



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



In the matter of:)	
)	
)	ISCR Case No. 11-03231
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr. Esq., Department Counsel
For Applicant: *Pro se*

10/03/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

In May 2012, Applicant satisfied or settled delinquent debt around \$14,000, including two medical debts he did not recognize. He paid off a current car loan and addressed his spouse’s debts before his own debts, but his financial problems are resolved. He is able to meet all his expenses on his current income and is not relying on credit for new purchases. The financial considerations security concerns are mitigated. Applicant did not disclose on his security clearance application that he had used Ecstasy in 2001, for which he received non-judicial punishment. Personal conduct concerns do not warrant revocation of his security clearance because the omission was due to mistake rather than intent to deceive. Clearance granted.

Statement of the Case

On April 2, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and explaining why it was unable to find that it is clearly consistent with the national interest to grant or continue

his security clearance. DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on May 24, 2012, and he requested a decision without a hearing. On July 16, 2012, the Government submitted a File of Relevant Material (FORM) consisting of nine exhibits (Items 1-9). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on July 24, 2012. He filed a timely response dated July 29, 2012, to which the Government had no objection. On August 24, 2012, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant's rebuttal to the FORM was accepted into the record as Applicant exhibit (AE) A.

Findings of Fact

The SOR alleged under Guideline F (SOR 1.a) that as of April 2, 2012, Applicant owed \$16,623 in delinquent debt (SOR 1.a-1.i). The debts were also alleged under Guideline E (SOR 2.a). Also under Guideline E, Applicant was alleged to have deliberately falsified an October 27, 2010 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing that he had tested positive for the illegal hallucinogen Ecstasy while he held a security clearance (SOR 2.c) and that he had received non-judicial punishment in July 2001 for wrongful use of hallucinogens (SOR 2.b). (Item 1.) Applicant responded that he had paid in full or settled several of the debts (SOR 1.a-1.c, 1.e, 1.f); had paid \$2,000 toward the corrected \$3,132.81 balance of SOR 1.g; and had paid the medical debts in SOR 1.h and 1.i to retain his clearance even though he knew nothing about them. Applicant provided evidence that he was disputing the debt in SOR 1.d because the creditor had no record of him having had an account. Concerning the Guideline E allegations, Applicant admitted that he failed a urinalysis in 2001, but he responded "No" on the e-QIP because he thought he only had to report information that occurred within the previous seven years. (Item 2.)

After considering the Government's FORM, including Applicant's Answer (GE 2) and his rebuttal to the FORM (AE A), I make the following findings of fact.

Applicant is 31 years old. As of his receipt of the FORM, he was working in Afghanistan for a defense contractor in support of the U.S. military.¹ Applicant served on active duty in the military from July 1999 to May 2010. While on active duty, he was deployed three times to Iraq, from January 2004 to January 2005, November 2005 to October 2006, and August 2008 to August 2009. Applicant received several decorations for his dedicated service, including his branch's Achievement Medal (2nd Award), Commendation Medal (2nd Award), Good Conduct Medal (3rd Award), National Defense

¹Applicant applied for periodic renewal of his security clearance with a previous employer. (Items 4, 5.)

Service Medal, and Expeditionary Medal. (Item 5.) He has held a secret clearance since December 1999. (Item 4.)

While stationed abroad in April 2001, Applicant tested positive for the illegal hallucinogen Ecstasy during a unit urinalysis inspection. Applicant admitted to a military investigator on June 28, 2001, that he had purchased and used Ecstasy at a local nightclub on three separate occasions. On July 27, 2001, he received non-judicial punishment for wrongful use of a controlled substance between April 15, 2001 and April 30, 2001. He was given 45 days of extra duty and 45 days restriction, reduced in rank from E-3 to E-1, and ordered to forfeit \$521 pay for two months. (Item 7.)

In September 2001, Applicant married his first wife (hereafter ex-wife). Their first child was born overseas in September 2002. In January 2003, Applicant and his ex-wife returned to the United States. In March 2004, a few months into Applicant's first deployment to Iraq, they had a daughter. Their third child, another daughter, was born in May 2005, shortly after his return. By then, Applicant and his ex-wife were estranged. Their divorce was final in January 2007. (Items 4, 5.) Applicant's wages were garnished to satisfy around \$7,000 in past due child support from July 2005. (Items 4, 5, 8.) He asserts that his ex-wife falsely claimed that he had not been making his child support payments during his deployment. As of December 2011, he was paying \$359.50 in child support every two weeks. (Item 5.)

While home on leave in December 2008, Applicant married his current spouse, with whom he had a daughter 13 days prior. In August 2009, he returned from his last deployment. He completed his enlistment term and was honorably discharged from the U.S. military in May 2010. (Items 4, 5.) Applicant began working as a personnel processing specialist for a defense contractor on the military base. In September 2010, he took a job off the base as a technical specialist for another defense contractor. (Item 4.)

On October 27, 2010, Applicant applied to renew the secret clearance he had held since 1999. On his Electronic Questionnaire for Investigations Processing (e-QIP), Applicant responded "No" to questions 22.e, "Have you EVER been charged with any offense(s) related to alcohol or drugs?" and 23.b, "Have you EVER illegally used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting the public safety?." Applicant answered "Yes" to 22.b, concerning any arrests within the last seven years, and he disclosed a May 2005 incident ("Ex Wife attacked me. I had a few beers so I had to be taken in so my commander could pick me up. Found not at fault but still had to make an appointment with family advocacy."). Applicant also responded "Yes" to several of the financial record inquiries with a seven-year scope: 26.b, any possessions or property voluntarily or involuntarily repossessed or foreclosed; 26.f, any loan defaults; 26.h, any accounts or credit cards suspended, charged off, or cancelled for failing to pay as agreed; 26.j, any delinquency in alimony or child support; 26.k, any wage garnishments; and 26.m, any debt delinquent over 180 days. Applicant answered "No" to 26.n about whether he was currently over 90 days delinquent on any debts. He disclosed that an automobile loan balance of \$9,000 had been placed for

collection around October 2007 because his ex-wife had not insured the vehicle even though he had been making payments on the loan (SOR 1.e). Applicant indicated that he had been \$7,000 past due in his child support around March 2006, but the debt had been paid in full. He listed two credit card debts: \$300 to the creditor in SOR 1.g, which he indicated had been paid through garnishment, and an outstanding \$250 credit card debt (not in SOR). (Item 4.)

As of November 9, 2010, the credit reporting agencies were reporting several collection balances on Applicant's credit record, which he had not included on his e-QIP: \$450 on a credit account past due since February 2006 (SOR 1.f); \$1,197 for wireless services from March 2010 (SOR 1.a); \$900 on a credit card account on which he was an authorized user (SOR 1.d); \$383 for energy services from August 2008 (SOR 1.b); and medical debt of \$554 from August 2006 (SOR 1.c) and of \$401 (SOR 1.h) and \$59 from August 2010 (SOR 1.1.i). Concerning the three consumer credit debts that Applicant had disclosed on his e-QIP, he reportedly owed \$9,455 for the repossessed vehicle (SOR 1.e), was behind \$245 on a balance of \$1,966 with the lender in SOR 1.g, and owed a collection balance of \$577 on the other credit card (not in SOR). Applicant was making timely payments on an \$18,031 car loan opened in June 2007 and had reduced the balance to \$10,927 as of October 2010. (Item 8.)

On November 26, 2010, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) for renewal of his security clearance. Concerning the delinquent car loan, Applicant admitted that he had taken out a car loan of \$18,000 for a 2003 model-year minivan in March 2005. The vehicle was given to his ex-wife in their divorce in January 2007, but he was required to continue to make the monthly \$365 loan payments. He cancelled his insurance coverage, assuming that his ex-wife would insure the car, but he continued to make the car payments. The lender took the vehicle around October 2007 for lack of insurance. Applicant's attorney informed him that because insurance coverage was not stipulated in the divorce, he was responsible for the repossession and approximate \$9,000 deficiency balance on the loan (SOR 1.e).

Applicant also acknowledged to the OPM investigator that he had fallen behind ten payments and seven payments on a couple of credit card accounts (SOR 1.f and the \$577 debt not in the SOR) because of his divorce. He indicated that he was seeking a debt consolidation plan under which to repay these debts in full. He had fallen 90 days behind in his payments on the debt in SOR 1.g as a result of his discharge from the military. Applicant disputed the debt in SOR 1.b, which he believed to be a payday loan taken out by his ex-wife. He indicated that the \$401 and \$59 medical debts (SOR 1.h and 1.i) were his current spouse's responsibility, but he planned to add her debts to his intended debt consolidation. Concerning the wireless phone debt in SOR 1.a, he explained that after his account was switched to a family plan in March 2007, he complained to the provider about rising service fees. He closed the account in September 2007 with a disputed balance owed of \$380. He expressed his intent to pay that debt under the consolidation plan. Applicant denied any knowledge of the \$554 medical debt (SOR 1.c) or the debt in SOR 1.d, which appeared on his credit record. Applicant acknowledged to the investigator that his automatic allotments for child support had been temporarily interrupted due to his

discharge from the military and subsequent change in civilian employments. Consequently, he fell six weeks in arrears on his monthly child support obligation of \$719. He was ordered to pay an additional \$245 per month toward the arrearage. He planned to satisfy the arrearage in December 2010 after he was reimbursed for travel expenses by his current employer. (Item 5.)

Record checks revealed that Applicant had been issued non-judicial punishment in 2001 for wrongful use of an illegal drug (hallucinogens). (Items 6, 7.) The investigator's summation of his November 2010 interview does not reflect whether Applicant was asked about his drug use and positive drug test in 2001. Applicant was asked about and detailed an incident involving his ex-wife in May 2005 not related to illegal drugs. (Item 5.)

Sometime in early 2011, Applicant began working in very remote locations in Afghanistan in support of the U.S. military. (AE A.) He put his plan to consolidate his delinquent debts on hold. As of January 2012, Equifax was reporting outstanding delinquent balances totaling \$13,747 (\$1,212 on SOR 1.a, \$355 on SOR 1.b, \$554 on SOR 1.c, \$900 on SOR 1.d, and \$10,726 on SOR 1.e).² The credit card debt of \$577 had been paid after collection as of May 2011. (Item 9.)

In January 2012, Applicant was asked to respond to DOHA interrogatories about his non-judicial punishment in 2001 and the adverse credit information on his record. Directed to provide his complete history of any illegal drug use, Applicant disclosed that he used Ecstasy once in June 2001. In response to whether he had purchased, sold, transported, or manufactured the drug, Applicant answered "no." As to why he failed to list the charge and drug use while he held a clearance on his October 2010 e-QIP, Applicant responded, "Because the questionnaire [sic] I filled out asked about within the last seven years. If it asked for longer then I would have answered yes. I have no intentions of hiding anything for this investigation." Asked about the status of delinquent accounts, Applicant admitted that he had not made any payments or payment arrangements on the debts in the SOR, despite net monthly income of \$11,466.14. In addition to overtime earnings in excess of \$3,000 every two weeks, his compensation included danger pay and a hardship allowance. He chose to pay off his auto loan because of its 19% interest rate and to repay his spouse's debts before he addressed his own delinquencies. He anticipated paying off all his debts by April 1, 2012. (Item 5.)

On April 2, 2012, DOHA issued the SOR because of unpaid delinquencies and his failure to disclose on his e-QIP his use of Ecstasy in 2001 while he held a clearance and his related non-judicial punishment. (Item 1.) Applicant received the SOR on April 11, 2012. (Item 3.) As of May 7, 2012, Applicant had settled the reported \$6,839.02 deficiency balance for his repossessed car (SOR 1.e). He filed an online dispute with Equifax about the \$900 charge-off debt in SOR 1.d because he did not recognize the debt, and the creditor could not verify any account under his name. (Item 2.) As of May 29, 2012, Equifax

²As of April 2012, the original lender was reporting a balance of \$6,905. On May 7, 2012, a collection agency was reporting the balance at \$6,839.02 and payment by Applicant of the amount (unspecified) agreed on to settle the account. (Item 2.)

had deleted the item from his credit record. (AE A.) On May 10, 2012, Applicant made payments of \$1,227.39 and \$794.06 in full satisfaction of the debts in SOR 1.a and 1.f, and of \$2,000 toward a reported balance of \$3,132.81 on SOR 1.g. He paid the remaining balance of the debt in SOR 1.g on May 22, 2012. On May 17, 2012, he paid \$437.79 to satisfy SOR 1.b. As of May 24, 2012, Applicant had apparently satisfied the medical debts in SOR 1.c, 1.h, and 1.i as well.³ He paid the medical debts in SOR 1.h and 1.i, even though he did not personally receive the care.⁴ In response to the SOR, Applicant attributed his debt to insufficient income and poor choices in the past. (Item 2.) In rebuttal to the FORM, Applicant explained that he had not addressed his collection debt earlier because he had been told that after seven years, it would be deleted from his credit record. Applicant does not intend to commit similar financial mistakes in the future. He pays his current financial obligations on time. Applicant has not received any financial counseling. It has not been available to him in the conflict zone. (AE A.)

In response to the SOR, Applicant admitted that he had received non-judicial punishment for wrongful use of illegal drugs in 2001. He denied that he had deliberately falsified his e-QIP when he omitted this punishment and his use of an illegal drug while holding a security clearance. Applicant maintained that due to “oversight,” lack of care in reading the questions closely, and “trying to speed through the process,” he thought the questions had a seven-year time limit. Applicant added that it would be “foolish” of him to try to hide any information from the U.S. government because it was in his file. (Item 2.)

In rebuttal to the FORM, Applicant reiterated that he thought the e-QIP had a seven-year scope, and that he did not take the time to read the questions fully. He again denied any intent to mislead the U.S. government. As for the discrepancy between the military investigative report from 2001, where he admitted to using Ecstasy three times, and his interrogatory response, where he told DOHA he used the drug once in June 2001, Applicant stated:

If the CID report stated three separate times then that is the correct answer. I honestly do not remember what was stated during the investigation. I was a young Solider in Europe and was drinking a lot back then. I have trouble recalling the CID interview that took place. I know I was scared out of my mind and tried as best as I could to be helpful in the investigation. I was punished under Article 15 and was also sent to Drug and Alcohol counseling. . . I was a 19 year old with a drinking problem that got caught up in some stupid mistakes. I am now 31 years old and wouldn't dream of doing something that stupid again. This was an isolated incident that has not and will never be repeated. (AE A.)

³Applicant presented documentation of a \$690.79 payment on May 25, 2012, to the agency reportedly collecting the \$554 medical debt in SOR 1.c.

⁴Applicant told the OPM investigator that the debts were incurred by his current spouse, who was making payments on them. (Item 5.) He now understands that the debts were incurred in the state where his ex-wife resides with three of his children. (Items 2, 4.) The debts could well have been incurred by a family member without Applicant's knowledge. According to his DD 214, Applicant continued to claim that state as his home of record, but there is no evidence he was living there when the services were rendered.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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 Government alleged that as of April 2, 2012, Applicant owed \$16,653 in delinquent debt, including \$10,726 in auto loan debt for a vehicle involuntarily repossessed and a \$900 credit card debt. The documentary evidence supports past-due debt totaling around \$14,000 as of May 2012. The assignee holding the auto loan reported only a \$6,839.02 balance, and Applicant's liability for the \$900 debt in SOR 1.d was not established. Applicant's credit report of November 2010 (Item 8) shows that he was only an authorized user on the account. Applicant claims to not recognize two medical debts on his credit record totaling \$460 (SOR 1.h and 1.i) because he did not receive the medical care. Yet, he did not disprove his financial responsibility for the debts, which appear on his credit and could be for a family member, since his three children reside in the state where the care was provided. Potentially disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply because of his \$14,000 in past-due debt.

Concerning potentially mitigating conditions, AG ¶ 20(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," cannot reasonably apply. While several of the debts became delinquent during his first marriage or shortly after his divorce (SOR 1.a, 1.c, 1.e, and 1.f), Applicant made no demonstrated progress toward resolving the debt balances until May 2012.

AG ¶ 20(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," is partially implicated in that his divorce, court-mandated child support, insufficient income, and non-discretionary medical expenses caused the delinquencies or contributed to his inability to repay them. Applicant apparently made the car loan payments from February 2005 until October 2007, when the vehicle was repossessed. However, Applicant did not act responsibly when he assumed that his ex-wife was going to insure the auto that she was given in their divorce. Applicant's year-long deployment from August 2008 to August 2009 could mitigate his failure to address his debts during that time, although Applicant has not shown that he was prevented because of duty obligations or location from contacting his creditors. As of his November 2010 interview with the OPM investigator, Applicant knew, if he did not know before, about the extent of the adverse credit information on his record. He expressed his intent to repay the debts in SOR 1.a, 1.e, 1.f, 1.h, and 1.i through a debt consolidation. Within two months, he was apparently detailed to Afghanistan.

in support of the U.S. military, where he has since been stationed. He was able to pay off his auto loan and spouse's debts despite his present hazardous duty assignment, so he could conceivably have made his debts his priority and chose not to do so.

Applicant told DOHA in January 2012 that he was in position to begin repaying his debts, and that he expected to have all his debts paid in full by April 1, 2012. With the exception of his child support arrearage and the \$577 credit card debt paid after collection, Applicant made no payments until after he received the SOR. His resolution of the delinquencies after he received the SOR is too belated to give full mitigating weight to AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." However, AG ¶ 20(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," applies. There is no evidence of any new delinquencies, and Applicant's net monthly income after expenses, reportedly \$11,466.14 due to his duty in Afghanistan, is more than sufficient to cover his household expenses. Applicant's expenses do not reflect an extravagant lifestyle. He has not applied for a credit card in several years, and he does not intend to make the same or similar financial mistakes in the future.

AG ¶ 20(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," applies with respect to the alleged debt in SOR 1.d, which Applicant disputed. He was only an authorized user on the account, which credibly explains why the creditor could not find a record of him having an account. The credit item was recently deleted from his credit record by Equifax. Applicant's financial situation no longer poses an unacceptable security risk.

Guideline E, Personal Conduct

The security concerns about Personal Conduct are 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.

Applicant did not disclose on his October 2010 e-QIP that he had used Ecstasy in 2001 while he held a security clearance, and that he had been given non-judicial punishment as a result of testing positive for hallucinogens. While Applicant now recognizes that he should have answered questions 22.e and 23.b affirmatively because he had been charged with a drug offense (22.e) and used a hallucinogen while holding a security clearance (23.b) in 2001, he has consistently denied any intent to conceal his drug involvement from the government. He failed to read the questionnaire closely and mistakenly assumed the questions had a seven-year scope. He also asserts it would have

been “foolish” of him to conceal the information given it was a matter of record. The Government submits that Applicant’s denial of intentional falsification is implausible, given the unambiguity of the questions, which inquire into whether Applicant had “EVER” been charged with a drug offense or illegally used a controlled substance while possessing a security clearance. The Government submits that two disqualifying conditions under AG ¶ 16 apply:

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

If Applicant intentionally falsified his e-QIP, it would be sufficient to deny him continued eligibility for a security clearance in light of the lack of reform reflected by repeated denials of deliberate omission. Revocation of Applicant’s security clearance eligibility under AG ¶ 16(a) would remove AG ¶ 16(c) from consideration. Alternatively, if Applicant omitted the information due to inadvertent mistake or other cause negating willful intent, it would not qualify as adverse information triggering AG ¶ 16(c) apart from negative inferences raised by a failure to read the form carefully. The Guideline E evaluation largely turns on whether Applicant’s denial of intentional falsification is credible in light of the evidentiary record as a whole.

The Government has the burden of proving Applicant intentionally falsified his responses to questions 22.e and 23.b on the e-QIP. Applicant’s denials of any intent to falsify his October 2010 security clearance application are relevant evidence that I must consider, although his statements about his state of mind are not binding or conclusive. The DOHA Appeal Board has held that, as a practical matter, “proof of the applicant’s intent or state of mind is rarely based on direct evidence, but often must rely on circumstantial evidence.” See ISCR 05-03472 (App. Bd. Mar. 12, 2007.) It is difficult to accept that Applicant would have overlooked, even in haste, the word “EVER” which is emphasized by its capitalization in both 22.e and 23.b on the e-QIP. On the other hand, other related inquiries on the e-QIP have a seven-year scope, most notably 15.d concerning any court marital or other disciplinary proceedings under the Uniform Code of Military Justice, and 23.a concerning any illegal drug use. Applicant did not disclose his drug use or non-judicial punishment during his November 2010 interview with the investigator, but there is also no evidence that he was asked about any illegal drug use during that interview. In January 2012, Applicant was informed by DOHA that record checks had revealed his positive urinalysis and drug charge in June 2001. In his

interrogatory response, Applicant listed one time use of Ecstasy in June 2001. Disclosure when confronted with the adverse information is not viewed as completely voluntary. Applicant also reported that he used Ecstasy only once and had not purchased the drug, when he had previously admitted in 2001 that he purchased and ingested Ecstasy three times. A material variance in the extent of admitted illegal drug involvement has a tendency to undermine an applicant's credibility. Yet, whether Applicant used marijuana once or three times, it was all during the same time frame, more than ten years before he responded to the interrogatory. Applicant credibly explained that he does not remember what he stated during the CID investigation, when he was 19 years old and "scared out of [his] mind." (AE A.) He is not disputing what is reported in the CID investigation. Furthermore, there is the issue of motivation to consider. His drug involvement did not lead to a revocation of his security clearance in 2001, when it would have been more likely than now to raise issues for his security suitability. Based on all the evidence, Applicant's denials of intentional falsification are accepted. AG ¶ 16(a) is not established.

To the extent that Applicant exercised poor judgment under AG ¶ 16(c) by not completing the e-QIP accurately and allowing several accounts to become delinquent, the personal conduct concerns are mitigated by his acknowledgement of his past mistakes and resolve not to repeat them. AG ¶ 17(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," applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁵

Applicant exercised very poor judgment when he used Ecstasy at age 19, and it led to non-judicial punishment. Yet, he rehabilitated himself from his drug use and did not allow personal financial and marital difficulties to adversely affect his military duty performance. After completing three separate tours of military duty in Iraq, he went to Afghanistan as a civilian contractor in early 2011. Although he has been unable to obtain financial counseling, his income from his hazardous duty assignment has enabled him to rectify his financial problems. Applicant now understands it was financially irresponsible of him to ignore his legitimate debts in the hope that they would be deleted from his credit record. Applicant is well aware of the seriousness with which the Government views any

⁵ The factors under AG ¶ 2(a) are as follows:

- (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.

incomplete or inaccurate answers on an e-QIP. He is not likely to repeat his mistakes. Based on the record before me, I conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

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

 Subparagraph 1.a-1.i: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

 Subparagraph 2.a-2.c: For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge