DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 14-05005
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Anthony J. Kuhn, Esquire

05/31/2017

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations, personal conduct, and criminal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On an unspecified date, on or before December 22, 2003, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86).[1] On March 11, 2014, he submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[2] On December 3, 2014, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a set of Interrogatories. He responded to those Interrogatories on December 19, 2014.[3] On August 25, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility

[1] GE 2 (SF 86, undated).

[2] GE 1 (e-QIP, dated March 11, 2014).

[3] GE 3 (Applicant's Answers to Interrogatories, dated December 19, 2014).

(CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on September 1, 2015. On September 9, 2015, he responded to the SOR and requested a hearing before an administrative judge. It is unclear when Department Counsel was prepared to proceed as there is no memorandum in the case file. The case was assigned to me on March 28, 2016. A Notice of Hearing was issued on April 7, 2016. I convened the hearing as scheduled on April 26, 2016.

During the hearing, 14 Government exhibits (GE) 1 through GE 14, and 26 Applicant exhibits (AE) A through AE Z, were admitted into evidence without objection. Applicant and three witnesses testified. The transcript (Tr.) was received on May 5, 2016. The record closed on May 5, 2016.

Findings of Fact

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

Applicant is a 32-year-old employee of a defense contractor. He has been an airfield management operations coordinator with the company since April 2013. He enlisted in the U.S. Air Force in March 2004 and served on active duty until March 2011 when he received a general discharge under honorable conditions for drug rehabilitation failure. He was unemployed from March 2011 until March 2013. He is a 2003 high school graduate with additional college credits, but no degree. It is unclear if Applicant was ever granted a security clearance, because in his e-QIP Applicant denied having received one, but he subsequently indicated he was granted a security clearance in September 2004 while in the U.S. Air Force, and he still may have it. Applicant was married in May 2007 and divorced in June 2011. He was married again in June 2015. He has no children.

Military Record

During his period of military service, Applicant was awarded the Meritorious Unit Award, the Air Force Outstanding Unit Award (with one oak leaf cluster), the Air Force Good Conduct Medal, the National Defense Service Medal, the Iraq Campaign Medal (with one service star), the Global War on Terrorism Service Medal, the Air Force Longevity Service Ribbon, and the Air Force Training Ribbon. He was a Senior Airman (E-4) at the time of his discharge, having been involved in a military disciplinary action for Uniform Code of Military Justice (UCMJ) violations for absence without leave (AWOL), dereliction of duty, and disrespect in language. Applicant was deployed to Iraq from December 2006 until May 2007.

Financial Considerations[4]

There was nothing unusual about Applicant's finances until his March 2011 involuntary discharge from the U.S. Air Force and the lengthy period of unemployment that followed it. Without the funds necessary to satisfy his accounts, or at least maintain them in a current status, various accounts became delinquent. Accounts were placed for collection, and at least two of them were charged off. After he obtained a new position, Applicant contacted his known creditors to either work out settlements or arrange for repayment plans.

The SOR identified six purportedly delinquent debts that had been placed for collection, as reflected by his March 2014 credit report, his July 2015 credit report, or his December 2015 credit report. Those debts, totaling approximately $22,485, and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

SOR ¶ 1.a. refers to a university student loan account with a high credit of $2,355 and an initial unpaid and past-due balance of $2,640 that was placed for collection after Applicant withdrew from the course in 2011, within the two-week grace period established to receive a full refund on the tuition. Applicant was unaware that there was a delinquency, and when he learned of the account status, he was unable to make any payments. In August 2013 – two years before the SOR was issued – he set up a $62.50 bi-weekly payment. His July 2015 credit report reflected a remaining balance of $578. Applicant eventually paid $3,140.39, including $2,355.29 in principal and $785.10 as a collection charge. The account has been resolved.

SOR ¶ 1.b. refers to a medical account with a high credit of $6,575 and an unpaid balance of $6,495 that was placed for collection in 2012. He was unable to make any payments. In February 2014 – one and one-half years before the SOR was issued – he

[4] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 2; GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 25, 2014); GE 4 (Equifax Credit Report, dated July 16, 2015); GE 8 (Equifax Credit Report, dated December 28, 2015); Applicant's Answer to the SOR, dated September 9, 2015; GE 3, *supra* note 3. More recent information can be found in the exhibits furnished and individually identified.

set up a $40 bi-weekly payment. His July 2015 credit report reflected a remaining balance of $5,295. His December 2015 credit report reflected a remaining balance of $4,815. Applicant contended that he had never missed a payment under the plan, but he failed to submit any documentation such as cancelled checks, receipts, or account statements to support his contentions. Nevertheless, because the credit reports indicate a decreasing balance, I have concluded that Applicant is making his payments. Accordingly, the account is in the process of being resolved.

SOR ¶ 1.c. refers to a financial services credit card account with a $14,000 credit limit and unpaid balance of $10,346 that was placed for collection in 2011. His July 2015 and December 2015 credit reports reflected that $15,896 was charged off. He was unable to make any payments. In April 2013 – nearly two and one-half years before the SOR was issued – he set up a $200 monthly payment. Applicant continued making his payments until July 2015, by which time he had paid the collection agent $9,870. On July 16, 2015, the creditor acknowledged that the account had been settled for less than the full balance, leaving a zero balance. The account has been resolved.

SOR ¶ 1.d. refers to a credit union credit card account with a $9,900 credit limit and an unpaid and past-due balance of $5,112 that was placed for collection in 2012. His July 2015 credit report reflected that $9,817 was charged off. He was unable to make any payments. In April 2013 – nearly two and one-half years before the SOR was issued – he set up a $100 bi-monthly payment. Applicant continued making his payments until July 2015, when the creditor acknowledged that the account had been settled, leaving a zero balance. His December 2015 credit report reflected a zero balance. The account has been resolved.

SOR ¶ 1.e. refers to a medical account with a high credit, unpaid balance, and past-due balance of $596 that was placed for collection. He was unable to make any payments. In February 2014 – one and one-half years before the SOR was issued – he set up a $25 bi-monthly payment. Applicant continued making his payments for an unspecified period. On June 25, 2015, the collection agent acknowledged that the account had been satisfied, leaving a zero balance. The account has been resolved.

SOR ¶ 1.f. refers to a medical account with an unpaid balance of $558 that was placed for collection. He was unable to make any payments. In February 2014 – one and one-half years before the SOR was issued – he set up a $25 bi-monthly payment. Applicant continued making his payments until December 2014. On an unspecified date, the collection agent acknowledged that the account had been satisfied, leaving a zero balance. The account has been resolved.

At the time of the hearing, Applicant had not received any financial counseling. Applicant indicated that once he had obtained his new employment, after the lengthy period of unemployment, he had worked hard to begin paying off his creditors. He is on a budget. That budget reflects the net monthly combined income for Applicant and his wife is $5,771.40 (including a U.S. Department of Veterans Affairs (VA) disability benefit); monthly expenses of $3,743.04; and a monthly remainder of $1,628.36 available for saving or spending. Applicant's most recent credit reports, a TransUnion credit report,

dated April 15, 2016, and an Experian credit report, dated April 15, 2016, indicate that his remaining financial accounts are current. Applicant clearly resolved five of the six SOR-related debts, and the remaining debt is either in the process of being resolved, or has by now actually been resolved. It appears that Applicant's financial status has significantly improved, and that his financial problems are under control.

Personal Conduct[5]

Applicant was a substance abuser whose choice of substances was identified as non-prescription over-the-counter Robitussin or Coricidin cough and cold medicine. His descriptions regarding his relationship with cough and cold medicines are inconsistent. Although he claimed he started using Robitussin in May 2007 upon returning from his deployment in Iraq, there is documentary evidence that he actually started using cough medicine in 2004 as a 19-year-old enlisted man with mild abdominal pain and intermittent nausea, to relieve his anxiety and stress, and to facilitate his ability to sleep. It should be noted that "use" of a medication without substantially more information does not necessarily constitute "abuse" of that medication. In October 2004, he was admitted to a medical center emergency room where he was evaluated, tested, and treated. Applicant's urinalysis registered a positive for phencyclidine (PCP) which the laboratory technician opined was the possible result of dextromethorphan or dicyclomine. Dextromethorphan is the cough suppressant in Robitussin. The discharge diagnosis by the physician included the following language: "at this time I believe it is a false positive due to the OTC cold medications he was taking."

When Applicant returned from his deployment, he started dealing with Post-Traumatic Stress Disorder (PTSD).[6] Once again, he started to self-medicate, returning to Robitussin. In 2010, Applicant self-identified his cough and cold medicine abuse to his commander who recommended Applicant for a 28-day residential substance abuse treatment. He successfully completed that treatment on October 18, 2010. There is no

[5] General source information pertaining to the substances abused, Applicant's involvement in criminal conduct, personal conduct, and questions pertaining to his candor and truthfulness, discussed below can be found in the following exhibits: GE 3, *supra* note 3; GE 6 (Docket Record/Driver's History, dated March 29, 2014); GE 7 Arrest Report, dated May 23, 2012); GE 11 (Case Summary, dated April 12, 2016); GE 12 (Arrest Report, dated April 19, 2016); GE 13 (Arrest Report, dated April 19, 2016); GE 14 (Case Summary, dated September 8, 2015); Applicant's Answer to the SOR, *supra* note 4.

[6] According to the Mayo Clinic,

> PTSD is a mental health condition that's triggered by a terrifying event — either experiencing it or witnessing it. Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. Most people who go through traumatic events may have temporary difficulty adjusting and coping, but with time and good self-care, they usually get better. If the symptoms get worse, last for months or even years, and interfere with your day-to-day functioning, you may have PTSD. Getting effective treatment after PTSD symptoms develop can be critical to reduce symptoms and improve function.

http://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/home/ovc-20308548

evidence of any diagnoses made, and there is no evidence that the rehabilitation facility found Applicant to be dependent on PCP, as alleged in SOR ¶ 2.b.

Upon his return to duty after the rehabilitation, Applicant was confronted with a variety of stressors: his commander advised him that he would be processed for discharge from active duty;[7] his supervisors and peers treated him differently; his PTSD was still undiagnosed; and he was in the process of getting divorced. The combined stressors led to additional anxiety, and with no outlets available to him, Applicant slipped and returned to Robitussin to deal with his issues. Misconduct followed. Applicant called the suicide hot-line in 2011. Applicant received non-judicial punishment under the UCMJ, and in March 2011, he was discharged from military service. While there is evidence that Applicant slipped after completing his substance abuse treatment, there is no evidence that Applicant failed the Air Force Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program, as alleged in SOR ¶ 2.d.

In May 2012, things started to unravel. On May 11, 2012, after rolling his vehicle, Applicant took his girlfriend's car to a local drug store and stole Coricidin. Upon returning to the residence, he was questioned by the police and charged with (1) receiving stolen property (a misdemeanor); (2) reckless operation (a violation); and (3) conduct after accident (a misdemeanor). He was convicted of the first two charges, and the third charge was *nolle prossed*. He was fined $372 (suspended). The Arrest Record and the Court Record do not support the allegation in SOR ¶ 2.e. that Applicant was placed on probation for six months.

On May 22, 2012, Applicant's girlfriend (and as of June 2015, his wife) reported to the police that, after a dispute with her, Applicant, while emotionally unstable and having a panic attack, had attempted to kill himself by wrapping a seatbelt around his neck. She stopped the car and cut the seatbelt. Applicant walked away. A police officer attempted to speak with him, but Applicant kept walking away because he did not realize the individual was a police officer. When the police officer grabbed him, Applicant resisted. Another police officer arrived and a struggle ensued. Applicant was tasered. Applicant's girlfriend complied with the police officer's request that she sign an Involuntary Emergency Admission (IEA) petition, and Applicant was taken to the hospital for a suicide watch evaluation and medical treatment. The following morning, Applicant agreed to voluntarily seek mental health treatment at the VA hospital. Applicant was issued a hand summons for resisting arrest and given a court date. The charge was placed on file without a finding providing Applicant remained on good behavior for one year, ending on October 3, 2013. The judge informed Applicant that as long as there were no future incidents, and he maintained good behavior, the incident would be removed from his record as though the incident never existed. There is no evidence of any further misconduct.

Applicant's family has not seen any evidence of Applicant using the cold and cough medicine since May 2012. However, Applicant acknowledged that he last abused non-

[7] U.S. Air Force policy at that time essentially mandated discharge for a member found to have abused drugs unless the member met seven specific criteria. *See* Air Force Instruction 36-3208, *Administrative Separation of Airmen* (April 2, 2010), ¶ 5.55.2.

prescription over-the-counter cold and cough medicine in September 2012. The period between May and September 2012 involved periodic use, but there is no evidence that the simple "use" constituted "abuse." He intends to remain drug free. During 2011 – 2013, Applicant was seen on various occasions at several different VA hospitals, and he was seen for a variety of issues. PTSD was initially merely identified by VA personnel in December 2011, revisited in May 2012, and again mentioned in May 2013, but until that last date, he was not treated for PTSD, largely because there were insufficient resources or facilities to do so. In May 2013, Applicant's PTSD was deemed to be chronic. Actual treatment for the condition was essentially commenced at that point. Effective January 1, 2014, Applicant was awarded a 50 percent service-connected disability evaluation, an increase from the original 10 percent. He tried attending Alcoholics Anonymous (AA) and Narcotics Anonymous (NA), but nobody could relate to him because his substance was neither alcohol nor narcotics, but rather non-prescription over-the-counter cold and cough medicine. He sees two physicians at the VA hospital to assist him, and sees a psychiatrist every few months. He has been prescribed Effexor for anxiety. In April 2016, feeling increased anxiety over his security clearance issues, Applicant sought guidance from his VA treating psychologist. After receiving ten minutes of support and cognitive therapy, he reported relief and indicated he would continue to use his developed stress management techniques.

On May 11, 2014, when Applicant completed his e-QIP, a question in Section 22 – Police Record asked if, in the past seven years, he had been arrested by any police officer, sheriff, marshal or any other type of law enforcement official. Applicant answered "no" to that question. He certified that the response was "true, complete, and correct" to the best of his knowledge and belief, but the response to that question was, in fact, false for Applicant had failed to report his arrest of May 22, 2012. He subsequently acknowledged that the incident occurred, but he did not think the incident had to be reported because (a) he did not think he was arrested, but rather detained for his own safety, and (b) the judge told him the records would be purged after one year of good behavior.

On April 2, 2014, when an investigator from the U.S. Office of Personnel Management (OPM) interviewed Applicant, he acknowledged the incident that occurred on May 22, 2012, but his memory of the events differed substantially from what was reported in the police record. Applicant acknowledged several parts of the incident: the dispute with his girlfriend; being yelled at, and tasered; and being questioned. He disputed that he initially knew the individual was a police officer because the individual was in plain clothes; that he was arrested; that he was taken to the police department; and that he had been charged. Applicant subsequently denied intending to provide false information, and he stated that he volunteered all the information based upon what he could remember. It is unclear if the arresting police officer was in plain clothes, although his girlfriend only saw uniformed officers. It is clear that Applicant was not taken to the police station; he was taken to the hospital in an emotionally disturbed condition, necessitating a suicide watch. Likewise, it is clear that Applicant's condition at the time of the incident might make it difficult for him to understand or recall the actual facts of the incident. Furthermore, Applicant repeatedly stated that he did not think the incident had to be

reported because the judge told him the records would be purged after one year of good behavior.

In his December 19, 2014 response to a DOHA Interrogatory regarding his last misuse of a non-prescription over-the-counter cold and cough medicine, Applicant stated that he had stopped using the medicine in approximately August 2011, and that he routinely states the "clean date" is September 1, 2011. That date was a mistake. Applicant denied deliberately providing false information. Although he acknowledged slipping in 2011, he now contends that he has been sober since September 2012 – nearly three years before the SOR was issued, and over four and one-half years ago. The SOR (¶ 2.i.) alleged that Applicant deliberately falsified material facts in his answer to the DOHA Interrogatory by stating his last abuse of non-prescription over-the-counter cold and cough medicine occurred on January 9, 2011. That allegation is unsubstantiated. The information regarding that particular date was furnished by Applicant when he was correcting the information that appeared in the OPM version of Applicant's Personal Subject Interview. It was not an answer to the interrogatory.

The downward spiral of Applicant's life has stopped, and Applicant has turned his life around. The tough love imposed upon him by his family assisted him in overcoming his health issues. The various stress factors in his life have ceased or been successfully modified to a point where they are manageable. Physicians and a psychiatrist are routinely treating his PTSD; his anxiety is managed by prescribed medication; he uses various support mechanisms; he is highly thought of by his supervisors and colleagues; he is out of debt; he has rebuilt family relationships; he has established new relationships with a new wife; and he realizes that he must be drug free. In hindsight, Applicant acknowledges that questions could have been answered differently.

Work Performance and Character References

The airfield manager (Applicant's direct supervisor) and the assistant airfield manager have both known Applicant since he began working for his employer. Applicant's position involves many responsibilities, and he has handled them effortlessly. His hard work and determination are apparent, and because Applicant is an important, effective, and integral part of the team, and he has proven to be dependable, he has been tasked with additional responsibilities. Applicant multitasks effectively and is able to handle a high-volume workload. Applicant is honest and trustworthy. Applicant's most recent performance review rated him 4.55 out of a possible 5.0. Co-workers generally characterize Applicant with terms such as dependable, trustworthy, reliable, honest, hardworking, truthful, conscientious, and courteous. Applicant's immediate and extended family members are universal in their support for him, and they have characterized him as "scrupulously truthful."

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing,

"no one has a 'right' to a security clearance."[8] As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[9]

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[10] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[11]

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the

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

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

[10] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[12]

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."[13] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

> Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), *a "*history of not meeting financial obligations*"* may raise security concerns. Applicant was unemployed from March 2011 until March 2013, and during that period, a number of accounts were placed for collection or charged-off. The SOR identified six purportedly delinquent debts. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (*e.g.*, loss of employment,

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

[13] *See* Exec. Or. 10865 § 7.

a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*"* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[14]

AG ¶¶ 20(a), 20(c) and 20(d) apply. AG ¶ 20(b) partially applies. Some of Applicant's financial problems were caused by events that were largely beyond his control. He was discharged from the U.S. Air Force in March 2011 (for actions over which he did have some control), and he was unable to obtain new employment until March 2013. In addition, his PTSD went untreated and he generally self-medicated by abusing non-prescription over-the-counter cold and cough medicine. Because of the lack of funds, his accounts became delinquent, and at least two of them were charged off. However, upon obtaining new employment, and well before the SOR was issued, Applicant contacted his known creditors to either work out settlements or arrange for repayment plans. The SOR identified six purportedly delinquent debts that had been placed for collection, totaling approximately $22,485. Applicant clearly resolved five of the six SOR-related debts well before the SOR was issued, and the remaining debt is either in the process of being resolved, or has by now actually been resolved. There are no other delinquent accounts. Applicant maintains a budget, and has a monthly remainder of $1,628.36 available for saving or spending. Applicant's financial status has significantly improved, and that his financial problems are under control. Applicant's actions, under the circumstances, no longer cast doubt on his current reliability, trustworthiness, and good judgment.[15]

Guideline E, Personal Conduct

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

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

[14] The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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

> about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

> 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.

In addition, "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative" may raise security concerns under AG ¶ 16(b).

It is also potentially disqualifying under AG ¶ 16(c), if there is:

> 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.

Also, under AG ¶ 16(e), security concerns may be raised where there is

> personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

As noted above, on May 11, 2014, when Applicant completed his e-QIP, he responded to a question pertaining to his police record. The question in Section 22 – Police Record asked if, in the last seven years, he had been arrested by any police officer, sheriff, marshal or any other type of law enforcement official. Applicant answered "no" to the question. He certified that the response was "true, complete, and correct" to the best of his knowledge and belief, but the response to that question was, in fact, false. Likewise, when an OPM investigator interviewed Applicant on April 2, 2014, he denied he had been arrested.

Applicant's responses provide sufficient evidence to examine if his submission on the e-QIP and his OPM response were deliberate falsifications, as alleged in the SOR, or merely the result of misunderstanding on his part. Applicant subsequently denied

intending to falsify his responses and explained that he had simply answered the questions at that time with the mindset that he had not been arrested, essentially because the judge had informed him that the records of the incident would be purged after one year of good behavior as though the incident never existed. Upon reflection, Applicant now concedes that he made a mistake in his thinking, and he could have responded differently.

I have considered Applicant's background, professional career, his mental health issues, and his reputation in analyzing his actions. Applicant is an intelligent, talented, and experienced individual, and his explanation, under the circumstances, should be afforded some weight. His confusion and resultant actions are considered aberrant behavior out of character for him. His position, while normally unacceptable, is reasonable for a layperson not schooled in the law. Applicant relied on an authority figure – a judge – in deciding how to respond to the questions pertaining to the incident. As it pertains to the alleged deliberate falsifications, AG ¶¶ 16(a) and 16(b) have not been established. As it pertains to the questionable personal conduct (the criminal actions and Applicant's abuse of non-prescription over-the-counter cough and cold medicine), AG ¶¶ 16(c) and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(b) may apply if

> 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,

If "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," AG ¶ 17(c) may apply. Also, AG ¶ 17(d) may apply if

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

Similarly, AG ¶ 17(e) may apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

AG ¶¶ 17(d) and 17(e) apply. AG ¶¶ 17(b) and 17(c) partially apply. As noted above, Applicant's e-QIP entry and his OPM interview response – essentially concealments or omissions of the true facts – regarding his May 2012 arrest were caused or significantly contributed to by improper or inadequate advice of a judge. That judge, though a position of authority, especially to a layperson, was not an authorized person or

legal counsel with the authority to advise or instruct Applicant concerning the security clearance process. Those incidents occurred between two and one-half and three years ago. Applicant's other questionable conduct, including his abuse of non-prescription over-the-counter cough and cold medicine to self-medicate himself during periods when the U.S. Air Force medical specialists and the VA medical specialists failed to diagnose and treat his PTSD; his General Discharge under Honorable Conditions; and his substance-related arrests, all occurred between five and ten years ago. Now that Applicant's PTSD has been recognized and treated; he has undergone and continues to receive counseling; his anxiety is managed by prescribed medication; he has developed stress management techniques; he has a support system; he is happily married; he is highly thought of by his supervisors and colleagues; and he has taken positive steps to reduce or eliminate his vulnerability to exploitation, manipulation, or duress, such conduct is unlikely to recur. A person should not be held forever accountable for misconduct from the past, especially if there is a clear indication of subsequent reform, remorse, or rehabilitation. In this instance, I conclude that Applicant's actions no longer cast doubt on his reliability, trustworthiness, or good judgment.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[16]

There is some evidence against mitigating Applicant's conduct. He self-medicated by using and abusing non-prescription over-the-counter cough and cold medicine over a substantial period; he got into trouble with the U.S. Air Force and civilian police authorities; he stole some non-prescription over-the-counter cough and cold medicine; he resisted arrest; and he was not fully candid when reporting or responding to inquiries regarding

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

his police record. In addition, his memory regarding his last use of the non-prescription over-the-counter cough and cold medicine was not accurate.

The mitigating evidence under the whole-person concept is more substantial. Applicant's concealments or omissions of the true facts regarding his May 2012 arrest were caused, or significantly contributed to, by improper or inadequate advice of a judge. Applicant denied intending to falsify his responses and explained that he had simply answered the questions at that time with the wrong mindset. Upon reflection, Applicant now concedes that he made a mistake in his thinking, and he could have answered the questions differently. Based on his reputation, Applicant's actions appear to be aberrant behavior. Moreover, those incidents occurred between two and one-half and three years ago. Applicant's other questionable conduct, including his abuse of non-prescription over-the-counter cough and cold medicine to self-medicate himself during periods when the U.S. Air Force medical specialists and the VA medical specialists failed to diagnose and treat his PTSD; his General Discharge under Honorable Conditions; and his substance-related arrests, all occurred between five and ten years ago. There is substantial evidence of successful rehabilitation.

Now that Applicant's PTSD has been recognized and treated; he has undergone and continues to receive counseling; his anxiety is managed by prescribed medication; he has developed stress management techniques; he has a support system; he is happily married; he is highly thought of by his supervisors and colleagues; and he has taken positive steps to reduce or eliminate his vulnerability to exploitation, manipulation, or duress, such conduct is unlikely to recur. A person should not be held forever accountable for misconduct from the past, especially if there is a clear indication of subsequent reform, remorse, or rehabilitation. In this instance, I conclude that Applicant's actions no longer cast doubt on his reliability, trustworthiness, or good judgment. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated and overcome the Government's case.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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

> a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. [17]

Applicant has clearly demonstrated a "meaningful track record" of debt reduction and elimination efforts. After his lengthy period of unemployment, Applicant approached his creditors and started resolving his debts. He did so well before the SOR was issued. Five of the six debts were clearly resolved, and the sixth debt was in the process of being resolved or it has already been resolved. Applicant maintains a budget, and has a monthly remainder of $1,628.36 available for saving or spending. It appears that Applicant's financial status has significantly improved, and that his financial problems are under control.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.f.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. through 2.i.:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge

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