DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
------------------------	)	ISCR Case No. 10-10741
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

05/11/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the security concerns arising from his criminal conduct, but failed to mitigate the security concerns arising from his personal conduct and financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On February 11, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of financial interrogatories. He responded to the interrogatories on February 22, 2010.[2] On another unspecified date, DOHA issued him a set of interrogatories. He responded to those interrogatories on May 10, 2011.[3] On

[1] Government Exhibit 1 (2010 SF 86), dated February 11, 2010.

[2] Government Exhibit 3 (Applicant's Answers to Interrogatories, dated February 22, 2010).

another unspecified date, DOHA issued him a set of drug interrogatories. He responded to those interrogatories on May 10, 2011.[4] On another unspecified date, DOHA issued him a set of mental health interrogatories. He responded to those interrogatories on May 10, 2011.[5] On December 1, 2011, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations), and detailed reasons why DOHA was unable find 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 a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on December 19, 2011. In a sworn written statement, dated January 10, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 28, 2012, and the case was assigned to me on March 2, 2012. A Notice of Hearing was issued on March 14, 2012, and I convened the hearing, as scheduled, on April 3, 2012.

During the hearing, 14 Government exhibits (GE 1-14) and 4 Applicant exhibits (AE A-D) were admitted into evidence without objection. Applicant and four other witnesses testified. The hearing transcript (Tr.) was received on April 10, 2012.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to criminal conduct (¶¶ 1.a. through 1.e.) and financial considerations (¶¶ 3.a. through 3.f.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. He denied all of the factual allegations pertaining to personal conduct (¶¶ 2.a. through 2.j.) of the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 46-year-old employee of a defense contractor, currently serving as a quality assurance technician.[6] He was previously granted a secret security clearance

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[3] Government Exhibit 2 (Applicant's Answers to Interrogatories, dated May 10, 2011).

[4] Government Exhibit 4 (Applicant's Answers to Interrogatories, dated May 10, 2011).

[5] Government Exhibit 5 (Applicant's Answers to Interrogatories, dated May 10, 2011).

[6] Tr. at 94.

in October 2007,[7] but does not currently hold any security clearance.[8] Following his high school graduation, he attended a university for four years and a technical school for eight months, but did not receive a degree or diploma from either institution.[9] Applicant entered the Army National Guard in an enlisted capacity in October 1985, and served honorably until October 1993 when he separated as a staff sergeant serving as a combat engineer sapper leader.[10] Very little is known about his employment activities between 1993 and 2002. Over the ensuing years, he has held a variety of positions with different organizations. He was a technical support engineer from November 2002 until November 2003; a clerk/information systems technician (IT) from sometime in 2003 until September 2004; a technical support engineer from September 2004 until November 2005; a desktop support engineer from November 2005 until July 2006; an IT support specialist from August 2006 until October 2009; and a computer specialist from September 2011 until December 2011.[11] He joined his current employer in January 2012, and serves as a quality assurance technician.[12] Applicant also went through a lengthy period of unemployment (November 2009 to September 2011).[13] Applicant has never been married.[14]

Criminal Conduct

(SOR ¶ 1.a.): In February 2003, while operating his motor vehicle at about 83 miles per hour, Applicant was stopped by police and charged with reckless driving, a misdemeanor. In April 2003, he was found guilty as charged. He was fined approximately $65, and his operator's license was suspended for 15 days.[15]

(SOR ¶ 1.b.): Four months later, in August 2003, he was charged with (1) possession of a controlled substance, a felony; (2) possession of a controlled substance, a felony; (3) possession of a controlled substance, a felony; and (4) possession of marijuana, a misdemeanor. In January 2005, the first three counts were each amended to possession of a Schedule III drug, a misdemeanor. Applicant was subsequently found guilty of the three amended charges and charge (4), and fined $500 for each of the first three charges and $200 for charge (4).[16]

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[7] Government Exhibit 1, *supra* note 1, at 40-41.

[8] Tr. at 7.

[9] Tr. at 6; Government Exhibit 1, *supra* note 1, at 14-15.

[10] Government Exhibit 1, at 25-26; Tr. at 95.

[11] Government Exhibit 1, at 17-23; Tr. at 93-94.

[12] Tr. at 94.

[13] Tr. at 92-93.

[14] Government Exhibit 1, *supra* note 1, at 29.

[15] Applicant's Answer to the SOR, dated January 10, 2012, at 1.

[16] Applicant's Answer to the SOR, dated January 10, 2012, at 1. The documentary evidence in support of the allegations in SOR ¶ 1.b. is somewhat meager and inconsistent. There are no court records to support the

(SOR ¶ 1.c.): In January 2004, Applicant was charged with (1) breaking and entering, a felony; (2) attempted malicious wounding, a felony; (3) grand larceny, a felony; (4) trespassing, a misdemeanor; (5) assault and battery, a misdemeanor; and (6) assault and battery, a misdemeanor. In April 2004, charges (2) through (4) and (6) were nolle prossed. He was convicted of charges (1), as amended to statutory burglary with intent to commit a felony, and (5), and was sentenced to ten years in prison (nine years suspended) on charge (1), one year in prison (one year suspended) on charge (5), placed on probation for two years, and ordered to complete both drug treatment and mental health treatment. Applicant spent ten months in the city detention facility, with eight of those months in a work-release program.[17]

(SOR ¶ 1.d.): In June 2006, Applicant was charged with assault and battery – family member. Applicant contended he was "falsely accused of assault by [his] ex-girlfriend and her ex-boyfriend." The charges were dismissed, but he was required to attend an 18-session Violence Intervention Program from March 2006 until July 2006.[18] He successfully completed the program.[19]

(SOR ¶ 1.e.): In May 2008, while operating his motor vehicle on an interstate highway, Applicant was stopped by police and charged with reckless driving, a misdemeanor. In July 2008, he was found guilty as charged. He was fined approximately $150.[20]

Personal Conduct

Applicant has a lengthy history of illegal substance abuse and prescription drug abuse. He has acknowledged that his illegal substance of choice was marijuana, and his abused prescription of choice was the opiate pain medication Vicodin.[21] There is

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allegations. The FBI Identification Record (Government Exhibit 11, dated February 21, 2010), at 2, indicates only three charges, with the first two being possession of controlled substances, and the third charge being possession of marijuana. The police report attached to Government Exhibit 10 (Police File, various dates) indicates there were only three charges. Moreover, Applicant contended in his Answer to the SOR, at 1, that the fourth charge was for failure to comply with the court mandated ASAP probationary period.

[17] Applicant's Answer to the SOR, dated January 10, 2012, at 1-2; Government Exhibit 1, *supra* note 1, at 38. The documentary evidence in support of the allegations in SOR ¶ 1.c. is both meager and inconsistent. There are no police or court records to support the allegations. The FBI Identification Record at 2, indicates six charges (with minor variations as to the titles of some of the charges), and Applicant contended in his Answer to the SOR that the court mandate for mental health treatment was vacated in December 2004. It was vacated. *See* Letter to Applicant, dated December 3, 2004, attached to his Answer to the SOR at Item A. Applicant also claimed that the judge felt he was not "remorseful enough" so the lengthy sentence was adjudged to hold over him. *See* Tr. at 74-75.

[18] Applicant's Answer to the SOR, dated January 10, 2012, at 2. The documentary evidence in support of the allegations in SOR ¶ 1.d. is extremely limited. There are no police or court records to support the allegations. The FBI Identification Record at 2, indicates the charge, and Applicant contended in his Answer to the SOR that the court found the accusers to be falsifying evidence in court and ordered not to have any contact with Applicant for two years.

[19] Government Exhibit 8 (Letter, dated January 25, 2011) and Certificate of Completion, dated July 13, 2006).

[20] Applicant's Answer to the SOR, *supra* note 15, at 2. There are no police records or court records to support the allegations.

also some evidence that he may have possessed and used cocaine and the hallucinogenic mushroom psilocin, but he has denied using either substance and contended they belonged to his roommates.[22] Upon being admitted to the hospital for a possible overdose on June 1, 2003, a toxicology screen was run and it was positive for the presence of opiates and marijuana.[23]

(SOR ¶ 2.d.): On November 21, 2005, when Applicant completed and submitted his 2005 e-QIP, he responded to a question about his drug involvement set forth therein. The SOR alleges Applicant deliberately failed to disclose complete information in response to § 24.a: Your Use of Illegal Drugs and Drug Activity – (*Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc), hallucinogenics (LSD, PCP, etc), or prescription drugs?*), to which he answered "yes," and listed marijuana use of about 20 times during the estimated period of November 1993 to December 1995.[24] He added:[25]

> I was on heavy pain killers after separation from the Army. I quit smoking when I decided that I did not like what it did to me. I wanted to go to technical school. For a time I allowed others to use around me . . . which I no longer tolerate this behavior. Yet it took from me more than I could ever believe. To be set up by drug users and convicted of crimes I did not commit.

He did not list his subsequently admitted use of marijuana on multiple occasions (two times per month) between April and June 2003.[26] Applicant denied intentionally omitting the true extent as to frequency and period of his marijuana abuse.[27]

(SOR ¶ 2.e.): The SOR alleges Applicant deliberately failed to disclose complete information in response to § 23d: Your Police Record – (*Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?*), to which he answered "yes," and listed "3 counts possession" occurring in May 2003.[28] He added:[29]

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[21] Government Exhibit 4, *supra* note 4, at 5-7.

[22] Government Exhibit 10 (Police Records, various dates, related to an incident occurring on June 1, 2003); Tr. at 81.

[23] Government Exhibit 6 (Hospital Records, various dates, related to an incident occurring on June 1, 2003).

[24] Government Exhibit 14 (2005 SF 86, dated November 21, 2005), at 30-31.

[25] Government Exhibit 14 (2005 SF 86, dated November 21, 2005), at 30-31.

[26] Government Exhibit 4, *supra* note 4, at 6.

[27] Applicant's Answer to the SOR, *supra* note 15, at 4.

[28] Government Exhibit 14, *supra* note 24, at 29-30.

[29] Government Exhibit 14, *supra* note 24, at 30.

> I was in the hospital at the time & my roommates threw a party and hid their illegal substances in my locked room where they were found by police. I sought to move out of the residence after this occurred.

He did not list that in August 2003, he was charged with (1) possession of a controlled substance, a felony; (2) possession of a controlled substance, a felony; (3) possession of a controlled substance, a felony; and (4) possession of marijuana, a misdemeanor; or that in January 2005, the first three counts were each amended to possession of a schedule III drug, a misdemeanor. He also conveyed the false impression that he was already in the hospital when the incident took place. Applicant denied intentionally omitting any of the charges and contended charge (4) was not drug-related and was dismissed in court.[30]

(SOR ¶ 2.f.): The SOR alleges Applicant deliberately failed to disclose complete information in response to § 23f: Your Police Record – (In the last 7 years, have *you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than $150 unless the violation was alcohol or drug related)*, to which he answered "no." He added that in about November 2003, he was charged with "statutory burglary (being in a dwelling or residence past the hour of 9:30 PM without owner/resident permission)."[31]

While he did not specifically list that in January 2004, he was charged with (1) breaking and entering, a felony; (2) attempted malicious wounding, a felony; (3) grand larceny, a felony; (4) trespassing, a misdemeanor; (5) assault and battery, a misdemeanor; and (6) assault and battery, a misdemeanor; or that in April 2004, charges (2) through (4) and (6) were nolle prossed, he did furnish substantial details to indicate the general nature of the charges. Applicant denied intentionally omitting any of the charges and contended he answered yes to an earlier version of the question, and must have mistakenly mixed up his dates and left out several details.[32] The SOR also alleged that Applicant had deliberately omitted the offenses referred to in SOR ¶¶ 1.d. (the assault and battery – family member charge of June 2006) and 1.e. (the reckless driving charge of May 2008). Neither of those two incidents had yet occurred in November 2005, so Applicant could not have deliberately omitted them.

(SOR ¶ 2.a.): On February 11, 2010, when Applicant completed and submitted his 2010 SF 86, he responded to a question about his police record set forth therein. The SOR alleges Applicant deliberately failed to disclose complete information in response to §22a: Police Record – (*Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you; are you on trial or awaiting a trial on criminal charges; or are you currently awaiting sentencing for a criminal offense?*), to which he answered "yes," and listed two such incidents: the statutory

[30] Applicant's Answer to the SOR, *supra* note 15, at 4.

[31] Government Exhibit 14, *supra* note 24, at 29-30.

[32] Applicant's Answer to the SOR, *supra* note 15, at 5.

burglary charge of approximately November 2003 and the "3 counts possession" of May 2003.[33]

He did not specifically list the details of the January 2004 charges set forth in SOR ¶ 1.c., and the offenses referred to in SOR ¶¶ 1.d. (the assault and battery – family member charge of June 2006) and 1.e. (the reckless driving charge of May 2008). Applicant denied intentionally omitting those charges and claimed he misunderstood that the reckless driving charge was a civil or traffic violation and not a criminal offense, and that he simply miscounted the period between the January 2004 charges and the date he completed the SF 86.[34]

(SOR ¶ 2.b.): The SOR alleges Applicant deliberately failed to disclose complete information on his February 11, 2010 SF 86 in response to § 22e: Police Record – (*Have you EVER been charged with any offense(s) related to alcohol or drugs?*), to which he answered "yes," and furnished the same response, including his commentary regarding being in the hospital, he gave in response to the inquiry in §22a: the statutory burglary charge of approximately November 2003 and the "3 counts possession" of May 2003.[35]

He did not specifically list that in August 2003, he was charged with (1) possession of a controlled substance, a felony; (2) possession of a controlled substance, a felony; (3) possession of a controlled substance, a felony; and (4) possession of marijuana, a misdemeanor; or that in January 2005, the first three counts were each amended to possession of a schedule III drug, a misdemeanor. He also conveyed the false impression that he was already in the hospital when the incident took place. Applicant denied intentionally omitting any of the charges and contended charge (4) was not drug-related and was dismissed in court.[36]

(SOR ¶ 2.c.): The SOR alleges Applicant deliberately failed to disclose complete information complete information on his February 11, 2010 SF 86 in response to § 23a: Illegal Use of Drugs or Drug Activity – (*In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.), stimulants (amphetamines, speed, crystal methamphetamine, Ecstacy, ketamine, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), steroids, inhalants (toluene, amyl nitrate, etc.) or prescription drugs(including painkillers)? Use of a controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any controlled substance.)* Applicant answered "no," but

[33] Government Exhibit 1, *supra* note 1, at 37-38.

[34] Applicant's Answer to the SOR, *supra* note 15, at 2-3.

[35] Government Exhibit 1, *supra* note 1, at 37-38.

[36] Applicant's Answer to the SOR, *supra* note 15, at 4.

listed marijuana use of about 20 times during the estimated period of November 1993 to December 1995.[37] He added:[38]

> I was on heavy pain killers after separation from the Army. I quit smoking when I decided that I did not like what it did to me. I wanted to go to technical school. For a time I allowed others to use around me . . . which I no longer tolerate this behavior. Yet it took from me more than I could ever believe. To be set up by drug users and convicted of crimes I did not commit. I have completed several treatment programs including ASAP and ADS programs and have not involved myself in these activities any further since separating myself from such individuals.

He did not list his subsequently admitted use of marijuana on multiple occasions (two times per month) between April and June 2003.[39] Applicant denied intentionally omitting the true extent as to frequency and period of his marijuana abuse, and opined that he must have mixed up his dates and times "due to the time constraints and a lack of understanding of the information [he] was attempting to provide."[40]

Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in March 2010.[41] The SOR alleges Applicant deliberately provided false information pertaining to his substance abuse: that he stated he had no problems with prescription drugs since 1992 , whereas in truth, he had overdosed on prescription medication in June 2003, leading to a hospitalization (SOR ¶ 2.g); that he stated he had been on an out-of-state business trip when police searched his room and found illegal drugs placed there by his roommates without his knowledge, whereas in truth, the police discovered the drugs in his room upon arriving at the scene while responding to his overdose (SOR ¶ 2.h); and that he stated he had stopped using marijuana in the early 1990's, whereas in truth, he had continued to use marijuana until at least June 2003 (SOR ¶ 2.i).

Applicant denied intentionally providing false information during his OPM interview, and attributed his responses in part to a dispute of the developed facts regarding the actions and statements of his roommates, the timeline of the police search of his room, and "just another mistake in the presentation of the information [he] submitted."[42]

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[37] Government Exhibit 1, *supra* note 1, at 39.

[38] Government Exhibit 1, *supra* note 1, at 39.

[39] Government Exhibit 4, *supra* note 4, at 6.

[40] Applicant's Answer to the SOR, *supra* note 15, at 4.

[41] Government Exhibit 2 (Personal Subject Interview, dated March 1, 2010), attached to Applicant's Answers to Interrogatories, *supra* note 3.

[42] Applicant's Answer to the SOR, *supra* note 15, at 5-6.

Upon being admitted to the hospital in June 2003, Applicant was interviewed and treated over a two-day period. The attending physician noted that Applicant "was extremely vague and did not give any straight answers to any of a number of very straightforward questions. His story made no sense and it did not hang together."[43] It was also noted that Applicant "was very evasive and did not answer most of the questions directly. He was also very circumstantial."[44] Applicant denied any suicide attempt (despite the presence of several notes to his mother and friends in which he said "good-bye"),[45] and indicated (SOR ¶ 2.j.) that he had simply taken too many Tylenol No. 3 (acetaminophen and codeine) during the day because of nervous tension and a headache.[46] He denied to the attending emergency room registered nurse taking any other drugs.[47] He later acknowledged periodically taking Vicodin which was prescribed for him in 1992 for injuries sustained while in the Army in the Gulf War.[48] In reality, he was in the Army National Guard during the Gulf War and had never served overseas: the injuries were sustained during training exercises in Arkansas and North Carolina.[49]

Financial Considerations

As noted above, very little is known about Applicant's employment activities between 1993 and 2002. He subsequently held a variety of positions with different organizations, and also went through a lengthy period of unemployment. It appears there was nothing unusual about Applicant's finances until about November 2009, when he first became unemployed. He finally found a job in September 2011. He assumed his present position in January 2012. With no steady income other than periodic temporary assignments, Applicant's financial situation deteriorated. Accounts became delinquent and were placed for collection, charged off, or became judgments against him.[50]

The SOR identified six delinquent accounts in collection, charged off, or in a judgment status, in the total amount of approximately $16,696, as reflected by two credit reports. Those accounts listed in the SOR, and their respective current status, according to the evidence, are properly consolidated and categorized, as follows: those which are not resolved, and those which have been resolved.

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[43] Government Exhibit 6, *supra* note 23, at 19.

[44] Government Exhibit 6, *supra* note 23, at 24.

[45] Government Exhibit 6, *supra* note 23, at 19.

[46] Government Exhibit 6, *supra* note 23, at 19. During his admission to the emergency room, Applicant also stated he had taken 14 Tylenol tablets. *See id.* at 27.

[47] Government Exhibit 6, *supra* note 23, at 9.

[48] Government Exhibit 6, *supra* note 23, at 20.

[49] Tr. at 94-95.

[50] Government Exhibit 13 (Equifax credit report, dated August 12, 2011); Government Exhibit 12 (Equifax credit report, dated November 25, 2011).

Among those accounts which have not been resolved are the following: There is a mobile telephone account, in the amount of $260 (SOR ¶ 3.a.), that was placed for collection and, as of this date, remains unpaid; there is a cable TV account, in the amount of $193 (SOR ¶ 3.b.), that was placed for collection, and as of this date, remains unpaid; there is a medical account, in the amount of $708 (SOR ¶ 3.c.), that was placed for collection, and as of this date, remains unpaid; there is a judgment with an unspecified creditor, in the amount of $6,646 (SOR ¶ 3.d.), that, as of this date, remains unpaid; there is a bank credit card account, in the amount of $8,652 (SOR ¶ 3.e.), that was placed for collection, and as of this date, remains unpaid; and there is an unspecified type of account, in the amount of $237 (SOR ¶ 3.f.), that was placed for collection, and as of this date, remains unpaid. Although Applicant contended he contacted each of the creditors to make them aware of his situation, promised to start making payments as soon as he found gainful employment,[51] and made payment arrangements with them,[52] he had not made any payments to his creditors as of the date of the hearing because he was unable to do so because of insufficient funds.[53] He has offered no documentary evidence to support his claim that he had contacted his creditors. None of the accounts have been resolved.

It is unclear what Applicant's net monthly income might be. His monthly expenses are unspecified, and the record is silent as to whether or not he has a monthly remainder available for discretionary spending. Likewise, there is no indication that Applicant has ever received any financial or debt management counseling.

Character References

Applicant has been described by friends as honest, trustworthy, faithful, kindhearted, and loyal.[54]

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."[55] 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. The President has authorized the Secretary of Defense or his

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[51] Tr. at 84, 86.

[52] Tr. at 86.

[53] Tr. at 86-87.

[54] Tr. at 48-64.

[55] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[56]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[57] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[58]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[59]

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[56] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[57] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

[58] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[59] *Egan*, 484 U.S. at 531

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."[60] 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 or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline J, Criminal Conduct

The security concern under the guideline for Criminal Conduct is set out in AG ¶ 30:

> 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), "*a single serious crime or multiple lesser offenses*" is potentially disqualifying. As noted above, Applicant was convicted of a variety of criminal counts in 2003, 2004, 2005, and 2008, and in 2004 was sentenced to ten years in prison (nine years suspended) on charge (1), one year in prison (one year suspended) on charge (5), and placed on probation for two years. AG ¶¶ 31(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where "*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*." Similarly, AG ¶ 32(d) may apply where "*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*."

AG ¶¶ 32(a) and 32(d) apply. Applicant's criminal history is both varied and frequent, with four overall convictions during a five-year period. However, his most recent serious conviction occurred in 2004 when he was convicted of statutory burglary with intent to commit a felony and assault and battery, and was sentenced to ten years in prison (nine years suspended) on one charge and one year in prison (one year

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[60] *See* Exec. Or. 10865 § 7.

suspended) on the other charge. Applicant spent ten months in the city detention facility, with eight of those months in a work-release program. He successfully completed his two year period of probation as well as drug treatment. A 2006 assault and battery – family member charge was dismissed. His most recent scrape with the authorities occurred in 2008, when he was charged with reckless driving, a misdemeanor. He has avoided any subsequent participation in any criminal activity. Because his former relationships with his substance-abusing roommates and former girlfriends have ceased, and he is now in a lengthy committed positive relationship, his former criminal behavior is unlikely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

> 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.

The guideline notes several conditions that could raise security concerns. The "*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*," may raise security concerns under AG ¶ 16(a). Similarly, under AG ¶ 16(b), "*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*," may raise security concerns. Also, under AG ¶ 16(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 . . .*" may raise security concerns.

Applicant's omissions in his responses to inquiries during his emergency hospitalization in 2003, in the 2005 SF 86, the 2010 SF 86, and during his 2010 OPM interview, of information pertaining to his criminal conduct, substance abuse, and police record, provide sufficient evidence to examine if Applicant's answers and comments were deliberate falsifications pertaining to critical information, as alleged in the SOR, or were the result of confusion or misunderstanding on his part. I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. Applicant's explanations regarding those answers and comments brought to mind the observations made by his attending

hospital physician: Applicant was extremely vague and did not give any straight answers to several very straightforward questions; his story made no sense and it did not hang together; and he was evasive and did not answer many questions directly. Furthermore, his explanations are, in several instances, inconsistent. While some of Applicant's responses furnished meaningful information, in several instances the responses were incomplete. Nevertheless, where he has done so, I have given him credit for supplying the truthful, though incomplete, information, as he is not trained in the specifics of the legal terminology used in identifying each charge against him. AG ¶¶ 16(a), 16(b), and 16(e) have been established.[61]

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct. Under AG ¶ 17(c), the disqualifying condition may be mitigated where "*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.*" Also, AG ¶ 17(d) may apply if "*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*." In addition, when "*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(g) may apply.

Applicant's initial less-than-full and complete responses as well as his subsequent and continuing inconsistencies with regard to his criminal history and substance abuse history are troubling. Despite his explanations used to describe his earlier statements and comments, the full truth has yet to emerge. Applicant has acknowledged some of his criminal behavior and some of his substance abuse. He has completed some court-mandated counseling to change his behavior and taken other positive steps to alleviate some of the stressors, circumstances, or factors that caused his untrustworthy, unreliable, or other inappropriate behavior. He has ceased his association with his substance-abusing roommates, and entered into a long-term positive relationship. Nevertheless, because of Applicant's inability to be more forthright about his past, and until the passage of a longer period of positive activity, such behavior is likely to recur. Despite the length of the period since he completed his security clearance applications and his interviews, in light of some continuing

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[61] The Appeal Board has explained the process for analyzing falsification cases, stating:

> (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

inconsistencies, there is some doubt as to Applicant's current reliability, trustworthiness, or good judgment. AG ¶¶ 17(c), 17(d), and 17(g) partially apply.

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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "*inability or unwillingness to satisfy debts*" is potentially disqualifying. Similarly, under AG ¶ 19(c), "*a history of not meeting financial obligations*" may raise security concerns. As noted above, it appears there was nothing unusual about Applicant's finances until about November 2009, when he first became unemployed, and remained unemployed until September 2011. With no steady income, his financial situation deteriorated. Accounts became delinquent and were placed for collection, charged off, or became judgments against him. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "*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*." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "*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*." Evidence that "*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*" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*"[62] Also, AG ¶ 20(e) may apply where "*the individual has a reasonable*

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[62] The 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

basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. Applicant's initial financial problems commenced in 2009, and continue unchanged as of this day. He joined his current employer in January 2012. While he has attributed his financial difficulties in general terms to insufficient funds, he never fully described why he could not maintain his monthly payments or commence them once he obtained new employment. In the absence of more specific explanations, and considering his minimal attention to his accounts, his financial problems are likely to continue and recur. The combination of factors casts doubt on his current reliability, trustworthiness, or good judgment.[63] Applicant has not received any financial counseling and there are no indications that his financial problem is being resolved or is under control. Other than purportedly contacting his creditors, he has not initiated a good-faith effort to repay his creditors or otherwise resolve his debts. Also, there has been no showing that Applicant has a reasonable basis to dispute the legitimacy of any of his past-due debts.

AG ¶ 20(b) partially applies because there was one condition beyond Applicant's control that may have had a negative impact on his financial situation. He was unemployed from November 2009 until September 2011. The basic question is whether or not Applicant eventually acted responsibly to address the debts that resulted. Based on the evidence supported by documentation, the answer is no.

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.

> available option (such as bankruptcy [or statute of limitations]) 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)).

[63] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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.

There is some evidence in favor of mitigating Applicant's conduct. His most recent criminal conduct occurred in 2008 when he was convicted of reckless driving. There has been no recurrence of such conduct since that time. He stopped his substance abuse in 2003, and has abstained since then. He is now in a committed positive long-term relationship. He has complied with the court-imposed sentences.

The disqualifying evidence under the whole-person concept is more substantial. Applicant was convicted of a variety of criminal counts in 2003, 2004, 2005, and 2008, and in 2004 was sentenced to ten years in prison (nine years suspended) on charge (1), one year in prison (one year suspended) on charge (5), and placed on probation for two years. When afforded the opportunity to describe his criminal conduct and substance abuse history to hospital personnel, an OPM investigator, and on two security clearance applications, he was less than candid or truthful. In too many instances, both before and during his hearing, Applicant was vague and failed to provide clear answers to a number of very straightforward questions; and he was evasive and did not answer the questions accurately, honestly, fully, or directly. His explanations are frequently inconsistent. Applicant has failed to make meaningful efforts towards resolving his delinquent debts. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[64] *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Applicant has not shown a meaningful track record of debt repayment. The Appeal Board has addressed this key element in the whole-person analysis in financial cases stating:[65]

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has " . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts

[64] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

[65] ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

> simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant did not make any payments to his SOR creditors, even though three of his SOR debts are less than $300 each. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his criminal conduct, but failed to mitigate the security concerns arising from his personal conduct and financial considerations.

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

Subparagraph 1.a: For Applicant
Subparagraph 1.b: For Applicant
Subparagraph 1.c: For Applicant
Subparagraph 1.d: For Applicant
Subparagraph 1.e: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant
Subparagraph 2.b: Against Applicant
Subparagraph 2.c: Against Applicant
Subparagraph 2.d: Against Applicant
Subparagraph 2.e: Against Applicant
Subparagraph 2.f: For Applicant
Subparagraph 2.g: Against Applicant
Subparagraph 2.h: Against Applicant
Subparagraph 2.i: Against Applicant
Subparagraph 2.j: Against Applicant

Paragraph 3, Guideline F: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant
Subparagraph 3.b: Against Applicant
Subparagraph 3.c: Against Applicant
Subparagraph 3.d: Against Applicant
Subparagraph 3.e: Against Applicant
Subparagraph 3.f: Against Applicant

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.

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ROBERT ROBINSON GALES
Administrative Judge