DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-11562
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2013

_____

Decision

_____

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant still owes more than $20,000 in delinquent debt after paying off a $4,118 credit card debt in collection. Criminal conduct concerns include a felony conviction in 2009 for altering a medical prescription to obtain a controlled substance. He disclosed his delinquent debts but not his felony offense on his security clearance application. Clearance denied.

Statement of the Case

On December 13, 2012, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct), and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility

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

Applicant submitted an undated response to the SOR allegations, and he requested a hearing before the Defense Office of Hearings and Appeals (DOHA). On February 7, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Scheduling of the hearing was delayed pending guidance related to sequestration budget issues. On April 11, 2013, I issued a notice scheduling a hearing for April 26, 2013.

I convened the hearing as scheduled. Thirteen Government exhibits (GEs 1-13) were admitted without objection. Applicant testified, as reflected in a transcript (Tr.) received on May 3, 2013.

Findings of Fact

The SOR alleges under Guideline F that as of December 13, 2012, Applicant owed a charged-off debt of $12,419 (SOR 1.a) and collection debts of $81 (SOR 1.b), $2,695 (SOR 1.c), $2,824 (SOR 1.d), and $8,408 (SOR 1.e). Under Guideline J, Applicant pleaded nolo contendere in July 2009 for felony false report to obtain a controlled substance in November 2008 (SOR 2.a); in July 2004 for misdemeanor reckless driving/drag racing/eluding police in April 2004 (SOR 2.b); and in March 2004 for misdemeanor false document to an agent or public official in January 2004 (SOR 2.c). Under Guideline E, Applicant allegedly falsified his July 2011 Electronic Questionnaire for Investigations Processing (e-QIP) by responding negatively to inquiries concerning any arrests within the last seven years (SOR 3.a), any felony charges ever (SOR 3.b), and any debts currently over 90 days delinquent (SOR 3.c).

In his Answer to the SOR allegations, Applicant admitted that he owed the $12,417 debt in SOR 1.a because of excess mileage on a leased truck returned to the dealership in 2010. He also admitted that he owed for a dirt bike purchased in 2007, although less than the $8,408 alleged in SOR 2.e. Applicant indicated that he had owed $4,118 (rather than the $2,695 alleged) in delinquent credit card debt in SOR 1.c, which has been paid. Applicant did not recognize the $81 debt in SOR 1.b, and he averred that the $2,824 debt in SOR 1.d was his father's debt. Applicant admitted the criminal charges. Concerning the felony offense in SOR 2.a, Applicant explained that he had a valid prescription for 14 Vicodin in 2008 and altered the prescription to 140 pills so that he would not have to return to his physician every couple of days. As for the Guideline E allegations, Applicant indicated that he responded negatively to the e-QIP inquiries because he misunderstood the questions.

[1] The SOR contained the wrong middle name for Applicant, and it did not include the case number. At the hearing, I amended the SOR to correct his name.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 28-year-old high school graduate. He enrolled in a local community college in September 2003 but has yet to finish his degree. Applicant worked as a board hanger in his father's home-based business from June 2003 until February 2008 when he started with his current employer as an installation mechanic. He is currently a production planner for a defense contractor and is seeking his first DOD security clearance. (GE 1; Tr. 47-48.)

In January 2004, Applicant was issued a summons for giving a false document to a public official, a misdemeanor. He was pulled over for speeding, and one of his passengers had an active capias warrant against him. The police searched Applicant's vehicle and found an identification card bearing Applicant's name and picture but a false address. (GE 5; Tr. 45, 59.) Applicant pleaded nolo contendere to the misdemeanor charge in March 2004, and he was fined $100 and $3.50 court costs. (GEs 4, 6, 10, 11.) Applicant understood at the time that he was charged with a misdemeanor and not a traffic offense. (Tr. 59.)

In April 2004, Applicant was arrested for reckless driving/drag racing/eluding police, first offense. (GEs 4, 5, 9.) Applicant was tailgating a dispatcher for the police department, who reported him and another vehicle for driving recklessly. (GE 5; Tr. 44.) He pleaded nolo contendere to the misdemeanor in May 2004, and the case was filed.[2] In June 2004, he was held without bail for violating the terms of the filing. In July 2004, Applicant was sentenced to one year in jail (suspended) and one year of probation. (GEs 4, 5, 8, 9.)

Around November 2008, Applicant fractured his tail bone while riding his dirt bike. A physician prescribed 14 Vicodin pills for pain. Applicant was working and also going to school at the time, and he did not want to return to the doctor for another prescription every few days. He altered the script by adding a zero to the number of pills prescribed and presented it to a local pharmacy. Applicant "thought it was like forging a note going to school," and he did not realize the serious consequences. (Tr. 61.)The pharmacy refused to fill the prescription for 140 Vicodin after contacting the physician. Around one week later, Applicant was contacted by the police. After speaking with his attorney, he turned himself in on November 8, 2013, when he was booked and fingerprinted. (GE 2; Tr. 43-44, 61-64.) Criminal records show that he was arrested for obtaining a controlled substance by fraud, a

[2] Under § 12-10-12 of the pertinent state law, any judge of the district court or superior court may place on file any complaint in a criminal case other than a complaint for the commission of a felony or a complaint against a person who has been convicted of a felony or a private complaint. The court may in its discretion require, as a condition of the filing, the performance of services for the public good or may attach other conditions as determined by the court, subject to a restitution requirement if the court orders restitution. It is an express condition of any filing under § 12-10-12 that the defendant during the one year keep the peace and be of good behavior. A violation of that express condition or any other condition set by the court is deemed a violation of the filing, and the matter may be resurrected by the court. If the complaint was filed subsequent to a defendant's plea of guilty or nolo contendere to the charge, the court, if it finds there to have been a violation, may sentence the defendant. Available court records do not identify the violation that led the court to order Applicant held without bail on June 18, 2004, declare him to be a violator on July 2, 2004, and convert his sentence to probation. It is noted that Applicant was fined $275 for speeding on May 18, 2004. (GE 5.)

felony. (GE 7.) Applicant testified that he went directly to the court and paid a fine. (Tr. 64.) Applicant claims to not have realized that he had been arrested because he went to court on his own, even though his fingerprints were taken, and he was handcuffed at the courthouse. (Tr. 68-69.) In July 2009, Applicant pleaded nolo contendere to an amended charge of false report to obtain a controlled substance, a felony. He was sentenced to one year of probation and ordered to pay costs. He paid all costs in full on November 10, 2009. (GE 6; Tr. 43-44.)

On July 13, 2011, Applicant completed and certified to the accuracy of an e-QIP on which he responded negatively to all the police record inquiries, including 22.b, concerning whether he had been arrested in the last seven years, and 22.c, about whether he had ever been charged with a felony offense. (GE 1.) Applicant testified about the omission of any arrest information that "he] thought that being charged meant like being found guilty and having a criminal record." (Tr. 45.) Under the financial record section, Applicant answered "Yes" to 26.g, "Have you had bills or debts turned over to a collection agency." He listed the accounts identified in SOR 1.a, 1.c, and 1.e as unsatisfied and in collection with respective balances of $12,868, $7,867, and $4,118.13. Applicant responded negatively to all the other financial record inquiries, including 22.n, "Are you currently over 90 days delinquent on any debt(s)?" (GE 1.) Applicant testified at his hearing that he thought question 22.n covered new, current debts that were not in collection ("I was just basing it off of my current debt, not knowing the ones in collection were still delinquent. I just thought it was charged off and I owed the money. I didn't know it was still on a timeline." (Tr. 45.)

As of July 28, 2011, Applicant's credit record was showing unpaid collection balances of $2,695 on SOR 1.c and $8,408 on SOR 1.e, as well as $81 on a disputed debt (SOR 1.b), and $2,824 on a revolving charge account on which Applicant was an authorized user (SOR 1.d). A revolving charge account opened in January 2008 reportedly had a zero balance after being charged off in the amount of $1,387 and being placed for collection (debt not alleged in SOR). Applicant owed balances totaling $863 on accounts that were being repaid according to agreed terms. (GE 13.)

On August 15, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his unlisted felony arrest and his admitted financial issues. Applicant averred that he had not realized the seriousness of the consequences for altering his prescription, and he believed that he did not have to list the offense on his e-QIP because he had been fined less than $300. He denied knowing that the offense was a felony and indicated that he had no other criminal offenses on his record. Applicant attributed his financial delinquencies to a decrease in his income. He had looked into debt consolidation but had not pursued it because he thought it was a scam. His financial situation had improved to enable him to make payments on the debt in SOR 1.c at $343 per month since March 2011. The debt was incurred for motocross racing supplies. Once he finished paying that debt around early 2012, he planned to start repaying his remaining acknowledged delinquencies: a vehicle lease unpaid since September 2010 (SOR 1.a);[3] a motocross bike debt incurred in February 2007 and in

[3] Applicant leased a truck in June 2007 at $361 per month for 39 months and 39,000 miles. (GE 12; Tr. 33.)

collection since May 2008 (SOR 1.e); and the $1,387 revolving charge account in collection (not in SOR). (GE 2.) His creditors wanted payment in full or a lump sum to settle beyond what he could afford at the time. (Tr. 35-36, 49, 52.) Applicant planned to investigate the $81 collection debt on his record (SOR 1.b). Applicant reiterated that the $2,824 delinquency on his record (SOR 1.d) was his father's debt. (GE 2.)

Around February 2012, Applicant finished paying off the debt in SOR 1.c (Tr. 51.), and on March 5, 2012, the creditor extended him new credit on another account rated as current with a $1,173 balance as of September 13, 2012. (GE 12; Tr. 36, 42-43.) Applicant was making timely payments to another credit card lender on a current account with a $1,425 balance. Applicant still owed $12,419 on the vehicle lease (SOR 1.a). The disputed debts in SOR 1.b and 1.d were no longer on his credit report because a credit resolution firm had worked on his behalf to clear up his credit and delete these disputed accounts. (Tr. 52.) The account identified in SOR 1.e was being reported by the original creditor as sold or transferred. No collection information was listed for that debt. (GE 12.)

On September 24, 2012, DOHA asked Applicant to update the status of the debts identified in SOR 1.a-1.e, the $1,387 credit card debt (not in SOR), and a $4,620 charge-off debt that was apparently included on the interrogatories in error. To prove that the debt in SOR 1.c had been paid, Applicant submitted a letter dated March 5, 2012, showing that he had paid his balance with the creditor in full and had been prequalified for another credit card with a credit line of $1,200.[4] Applicant also provided an October 9, 2012 credit report confirming that a $4,118 balance had been paid after collection. Applicant admitted that he had made no payments on the debts in SOR 1.a, 1.e, and the undisputed $1,387 credit card debt, but a credit repair company was working on his behalf. (GE 2; 49.) Again, Applicant indicated that the $81 debt was a mistake on his credit while the debt in SOR 1.d belonged to his father. Applicant completed a personal financial statement showing monthly expenses of $600 and debt payments of $843 ($668 in a truck payment and $175 for a dirt bike) leaving him net disposable income of $1,157. (GE 2.) Applicant bought both the dirt bike and the truck in 2012. (Tr. 56.) He commute is around 65 miles a day, so he decided to purchase a new truck for its reliability. (Tr. 33, 57.)

As of October 9, 2012, the credit reporting agencies Equifax and Trans Union were both showing a past-due balance of $12,419 for the leased vehicle. His last payment was

---

After he started working for his current employer, he had a lengthy commute and put "upwards of 80,000 miles" on the vehicle. He thought that he could afford to purchase the vehicle at the end of the lease but his credit was not sufficient. When he turned in the truck, he was penalized for exceeding the mileage, and he owed around three payments tacked on the end of the lease. (Tr. 32-35.)

[4] As of July 2011, Applicant's credit report was showing two accounts with the creditor identified in SOR 1.c. The account in SOR 1.c, which was opened in June 2006, was in collection with a $2,695 balance. An account starting with 7416 was reported as opened in July 2006, current, paid, and closed at Applicant's request in September 2007. (GE 13.) As of September 2012, Equifax was reporting the account in SOR 1.c as charged off with a zero balance, the account starting with 7416 as closed or paid with a zero balance, and a third account with the creditor with a $1,173 balance. The account was reported to have been opened in March 2006 (GE 12.) That account appears on a consolidated credit report of October 2012 (GE 2) yet not on the July 2011 credit report. As of October 2012, Trans Union was reporting the debt in SOR 1.c as a $4,118 balance paid after collection. (GE 2.)

in 2010. (Tr. 48.) The motorbike debt in SOR 1.e was reported by Trans Union as in dispute and paid after charge off/collection, although Applicant admits that he had not made any payments on the debt since about 2009. (Tr. 54.) He believes the balance is about $7,867 based on his credit report. (GE 2; Tr. 54.) The credit card account on which he believes he owes $1,387 was reported only by Experian, and as having a zero balance after being charged off. Applicant had an unusually high discrepancy in his credit scores (Equifax 580, Trans Union 666, Experian 781) because of significant differences in the credit history reported by the three credit bureaus. Balances on open, current accounts totaled less than $100. (GE 2.) Applicant used his income tax refund of $3,000 to pay off the current credit card debt shown on his September 2012 credit report. (GE 12; Tr. 58.)

At his hearing on April 26, 2013, Applicant testified that he was "going to try [his] best to pay off the debts." Around February 2012, he filed for a limited liability company (LLC) to obtain a golf website similar to Expedia and invested more than $1,000 to develop the website in the hope of making money. (Tr. 46-47, 50-51.) In October 2012, he began classes toward obtaining a real estate license, which he obtained in March 2013. He plans to put the income from any real estate sales toward his old debt. (Tr. 46-47.) Applicant has been putting more of his salary into his 401(k) at work, which still leaves him with about $300 to $400 per month in discretionary income. (Tr. 57.) He and his girlfriend have joint savings and checking accounts with $6,000 and $1,300 on deposit, respectively. (Tr. 58.)

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 about 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 concerns about financial considerations are 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.

Applicant leased a truck in June 2007 at $361 per month for 39 months. When he returned the truck around September 2010, he owed around $12,419 that is still unpaid (SOR 1.a). He stopped paying for a dirt bike purchased in February 2007 for $8,000, and in May 2008, his account was placed for collection. The assignee holding the debt as of July 2011 was reporting an unpaid balance of $8,408 (SOR 1.e). Applicant allowed a credit card account with the lender identified in SOR 1.c to become seriously delinquent in the amount of $4,118. Applicant also stopped paying on another credit card debt with a balance of $1,387 that was not alleged in the SOR. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established.

Concerning the 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. The debts were not incurred so long ago, and as to the debts in SOR 1.a and 1.e, they are unresolved with no present repayment arrangements in place.

When interviewed by the OPM investigator in August 2011, Applicant attributed his debts to a decrease in income. Based on the limited information available, it appears that the primary financial impact came from commuting costs incurred by Applicant when he went to work for the defense contractor. 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 implicated, but it does not mitigate Applicant's recent questionable financial judgment. Applicant purchased two new vehicles in 2012, after he was on notice of the DOD's concerns about his unpaid delinquencies. Perhaps he should have bought a used truck, but it is reasonable for him to want reliable transportation. His purchase of a new dirt bike when he owes some $20,000 in delinquent debt is difficult to justify.

Mitigating conditions 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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," have some applicability because of the efforts Applicant has made to clean up his credit. For one year from March 2011 through February 2012, Applicant made $343 monthly payments to satisfy in full the credit card debt in SOR 1.c. He also retained the services of a credit repair company to assist him in removing unverified adverse credit information from his record. Applicant is not incurring any new delinquent debt. However, security concerns persist because of Applicant's ongoing disregard of the undisputed delinquencies in SOR 1.a and 1.e. Although Applicant testified about his intent to pay off these debts, one has to question his commitment in light of his purchase of the dirt bike, the expenditure of $1,000 on developing a golf website that may not prove lucrative, and the absence of any good-faith attempts on his part to address his approximate $20,000 in delinquent debt in the past year.

AG ¶ 20(e) applies if "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." Applicant has consistently maintained that the $2,824 collection debt in SOR 1.d is his father's liability. The debt appears only on Applicant's July 2011 credit report, and Applicant is listed as an authorized user on the account. As for the disputed debt in SOR 1.b, it appears only on one of the three credit reports of record. Applicant testified that the credit repair company had worked on his behalf to verify his debts, and it too no longer appears on his record. AG ¶ 20(e) applies to the debts alleged in SOR 1.b and 1.d. As for Applicant's challenge to the balance of SOR 1.e ($7,867 versus $8,408), it is unclear who is currently holding that debt and whether interest is continuing to accrue, but Applicant does not deny that he defaulted on the account.

Applicant is not required to satisfy all of his delinquent debts for him to be eligible for a security clearance. Yet, without any concrete plans in place to address his sizeable delinquencies in SOR 1.a and 1.e, his financial situation continues to cause security concerns.

Guideline J, Criminal Conduct

The security concerns about criminal conduct are set out in AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant committed misdemeanor criminal conduct when he was caught with a fake identification in January 2004 and when he drove recklessly in April 2004. Available criminal records show that the court initially filed the April 2004 charge, but that Applicant was sentenced to one year in jail (suspended) and to one year of probation in July 2004 after being declared a violator. In November 2008, Applicant committed a felony by materially altering the script for prescribed Vicodin in an attempt to obtain ten times the prescribed dosage. He was placed on one year of probation on an amended charge of presenting a false document to a public official, employee, or agent. Two disqualifying conditions, AG ¶ 31(a), "a single serious crime or multiple lesser offenses," and AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted," are firmly established. Applicant violated the terms under which the court filed the reckless driving charge. AG ¶ 31(e), "violation of parole or probation, or failure to complete a court-mandated rehabilitation program," does not squarely apply because he was not on probation at the time, although his failure to comply with a condition imposed by the court is behavior akin to that covered under AG ¶ 31(e).

Mitigating condition AG ¶ 32(a), "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstance that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," is difficult to apply despite the passage of nine years since the misdemeanor offenses and four years since the felony offense. Possessing a false ID and altering a prescription reflect a pattern of criminal behavior involving misrepresentation that has very negative implications for whether Applicant can be counted on to fulfill the trust obligations of a security clearance. Applicant committed similar misconduct when he falsely denied any criminal arrests and any felony charges on his July 2011 e-QIP. *See* Guideline E, *infra*. His deliberate concealment of the felony charge is itself a felony violation under 18 U.S.C. § 1001. While the e-QIP falsification cannot provide a separate basis for security disqualification under Guideline J because it was not alleged under that guideline, it may appropriately be considered for other purposes.[5] Less than two years have passed since he falsely certified to the accuracy of a security clearance application on which he

[5] The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Directive Section 6.3. *See, e.g.*, ISCR Case No. 02-07218 (App. Bd. Mar. 15, 2004); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). I have considered the falsification of his e-QIP for these purposes only with respect to assessing the Guideline J concerns.

responded "No" to the police record inquiries. This recent criminal behavior precludes favorable consideration of AG ¶ 32(a).

AG ¶ 32(d), "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement," is satisfied only in limited part. Applicant has worked for his defense contractor employer since February 2008 with no apparent concerns about the quality of his performance on the job. Yet, the falsifications of his prescription for a potent narcotic in November 2008, and of his criminal past on his security questionnaire in July 2011, are inconsistent with the good judgment reasonably demanded of a defense contractor employee. He may not have realized the serious legal ramifications, but he knew that it was wrong to alter his prescription. Furthermore, Applicant's reform is undermined by his lack of candor on his e-QIP about his felony offense. Applicant had a history of prior involvement with the law, including a brief detention in jail in 2004. It stretches credulity for him to claim that he did not realize that he had to report the felony offense. The criminal conduct concerns are not sufficiently mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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

The Government alleges, and Applicant denies, that he falsified his July 2011 in three aspects. He did not list his November 2008 felony offense of false report to obtain a controlled substance, his April 2004 reckless driving offense, or his January 2004 false ID offense in response to question 22.b, concerning any arrests within the last seven years. In addition, he denied ever having been charged with a felony offense when he had been arrested for a felony in November 2008. Finally, he responded "No" to whether he was currently over 90 days delinquent on any debts. When he answered the SOR, Applicant claimed that he misunderstood the police record inquiries. He thought he only had to report convictions, and he "thought not being convicted was not being charged." Concerning his negative response to the debt inquiry, Applicant indicated that he thought it pertained only to current, active accounts and not to those that had been charged off.

The Government has the burden of proving Applicant deliberately falsified or omitted relevant and material information from his e-QIP in light of Applicant's denials of any intent to falsify. Applicant's statements about his state of mind are relevant evidence that I must consider, although they 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.)

There must be an obligation to disclose the information allegedly omitted, and as to Applicant's January 2004 and April 2004 criminal offenses, that threshold was not met. The inquiry under 22.b covers the preceding seven years, and Applicant's 2004 offenses fall just outside the time frame. Neither the questions themselves nor the instructions expressly require the disclosure of offenses committed outside of the time frame but disposed of within the seven years. Furthermore, Applicant had been summoned to court rather than arrested in January 2004. Question 22.a covers summons, citations, and tickets, but that inquiry also has a seven-year scope.

Applicant was required to disclose his November 2008 felony offense on the e-QIP in response to both questions 22.b and 22.c. Applicant's claim that he thought he only to report charges that led to convictions lacks credibility, given the unambiguous language of the questions (22.b, "Have you been arrested by any police officer . . .?," and 22.c, "Have you EVER been charged with any felony offense?"), and the detailed instruction to "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." Neither question 22.b nor 22.c mentions convictions. Moreover, Applicant admitted at his hearing that he knew he had been arrested for a felony charge (Tr. 60, 65.), and that the police had taken his fingerprints and photo. (Tr. 68-69.) When pressed to explain why he had not then responded affirmatively to the arrest inquiry in 22.b, Applicant discrepantly denied knowing that he had been arrested. He claimed he went down to the court on his own and assumed that being handcuffed was "normal procedure because everyone had to be cuffed when they got out of the car." (Tr. 68.) Applicant's account of a good-faith misunderstanding is simply not credible with respect to omission of the November 2008 felony. In closing argument, Applicant stated:

> I didn't understand the question, in Guideline E, I didn't understand the questions clearly. And I mean, I'm ashamed of some things in my past and maybe they were overlooked to try to—I mean the six years or whatever, so I didn't have to—the false documentation or whatever.

This suggests a motive to conceal his criminal past. He just wanted to put it behind him. AG ¶ 16(a) applies to his deliberate omission of the felony charge:

> (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.

As for the alleged falsification of question 26.n, concerning any debts currently over 90 days delinquent, Applicant listed his undisputed debts (SOR 1.a, 1.c, and 1.e) on his e-QIP, but as unpaid collection balances in response to question 26.g only. While the

delinquencies should also have been listed under 26.n, Applicant obviously had no intent to conceal the debts from the DOD. I accept his explanation that he thought question 26.n pertained to only open, active accounts. AG ¶ 16(a) is not established with regard to the omission of alleged debt.

Applicant's decision to conceal his felony charge, for which he served one year of probation, has negative implications for his judgment and reliability. Mitigating condition AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," does not apply. Applicant verified all his negative responses to the police record section when initially questioned by the OPM investigator, and he admitted the 2008 charge of filing a false report to obtain a controlled substance only after he was confronted about the charge. His false verification of his negative responses to police record inquiries 22.b and 22.c could have been alleged as disqualifying in its own right under AG ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Applicant's intentional omission of a serious felony offense from a July 2011 questionnaire used to determine security clearance eligibility is too recent and too serious to qualify for mitigation under AG ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Concerns persist about Applicant's reform and his general credibility in light of his denials of the intentional nature of the e-QIP falsification. 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," is only minimally satisfied by the fact that the DOD now knows the details of Applicant's criminal record.

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).[6]

[6]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.

Applicant's immaturity partially explains his criminal conduct. He was only 19 when he was caught with a false ID and pulled over for reckless driving. He was 23 when he altered his prescription. His financial mismanagement includes buying a motorbike in February 2007 and supplies for the bike, which he could not afford, on credit. Applicant has demonstrated some responsibility by maintaining steady employment with a defense contractor, and by paying off a sizeable delinquent debt. He used his income tax refund to pay down current credit card debt. However, he also showed an unacceptable tendency to act in self-interest. He was not candid about his felony offense on his e-QIP, and he made personal enjoyment a priority over his obligation to the creditors in SOR 1.a and 1.e when he bought a new dirt bike in 2012 ("I mean I try to enjoy life the best I can. Maybe buying a new vehicle was not maybe the correct choice but, at the time, either dwell on my past and say I can't afford something and to just live like in misery because I go to work every day to pay off old debts, which I plan to do one day."). (Tr. 81.) Applicant's lack of urgency about resolving those delinquent debts, knowing that they are of concern to the DOD, raises doubts about whether he can be counted on to fulfill the obligations of a security clearance. Based on the record before me, I cannot conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Elizabeth M. Matchinski
Administrative Judge