



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



In the matter of:)
)
-----) ISCR Case No. 10-09985
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

December 2, 2011

Decision

HARVEY, Mark, Administrative Judge:

Applicant committed about nine misdemeanor or felony offenses from 1998 to August 2010. He intentionally failed to disclose derogatory information on his May 17, 2010 security clearance application about some of his criminal offenses. Personal conduct and criminal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 17, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On July 7, 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) promulgated by the President on December 29, 2005.

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

On August 4, 2011, Applicant responded to the SOR and requested a hearing. (HE 3) On October 18, 2011, Department Counsel indicated he was ready to proceed with Applicant's case. On October 20, 2011, DOHA assigned Applicant's case to me. On November 17, 2011, Applicant's hearing was held using video teleconference. I was located in Arlington, Virginia, and Department Counsel and Applicant were located in another state. At the hearing, Department Counsel offered ten exhibits (GE 1-10) (Tr. 19-20), and Applicant did not offer any written evidence. There were no objections, and I admitted GE 1-10. (Tr. 20) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) On November 28, 2011, I received the hearing transcript.

Findings of Fact¹

Applicant's SOR response admitted all of the SOR allegations except for SOR ¶¶ 1.n and 1.s. (Tr. 15, 25; HE 2, 3) His admissions are accepted as factual findings. SOR ¶ 1.n alleges that in July 2005, the police cited Applicant for Operating an Uninsured Motor Vehicle. Applicant denied the offense in his SOR response, and Department Counsel concurred the offense was not established. (Tr. 18) At the hearing, Applicant conceded that the allegation in SOR ¶ 1.s that he was arrested in September 2008 and charged with Driving on a Suspended or Revoked Driver's License was established. (Tr. 19)

Applicant is a 31-year-old field service engineer for a defense contractor. (Tr. 6, 22) He has held this position for three years. (Tr. 22) He served in the Navy from December 1998 to January 2003. (Tr. 7, 31, 33) His rate was avionics electronics technician. (Tr. 24) He left active duty as a Petty Officer Third Class (E-4), and he received an honorable discharge. (Tr. 7) In 2005, he earned an associate's degree in automotive reconstruction, and in 2007, he earned a bachelor's degree in automotive technology. (Tr. 7-8) In November 2011, he married, and he does not have any children. (Tr. 8, 22)

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

Criminal Offenses and Traffic Citations ²

In 1996 and 1997, the police issued three traffic-related citations to Applicant. In September 1996, Appellant was cited with and pleaded guilty to Failure to Reduce Speed. (SOR ¶ 1.a; HE 1, HE 2) In April 1997, Appellant was cited with and pleaded guilty to Front or Side Windshield Unobstructed. (SOR ¶ 1.b; HE 1, HE 2) In July 1997, Appellant was cited with and pleaded guilty to Operating Vehicle in a Careless and Imprudent Manner. (SOR ¶ 1.c; HE 1, HE 2)

In 1998, the police issued two traffic-related citations to Applicant, and he had two felony-level arrests. In March 1998, Applicant was cited with and pleaded guilty to Driving Above the Speed Limit. (SOR ¶ 1.d; HE 1, HE 2) In May and July 1998, he was arrested for, cited with, and pleaded guilty to Operate Uninsured Motor Vehicle and Driving 15-20 MPH above the Limit. (SOR ¶¶ 1.e and 1.f; HE 1, HE 2) In August 1998, the police arrested Applicant, and he was charged with Tampering with Motor Vehicle or Airplane, a Felony. (Tr. 25-26; SOR ¶ 1.g; HE 1, HE 2) He said a friend broke the window of a van, and he and the friend planned to steal items of value found in the van. (Tr. 26-27)

About a month later, in September 1998, the police arrested Applicant, and he was charged with Theft or Unauthorized Control Over Property Valued at Over \$300 and Under \$10,000 and Knowingly Damage Property of a Value of Over \$300, Possession of Stolen Property, and Possession of Burglary Tools, a felony. (Tr. 28-29; SOR ¶ 1.h; HE 1, HE 2) Appellant stole a soda machine, and broke into several soda machines. (Tr. 28-29) When Appellant was stopped by the police and initially questioned about having a soda machine in his vehicle, he lied to the police. (Tr. 29-30) Upon further questioning by the police, Appellant admitted stealing the soda machines and several break-ins. (Tr. 30) Applicant was able to plea bargain down to a misdemeanor, which enabled him to join the Navy. (Tr. 31)

In January 2000, the police cited Appellant for Speeding. (SOR ¶ 1.i; HE 1, HE 2) In December 2003, Applicant was charged with Sexual Battery; however, the charge was reduced to Battery and Drunk in Public. (Tr. 33; SOR ¶ 1.j; HE 1, HE 2) Applicant admitted that he slapped a woman he had never met on her buttocks. (Tr. 34) When he was arrested, he falsely denied that he committed the offense to a police officer, and subsequently to an investigator from the Office of Personnel Management. (Tr. 34-36; GE 2)

In April 2004, Applicant was charged with Petty Larceny. (Tr. 35-36; SOR ¶ 1.k; HE 1, HE 2) He stole \$17 in gas from a filling station. His theft was “my response to rising gas prices.” (Tr. 37) He conceded this theft showed dishonesty and irresponsibility. (Tr. 37) In July 2004, the police cited Applicant for Transportation or Carry Alcohol Liquor as a Vehicle Driver. (SOR ¶ 1.l; HE 1, HE 2)

² On June 15, 2010, Applicant provided brief descriptions of each offense listed in this section to an Office of Personnel Management (OPM) investigator. This OPM personal subject interview is the source for the facts in this section, unless stated otherwise.

In May 2005, the police arrested Applicant, and he was charged with Theft of Property Valued at \$300 and Under and Criminal Damage to Property. (Tr. 38-39; SOR ¶ 1.m; HE 1, HE 2; GE 8) Applicant's vehicle was towed to an impound lot. Applicant went to the lot and drove his vehicle out of the lot without paying the fees. He struck and damaged the fence of the impound lot when he removed his vehicle. The charge was eventually dismissed after he paid the owner of the lot \$1,000 in restitution. (Tr. 39)

In June 2006, the police arrested Applicant and cited him for Driving Under the Influence of Alcohol and Fleeing or Attempting to Elude Peace Officer. (Tr. 41; SOR ¶ 1.o; HE 1, HE 2) A police officer told Applicant not to leave a parking lot, and when the police officer went around a corner, Applicant drove away. (Tr. 41-42) In December 2006, the police arrested Applicant and cited him for Driving the Wrong Way, No Valid Proof of Insurance, and Driving Under the Influence of Alcohol. (Tr. 39-41; SOR ¶ 1.p; HE 1, HE 2) Applicant refused a breath or blood alcohol test (BAT). (Tr. 40-41) The court placed Applicant on 12 months court supervision and ordered him to participate in alcohol assessment and treatment. (SOR ¶ 1.p; HE 1, HE 2)

In December 2007, the police cited Applicant for Speeding. (SOR ¶ 1.q; HE 1, HE 2) In July 2008, the police arrested Applicant for Fleeing from a Peace Officer. (Tr. 43; SOR ¶ 1.r; HE 1, HE 2) Applicant thought the July 2008 offense might be related to an offense about two years previously, or possibly it was a duplication of a previous offense. (Tr. 44)

In September 2008, the police charged Applicant with Driving with a Suspended or Revoked Driver's License. (Tr. 44; SOR ¶ 1.s; HE 1, HE 2)

On May 17, 2010, Applicant completed his SF 86 and omitted information about his criminal arrests, charges, and one alcohol-related arrest, as discussed in the next section. SOR ¶ 2.b indicates these omissions violated 18 U.S.C. § 1001, the false statement statute.

In August 2010, the police arrested Applicant, and he was charged with Unauthorized Certificate Original Sale Title, a felony-level offense, and Aiding, Abetting, or Permitting Possession of an Unauthorized Title or License Plate. (Tr. 46-47; SOR ¶ 1.t; HE 1, HE 2) He did not report this arrest to his security officer or reveal it to his employer. (Tr. 47) He pleaded guilty and received a fine, which he paid. (Tr. 49)

Appellant agreed that in each instance where he paid a fine, he also had a conviction. (Tr. 49) He did not allege any instances of deferred adjudication. (Tr. 49)

Falsification of SF 86

SOR ¶¶ 1.u, 1.v, 1.w, and 2.b list three omissions relating to Section 22, "Your Police Record" of his May 17, 2010 SF 86. Section 22 states:

For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record. The

single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Sections 22.b, 22.c, and 22.e ask:

b. Have you ever been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer?

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

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

Applicant answered, "Yes" and disclosed that he was arrested for DUI in June 2006 and December 2006. He said the June 2006 DUI resulted in a guilty plea to a lesser charge³ and the December 2006 DUI was dismissed.⁴ However, he deliberately omitted the following six arrests, charges, and one alcohol-related citation:

(1) In August 1998, the police arrested Applicant, and he was charged with Tampering with Motor Vehicle or Airplane, a Felony. (SOR ¶ 1.g; HE 1, HE 2)

(2) In September 1998, the police arrested Applicant, and he was charged with Theft or Unauthorized Control Over Property Valued at Over \$300 and Under \$10,000 and Knowingly Damage to Property Over \$300, Possession of Stolen Property, and Possession of Burglary Tools, a felony. (SOR ¶ 1.h; HE 1, HE 2)

(3) In December 2003, Applicant was charged with Sexual Battery; however, the charge was reduced to Battery and Drunk in Public. (SOR ¶ 1.j; HE 1, HE 2)

(4) In April 2004, the police arrested Applicant for Petty Larceny. (SOR ¶ 1.k; HE 1, HE 2)

(5) In July 2004, the police cited Applicant for Transportation or Carry Alcohol Liquor as a Vehicle Driver. (SOR ¶ 1.l; HE 1, HE 2)

(6) In May 2005, the police arrested Applicant for Theft of Property Valued at \$300 and Under and Criminal Damage to Property. (SOR ¶ 1.m; HE 1, HE 2)

³ On June 15, 2010, he told an OPM investigator that he pleaded guilty to the June 2006 DUI offense and received a \$500 fine. He did not indicate the offense he pleaded guilty to. He was on probation for one year.

⁴ On June 15, 2010, he told an OPM investigator that he pleaded guilty to the December 2006 DUI charge and received a \$3,000 fine. He was on probation for one year, and was required to attend classes about alcohol consumption.

Applicant explained that his omissions on his May 17, 2010 SF 86 were because “I’ve been in a lot of trouble and I simply did not remember every single thing.” (Tr. 45) He acknowledged a history of criminal activity; however, he argued that he had changed. He was married in 2011, had matured, had taken responsibility for his conduct, and had learned from his mistakes. (Tr. 50) He requested an opportunity to prove he should be entrusted with access to classified information. (Tr. 55)

Policies

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

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See v.

Washington Metro. Area Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines E (personal conduct) and J (criminal conduct).

Personal Conduct

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

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

AG ¶ 16 describes five conditions that could raise a security concern in this case:

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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness,

unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . ; and (3) a pattern of dishonesty or rule violations . . . ; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

All five conditions apply. In 1998, Applicant had two felony-level arrests. In December 2003, he was charged with Sexual Battery. In 2004, he was charged with two misdemeanors. In 2005, he was charged with one misdemeanor. In June 2006 and December 2006, he was charged with DUI and other driving-related offenses. In August 2010, he was charged with a felony. He admitted the underlying conduct to support the charges.

When Applicant completed his May 17, 2010 SF 86, he disclosed two DUIs. However, he deliberately omitted six arrests, charges, and one alcohol-related citation. His statement that he did not remember "every single thing" is credible because of the sheer number of citations and arrests; however, his failure to disclose more of the offenses, especially the felonies, was intentional.

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

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶¶ 17(a), 17(b), 17(d), 17(e), and 17(g) do not apply to a sufficient degree to mitigate any SOR allegations. AG ¶ 17(c) applies to the information in SOR ¶¶ 1.a through 1.f and 1.i. This series of traffic-related offenses is either pre-Navy service or more than 10 years ago. These specific offenses no longer cast doubt on Applicant's trustworthiness. AG ¶ 17(f) applies to SOR ¶ 1.r. Applicant believed that this offense might be a duplication.

Applicant's intentional omissions of required information on his 2010 SF 86 about his arrests, felony-level charges, and alcohol-related charges are not mitigated. He was not credible at his hearing about why he did not disclose this information. No one misled him into thinking this information should not be reported on his SF 86. The questions are clear, and his education level, current employment, and Navy experience show that he is an intelligent person. He did not claim that he misunderstood the question or that he failed to recognize the legal implications of his arrests and charges. His false statements on his SF 86 are serious and relatively recent. Personal conduct concerns are not mitigated.

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 six conditions that could raise a security concern and may be disqualifying:

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

(b) discharge or dismissal from the Armed Forces under dishonorable conditions;

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

(d) individual is currently on parole or probation;

(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and

(f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

AGs ¶¶ 31(a) and 31(c) apply. In 1998, Applicant had two felony-level arrests. In December 2003, he was charged with Sexual Battery. In 2004, he was charged with two misdemeanors. In 2005, he was charged with one misdemeanor. In June 2006 and December 2006, he was charged with DUI and other driving-related offenses. In August 2010, he was charged with a felony. Although his Sexual Battery offense was pleaded down from a felony to a misdemeanor, and one misdemeanor was dismissed, he admitted the underlying conduct to support the charges.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(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;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; 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.

None of the mitigating conditions fully apply. Appellant committed approximately nine criminal offenses beginning in 1998, and his most recent criminal offense occurred in August 2010. He violated 18 U.S.C. § 1001 when he intentionally omitted criminal-offense information from his May 17, 2010 SF 86. He accepted some responsibility for his misconduct. He married in 2011, has matured, and learned from his mistakes; however, more time is necessary without criminal offenses before his criminal conduct will be fully mitigated.

Whole-Person Concept

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

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

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines E and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his access to classified information. He is a 31-year-old field service engineer for a defense contractor. He has held this position for three years, and there are no allegations of security violations. He served in the Navy from December 1998 to January 2003. He left active duty as a Petty Officer Third Class (E-4), and he received an honorable discharge. In 2007, he earned a bachelor's degree in automotive technology. In November 2011, he married. There is every indication that he is loyal to the United States and his employer. I give Applicant substantial credit for addressing the allegations at his hearing. He has matured, and learned from his mistakes. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial.⁵ He committed approximately nine criminal offenses beginning in

⁵ The SOR did not allege Applicant lied to the police or the OPM investigator, that he failed to disclose his most recent arrest to his security manager or employer, and that the disposition information on his May 17, 2010 SF 86 concerning his DUIs was incorrect or incomplete. 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.

1998, and his most recent criminal offense occurred in August 2010. He violated 18 U.S.C. § 1001 when he intentionally omitted criminal-offense information from his May 17, 2010 SF 86. He has not mitigated his deliberate and intentional falsification of his 2010 SF 86. He knew he should have disclosed his felony-level arrests and charges and his alcohol-related offense on his SF 86, and he chose not to do so.

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 personal conduct and criminal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant
Subparagraphs 1.g through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j through 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o through 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s through 1.w:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

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

MARK HARVEY
Administrative Judge

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have not considered the non-SOR allegations for any purpose as this information is unnecessary to resolve the allegations against Applicant.