



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



In the matter of:)	
)	
)	ISCR Case No. 10-09035
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

01/31/2014

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 19, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on March 7, 2012, detailing security concerns under Guidelines J, criminal conduct; G, alcohol consumption; E, personal conduct; and F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 March 15, 2012, and he answered it on March 31, 2012. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on July 15, 2013, and I received the case assignment on August 26, 2013. DOHA issued a Notice of Hearing on September 16, 2013 for a hearing scheduled on October 9, 2013. Due to the Government shutdown, the hearing was cancelled. A second Notice of Hearing was issued on October 30, 2013, and I convened the hearing as scheduled on November 20, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 4, 2013. I held the record open until December 20, 2013, for Applicant to submit additional matters. Applicant timely submitted AE D - AE T, which were received and admitted without objection. The record closed on December 20, 2013.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. 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 this right under the Directive. (Tr. 12.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1, 1.a-1.d, 1.f, 2, 2.a, 3, and 3a of the SOR. Some of his admissions are with explanation. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.e,¹ 1.g, 3.b-3.g, 4, 4.a, and 4.b of the SOR.² 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 findings of fact.

¹Applicant admitted SOR allegation 1.e, but states that he was unaware of this charge. Due to this statement, his answer is deemed a denial. Response to SOR.

²When 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).

Applicant, who is 42 years old, works as an aviation mechanic for a DOD contractor. He began his current employment in April 2010. He has worked as an aviation mechanic for almost 20 years. His current supervisor describes him as highly skilled and a person of integrity, dependability, and honesty. His chief warrant officer indicates that he is an outstanding member of his flight detachment team. The chief warrant officer states that Applicant is reliable, hard working, honest, and trustworthy. Another co-worker, who hired Applicant in 2010, praises Applicant's work ethic and his knowledge of his job. All three recommend Applicant for a security clearance.³

Applicant graduated from high school in June 1989. He enlisted in the United States Air Force in August 1989 and served on active duty for three years. He received an honorable discharge from the Air Force in August 1992. He attended two training courses after high school. Applicant is single and the father of a nine-year-old daughter. He has had full custody of his daughter since March 2009.⁴

Applicant explained that in the past, he simply procrastinated in filing his tax returns, but is now timely with filing his tax returns. He failed to file his federal income tax returns in 1993, 1994, and 1996. The Internal Revenue Service (IRS) determined that he owed \$12,262 in unpaid taxes for these years and filed a lien against him on April 18, 2003. Applicant filed these tax returns and paid any past due taxes. He provided a copy of his tax returns for the years 2010 through 2012. Except for 2010, Applicant received a substantial tax refund each year. IRS transcripts show that he does not owe any back taxes. The IRS provided Applicant with a Certificate of Release of Federal Tax Lien, which Applicant recorded on December 10, 2013. Applicant provided copies of his state tax returns for the years 2010, 2011, and 2012. These returns reflect that he received a refund as does other documentation from the state. Applicant's taxes were prepared by a tax consultant. Applicant timely pays his monthly living expenses.⁵

Applicant started consuming alcohol when he served in the Air Force. He usually consumed alcohol at parties, and at this time, he believed that he drank at normal levels. His alcohol consumption continued after he left the Air Force. Initially, he consumed alcohol every weekend, then he increased his alcohol consumption to occasional nights at home. By his early thirties, his social life revolved meeting friends at bars, restaurants, or clubs where they consumed alcohol four or five nights a week. He last consumed alcohol on May 3, 2010.⁶

The SOR alleges that in February 1993, the police arrested and charged Applicant with possession of methamphetamine, a felony; committing the offense while armed with a firearm, a felony; and willfully and unlawfully using force against a police

³AE A; AE B; AE T.

⁴GE 1; Tr. 37-38.

⁵GE 2; GE 4; GE 5; AE C; AE D; AE J - AE Q ; Tr. 65-73.

⁶GE 2; Tr. 27-28, 31.

officer engaged in the performance of his duties, a misdemeanor.⁷ Applicant and his girlfriend planned a weekend out of town. During the night, he drove to her apartment, but she did not answer his door knock. He decided to sleep on her balcony. He took his sport shooting gun from his car and placed it in a storage unit on the balcony as he did not want it stolen. Later, the police arrived. During his arrest, the police pulled his arm over his head, causing pain. As he turned, he hit the police officer and things escalated out of control. He acknowledged that he was agitated and “ran his mouth” to the police, which did not help his situation. In his response to the SOR, Applicant explains that after further investigation, the police determined that he did not have methamphetamines in his possession and dropped this felony charge. Because this charge was dropped, the second felony charge was reduced to carrying a concealed weapon, a misdemeanor. Applicant pled no contest to two misdemeanor charges: battery and possession of a concealed weapon. The court sentenced him to 125 hours of community service and placed him on three years of informal probation.⁸

According to the SOR, in June 1994, the police arrested Applicant and charged him with disorderly conduct and public intoxication. Applicant has little memory of this incident. He thinks that he was in a fight outside a bar after consuming alcohol with friends and that he paid a fine as a penalty.⁹

In June 1996, Applicant and his then girlfriend had lunch at home, which included a beer for him. Later, they left the house on his motorcycle. Over seven hours, he consumed seven drinks and had dinner at a local restaurant. They ended the evening at a club where they listened to a live band and where Applicant parked his motorcycle on the sidewalk. At the end of the evening they started to leave. The police arrived at the same time. Applicant failed the field sobriety test and the breathalyzer test. The police charged him with driving under the influence (DUI) and driving with a blood alcohol level of .08 or higher. He pled no contest to the charges, and the court found him guilty of the lesser DUI charge, sentenced him to two days in jail, placed him on probation for three years, fined him approximately \$1,134, suspended his driving privileges for five months,

⁷The source of the information contained in this allegation is unknown. The record does not contain a copy of the arrest report nor is this arrest listed on the Federal Bureau of Investigation (FBI) criminal records report for Applicant (GE 3). Applicant did not discuss this arrest with the security clearance investigator, but did acknowledge the arrest in his response to interrogatories from Department Counsel and provided more information during his testimony. (GE 2).

⁸GE 2; GE 3; Response to SOR; Tr. 49-54.

⁹The source of SOR allegation 1.e is unknown as the record does not contain a copy of the police arrest report, and this arrest is not listed on Applicant’s FBI criminal records report. Applicant did not discuss this arrest in his answers to interrogatories and indicated an unawareness of the arrest in his response to the SOR. GE 2; GE 3; Response to SOR; Tr. 28.

and ordered him to complete a first offender's program. Applicant complied with the terms of his sentence.¹⁰

Applicant continued to consume alcohol after his 1996 arrest. On May 13, 2000, he consumed several beers at dinner then attended a concert, where he consumed two more beers. On his trip home, his motorcycle crashed. The police arrived. Applicant was transported to hospital. Later, the police issued him a ticket, charging him with DUI, first offender. He pled guilty, and the court sentenced him to two days in jail, fined him \$1,250, suspended his driving privileges for five months, and directed him to attend a drunk driver's program. Applicant complied with the terms of his sentence.¹¹

Applicant continued to drink alcohol after his 2000 DUI arrest. He does not believe he increased his level of alcohol consumption. In August 2004, he learned that his baby nephew died and that his girlfriend was pregnant. His alcohol consumption increased, which resulted in another DUI arrest on September 5, 2004. The police charged him with DUI and DUI with a blood alcohol level of .08 or higher. The court dismissed the second DUI charge, and Applicant pled no contest to the lesser DUI charge. The court sentenced him to one year in jail, suspended; placed him on five years probation; suspended his driver's license from January 6, 2005 until October 27, 2006; required him to perform 18 days of community service; fined him \$1,584; and directed him to attend a DUI second offender's program for 18 months. Applicant described the second offender's program as informal counseling with former alcoholics and addicts. The program offered good advice, positive information, and positive guidance. He stated that it was up to him to learn from the program. He completed the requirements of his sentence.¹²

After this arrest, Applicant continued to consume alcohol, but at a reduced level. In March 2009, his company filed for bankruptcy and closed the business without warning to its employees. The next day the court awarded Applicant full custody of his daughter. He was unemployed for a year. After being offered a job by his current employer, Applicant and a friend decided to celebrate his new job and the end of unemployment on a weekend when his daughter visited her mother. On his way home from the celebration on May 2, 2010, the police arrested him for DUI. Applicant pled no contest to this charge. The court sentenced him to 147 days in jail; placed him on informal probation for five years; suspended his driving privileges for three years; fined him \$3,844; and required him to attend an 18-month alcohol program and a Mother's Against Drunk Driving (MADD) impact panel. Applicant spent three 48-hour weekends in

¹⁰GE 2; Tr. 30. The police arrest report is not in the record, and this arrest is not listed on Applicant's FBI criminal record report. (GE 3). The information in SOR allegation 1.d differs from the information provided by Applicant in his answer to interrogatories. (GE 2). Applicant does not dispute the arrest. Response to SOR.

¹¹GE 2; GE 3; Tr. 31-33. This arrest is listed on Applicant's FBI criminal records report; however, information about the sentence imposed by the court is not in the record. There is some discrepancy between what Applicant states was his sentence and what is stated in SOR allegation 1.c.

¹²GE 2; GE 3; AE R; Tr. 34-35.

jail and the remainder of his jail time in the sheriff's work furlough/home detention program. He participated in the home detention program from September 22, 2010 until December 3, 2010. He paid approximately \$2,500 to participate in this program. He also underwent random alcohol and drug testing during this time. He did not test positive for alcohol, but on one occasion he tested positive for opiates, which he concluded occurred because he had eaten a begal with poppy seeds. Applicant began attending the alcohol counseling program in June 2011 and completed the program on January 8, 2013. Applicant paid his fines and the cost of detention. He did not drive for three years, but he now has his driver's license. He has complied with the terms of his sentence, although he remains on informal probation until June 2015. Informal probation does not require him to report to a probation officer, but it does require him to obey the law.¹³

Applicant describes his 2010 arrest as a "game changer", which "turned his life around". He thought that he would lose his new job because of his arrest, and he realized that his drinking pattern would negatively impact his daughter. He describes his current life as "more enjoyable". He decided to stop consuming alcohol on May 3, 2010 and has not consumed any alcohol since this date. He stated that he started the alcohol counseling program a year after he stopped consuming alcohol. He believes that he benefitted more from the program because he processed the information differently. His neighbor and his chief warrant officer, who socializes with Applicant, have always seen him sober, not drunk. Two co-workers verified that he is always sober at work and does not show any signs of alcohol consumption. He has not been diagnosed as alcohol dependent or as an alcohol abuser. He does not attend alcoholics anonymous nor does he associate with his drinking friends.¹⁴

Applicant completed his e-QIP on May 19, 2010. Section 22 requests information about his police record. Applicant answered "yes" to questions a and b, which ask about summons, tickets, court proceedings and arrests by law enforcement officers, and to question c, which asks if he has "EVER been charged with any offense related to alcohol or drugs." He listed his 2004 and 2010 DUI arrests, but not his 1993, 1996, and 2000 arrests. He did not acknowledge that he had been charged with a felony, with a firearms offense, and a drug offense in 1993. The Government alleges that Applicant intentionally falsified his answers on his e-QIP and intentionally provided false information to the security clearance investigator (investigator) during his personal subject interview when he did not reveal this information.¹⁵

Applicant denies any intent to falsify his answers on the e-QIP or during his personal subject interview. He also completed a form called HR plus for his employer at the same time he completed his e-QIP. His security officer advised him that he need only report his criminal arrests for the last seven years. He did ask the security officer if

¹³GE 2; GE 3; AE G - AE I; AE R; AE S; Tr. 36-40, 44-47, 68-70, 76-79, 81.

¹⁴GE 2; AE T; Tr. 36, 46-47, 82-86.

¹⁵GE 1; SOR.

he should go back further when he saw the question with “ever”. He was again told seven years. In his response to interrogatories, Applicant disagreed with the summary of his interview with the investigator. He advised that the investigator omitted his question about whether he needed to describe his criminal history for the last seven years or over his lifetime. The investigator did not clarify which he needed to provide nor did she disagree with his perception that seven years was sufficient. In his answer to the interrogatories, Applicant did provide a complete history of his arrests, except he did not list the 1994 arrest. In his response to the SOR and in his testimony, Applicant reiterated his belief that he needed only to list his criminal history for the seven years preceding his completion of the e-QIP. At the hearing, Applicant stated that at the time he completed the e-QIP, his interpretation made sense, but looking back it does not.¹⁶

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

¹⁶Response to SOR; GE 2; Tr. 48, 61-62, 88-105.

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.

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 J, Criminal Conduct

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

AG ¶ 31 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

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

- (d) individual is currently on parole or probation.

Applicant has been arrested and charged with DUI on four occasions between 1996 and 2010. In 1993, the police arrested him after he made a decision to sleep on his girlfriend's balcony without her knowledge. He had placed his sport gun in the storage shed on the balcony, which is the reason for the concealed weapon charge. During his arrest, he spun around hitting the police officer. The situation escalated, resulting in a charge for using force against a police officer. After further investigation, the police decided not to charge him with possession of methamphetamine, a felony. This arrest did not result in any felony charges. Applicant remains on informal probation for his 2010 DUI conviction. A security concern has been established under AG ¶¶ 31(a), 31(c), and 31(d). Because the record lacks any evidence that Applicant was arrested in 1994 and he is not aware of an arrest, a security concern has not been established by SOR allegation 1.d.

The Criminal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 32(a) through ¶ 32(d), and the following are potentially applicable:

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

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

Applicant's conviction for battery and possession of a concealed weapon is a one time event and occurred many years ago. Due to the length of time and the fact that this type of behavior has not reoccurred, he has mitigated any security concern about his 1993 arrest under AG ¶ 32(a).

Applicant's excessive use of alcohol has resulted in four DUI arrests in 14 years. His alcohol use covered a significant period of time. During this time, he attended court-ordered alcohol counseling and education classes. After his third DUI, he reduced his alcohol consumption, but did not stop. Following his last arrest in 2010, Applicant made a decision not to consume any alcohol because he realized the problems his alcohol use was causing him and because he understood that his behavior would impact his daughter and could jeopardize his work. He has worked steadily since April 2010. He pays his bills, and he takes care of his nine-year-old daughter. He has stayed sober and complied with the court requirements. He is still on informal probation. He has partially mitigated his criminal conduct under AG ¶ 32(d).

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

AG ¶ 22 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Between 1996 and 2010, the police arrested and charged Applicant with four DUIs. For many years, Applicant consumed alcohol, usually beer, frequently and to the point of intoxication. A security concern is established under AG ¶¶ 22(a) and 22(c).

The Alcohol Consumption guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 23(a) through ¶ 23(d), and the following is potentially applicable:

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant has not been diagnosed with alcohol dependence or as an alcohol abuser. He, however, acknowledged that he consumed alcohol to excess for a significant time as an adult. His alcohol consumption resulted in criminal charges. After his last arrest in May 2010, Applicant decided to change his behavior. He changed his lifestyle, and he established a pattern of abstinence. He has not consumed alcohol in over three and one-half years. He plans to remain sober as his life is better. He no longer has a need to spend time at bars and drinking with his friends. Friends and co-workers verify his sobriety for these years. His finances are stable, and his friends have changed. His employer describes him as reliable and dependable and considers him honest and trustworthy. He does not arrive at work drunk or with a hang over. He has mitigated the security concerns about his alcohol consumption under AG ¶ 23(d).

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

(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; 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.

The Government alleges three incidents of falsification by Applicant when he completed his 2010 e-QIP, and two incidents of falsification during his personal subject interview. For AG ¶¶ 16(a) and 16(b) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2010 e-QIP and person subject interview when he answered "no" to questions about felony criminal charges and arrests for firearms and when he failed to list all his arrests on his e-QIP or mention these incidents to the investigator. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied in his response, in his answers to interrogatories, and at the hearing that he intentionally falsified his answers on his e-QIP and intentionally provided false information to the investigator.

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.¹⁷

¹⁷See 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)).

When he completed his e-QIP, Applicant believed that he needed only to provide information about his criminal arrests in the previous seven years. At the time he completed his e-QIP, he asked his security officer for guidance because he was completing two separate forms. She told him that he only needed to list arrests occurring in the last seven years. When he pressed her about “ever”, she again said to list only the last seven years. Through this process, Applicant has consistently stated that he thought he only needed to list his arrests for the seven years prior to 2010. His statements and testimony about his incorrect belief are credible. Intentional falsification has not been established. SOR allegations 3.c, 3.d, and 3.e are found in favor of Applicant. Likewise, no security concern has been raised by SOR allegations 3.a and 3.b because these issues are covered by other guidelines.

As for his interview with the investigator, he raised the question of whether he needed to discuss his criminal conduct for the last seven years or forever. He did not get an answer from the investigator. He discussed not only the two arrests listed in his e-QIP, but he voluntarily discussed his 2000 arrest, which was listed on the Federal Bureau of Investigation (FBI) criminal records report. Given that SOR allegation 1.d is not established, his failure to discuss this arrest cannot be viewed as a falsification. His question to the investigator about how far should he go back with his criminal history indicates that he knew he had more information to provide. He withheld this information, which was intentional. A security concern has been raised as to SOR allegations 3.f and 3.g.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and the following are potentially applicable:

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

The investigator never presented Applicant with evidence of his 1993 and 1996 arrests, which are not listed on his FBI criminal record report. The Government first learned of his 1993 and 1996 arrests when Applicant voluntarily discussed these arrests in his answers to interrogatories. In addition, the investigator failed to give Applicant accurate guidance as to the length of time he needed to cover for his past criminal activity. Applicant’s DUI arrests are known by his employer and his friends and cannot

be a source of exploitation, manipulation, or duress. Applicant has mitigated the security concerns raised by his personal conduct under AG ¶¶ 17(a), 17(b), and 17(e).

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;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to pay his federal income taxes in 1993, 1994, and 1996, which resulted in the IRS filing a tax lien against him. At the time the SOR was issued, he owed money to the State of California. A security concern is established under AG ¶¶ 19(a), 19(c), and 19(g).

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;
- (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.

Applicant's failure to file his federal tax returns occurred more than 15 years ago. He now regularly files his federal tax returns. He has resolved his old tax debt, and the IRS prepared a certificate of release of lien, which has been filed with the local court. The debt to the State is related to his 2010 DUI fines and program costs. He paid all the costs of these programs under a monthly payment plan developed with the State. His debt was paid in full by November 2012. Applicant mitigated the security concerns under AG ¶¶ 20(a), 20(c), and 20(d).

Whole-Person Concept

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

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

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

The evidence in support of granting a security clearance to Applicant under the whole-person concept is 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 began consuming alcohol in excess as a young man. His behavior continued for many years and resulted in four DUI arrests and convictions. He accepted responsibility for his conduct and made a decision to cease his alcohol consumption. This decision led to significant behavioral changes. He remains sober and committed to sobriety. He is a valued employee, and his finances are excellent.

Applicant's criminal conduct is directly related to his alcohol consumption. He remains on informal probation for his last DUI conviction, a factor I must consider. As a result of his 2000 and 2004 arrest, the court placed Applicant on informal probation, which he successfully completed. Unlike his most recent probation, he did not stop consuming alcohol while on probation in the past. There is no evidence that he was required to cease his alcohol consumption in the past or now. After his 2010 DUI, Applicant stopped consuming any alcohol for the first time in many years. He is committed to this decision and to remaining sober. He has complied with all the requirements of his sentence. He realizes the negative impact of his past decisions and has made a decision to move forward in a different direction. He understands that his alcohol use could negatively impact his daughter and made changes in his life. As a result of these changes, he enjoys his life. Applicant's alcohol consumption led to a pattern of drinking and driving, which he has changed. In reviewing and weighing all the evidence presented by Applicant, I find that he has mitigated any security concerns raised in this case.

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 personal conduct, finances, alcohol consumption, and criminal conduct under Guidelines E, F, G, and J.

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 J:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.g:	For Applicant
Paragraph 4, Guideline F:	FOR APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraph 4.b:	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.

MARY E. HENRY
Administrative Judge