DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-10789
	)	
Applicant for Security Clearance	)	

Appearances

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

11/06/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on April 7, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 24, 2013, detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated June 5, 2013, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on July 11, 2013. Applicant received the FORM on August 13, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on October 17, 2013. The Government submitted 13 exhibits, which have been marked as Items 1-13 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1.

Procedural Rulings

In his brief, Department Counsel submitted a motion requesting that the SOR ¶¶ 1.a, 1.h, and 1.p be amended to conform with the evidence. SOR allegation 1.a alleges that Applicant was arrested on June 29, 2009 for driving under the influence of intoxicants (DUII). In his response, Applicant stated that this arrest occurred on June 29, 2007. The police arrested Applicant on June 29, 2007 on a bench warrant issued after he failed to appear in court following his June 8, 2007 DUI arrest. SOR allegation 1.a is amended to reflect the correct date of arrest as June 29, 2007. SOR allegations 1.h and 1.p state that Applicant provided false information on his December 23, 2012 sworn affidavit. The actual date of the sworn affidavit is December 13, 2012. SOR allegations 1.h and 1.p are amended to reflect December 13, 2012 as the correct date of the sworn affidavit.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 1.f, 1.g, 1.j - 1.q, and 1.s of the SOR. He admitted with explanation the factual allegations in ¶¶ 1.b and 1.r. His admissions are incorporated herein as findings of fact. He denied the general security concern in ¶ 1 of the SOR. He neither admitted nor denied the factual allegations in SOR ¶¶ 1.d, 1.e, 1.h, and 1.i. These allegations are deemed denied. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 52 years old, works as an instructor for a DOD contractor. He began his current employment in August 2006. He previously worked as a mail carrier for four years and in the automobile industry for 12 years.[1]

Applicant graduated from high school in 1979. He attended college for one semester after high school. Applicant served in the United States Army from 1981 until 1984. He received an honorable discharge from the Army in 1984. Applicant married in

[1]Item 3.

1985 and divorced in 2009. Applicant has a son, who is an adult. Applicant moved across country in 2006, leaving his home of many years.[2]

Criminal Allegations

SOR allegation 1.s alleges that Applicant has been charged or cited for at least 29 criminal or motor vehicle violations. In support of this allegation as well as the allegations in SOR ¶¶ 1.a, 1.d, 1.e, and 1.g, the Government submitted documentation which is marked as Items 8-13.

The Government's documentation shows an arrest in April 1987 for possession of cocaine after police conducted a search of Applicant's home. The court results of this arrest and the charges are not in the record. (Item 11). The police arrested Applicant in January 1992 on four charges related to menacing, resisting arrest, disorderly conduct, and criminal trespass, all misdemeanor offenses. (Item 9) The court dismissed the first two charges and consolidated the remaining charges with another case (no information), then dismissed this case. (Item 9) In March 1992, the police again arrested him for theft, and the court convicted him on a misdemeanor theft charge. (Item 9)[3]

While away on vacation and business travel in July 1998, Applicant asked a friend to watch his house. During the first week of Applicant's trip, the police conducted a search of Applicant's home with a valid search warrant. The search revealed nine marijuana plants growing in Applicant's basement. The police arrested his friend and charged the friend with growing marijuana. Applicant denied any knowledge of or involvement in this activity. The record lacks any evidence that Applicant was arrested by the police and charged with growing marijuana. Applicant does not associate with this friend anymore. (Items 5, 6, 12)

The police arrested and charged Applicant on three misdemeanor harassment counts on May 27, 1999. The court convicted him on one misdemeanor charge and dismissed the two remaining charges.(Item 9) Applicant sponsored a barbecue for his family and friends at his house on July 4, 1999. He heard his neighbors yelling racial slurs at his wife, children, and friends. He and his neighbor argued. Their argument escalated to the neighbor spraying him with a hose, and Applicant throwing firewood in the neighbor's yard. The police were called. Both were arrested and charged with disorderly conduct. A few days later, the police issued Applicant a second summons, charging him with possession of less than 1 gram of marijuana, a misdemeanor offense, following a July 6, 1999 lab report showing that the substance found in a plastic bag in the back seat of the patrol car where he was placed after his arrest contained 2.3 grams of marijuana. Applicant denied that the marijuana was his and that he placed it in the police car. The record does not contain the court disposition of this summons. (Items 5, 6, 9, 10) However, the court convicted Applicant of the disorderly conduct misdemeanor

[2]Item 4; Item 5; Item 6.

[3]Department Counsel submitted two copies of the January 1992 and the March 1992 court records. Item 9.

offense, then deferred his sentence. The court dismissed the judgment in 2003. (Items 5, 6, 9)[4]

Applicant received a motor vehicle violation notice in September 2000 for exceeding the maximum speed and failure to display insurance. He paid the fine. (Item 8) In January 2003, he received a motor vehicle violation notice for failure to obey a traffic control device. He paid the fine. (Item 8) Applicant received a second motor vehicle violation notice for failure to obey a traffic device in May 2006, and the court found him guilty of this infraction when he failed to appear for his court hearing. He paid the fine and received a refund. (Item 8)

On June 8, 2007 and over the course of the day, Applicant took one and one-half tablets of vicodin for pain after a root canal. Later that day, he consumed alcohol at a club with friends. After he left the club, the police stopped him because he was driving erratically. The police officer smelled alcohol and noticed cup with liquid in his car. Applicant failed a field sobriety test ,and the police arrested him for DUI. The breathalyzer test results registered a .06%, which the reports indicate was below the legal limit. The report to the Department of Motor Vehicle indicates that Applicant did not fail the breathalyzer test or refuse to take the test. The police took a urine sample for testing. Because Applicant failed the field sobriety test, because of his appearance, and because he tested under the legal limit, the police requested a drug influence evaluation by a drug recognition expert. The drug expert knew Applicant used vicodin and consumed alcohol on this date. The drug expert concluded that Applicant was under the influence of alcohol and a narcotic analgesic.[5] During his detention, Applicant told the police officer that his urine test would be positive for the marijuana he smoked two weeks earlier. The report on Applicant's urine analysis showed 9-Carboxy-THC, which is a marijuana metabolite. (Item 13) The arresting police officer charged Applicant with DUI and having an open container in his car. Applicant was convicted of having an open container in his vehicle.

The Government offered Item 7 as proof of multiple infractions and arrests for Applicant. Item 7 is a local police department personal information sheet on Applicant. The sheet identifies an incident number, a date, an involvement type, and an incident type. On page one, the involvement type indicates parent, other, victim, involved, arrested, and driver. This page shows one arrest on June 8, 2007 for DUI and lists Applicant as the driver on this date. The other information does not explain Applicant's role in the incidents. The "parent" reference suggests that his child was involved in the theft incident, and the "victim" reference suggests that he was the victim of theft. The "other" reference concerns a house fire and a theft. The remaining two pages of this document list 24 incidents between 1985 and 2001, which involve Applicant. The listing does not clearly explain Applicant's role, such as victim, doer, or reporter, in these incidents. On the left of each incident, the letters "V, O, and S" are noted without more

[4]Department Counsel submitted two copies of the May 27, 1999 and July 4, 1999 court records. Item 9.

[5]The report does not define this term, which also relates to prescription drugs.

information. On the very right column of each incident, the status is noted with the letters " EN, O, D, A, or U" without any explanation of their meaning. Of the 24 incidents listed, only the July 4, 1999 arrest is listed. The first item listed on page two appears to reference a motor vehicle accident with no injury and the left column has the letter "V" which may mean victim. This report is insufficient on its face to establish 24 separate incidents of criminal arrests or motor vehicle violations because it lacks clarity.

The documentary evidence submitted by the Government establishes that Applicant was arrested on six separate occasions, which resulted in 12 misdemeanor charges and four convictions, and that he received three motor vehicle violations. Except for his 2007 DUI arrest, Applicant's arrests occurred between 1987 and 1999. His motor vehicle violations occurred between 2000 and 2006.

Employment

Applicant worked for an automobile company from 1989 until 2001. When he met with the Office of Personnel Management (OPM) investigator in December 2012, the OPM investigator asked why he left his position with this company. Applicant advised that his company began random drug testing in 2000 and that he failed the drug test the first time he took the test. He explained that his supervisor offered to continue his employment if he attended drug counseling or took vocational training in another state many miles from his home. Applicant did not wish to move, and he believed the company to be in financial trouble. He decided to voluntarily quit. He emphatically stated that he was not involuntarily terminated from his job. His sworn affidavit and the summary of his interview do not indicate that the OPM investigator presented him with a document showing he was involuntarily terminated from this job, and the record contains no such evidence. (Items 5, 6)

Financial

During his second interview with the OPM investigator, Applicant acknowledged that he filed for bankruptcy in the 1980s or 1990s and that he had not had any financial problems since that time. In his answer to the SOR, Applicant admitted filing bankruptcy in 1991, but denied any knowledge about the case being reopened or terminated. Information related to his 1991 bankruptcy and the 2004 reopening followed by a termination of the case is not in the record. (Items 5, 6)

Applicant provided information to the OPM investigator about owing taxes to the Internal Revenue Service (IRS) in the past. Applicant always filed his tax returns. After he filed his tax return in 2008, the IRS determined that he owed an additional $2,442 because of the sale of his house after he moved in 2006. He paid these taxes to the IRS over a few months in 2008 by way of a deduction from his salary.[6] Applicant recalls that

[6]As a general rule, the IRS must prepare and file an assessment of income tax it believes due within three years after the return is filed. *See* 26 U.S.C. § 6501(a). Once an assessment is complete, it has 60 days to give notice and a demand for payment of the tax due to the person liable. *See* 26 U.S.C. § 6303(a). Once the

he voluntarily returned a truck to the car dealer on the advice of the finance company after he fell behind in his payments in 2006. Applicant did not consider the voluntary return of his truck a repossession nor did he consider the payment of his additional taxes owed a garnishment. Applicant's statement is the only evidence on these issues. (Items 5, 6)

Drugs

Applicant told the OPM investigator that he smoked marijuana two to three times a year with friends from 1984 until 2002. He denied purchasing marijuana at any time, and he denied using marijuana after 2002. As previously discussed, Applicant denied that he had marijuana when he was arrested on June 8, 2007. He also denied that he he had possession of marijuana when he was arrested in July 1999 and that he placed it in the back of the patrol car. The police summary of the events connected to his June 8, 2007 arrest reflect that he told the police that he would probably test positive for marijuana because he had smoked marijuana about two weeks earlier. (Item 13)

Falsification

Section 22 of the e-QIP requests information about Applicant's police record. The directions advise that an applicant need only respond to questions 22a and 22b in the time frame of the last seven years. Questions 22c, 22d, and 22e specifically request an applicant to answer affirmatively or negatively if the applicant had "EVER" been charged with a felony, firearms or explosives offense, or alcohol or drug offense. Section 23 requests specific information about illegal use of drugs or drug activity. Questions 23a, 23c, and 23d limit an applicant's answer to the last seven years while question 23b asks if an applicant has "EVER" used an illegal drug when holding a security clearance. Finally, Section 26 asks multiple questions about an applicant's finances. Applicant completed his e-QIP on April 6, 2011 and signed it on April 7, 2011. (Item 4)

SOR ¶¶ 1.b, 1.c, 1.f, and 1.j - 1.n, allege that Applicant deliberately provided false information on his e-QIP about his police record, his drug activity, and his financial record. SOR ¶¶ 1.h, 1.l, 1.p, and 1.q allege that Applicant deliberately provided false information on his December 2012 sworn affidavit and in his December 2012 personal subject interview. During his December 2012 interviews and in his sworn affidavit signed on December 13, 2012, Applicant states that he was not fired from his job with the automobile company and that he did not list his drug and alcohol arrests because he

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notice and demand are made, a lien in favor of the United States automatically arises. *See* 26 U.S.C. § 6321. The IRS must file a levy or institute court proceedings within 10 years after the tax assessment to collect the tax lien. *See* 26 U.S.C. § 2602(a)(1); *United States v. Galletti*, 541 U.S. 114, 119 (2004). The running of the statute of limitations is tolled during a bankruptcy proceeding, *see United States v. Doe*, 438 F.Supp.2d (S.D. Ohio 2006), by agreements (made before Dec. 20, 2000), *see United States v. Ryals*, 480 F.3d 1101, 1106(11th Cir. 2007), or while an offer in compromise (made on or after Dec. 31, 1999) is pending. 26 U.S.C. § 6404(a) provides for abatement of an assessment when it is uncollectible. The state law also generally follows the 3-year and 10-year statute of limitations used by the IRS. *See* Code § 12-54-85.

thought he needed to go back only seven years. He also said that he could not recall all of the incidents and that he did not have access to the records of his arrests. (Item 1)

Policies

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 used 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 overarching 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or 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 E, Personal Conduct

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

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

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

> (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;
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> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
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> (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;
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> (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:
>
> * * *

(3) a pattern of dishonesty or rule violations.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his April 2011 e-QIP when he failed to acknowledge his past drug use, his criminal record, and his negative financial information. This information is material to the evaluation of Applicant's trustworthiness and honesty. In his personal subject interview, he denied that he intentionally withheld this information; however, in his answers to the SOR he admits to intentional falsification with the explanation in his response to SOR allegation 1.f of "Why? I referenced (in the Past 7 years)." He denies an intent to deceive the Government. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.[7]

Applicant admits that he falsified his answer on the e-QIP when he failed to list his DUI arrest in June 2007, which was about four years prior to his completion of his e-QIP. SOR allegations 1.b and 1.c raise security concerns under AG ¶ 16(a). Section 22, question e (SOR allegation 1.e) requests Applicant to disclose any alcohol or drug arrests. Applicant qualified his answer to this allegation when he said he referenced the last seven years. Even if he only considered his arrests for the seven years prior to April 2011, he needed to list his 2007 DUI arrest. Given his acknowledgment that he deliberately failed to list this arrest in his answer to SOR ¶¶ 1.b and 1.c, I find that he deliberately failed to list the 2007 DUI arrest in response to question e in Section 22 and a security concern is raised by SOR allegation 1.f. His failure to list the arrests mentioned in SOR allegations 1.d and 1.e, which date back many years beyond seven years was not intentional.

The police report and the citation reflect that Applicant received a summons on June 8, 2007 for DUII and an open container. The record contains a toxicology report dated August 1, 2007, which reflects that marijuana was found in Applicant's urine. The record does not indicate that Applicant received this report, and the summons does not show that Applicant was arrested for marijuana use. Applicant admitted to the contents of the report in his response. SOR allegation 1.g, that he was arrested for marijuana use on June 8, 2007 or June 29, 2007, is not supported by the police report or the summons. However, because the toxicology report showed the presence of a marijuana metabolite in his urine in June 2007 and in light of his statements to the arresting officer, a finding that Applicant deliberately falsified his answer to question a in Section 23 is supported by the evidence. SOR allegation 1.j is found against Applicant.

[7] *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Section 26 asks multiple questions about an applicant's finances. SOR allegations 1.k and 1.l concern Applicant's failure to provide information about his decision to voluntarily return his truck to the car dealer after he missed several monthly payments. In his personal subject interview and in his sworn affidavit, Applicant stated that he missed several payments on his truck, which led to a decision to return his truck to the car dealer as instructed by the finance company. He further stated that he did not consider the return of his truck by him to the car dealer a repossession. In his response to the SOR, he admitted to these allegations, which conflicts with his previous sworn statement. Applicant was aware that he had missed payments on his truck in 2006. Based on this knowledge and his admission, I find that SOR allegation 1.l establishes a security concern under AG ¶ 16(a). Applicant's statement that he did not believe that his return of his truck to the car dealer was a repossession is reasonable. Thus, at the time he completed his e-QIP, he did not intentionally falsify his answer to SOR allegation 1.k, which is found in favor of Applicant.

SOR allegations 1.m and 1.n relate to the taxes Applicant owed to the IRS in 2008 following the sale of his house. Section 26, question c states : "Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?" Applicant filed his taxes each year. In 2008, the IRS determined that he owed additional taxes following the sale of his house. When he received this information from the IRS, he made arrangements to pay the taxes owed. He did not falsify his answer to this question at the time he completed his e-QIP. Federal law requires the IRS to give Applicant notice of taxes owed and make a demand for payment, which the IRS did according to Applicant's statement. Once this step is taken, an automatic lien attaches to Applicant. To legally collect the taxes owed, federal law requires the IRS to file a levy or institute court proceedings to collect the taxes owed within 10 years. There is no evidence that the IRS filed a levy or instituted court proceedings to collect the taxes owed.[8] Rather, Applicant reached an agreement with the IRS to pay the taxes owed through a deduction from his paycheck. While such a deduction may be characterized as a garnishment on his check, because he agreed to the deduction, it is more like an allotment. Applicant did not falsify his e-QIP answers as alleged in SOR ¶¶ 1.m and 1.n. These allegations are found in favor of Applicant.

Given that Applicant told the arresting police officer in June 2007 that marijuana would probably be found in the urine analysis test because he had smoked marijuana two weeks earlier, Applicant intentionally falsified his sworn affidavit and intentionally provided false information during his personal subject interview when he said that he had not used marijuana since 2002. SOR ¶¶ 1.h and 1.i establish a security concern under AG ¶16(b). The record does not reflect that he received a copy of the August 1, 2007 toxicology report.

[8]I take administrative notice of the generally recognized fact that creditors can only garnish a debtor's income after obtaining a judgment in court then filing a writ of garnishment with the court asking that the court issue an order of garnishment.

SOR ¶¶ 1.p and 1.q allege that Applicant was involuntarily terminated from his employment in the automobile industry and that he provided false information about his termination in his sworn statement and personal subject interview. The summary of his personal subject interview shows that "when asked about previous employments," Applicant discussed his employment and reasons for leaving his job in the automobile industry. The summary does not indicate that Applicant was presented with any information reflecting that he had been involuntarily terminated from his employment nor does the record contain such documentation. Applicant admitted these allegations in his response to the SOR; however, he made it very clear in his meeting with the OPM investigator and in his sworn affidavit that he was not fired. His SOR answer conflicts with his statements to the investigator and in his sworn statement. In weighing this information, I find that Applicant's sworn affidavit and personal subject interview are more persuasive. SOR ¶¶ 1.p and 1.q are found in favor of Applicant.

As shown by the evidence, Applicant was arrested in April 1987 on drug charges and in 1999 for disorderly conduct. In 2007, the police arrested him and charged him with DUII and an open container violation. The August 1, 2007 toxicology report showed marijuana in his urine. The records lacks any evidence of a 1982 arrest. SOR ¶¶ 1.a, 1.d, 1.e, and 1.g establish a security concern under AG ¶ 16(c) because these events would be mitigated by the passage of time under the alcohol consumption and criminal conduct guidelines, but raise questions about Applicant's judgment and reliability under a whole-person analysis.

The record establishes that between 1987 and 1999 Applicant was arrested six times for criminal conduct such as theft, disorderly conduct, and harassment. These arrests included a total of 12 different criminal charges. Between 2000 and 2006, he received three motor vehicle violations and in 2007, the police arrested and charged him with DUII and an open container. The record evidence establishes seven arrests with a total of 14 charges and three motor vehicle violations, which is significantly under the "at least" 29 incidents alleged in SOR ¶ 1.s. While Applicant admitted this allegation, he admitted to incorrect information in the allegation making his admission invalid. SOR ¶ 1.s is found in favor of Applicant.

Finally, SOR ¶ 1.o asserts that Applicant was involuntarily terminated from his job in the automobile industry. Even though he admitted this allegation in his response to the SOR, Applicant clearly stated in his personal subject interview and in his sworn statement that he decided to leave his employment and that he was not fired. Since there is no evidence that Applicant was involuntarily terminated (fired) from this job, his previous statements are credible and accorded determinative weight. This allegation is found in favor of Applicant. SOR allegation 1.r raises no security concern due to age and the lack of information about the reopening of the 1991 bankruptcy case in 2004.

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through ¶ 17(g), and the following are potentially applicable:

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

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

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

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

Applicant intentionally falsified his answers to five questions on his e-QIP, and in his sworn statement and during his personal subject interview, he intentionally provided false statements about his marijuana use after 2002. Applicant has not provided a rational explanation for his conduct nor has he provided evidence which supports mitigation of SOR ¶¶ 1.b, 1.c, 1.f, 1.h, 1.i, and 1.l under AG ¶ 17(a) through ¶17(g).

Applicant's involvement with illegal drugs and criminal conduct extends over a long period of time. I have considered the above mitigating conditions and conclude that none of them apply because the Applicant has not provided evidence showing a change in his behavior which would eliminate or reduce his vulnerability to exploitation, manipulation, or duress or which would support the grant of a security clearance. Applicant has not mitigated the security concerns raised by SOR ¶¶ 1.a, 1.d, 1.e, and 1.g.

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 an 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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Beginning as a young adult, Applicant became involved in activities which brought him to the attention of the police and courts. After many years of inappropriate conduct, Applicant started to change his conduct. His arrests for minor criminal infractions stopped. However, he continued to violate the rules of the road which resulted in traffic violations and ultimately, a DUI in 2007. While it has been six years since this offense, Applicant has not been forthcoming about this arrest and the circumstances surrounding his behavior that day. Applicant was fully aware that his conduct in the past could create problems for his eligibility for a security clearance. He chose not to provide the necessary information for a full and fair evaluation of his background. His decision to hide information from the Government reflects negatively on his trustworthiness to hold a security clearance.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his personal conduct under Guideline E.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-1.j:	Against Applicant
Subparagraph 1.k :	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m-1.s:	For 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.

MARY E. HENRY
Administrative Judge