



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



In the matter of:)
)
) ISCR Case No. 10-09670
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2012

Decision

TUIDER, Robert, Administrative Judge:

Applicant's statement of reasons (SOR) lists five delinquent debts totaling \$28,383. Applicant made sufficient progress resolving his delinquent debts, and financial considerations concerns are mitigated. However, he intentionally failed to fully disclose his arrests on his May 20, 2010 Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF-86), and personal conduct concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On May 20, 2010, Applicant submitted an SF-86. (GE 1) On October 11, 2011, 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) the President promulgated on December 29, 2005.

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

Applicant submitted an unsigned and undated response to the SOR. (HE 4) On February 15, 2012, Department Counsel was prepared to proceed. On February 16, 2012, the case was assigned to me, and DOHA issued a hearing notice that same day, setting the hearing for February 29, 2012. (HE 2) A brief hearing was held as scheduled; however, Applicant was not present for the hearing. Applicant subsequently advised that he did not attend his hearing because there was a family emergency. (Tr. 8-9)

On March 8, 2012, DOHA issued a hearing notice setting the hearing for March 15, 2012. The hearing was held using video teleconference. (HE 1) At the hearing, Department Counsel offered six exhibits. (Transcript (Tr.) 10; GE 1-6) Applicant did not offer any exhibits at his hearing. (Tr. 10, 29-32) I admitted GE 1-6. (Tr. 32) Additionally, I admitted the SOR, response to the SOR, and the hearing notices. (HE 1-4) On March 15, 2012, and March 26, 2012, I received the hearing transcripts. I held the record open until March 23, 2012. (Tr. 28-29, 73-74, 83) I received four exhibits after the hearing, and they were admitted without objection. (AE 1-4)

Procedural Issues

Department Counsel made a motion to withdraw the allegation in SOR ¶ 2.b, as a duplication of SOR ¶ 2.d and the allegation in SOR ¶ 2.i, as not proven. (Tr. 14, 19-20) Applicant did not object, and I granted the Department Counsel's motions. (Tr. 14, 19-20) Applicant waived his right to 15 days' notice of the date, time, and place of his hearing. (Tr. 23-24)

Findings of Fact¹

Applicant did not sign and date the response to the SOR. (HE 4) At the hearing, Applicant denied each of the SOR allegations in SOR ¶¶ 1.a to 1.e with explanations. (Tr. 16-18) He admitted the allegations in SOR ¶¶ 2.a, 2.c, 2.d, 2.e, 2.f, 2.g, and he denied the allegation in SOR ¶ 2.h. (Tr. 18-22; HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 26-year-old mechanical technician (repairs vehicle body damage), who has been employed by a defense contractor since January 2011. (Tr. 39-42; GE 1) In 2003, he graduated from high school. (Tr. 34-35) He has not attended college. (Tr.

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

37) He served in the Army from 2004-2006, including six months in Iraq. (Tr. 38; GE 1) He worked for a defense contractor in Iraq from February to May 2008, and in Kuwait from February 2009 to October 2009, performing technical inspections for equipment. (Tr. 45-47) Applicant has never married, and he has a three-year-old child. (Tr. 42) Applicant's mother has served in the U.S. Army for 20 years, and she is currently deployed to Afghanistan. (Tr. 35-36) In February 2011, Applicant deployed overseas to Kuwait for his defense contractor employer, and eventually he deployed to Afghanistan. (Tr. 40-41) He has never held a security clearance. (Tr. 33-34)

Financial Considerations

The SOR alleges five delinquent debts totaling \$28,383 as follows: 1.a is a medical collection account, alleging a delinquent debt for \$104 (Tr. 50-51); 1.b is a delinquent debt owed to the Defense Finance and Accounting Service (DFAS) for \$3,328; 1.c is a delinquent debt for \$629; 1.d is a collection account resulting from the purchase of a laptop computer (Tr. 53), alleging a delinquent debt for \$8,322; and 1.e is a collection account from a vehicle (Tr. 54-55), alleging a delinquent debt for \$16,000. (HE 3) He disclosed his delinquent debts in his May 20, 2010 SF-86, his OPM interview, and at his hearing. His finances were adversely affected by several brief periods of unemployment.

Applicant said he paid the debt in SOR ¶ 1.a. (Tr. 50-51) He asked for the basis for the debt to DFAS in SOR ¶ 1.b, and he did not receive a satisfactory explanation from DFAS. (Tr. 51-52) He disputed his responsibility for the debt to DFAS. (Tr. 51-53) As a federal debt, DFAS has the means to collect the remainder owed on this debt.

Applicant said he settled and paid the debts in SOR ¶¶ 1.c and 1.d. (Tr. 53-54) On March 20, 2012, the creditor for the debt in SOR ¶ 1.d for \$8,322 wrote that the account was closed out when a credit card payment on October 21, 2011 was processed. (AE 4)

The debt in SOR ¶ 1.e resulted from a vehicle purchased in 2004 and repossessed. (Tr. 55-56) On March 20, 2012, the collection agent for the creditor in SOR ¶ 1.e for \$16,000 wrote that the debt was settled. (AE 3)

Applicant began providing approximately \$1,000 per month of child support to his child's mother in January 2011. (Tr. 43-44) The child support is not court ordered. (Tr. 43)

In sum, Applicant provided proof that he paid his two largest debts for \$8,322 and \$16,000. He said he paid two small debts for \$104 and \$629. He is disputing his DFAS debt. He has taken reasonable actions to resolve all of his SOR debts.

Personal Conduct

In 2005 and early 2006, Applicant engaged in a series of minor acts of misconduct to obtain a discharge from the U.S. Army. (Tr. 56-58, 70; SOR ¶ 2.g) In May

2006, Applicant was discharged for pattern of misconduct, and he received a general discharge under honorable conditions.

In October 2006, Applicant presented the expired dependent identification card of his stepbrother to a gate guard on a military installation.² (Tr. 61-62; GE 2 at 148) Applicant said he grabbed the wrong identification card by accident out of the center console of his vehicle. (Tr. 62) He was arrested, processed, and released. (GE 2 at 148) The charge was dismissed. (GE 2 at 149) He did not list the arrest on his SF-86 because he “forgot about the incident.” (GE 2 at 149)

In March 2007, the police arrested Applicant for Driving While License Suspended or Revoked. He was convicted and fined. (SOR ¶ 2.a; GE 2 at 148, 157; GE 3 at 92)

In July 2007, the police arrested Applicant for Failure to Appear in court for a speeding ticket. The charge was dismissed after he paid a fine for the speeding ticket. (SOR ¶ 2.c; GE 2 at 153, 155; GE 3 at 92-93)

In July 2007, the police arrested Applicant for Fleeing/Evading Police, Speeding, and Driving Without a License. (Tr. 59-61; SOR ¶ 2.d; GE 3 at 93) He was found guilty of Fleeing/Evading and Speeding. (GE 2 at 153, 157) The other charges were dismissed. He received a fine and 12 months of probation.

In October 2009, the police arrested Applicant and took him to jail for Driving While License Suspended or Revoked. He was found guilty, and he received a fine for \$2,655, and 12 months of probation. (SOR ¶ 2.e; GE 2 at 155; GE 3 at 93-94)

In June 2010, Applicant checked his criminal history and discovered he had an outstanding warrant for failure to appear. (GE 2 at 152, 155) He paid \$700 in fines to resolve the issue. *Id.* Applicant’s traffic fines are paid. (Tr. 74) His driver’s license is not suspended. (Tr. 74)

² The SOR did not allege that in 2006 Applicant was arrested for presenting a false identification card, that in June 2010 he discovered he had a standing arrest warrant for failure to appear, or that he presented inconsistent statements about why he failed to fully disclose his arrest record on his May 20, 2010 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)). His non-SOR arrest for presenting a false identification card is supporting evidence in relation to SOR ¶ 2.h (failure to accurately list arrests on his May 20, 2010 SF-86). Consideration of the other non-SOR allegations is limited to the five reasons listed in the quotation above.

Applicant's May 20, 2010 SF-86 in Section 22, **Your Police Record**, asked "For questions a. and b., respond for the time frame of the last seven years . . . a. Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you; . . . and b. Have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer?" (SOR ¶ 2.h) Applicant responded, "Yes" and disclosed an arrest in February 2006. (Tr. 66; GE 1 at 47 of 56) He provided the state and town of the arrest, and he indicated the offense was "failure to pay and appear in court for traffic violation" and the action taken, "paid fine and penalties." (GE 1 at 47 of 45) He did not disclose the other arrests described in this section in section 22 of his SF-86. He did not disclose any additional arrests in the additional comments section of his SF-86. (GE 1 at 56 of 56) Applicant completed his SF-86, mailed it to his company, and it was returned two or three times for corrections. (Tr. 64-65) When he responded to a DOHA interrogatory, he admitted one additional arrest. (Tr. 67)³ At his hearing, Applicant explained why he did not disclose the additional arrests as follows:

I just didn't recall them, sir. I didn't recall them all off[f] the top of my head. And I tried to – when I did my e-QIP originally, the question said, "Have you ever been arrested," etc. And I just tried to group them all together, because they were all the same charge, they were all speeding charges, so I tried to put one down as a group. I have been arrested for speeding . . . I was unaware that each one had to be written out. . . . I tried to group them all together because they were the same type of charges, sir. . . They were all traffic violations. That's why I tried to group them under traffic violations. (Tr. 68-69)

In sum, Applicant was arrested five times from October 2006 to October 2009. He only disclosed one arrest on his March 20, 2010 SF-86. He did not provide consistent explanations for failing to disclose an accurate arrest record.

Policies

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

³On July 9, 2010, Applicant told an Office of Personnel Management (OPM) investigator as part of his personal subject interview (PSI) that he did not list more arrests "because they were for petty stuff that most of them were for a failure to appear in court for previous speeding tickets. . . . [, and he] has a spotty and unreliable memory." (GE 2 at 157) On August 29, 2011, he affirmed the accuracy of his OPM PSI. (GE 2 at 158)

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are 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 as to potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

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

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (financial considerations) 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 SF-86, credit reports, his OPM interview, and his hearing record. Applicant's SOR alleges five delinquent debts totaling \$28,383. 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.

Applicant's conduct in resolving his debts warrants application of AG ¶¶ 20(b) and 20(d).⁴ Applicant's financial situation was damaged by his unemployment. He provided proof that he paid his two largest debts for \$8,322 and \$16,000. His statement without receipts that he paid two small debts for \$104 and \$629 is accepted as accurate. He showed some good faith when he admitted responsibility for some of his SOR debts on his SF-86, to the OPM investigator, and at his hearing.

Applicant disputes his responsibility for the DFAS debt, and AG ¶ 20(e) applies to the debt in SOR ¶ 1.b. He has taken reasonable actions to resolve all of his SOR debts. He maintained contact with some of his SOR creditors, and he attempted to negotiate some payment plans.⁵ There is sufficient evidence that his financial problem is being resolved and is under control. His recent track record of voluntary payments to his SOR creditors support a conclusion that he will pay his debt to DFAS, if his dispute is unsuccessful and resolve his debts as they arise.

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

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

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

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

⁵Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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

AG ¶ 16(c) does not apply. Applicant's falsification of his March 20, 2010 SF-86 is specifically covered under the personal conduct guideline. His falsification is sufficient by itself under Guideline E for an adverse determination.

AG ¶¶ 16(a), 16(d), and 16(e) apply. Applicant was arrested five times from October 2006 to October 2009. His pattern of minor criminal conduct would not be sufficient to warrant denial of his security clearance alone. However, in combination with his intentional disclosure of only one arrest on his March 20, 2010 SF-86, there is

sufficient evidence to establish AG ¶¶ 16(a), 16(b), and 16(d). Applicant's five arrests and falsification of his March 20, 2010 SF-86 create a vulnerability to exploitation, manipulation, or duress, because he engaged in activities which, if known, adversely affect his personal, professional, and community standing.

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.

None of the mitigating conditions apply. Applicant was arrested five times from October 2006 to October 2009. He only disclosed one arrest on his March 20, 2010 SF-86. He did not provide consistent explanations for failing to disclose an accurate arrest record. On July 9, 2010, he told an OPM investigator as part of his PSI that he did not list more arrests "because they were for petty stuff[,] most of them were for a failure to appear in court for previous speeding tickets. . . . [, and he] has a spotty and unreliable memory." (GE 2 at 157) At his hearing, he said he did not remember the arrests. Alternatively, he said he tried to group them together as "speeding charges" because

they were all traffic offenses; however, none of his arrests were for speeding. The five arrests were for presenting a false identification card, driving without a valid license or driving with a suspended license (three times), failing to appear in court, and fleeing the police. He also claimed that he thought he did not have to list all offenses; however, elsewhere on his SF-86, he listed multiple delinquent debts.

No one misled him into thinking complete information about his arrests should not be reported on his SF-86. The questions are clear; he is intelligent; and he understood that full negative arrest information was reportable. His explanation for failing to fully report all of his arrests is not credible. His false statement on his March 20, 2010 SF-86 is 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 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. 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 two guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. There is no derogatory information concerning illegal drug possession or use, or alcohol-related incidents. He is loyal to the United States. He is a 26-year-old mechanical technician, who has been employed by a defense contractor since January 2011. He is a high school graduate. He worked for other defense contractors in Iraq from February to May 2008, and in Kuwait from February 2009 to October 2009, performing technical inspections for equipment. In February 2011, Applicant deployed overseas to Kuwait for a defense contractor, and eventually he deployed to Afghanistan. He is sufficiently intelligent and mature to understand and comply with security requirements. His finances were adversely affected by relatively brief periods of unemployment. He understands what he must do to establish his financial responsibility. He is paying child

support for his three-year-old child. He paid four SOR debts, and he will pay his remaining SOR debt should his ongoing dispute with DFAS be unsuccessful.

The personal conduct evidence tending to support denial of Applicant's clearance is more significant than the factors weighing towards approval of his clearance at this time. Applicant was arrested five times from October 2006 to October 2009. He only disclosed one arrest on his March 20, 2010 SF-86. The five arrests were for presenting a false identification card, driving without a valid license or driving with a suspended license (three times), failing to appear in court, and fleeing the police. He did not provide a credible explanation for failing to disclose all of his arrests on his March 20, 2010 SF-86. Applicant's intentional failure to disclose derogatory arrest information on his March 20, 2010 SF-86 is recent, serious, and not mitigated.

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 Applicant has fully mitigated the financial consideration security concerns; however, personal conduct security concerns are not mitigated.

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 to 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant (Withdrawn)
Subparagraphs 2.c to 2.h:	Against Applicant
Subparagraph 2.i:	For Applicant (Withdrawn)

Conclusion

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

Robert Tuider
Administrative Judge