



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



In the matter of: )  
)  
) ISCR Case No. 11-08189  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

01/16/2013

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline E (Personal Conduct). Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 10, 2011. On August 24, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing security concerns under Guideline E. This action was taken under 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DoD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On September 12, 2012, Applicant

answered the SOR and requested a hearing. The case was assigned to me on October 25, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 2, 2012, and the hearing was convened as scheduled on November 15, 2012. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 9. Applicant testified and offered Applicant's Exhibits (AE) A and B. The record was left open until November 23, 2012, for Applicant to submit additional matters. Applicant timely submitted AE C through G. On November 30, 2012, Applicant submitted AE H and I. All exhibits were admitted into evidence without objection. Department Counsel's memoranda forwarding Applicant's post-hearing exhibits were marked as Hearing Exhibits (HE) 1 and 2. DOHA received the hearing transcript (Tr.) on November 26, 2012.

### **Procedural Matters**

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.<sup>1</sup>

### **Findings of Fact**

Applicant is a 40-year-old information technology technician who works for a defense contractor. He has worked for his current employer from October 2006 to January 2007 and from October 2010 to the time of the hearing. He dropped out of high school and is one point short of obtaining a Graduate Education Development (GED) certificate. He married in July 1993 and divorced in July 2005. He has four children, ages 8, 16, 17, and 18. He is seeking a security clearance for the first time.<sup>2</sup>

The SOR contained five falsification allegations. Four of those allegations asserted that he falsified responses in his e-QIP. Specifically, they contend that he falsified his e-QIP by failing to disclose that he was charged with felony offenses on six occasions (SOR ¶ 1.a(1)-(6)); by failing to disclose that he was charged with a firearms offense (SOR ¶ 1.b); by failing to disclose that he was charged with drug-related offenses on four occasions (SOR ¶ 1.c(1)-(2)); and by failing to disclose that he had a pending federal tax lien (SOR ¶ 1.d). The fifth allegation asserted that he falsified material facts during a security clearance interview (SOR ¶ 1.e). In his Answer, Applicant admitted each allegation, but also indicated that he did not deliberately fail to disclose information in his responses to the e-QIP questions because he misunderstood those questions. He also stated that he did not deliberately misrepresent information about his criminal record during the security clearance interview. I interpreted Applicant's responses to the SOR to constitute denials of the allegations. Department Counsel concurred with that interpretation.<sup>3</sup>

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<sup>1</sup> Tr. 14-15.

<sup>2</sup> Tr. 5-7, 19-21, 66-67; GE 1, 4.

<sup>3</sup> Tr. 10-13, 21-24; Applicant's Answer to the SOR.

Applicant had been charged with criminal offenses on several occasions. These included:

SOR ¶ 1.a(1). In May 1991, Applicant was arrested and charged with Possession of Cannabis with the Intent to Sell, a felony. He was 18 years old at the time of this arrest. His state criminal history reflected that he was arrested as an adult and that the disposition of that charge was unknown. County courthouse records, however, reflected that the booking number was changed on February 6, 1992. On February 11, 1992, he pled no contest to the lesser offense of Unlawful Possession of a Controlled Substance Under 20 Grams. He was sentenced to 64 days in jail (time served), plus court costs and fees. During his Office of Personnel Management (OPM) interviews, he repeatedly stated that he never used or experimented with any type of drugs in his life.<sup>4</sup>

SOR ¶ 1.a(2). In June 1991, Applicant was charged with three felony offenses. On this occasion, he was arrested as an adult and charged with Carrying a Concealed Weapon; Burglary-Occupied; and Use of a Firearm While Committing a Felony. At the hearing, he indicated that these charges involved him breaking into his home while his girlfriend was in there with another man. Specifically, he testified:

Well, I was working out of town and I came home and she [his girlfriend] was with another gentleman in the house, which was a friend of mine . . . . I was young and dumb. I didn't break into the house. I didn't threaten nobody's life. Yes, there was a firearm in the car. It was my brother's firearm, which I had told the police officers and I gave them the firearm . . . . That's why I believe all the charges were dropped to a trespass charge.<sup>5</sup>

During an OPM interview on March 17, 2011, he reportedly stated:

In 88 and 89, date not recalled, he was living with a girl . . . . On the day of the incident, he had gone to the home and could not get in as the door was locked. He knocked on the door and [she] came to the door after awhile in a robe. [She] would not unlock the screen door at first and when [she] did, he put 1 foot in the door to lean forward as he thought he saw someone else pass by the door. It turned out that [she] had a male visitor at the time unknown to him. [She] was on the telephone at the time with the [sheriff's office]. [Applicant] walked away and went to his mother's. He then turned himself in to the [sheriff's office] due to [her] talking to the sheriff's office while he was there. While at the police station, he was

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<sup>4</sup> Tr. 37-39, 41-47, 71; GE 3, 4, 7. During an OPM interview, Applicant indicated he was a passenger in a vehicle that was pulled over by the police. A small amount of marijuana was found on the floor of the vehicle. All of the occupants of the vehicle were arrested. Applicant claimed that marijuana was not his property. See GE 4.

<sup>5</sup> Tr. 40-41.

asked about weapons, and he acknowledged that in his brother's car, which he was driving at the time, was a pistol that belonged to his brother. With the help of the sheriffs, he retrieved the pistol from the car and turned it over to the sheriffs.<sup>6</sup>

The police report of that incident, however, tells a much different story. It indicated that he went to the female victim's residence to threaten her "current boyfriend." The police report listed his residence at a different location. The victim's boyfriend was not present when Applicant was at her residence. Applicant allegedly produced a handgun and stated he "was going to 'cap'" her boyfriend. He opened the top of the handgun to show her the bullets. During that conversation, the telephone rang, and the victim locked the screen door to prevent him from entering. As she went to answer the telephone, he forced open the screen door and entered the residence without her consent. The victim began screaming and ordered him to leave. Her friend on the other end of the telephone line heard her screaming. At that point, he left the residence. In October 1991, he pled no contest to Trespass - Structure or Conveyance While Armed, a third degree felony, and was sentenced to four years and six months in prison. He received credit for 39 days already served. At the hearing, he testified that he served a couple of years in prison for that offense. In his post-hearing submission, he presented a department of corrections document indicating that he was released from prison on March 31, 1992.<sup>7</sup>

SOR ¶ 1.a(3). The SOR asserted that Applicant was arrested and charged with Unlawful Possession of a Controlled Substance with Intent to Sell and Possession of Drug Paraphernalia on February 6, 1992. On that date, however, Applicant was in prison serving the sentence reflected in the above paragraph. From a review of the exhibits, it appears that these charges are the same as those in SOR ¶ 1.a(1). I find in favor of Applicant on SOR ¶ 1.a(3) because it is a duplicate of SOR 1.a(1).<sup>8</sup>

SOR ¶ 1.a(4). In February 1993, Applicant was arrested and charged with Larceny/Grand Theft, a felony. During an OPM interview, he indicated that he went with his then-wife to visit a female friend who was babysitting at a private residence. One of his male friends also came to that residence. At a later point, items were discovered missing from the residence. Applicant, his wife, the female friend, and the male friend were charged with burglary. He indicated that the police later found the stolen items in the possession of his male friend. In March 1993, a probation violation charge was filed against him. In August 1993, Applicant entered a pretrial diversion program for the Larceny/Grand Theft charge.<sup>9</sup>

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<sup>6</sup> GE 4, 7.

<sup>7</sup> Tr. 39-47; GE 3, 4; AE D, E, H, I.

<sup>8</sup> Tr. 41-47; GE 7.

<sup>9</sup> Tr. 49-50; GE 4, 6.

SOR ¶ 1.a(5). In June 1993, Applicant was arrested and charged with Aggravated Battery, a felony. During an OPM interview, he indicated that he and his then-wife were involved in a minor traffic accident. His wife and a female in the other car got into a fight. As he was pulling his wife away, she kicked the other women in the head. Although he claimed he did not harm the other women, he pled no contest to the reduced charge of Battery, a misdemeanor. He was sentenced to pay restitution, to have no contact with the victim, and to serve one year of probation. In January 1995, he was arrested for an alleged probation violation. He indicated that the probation violation may have resulted from the failure of the other participants in the fight to make their restitution payments.<sup>10</sup>

SOR ¶ 1.a(6). In January 1996, Applicant was arrested and charged with Possession of Cocaine with Intent to Distribute, a felony; Possession of Marijuana, a misdemeanor; and Possession of Drug Paraphernalia, a misdemeanor. During an OPM interview, he indicated these charges arose from when he was helping his brother and another individual move from their apartment. Evidently, illegal drugs were found in the apartment. Applicant, his brother, and the roommate were arrested. Following police questioning, the charges against Applicant were dismissed. He claimed the prosecutor's office issued a document stating that no charges were brought against him for this incident.<sup>11</sup>

SOR ¶ 1.c(1). In April 2003, Applicant was arrested and charged with Driving with License Suspended; Possession of Cannabis; and Possession of Drug Paraphernalia. These charges were not reflected in his state criminal history. This information was obtained from county courthouse records. Regarding these charges, Applicant stated that he had borrowed a friend's car to perform an errand. As he was departing a convenience store, the police stopped him. He said that the police thought that he was his friend because he was driving the friend's car. He also stated he was unaware that his driver's license was suspended at that time. The police officer searched the car and found marijuana residue and a pipe on the car's floor. Applicant stated those items were not his property. He informed the OPM investigator that all of these charges were dismissed. The courthouse records, however, reflected that, in December 2003, he pled no contest to unspecified charge(s), was fined \$50, and assessed other fees. At the hearing, he indicated that he believed he pled no contest to the driving with a suspended license. The courthouse record and SOR also indicated that he served one day in jail; however, he testified that he did not serve any jail time.<sup>12</sup>

SOR ¶ 1.d. In February 25, 2008, the Internal Revenue Service (IRS) issued Applicant a tax assessment. The assessment was for taxes that were supposedly owed for tax year 2006. The assessment arose because he filed his tax return as head of the

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<sup>10</sup> Tr. 50-52; GE 4, 5, 6.

<sup>11</sup> Tr. 52-53; GE 4, 6.

<sup>12</sup> Tr. 79-81; GE 3, 7.

household and claimed an earned income credit for one of his children. On April 9, 2009, the IRS filed a tax lien against him in the amount of \$6,131. Applicant testified that he was not sure if he knew about the lien when he filled out his e-QIP. He later contested the tax lien. On September 5, 2012, the IRS tax lien was released. The IRS eventually determined he was owed a refund of \$1,818 for tax year 2006.<sup>13</sup>

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 10, 2011. In that e-QIP, he was asked to respond to the following questions:

**Section 22: Police Record**

For this item, report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed. You need not report 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. Be sure to include all incidents whether occurring in the U.S. or abroad.

For questions a and b, respond for the timeframe of the last 7 years (if an SSBI go back 10 years). Exclude any fines of less than \$300 for traffic offenses that do not involve alcohol or drugs.

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

Yes: {} No: {}

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d. Have you EVER been charged with a firearms or explosives offense?

Yes: {} No: {}

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e. Have you EVER been charged with any offenses related to alcohol or drugs?

Yes: {} No: {}

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Applicant responded “No” to the questions in Sections 22c, 22d, and 22e. In the e-QIP he was also asked to respond to:

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<sup>13</sup> Tr. 21-22, 53-66; Applicant’s Answer to the SOR; GE 4, 9; AE A, F, G.

**Section 26: Financial Record**

For the following, answer for the last 7 years, unless otherwise specified in the question. Disclose all financial obligations, including those for which you are a cosigner or guarantor.

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d. Have you had a lien placed against your property for failing to pay taxes or other debts?

Yes: { } No: { }

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Applicant responded “No” to the question in Section 26d. However, he responded “Yes” to the question in Section 26m that asked whether he had been over 180 days delinquent on any debts and disclosed two delinquent debts.<sup>14</sup>

During an OPM interview on March 17, 2011, Applicant reportedly stated in part:

Concerning problems with law enforcement officials, he volunteered that he did have some problems when he was a juvenile in 88 and 89, but did not list any of this information as the form, which he misread, said to go back 7 years.

\* \* \*

The dates differ most likely as the 91 dates is most likely when he was released from prison and not the actual date of his arrest while he was a juvenile.

\* \* \*

Federal tax lien . . . for \$6,131, he knew he owed the IRS \$456 from his 06 taxes at one time due to a mistake on his taxes, which he later paid, date not recalled. He is in the process of filling (sic) a reconsideration audit for this account which will show that he owes no monies to the IRS as he has all documentation to back up his claim.<sup>15</sup>

During that interview, Applicant voluntarily provided the investigator information about the drug-related charges in 1991 (SOR ¶ 1.a(1)) as well as the incident that resulted in the charges of Carrying a Concealed Weapon; Burglary-Occupied; and Use of a Firearm While Committing a Felony in 1991 (SOR ¶ 1.a(2)). He indicated that he thought all of those charges arose from incidents in 1988 or 1989, when he was a juvenile. After describing those two incidents, he reportedly stated that “[h]e could not think of any other charges, arrests, or problems with local law enforcement officials.”

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<sup>14</sup> GE 1.

<sup>15</sup> Tr. 42; GE 4.

The OPM investigator then confronted him with records showing he was charged with the offenses reflected in SOR ¶¶ 1.a(4), 1.a(5), and 1.a(6), above. When confronted with each of those charges, he described each incident. The summary of that interview did not mention the drug-related charges that were brought against him in April 2003.<sup>16</sup>

Applicant's Sentencing Guidelines Score Sheet for his Trespass-Structure or Conveyance While Armed conviction in October 1991 reflected that he had a prior record (not discussed above) that included multiple felony offenses, e.g., auto theft (one count), burglary (two counts), and grand larceny (five counts). Since he was 18 years old in October 1991, those prior offenses were most likely processed as juvenile offenses and do not appear on his state criminal history.<sup>17</sup>

Applicant testified that he did not disclose his felony, firearm, and drug-related charges on the e-QIP because he thought he only had to report such offenses if they occurred within the last seven years. He testified: "when I filled out the e-QIP I am not sure if I knew about the federal lien that was on my credit until I pulled my credit report, if I'm not mistaken." He also indicated that he did not deliberately misrepresent facts during his OPM interview on March 17, 2011.<sup>18</sup>

In May 2012, Applicant received a Certificate of Appreciation for his outstanding support in the planning and construction of a new DoD office.<sup>19</sup>

## Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are

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<sup>16</sup> Tr. 58-59, 81-87; GE 4.

<sup>17</sup> GE 3.

<sup>18</sup> Tr. 39, 54-58, 70-78; GE 2, 3.

<sup>19</sup> Tr. 63-66; GE 2; AE B.



applied in conjunction with an evaluation of the whole person. An administrative judge's 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 unfavourable, to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

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 conditions that could raise security concerns. Two of those concerns are potentially applicable 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; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

The Government has the burden of proving a controverted falsification allegation. The submission of inaccurate information on a security clearance application or during a security clearance interview, standing alone, does not prove a falsification. For a finding of falsification to be sustainable, an applicant must have had a culpable state of mind at the time the information was submitted. A falsification must be made deliberately -- knowingly and willfully. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence that an applicant had a culpable state of mind at the time of such a submission.<sup>20</sup>

In general, I did not find Applicant to be a credible witness. In addressing the charges listed in SOR ¶ 1.a(2), he was not forthcoming about his use of a firearm during that incident. In his testimony at the hearing and during the OPM interview, he indicated the firearm was in a car. The police report, however, reflected that he possessed and displayed the firearm during that offense. The evidence also revealed that Applicant lied when he testified that he “didn’t threaten nobody’s life” and “didn’t break into the house” during that incident. The police report established that he made a threat against the victim’s boyfriend with the firearm and he broke into the victim’s house. He pled no

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<sup>20</sup> The Appeal Board has cogently 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.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See also ISCR Case No. 05-03472 at 5 (App. Bd. Mar. 12, 2007), ISCR Case No. 03-09483 at 4 (App. Bd. Nov 17, 2004).

contest to committing a trespass while armed. His sentence of 4½ years imprisonment indicated how serious the court considered this crime.

During his OPM interview on March 17, 2011, Applicant voluntarily provided information about the charges in SOR ¶¶ 1.a(1) and 1.a(2).<sup>21</sup> After providing that information, Applicant deliberately made a false statement by saying he could not think of any other charges, arrests, or problems that he had with law enforcement officials. The OPM investigator then confronted him with records showing he was charged with the offenses reflected in SOR ¶¶ 1.a(4), 1.a(5), and 1.a(6). When confronted with each of those charges, he described each incident, which showed he was well aware of them. He also told the investigator that the charges listed in SOR ¶¶ 1.a(1) and 1.a(2) occurred when he was a juvenile. At the time of those charges, he was 18 years old. Record evidence revealed that he had been charged with a number of offenses as a juvenile. Given his prior juvenile record, it was likely that he confused his juvenile charges with those in SOR ¶¶ 1.a(1) and 1.a(2). From the foregoing, I find that Applicant deliberately provided false information to the investigator (SOR ¶ 1.e) by concealing information about the charges listed in SOR ¶¶ 1.a(4), 1.a(5), and 1.a(6), but did not do so by indicating that the charges in SOR ¶¶ 1.a(1) and 1.a(2) occurred while he was a juvenile.

Based on the record evidence as a whole, particularly that discussed in the above two paragraphs, I find that he intentionally failed to disclose on his e-QIP the charges against him as alleged in SOR ¶¶ 1.a(1), 1.a(2), 1.a(4), 1.a(5), 1.a(6), 1.b, and 1.c(2). I did not believe Applicant's explanation that he thought he only had to disclose charges that occurred in the past seven years. However, I did find persuasive his explanation that he thought he was never charged with any offenses during the April 2003 incident. Therefore, I find in Applicant's favor on SOR ¶ 1.c(1).

In February 2008, the IRS issued Applicant a tax assessment. In April 2009, the IRS filed a tax lien against him. In his e-QIP dated February 10, 2011, he failed to disclose that tax lien. He testified that he was not sure he knew about the tax lien when he submitted the e-QIP. During an OPM interview that was conducted about a month after he submitted the e-QIP, he acknowledged that he was in the process of filing a reconsideration audit for the tax year in question. Sufficient circumstantial evidence was presented to establish that Applicant was aware of the tax lien and that he deliberately failed to disclose the tax lien on his e-QIP. I find against Applicant on SOR ¶ 1.d.

Six personal conduct mitigation conditions under AG ¶ 17 are potentially applicable:

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

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<sup>21</sup> SOR ¶ 1.d incorrectly asserted that Applicant failed to disclose his arrests as set forth in SOR ¶ 1.a(1) and 1.a(3) during the OPM interview of March 17, 2011. As noted above, SOR ¶¶ 1.a(1) and 1.a(3) are duplicate allegations.

(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; and

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

In his e-QIP and during his OPM interview, Applicant deliberately provided false information. When applicants intentionally provide false information on their e-QIPs or during OPM interviews, they seriously undermine the entire security clearance investigation process. Throughout the security clearance adjudicative process, Applicant denied that he provided false information on his e-QIP or during his OPM interview. He has not accepted responsibility for his falsifications. I find that none of the mitigating conditions apply to the security concerns arising from the proven falsifications.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. Applicant has worked in the defense industry for a number of years. He has not been arrested in the past nine years. He has not been convicted of an offense in the past 19 years. Nonetheless, his deliberate falsifications on his e-QIP and during his OPM interview are recent and raise serious security concerns about his reliability and trustworthiness. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person concept, I conclude he has not mitigated the personal conduct security concerns.

### **Formal Findings**

Formal findings 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(1)-(2):	Against Applicant
Subparagraph 1.a(3):	For Applicant
Subparagraphs 1.a(4)-(6):	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c(1):	For Applicant
Subparagraph 1.c(2):	Against Applicant
Subparagraph 1.d:	Against Applicant

### **Decision**

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

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James F. Duffy  
Administrative Judge