthiness, and honesty. He has mitigated the Government's security concerns under AG ¶ 17(c). Guideline E is found in favor of Applicant.

### **Whole-Person Concept**

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

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

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

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and

every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009); ISCR Case No. 09-08462 (App. Bd. May 31, 2011).

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s financial problems began after he enrolled in school, and his wife became ill and could not work. He paid the bills he could pay and fell behind on others. He does not believe he owes any additional money on the leased car he returned to the creditor.<sup>30</sup> He has paid his mortgage in full and paid his truck loan. He paid one past-due debt not listed in the SOR, and the credit reports reflect that he paid many of his debts in a timely manner. As his income increased, he started paying his past due debts, resulting in the payment of more than \$8,341 of the SOR debts. Even though he is not working, he continues to comply with his repayment plan on the \$1,600 debt. He intends to continue to resolve most of his additional debts, but cannot do so until his income improves. He has an established track record for paying his old debts. He is not required to be debt-free to hold a security clearance. He has acted reasonably under his present circumstances, has taken affirmative action to pay or resolve some of his delinquent debts, and plans on continuing towards the resolution of his other debts once he returns to work.(See AG ¶ 2(a)(6)) The evidence of record shows that Applicant has and is working towards the resolution of his past-due debts, the “concomitant conduct” necessary to resolve the issues with his security clearance. Of course, the issue is not simply whether all his debts are paid and will take time to resolve: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance.

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<sup>30</sup>Given the age of this debt, it may be barred from collection under the statute of limitations. Thus, this debt cannot be a source of improper pressure or duress.

While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

As a young man, Applicant exercised poor judgment on a number of occasions. In particular, he drank alcohol and then drove. Not only did the police ticket him for DUI, he seriously injured himself in 1982 and spent time in jail for his decision to drink and drive in 1984. He learned from these incidents, as he has not been arrested or charged with DUI in over 25 years. Applicant took longer to gain control over his anger and fighting conduct. As he matured, he chose not to involve himself in fights and learned to manage his anger. He has not been involved in a fight for more than 12 years. On the other hand, he works hard and he contributes to society.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances and person conduct under Guidelines F and E.

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.k:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge