



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-05975

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

05/16/2017

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Public Trust Position (e-QIP), on September 24, 2014. On May 25, 2016, the Department of Defense Consolidated Adjudications Facility (DoDCAF) issued a Statement of Reasons (SOR) for Applicant detailing the trustworthiness concerns under Guidelines J (Criminal Conduct), F (Financial Considerations), G (Alcohol Consumption), and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on June 28, 2016, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on August 31, 2016, and I received the case assignment on September 9, 2016.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 18, 2016, and I convened the hearing as scheduled on December 19,

2016. The government offered Exhibits (Ex.) 1 through 13, which were received without objection. Applicant testified. He did not submit any exhibits at the hearing. I granted Applicant's request to keep the record open until January 31, 2017, to submit additional matters. On January 31, 2017, he submitted Exhibit A to J, without objection. However, he stated he would submit a document I marked as Exhibit I after January 31, pertaining to one debt, but did not do so. The record closed on January 31, 2017.

DOHA received the transcript of the hearing (Tr.) on December 29, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by changing the case designation from an Industrial Security Clearance Review (ISCR) to a trustworthiness determination (ADP). Applicant had no objection, so I granted the motion. (Tr. 8, 9)

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.a to 1.c, 1.e to 1.m, 1.p, and 1.q. He denied Subparagraphs 1.d, 1.n, and 1.o. He admitted Subparagraphs 2.a, 2.b, and 2.h. He denied 2.c-2.g, 2.i, and 2.j. He admitted Paragraph 3. He denied Subparagraph 4.a. He neither admitted nor denied Subparagraph 4.b, so is it considered a denial. Applicant also provided additional information to support his request for eligibility for a public trust position.

Applicant is 49 years old. He has three children and has been married three times. He divorced his first wife in 1997, in between was married and divorced from his second wife (neither in his e-QIP or his interview did he provide the dates of his second marriage), and then was married to his third wife in 2003 and separated from her in July 2012. They do not speak often. Applicant pays the mortgage on the house in which his wife and child live, and gives her money for other expenses. He lives in a room in a farm house and does odd jobs for the farm owner. Applicant is about two credit hours short of obtaining a bachelor's degree. He served in the U.S. Army from 1985 to 2007 and is 90% disabled. He is diagnosed with post-traumatic stress syndrome (PTSD). He was deployed overseas several times. For his PTSD he took medications and counseling. He feels better now and is not such an angry person. He retired as an E-7. He receives a military retirement pension. He seeks a trustworthiness determination so he can be employed by a government contractor in a call center for veteran's health benefits. He is not currently employed and only obtains jobs from a temporary work agency. He has his Army retirement pay upon which to live. (Tr. 25-27, 31, 46-49, 54, 55, 90; Exhibits 1, 2 B-D, F, J)

Applicant has 17 criminal conduct allegations dated between September 1988 and August 2012. He has not had any incidents since 2012. The 17 occurrences

involved assault and battery, public intoxication, operating a motor vehicle while intoxicated, driving while revoked or suspended, various military offenses, and falsification. Specifically, he admits 14 allegations in Paragraph 1 that:

1.a: He was charged in September 1988 with Assault 4th degree. He had an argument with his first wife, who would call the local police anytime they argued. There was no conviction following this arrest;

1.b: His first wife got a protective order against him in January 1991. Applicant does not remember this incident. He knows he was deployed overseas in 1991;

1.c: In October 1993 he was charged with obstructing the police. Applicant admits he was drunk and argued with the local police officer;

1.e: He was charged with being a pedestrian under the influence of alcohol in October 1997. That incident resulted from a domestic argument and the responding policeman asked Applicant to step out to the sidewalk to talk, then arrested him for this offense;

1.f: December 1997 operating a motor vehicle under the influence of alcohol, eluding a police officer, and operating a motor vehicle without a license. A warrant was issued in 1998 for him when he failed to appear on those charges. It was rescinded in 2009 because of the passage of time. He hired a lawyer and the charges were dropped. He does not know about a warrant being issued;

1.g: November 1998 driving charges of not having a license, speeding, and improper state registration. He pled guilty to not having his driver's license in his possession;

1.h and 1.i: In April 2000 he was charged with assault resulting in minor injury. That same month he was charged with driving without a valid license and convicted of not having his license in his possession;

1.j: In August 2000 he admits he was charged with driving with a suspended license and again convicted of not having his driver's license in his possession;

1.k: July 2007 Applicant was court-martialed by the Army for destruction of government property, making false statements, maltreatment, two counts of dereliction of duty, and disrespect. He was convicted of the disrespect charge and specification. This court-martial resulted from actions while deployed and were based on false accusations by his platoon leader who later committed suicide. He retired from the Army after the court-martial and with an honorable discharge;

1.l: In July 2008, he was charged with disorderly conduct, but it was dismissed if he did not have any more violations for one year. He was charged as a civilian. He was angry, not drunk, in this incident;

1.m: In July 2008, he was arrested and charged with public intoxication;

1.p: In April 2012, he was charged with public intoxication in a public place;

1.q: In August 2012, he was arrested and charged with 4th degree assault, domestic violence, and terroristic threatening. He was convicted of harassment and sentenced in two years of probation. (Tr. 32-64; Exhibits 1-8)

Applicant denies the remaining three allegations of criminal conduct in the SOR. He denies he was charged on two separate occasions in June 1995 with assault consummated by a battery under Article 128 of the Uniform Code of Military Justice (UCMJ). These two incidents occurred while he was in the Army and involved arguments with his wife. He received a reprimand from his commander for conduct unbecoming of a non-commissioned officer (Subparagraph 1.d). He also denies that an emergency domestic violence protective order was obtained by his wife against him in September 2011 (Subparagraph 1.n). Applicant contends that such an order is automatically issued by the local county court in domestic dispute matters. That same month and year, he denies he falsified material facts during an interview with a government investigator when he denied any violence or abuse against his wife during his first marriage when in fact there were at least two occurrences during 1995 (Subparagraph 1.o). Applicant thought these marital disputes were not violence or abuse, but only arguments between him and his wife. He remembers the investigator's questions as whether there was any problems in their marriage. He admitted they had problems and got divorced. (Tr. 35-37, 50-52; Exhibits 2-8)

Applicant has a history of financial difficulties, as shown by 10 allegations in the SOR. Two allegations pertain to bankruptcies he filed and eight are delinquent debt totaling \$26,497. He admits three allegations and denies seven of them. The delinquent accounts were opened between 2004 and 2014. They became delinquent in 2013 according to the latest credit report exhibit:

2.a: He admits he filed Chapter 13 in February 1989 and it was dismissed in January 1990. He filed it after his first divorce;

2.b: Applicant filed Chapter 13 bankruptcy again in September 1997 and was discharged in October 2002. He filed it after his second divorce; and

2.h: He owes a military credit card \$6,139 with a past due amount of \$440. He testified he is paying \$200 monthly on that account and

started doing so two months earlier. He did not submit any documents to support his testimony. The debt is being paid from his retirement check.
(Tr. 65-86, Exhibits 9-13, A, E, G, H)

Applicant testified his wife paid the monthly bills and after they separated in July 2012 he did not speak to her for about two years. She took out credit cards about which he knew nothing about. He does not have credit cards for himself. His wife submitted a statement in which his wife explains she stopped paying credit card and other bills so she could pay for essential items. Therefore, the delinquent debts increased. Her letter does not state any plan on how or when the debts will be resolved and removed from Applicant's credit record. The allegations he denies are:

2.c: He has a judgment against him for \$3,338 from a credit card issuer. He does not know anything about this judgment and it is not paid;

2.d, and 2.e: Applicant owes the same creditor, a collection agency, \$506 and \$3,225. He does not know what these debts are for and they are unpaid;

2.f and 2.g: Applicant owes another creditor two debts, one for \$4,206 and the other for \$1,988. He also does not know about the first debt and it is unpaid. The second debt he testified he is paying at \$130 monthly and started doing so in October 2016. He submitted an exhibit showing he is making monthly payments. This debt is being resolved;

2.i: Applicant owes a bank \$2,609 on a credit card. He stated he does not know what that debt is and it is unpaid;

2.j: Applicant owes a state university \$4,486. Applicant claims the Department of Veterans Affairs (VA) is supposed to pay that tuition bill and asserts it is paid and will get proof. Applicant submitted a letter from the VA stating the debt was paid by the VA and it was an error to place it on Applicant's credit report. This debt is resolved. The unpaid debts remain on Applicant's credit report. He has resolved three of the delinquent debts totaling \$12,613, leaving a balance of \$13,884 unresolved.
(Tr. 65-86; Exhibits 9-13, A, E, G, H)

Applicant has a history of excessive alcohol consumption, as alleged in Paragraph 3 of the SOR, as shown by an arrest and conviction in October 1997 for being a pedestrian under the influence (referring to Subparagraph 1.e), a December 1997 operating a car while under alcohol influence, eluding a police officer, and operating a car without a license, and a warrant for his arrest was issued in 1998 and recalled in 2009 (Subparagraph 1.f), a July 2008 arrest for public intoxication (Subparagraph 1.m), and a charge in April 2012 of public intoxication (Subparagraph 1.p). Applicant admitted he started drinking alcohol in high school. He continued to drink in the Army and used it to relieve his stress. After he retired from the Army and had a few civilian incidents of being drunk and involved with the police, Applicant entered a

local institute in an intensive program, followed by continuing counseling. He also obtained counseling for his PTSD. Applicant's response to the investigative reports in the interrogatories states he "passed an anger management evaluation and Drug/Alcohol evaluation that is on file with the --- Institute." He also admitted he abused alcohol at some points in his life. He now "recognizes irresponsible behaviors and the importance of not self-medicating with alcohol." Applicant continues to consume alcohol on the weekend or holidays, usually a 12 pack of beer. He admits his alcohol consumption contributed to his divorces. He also had alcohol education in the Army but never had a diagnosis of alcoholism or abuse from any program. He has not had any alcohol related incidents since 2012. (Tr. 54-64; Exhibits 2 (Report 1, pages 4, 6 and his response to the investigative reports) 3-8)

Under the Personal Conduct guideline, two sets of allegations are made against Applicant. First, Applicant denies he deliberately falsified his e-QIP signed on September 24, 2014, in Section 26 that asked about any judgments against him or other delinquent debts. He answered "No" pertaining to the debts in Subparagraphs 2.c to 2.j that he denied as part of his Answer. Regarding his delinquent debts, he contends he did not know about the debts when he completed the e-QIP on September 24, 2014. He thought his credit record was perfect. He claims his wife opened charge accounts and let them become delinquent without his knowledge. He had to be confronted with them by the government investigators because he could not remember the debts his wife opened after they separated. (Tr. 86-107; Exhibits 1, 2; pages 8 to 11, Applicant's response to investigation)

The second Personal Conduct allegation pertains to his accumulation of criminal incidents alleged in SOR Paragraphs 1, dating from 1988 to 2012. (Tr. 32-86; Exhibits 1-2)

Applicant submitted his retirement DD 214 Form; a letter from the charitable organization he helps by repairing equipment and the building it uses, driving their clients; a letter from his landlord about the room Applicant rents and the work he does around their farm and at their trailer court they own; and his college transcripts. He also submitted a document from a state organization showing he was inducted into that charitable organization in 2015. (Exhibits B, C, D, F, J)

Policies

Positions designated as ADP I/II/III are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are

afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Administrative Guidelines (AG) ¶ 2 (a). 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 [sensitive] 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

AG ¶ 30 expresses the trustworthiness concern pertaining to criminal conduct:

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.

AG ¶ 31 describes five conditions that could raise a trustworthiness concern and may be disqualifying. Two apply:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant committed a variety of criminal offenses between 1988 and 2012. They total 17 incidents. The offenses range from assault and battery, public intoxication, obstruction of a police officer, driving while intoxicated, driving without a proper license, and various domestic disputes resulting in the local police being called when he and his wife were engaged in marital disputes. AG ¶ 30 (a) and (c) are established.

AG ¶ 32 provides conditions that could mitigate trustworthiness concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; and
- (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.

Applicant's criminal offenses occurred between 1988 and 2012. He served in the U.S. Army from 1998 to 2007. The last incident occurred in 2012. Most of the criminal acts occurred as a result of marital disputes with each of his three wives. His consumption of alcohol aggravated some of the offenses or was the determining element in other offenses, such as public intoxication or driving while under the influence of alcohol. Applicant attended an intensive program with following counseling after the last 2012 incident upon the recommendation of the local court that adjudicated the last charge. Applicant contends he changed his behavior and now lives simply,

trying to help other people, particularly veterans. He attends college and is trying to obtain a bachelor's degree.

It has been four years since the last incident. Applicant's incidents also occurred when he and one of his wives were arguing and he was drinking. He has now divorced two wives and been separated for four years from his third wife. The stressful situations of being in the Army, being deployed, and dealing with his wives' demands and situations, were a unique combination of circumstances that are in Applicant's past and not likely to recur based on his counseling and these past four years of lawful behavior. AG ¶ 32 (a) is established.

Based on the testimony and the list of offenses, most of his actions resulted from domestic disputes with his current wife at the time of the incident. The circumstances at the time created pressure on Applicant and those stressors are no longer present in his life. He is about to divorce his third wife and has not lived with her for four years. They speak only rarely. AG ¶ 32 (b) is established.

Applicant has improved his behavior after the last 2012 incident. His counseling and other treatments for alcohol, PTSD, and anger management have resulted in a calmer person. There has not been any criminal activity by Applicant for four years, he exhibited remorse at the hearing by stating he was a changed person, he has attended college to obtain a degree, and he helps veterans and other less fortunate people at a local charity. AG ¶ 32 (d) is established.

Guideline F, Financial Considerations

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

AG ¶ 18 expresses the trustworthiness concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes nine conditions that could raise a trustworthiness concern and may be disqualifying. Two conditions may apply:

(a) inability or unwillingness to satisfy debts; and

(b) a history of not meeting financial obligations.

Applicant has eight delinquent debts and two Chapter 13 bankruptcies on his financial record. The bankruptcies occurred after his first two divorces. The eight delinquent debts arose since the last bankruptcy was discharged in 2002. Applicant has not paid or resolved the listed debts. AG ¶ 19 (a) and (b) are established. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes six examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

AG ¶ 20 provides conditions that could mitigate trustworthiness concerns:

(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;

(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;

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's two bankruptcy filings occurring in February 1989 and September 1997. These events occurred more than 19 years ago. They were concluded in 1990 and 2002, respectively. They occurred after his first two divorces. AG ¶ 20 (a) is established pertaining to these two events.

The delinquent accounts were opened between 2004 and 2014, but became delinquent in 2016. Applicant's wife's letter states she did not pay them when the bills came to the home address at which Applicant no longer lives. She admits she was in control of the charge accounts. Applicant had not communicated with her for at least two years. Therefore, the delinquencies are the fault of the wife's actions, not primarily Applicant. However, they appear on Applicant's credit record and neither he nor his wife stated a plan to resolve them in an orderly program. These are unique circumstances but they cast doubt on his trustworthiness because he has not resolved the debts in the last two or four years since they were incurred. AG ¶ 20 (a) is not established.

Applicant had no control over the delinquent accounts because his wife opened some of them after they separated in 2012. She received the bills from the creditors and did not pay them. Their divorce caused this problem. However, Applicant has not acted responsibly regarding the debts, allowing them to languish unpaid or resolved for the past several years. AG ¶ 20 (b) is not established.

Applicant is paying three of the delinquent accounts. These debts are being resolved and are under control. He has made a good-faith effort to pay these debts. AG ¶ 20 (c) and (d) are partially established.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the trustworthiness concern pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes seven conditions that could raise a trustworthiness concern and may be disqualifying. Two conditions may apply:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Applicant is alleged to have four alcohol-related incidents between October 1997 and April 2012. They are the pedestrian under the influence incident of October 1997, the DUI arrest of December 1997, the public intoxication charge in July 2008, and the public intoxication charge in April 2012. These are all incidents away from his work location while in the Army until 2007 and as a civilian from then until 2012. His actions demonstrate habitual or binge alcohol consumption and show a pattern of drinking that resulted in public incidents causing law enforcement to intervene. AG ¶ 22 (a) and (c) are established.

AG ¶ 23 provides four conditions that could mitigate trustworthiness concerns. Two may apply:

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

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant's alcohol incidents are almost 20 years to 4 years old. After his counseling sessions in 2012 and following he continues to drink but only on weekends or holidays, and is responsible in his use of alcohol. There have not been any more incidents since April 2012. The circumstances were not unusual, but resulted from his arguments with one of his wives at the time. Since his separation from his third wife he has not had any further incidents. AG ¶ 23 (a) and (b) are established.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness 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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a trustworthiness concern and may be disqualifying. Four conditions may apply:

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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant has two major areas of personal conduct trustworthiness concerns. The first is his failure to disclose his delinquent debts in Section 26 of the e-QIP he completed in 2014. His explanation is that he did not know there were any delinquent debts because he assumed he had excellent credit. He contends his third wife from whom he was separated since 2012 managed the family money and he was unaware of her actions to incur further debt she allowed to become delinquent. He claims he made an innocent mistake about the failure to disclose any debts.

The second area of personal conduct is his history of criminal conduct as alleged in SOR Paragraph 1. He admits all of them in the hearing with an explanation of the background of each incident. Section 22 of the e-QIP asks about Applicant's police record. He disclosed the July 2012 harassment charge and its disposition, including the alcohol evaluation and anger management evaluation. He did not disclose any other criminal offenses, including felonies or domestic violation. He did not discuss why he did not disclose them on the e-QIP, but did discuss them with the investigators who spoke with him during the various background investigations.

Based on the documents and interviews, Applicant deliberately failed to disclose any delinquent debts and the full extent of his past criminal history. His answers to the e-QIP questions give the appearance Applicant did not have any financial or criminal problems. Therefore, AG ¶ 16 (a) and (b) apply because of Applicant's deliberate falsifications on the e-QIP and his deliberate failure to provide full disclosure to the government investigators. Applicant had repeated opportunities to provide this information during several interviews with investigators conducting his background investigation.

Applicant's long-term criminal incident history from 1988 to 2012 shows personal conduct that creates a vulnerability to exploitation, manipulation, or duress by his repeated conduct that would affect his personal, professional, or community standing. AG ¶ 16 (e) is established.

AG ¶ 17 provides seven conditions that could mitigate trustworthiness concerns. Three may apply:

(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; and

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

Applicant's criminal actions ended in 2012 and have not been repeated. He claims that his Army service, PTSD, and marital stress caused his problems with the law from 1988 to 2012. He successfully completed counseling programs for his problems and changed his behavior. They do not cast doubt on his current reliability, trustworthiness, or good judgment. He has reformed his behavior during the past four years. He is separated from his third wife and lives simply. AG ¶ 17 (c), (d), and (e) are established as they pertain to his criminal actions.

Applicant's explanation as to why he failed to disclose his delinquent debts on the e-QIP is that his third wife opened the accounts that became delinquent in 2013 after they separated in 2012 without his knowledge. However, he had an obligation to check his credit report before he made any answers on his e-QIP about his financial status. The interview summaries show repeatedly that he had to be confronted about the debts because he did not know about them. He testified he did not communicate with his third wife for at least two years after they separated. The only mitigating condition that might apply is AG ¶ 17 (c) because of the unique circumstances that his wife admitted she opened accounts that later became delinquent and did not tell Applicant about them because of their separation and lack of regular communication.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a public trust position 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's history of criminal and financial delinquencies is extensive. His problems arose from PTSD and alcohol consumption, in addition to marital conflicts, that he could not control. Now he appears to have the alcohol and anger problems under control. There has not been any further law violations since 2012. He made changes by attending counseling in 2012 and now lives alone and simply. There is not a likelihood of recurrence. Questions remain about Applicant's financial situation because he has five remaining delinquent debts that are unresolved and he has not demonstrated that he took actions to resolve them.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from his criminal conduct, alcohol involvement, and personal conduct trustworthiness concerns. He did not mitigate his financial considerations trustworthiness concerns.

Formal Findings

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

Paragraph 1, Guideline J:	FOR APPLICANT
Subparagraphs 1.a to 1.q:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a and 1.b:	For Applicant
Subparagraphs 2.c to 2.f, 2.i:	Against Applicant
Subparagraphs 2.g, 2.h, and 2.j:	For Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	FOR APPLICANT

Subparagraph 4.a: For Applicant

Subparagraph 4.b: 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 public trust position. Eligibility for access to sensitive information is denied.

PHILIP S. HOWE
Administrative Judge