



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



In the matter of:)
)
) ISCR Case No. 14-03753
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2016

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guidelines F (financial considerations) and E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On October 13, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E.¹ DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

¹ The SOR initially contained Guideline J (criminal conduct) allegations. On January 8, 2015, Department Counsel amended the SOR. In that amendment, the Guideline J allegations were deleted and more Guideline E allegations were added.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue Applicant's security clearance. On November 24, 2014, Applicant answered the SOR and requested a hearing. He answered the amendment to the SOR on January 22, 2015. This case was assigned to three other administrative judges. Between February and September 2015, the Defense Office of Hearings and Appeals (DOHA) issued four Notices of Hearing for the other administrative judges to hold a hearing in this case, but those hearings were not conducted. Two transcripts of earlier proceedings and Hearing Exhibits I through VIII are included in the record. On November 4, 2015, the case was assigned to me. On November 19, 2015, DOHA issued another Notice of Hearing and the hearing was held as scheduled on December 9, 2015.

At the hearing, Department Counsel offered Government's Exhibits (Gx) 1 through 21. Applicant's objection to an unauthenticated personal subject interview (Gx 2) was sustained, and it was not admitted into evidence. His objections to other Gxs were overruled. Applicant testified and offered Applicant's Exhibits (Ax) A through S, which were admitted into evidence without objection. The record of the proceeding was left open until January 6, 2016, to provide Applicant an opportunity to present additional matters. Applicant timely submitted documents that were marked as Ax T through BC and admitted into evidence without objection. The transcript (Tr.) of the hearing was received on December 18, 2015.

Procedural Matters

Department Counsel moved to withdraw SOR ¶¶ 1.a-1.c. Applicant had no objection to that motion. The motion was granted. SOR ¶¶ 2.a-2.c were also amended to change Section "26" to Section "22" to correct a typographical error.²

Findings of Fact

Applicant is a 54-year-old supply technician who works for a defense contractor. He graduated from high school in 1981 and earned an associate's degree in 1982 and bachelor's degrees in 1985 and 1992. He served in the U.S. Army from February to July 1983 and in the National Guard from March 1989 to July 1992. He received honorable discharges. He has been married twice and has four children, ages 17, 24, 28, and 31. He married his current wife in 1998. He was granted a security clearance in 2003.³

² Tr. 12-14, 39, 66, 84-85, 116-117. At the hearing, Applicant indicated that he believed a prior Department Counsel may have withdrawn other SOR allegations at an earlier hearing session that addressed his request to be represented by counsel. Review of the transcript of that session revealed that the Department Counsel indicated he was planning to withdraw SOR allegations, but those allegations were neither identified nor withdrawn at that session. See Tr. 33-34 of session held on March 12, 2015.

³ Tr. 5-7, 94; Gx 1; Applicant's Answer to the SOR (section on whole person).

As amended, the SOR alleged under Guideline F that Applicant had eight delinquent debts totaling \$4,649 (SOR ¶¶ 1.d-1.k). Under Guideline E, the SOR alleged that he falsified three responses on an Electronic Questionnaire for Investigations Processing (e-QIP) (SOR ¶¶ 2.a-2.c); that he was either apprehended, charged, or convicted of traffic infractions or other offenses on 19 occasions between 1991 and 2011 (SOR ¶ 2.d-2.k and 2.n-2.x); that he misused a Government credit card in 2003 (SOR ¶ 2.l); and that he uttered six worthless check in 1993 (SOR ¶ 2.m). In his Answer to the SOR, Applicant denied all of the allegations. He testified at the hearing. I did not find him to be a credible witness.⁴

SOR ¶ 1.d – judgment for \$684. This judgment was obtained by a credit union and entered against Applicant in August 2007. At the hearing, Applicant presented a letter from the credit union indicating the three credit reporting agencies confirmed the judgment no longer is reflected on his credit report. The letter does not reflect how the judgment was resolved. He testified it was resolved through arbitration.⁵

SOR ¶ 1.e – collection account for \$702. This is a cell phone account that has a date of last activity of April 2012. Applicant claimed his contract had a “military clause” that allowed him to break the contract when he was assigned to a different location. He testified that it no longer is reflected on his credit report; however, it was still being reported by two credit reporting agencies. In his post-hearing submission, he provided a letter from a collection agency indicating the debt will be deleted from his credit report by all three credit reporting agencies. This debt is resolved.⁶

SOR ¶ 1.f – collection account for \$448. This is a credit card account that has a date of last activity of June 2010. Applicant provided a letter from the creditor indicating that they were removing his telephone number from their file, but he would continue to receive correspondence and notices from them. There is no indication in the letter that this debt was resolved. Applicant claimed he paid this debt, but provided no proof of that payment. Insufficient evidence was presented to show this debt has been resolved.⁷

SOR ¶ 1.g – collection account for \$275. This is a cash advance account that has a date of last activity of April 2010. Applicant testified that this debt was removed from this credit report. In his post-hearing submission, he provided a copy of a money order dated December 29, 2015, showing this debt was paid.⁸

⁴ Applicant's Answer to the SOR. An attorney assisted Applicant in preparing his Answer to the SOR. Applicant was not represented by counsel at the hearing.

⁵ Tr. 67-70; Gx 3; Ax N, U; Applicant's Answer to the SOR (Exhibit B).

⁶ Tr. 70-80; Gx 3, 4; Ax B, M, Q, V; Applicant's Answer to the SOR (Exhibit C).

⁷ Tr. 80-83; Gx 3, 4; Ax P, Q, W; Applicant's Answer to the SOR (Exhibit D).

⁸ Tr. 83-84; Gx 3; Ax Q, X; Applicant's Answer to the SOR (Exhibit E).

SOR ¶ 1.h – collection account for \$77. This is an insurance account that has a date of last activity of May 2013. Applicant provided a letter from a collection company indicating this debt was closed in their office and further inquiry about it should be directed to the original creditor. The collection company also advised the credit reporting agencies to delete its listing of this debt. Applicant claimed he contacted that original creditor and they indicated that they no longer had this debt. He also stated he provided the creditor proof that he had insurance with another company for the month in question. Insufficient evidence was presented to show this debt has been resolved.⁹

SOR ¶ 1.i – past-due account for \$863. This is a rental agreement account that has a date of last activity of August 2011. Applicant testified that the prior Department Counsel requested that this debt be deleted from the SOR. However, the transcripts of the previous proceedings do not support that claim. Insufficient evidence was presented to show this debt has been resolved.¹⁰

SOR ¶ 1.j – collection account for \$594. This is a utility account that has a date of last activity of August 2012. Applicant testified that he disputed this debt online. He provided a credit report that reflected it was deleted from the report. This debt is resolved.¹¹

SOR ¶ 1.k – repossession account with balance of \$1,006. This is a vehicle loan that has a date of last activity of June 2011. A credit report dated December 2014 reflected “redeemed or reinstated repossession note loan,” but a later credit report from the same credit reporting agency reflected the vehicle was repossessed. Applicant had at least two loans from this creditor. He pointed to credit report entries for the other debt claiming it showed the alleged debt was resolved. He also provided a copy of a vehicle title showing the lien was released, but the release was for the other debt. Insufficient evidence was presented to show this debt has been resolved.¹²

Other financial matters. Applicant’s e-QIP reflects that he has had continuous full-time employment in three different jobs since at least August 2003. He has received financial counseling. In his Answer to the SOR, he submitted a debt management membership agreement dated November 17, 2014. The debts in SOR ¶¶ 1.f and 1.i were listed in the debt management plan. He provided no proof of payments under that plan. Attached to the plan was a budget that reflected his net monthly income was \$2,600, his monthly household expenses were \$1,879, his monthly secured debt

⁹ Tr. 85-87; Gx 3; Ax O, Q, Y; Applicant’s Answer to the SOR (Exhibit F).

¹⁰ Tr. 84-85, 87; Gx 3, 4; Ax M, Q, Z; Applicant’s Answer to the SOR (Exhibit G).

¹¹ Tr. 87; Gx 3; Ax M, Q, AA; Applicant’s Answer to the SOR (Exhibit H).

¹² Tr. 87-88; Gx 3, 4; Ax A, B, Q, AB; Applicant’s Answer to the SOR (Exhibit I). The account number for the alleged debt ends in “2.” The account number for the other debt from this creditor that is resolved ends in “1.” The vehicle title contains the account number, which ends in “1.”

payments were \$1,282, his monthly unsecured debt payments were \$134, and his monthly debt management plan payment was \$78, which left him a negative net monthly remainder of \$773.¹³

SOR ¶ 2.d – conviction for driving under the influence (DUI) in April 1991. A commander's report of disciplinary or administrative action reflected that Applicant operated a vehicle in an erratic manner on a military base on April 2, 1991. The vehicle had an alarm that sounded like a police siren. A moderate odor of alcohol was emanating from him. He failed a field sobriety test and a breathalyzer test reflected his blood alcohol level was .176%. He was charged with horn and warning devices, reckless driving, and DUI. In September 1991, he was convicted in U.S. Magistrate's court of DUI and sentenced to a fine and attendance at a DUI school. His driving privileges were also suspended for one year. The other charges were dismissed. Applicant denied this allegation. He initially testified that the DUI charge was reduced to a lesser offense, which he believed was reckless driving. However, he admitted the allegation when questioned about the commander's report.¹⁴

SOR ¶¶ 2.e-2.f – driving on a military base on September 10 and 14, 1991, while driving privileges were suspended. A military police report reflected that Applicant was apprehended for both driving offenses. Applicant testified that he was executing permanent change orders and notified a senior military police officer of his need to drive his vehicle off base. He claimed the supervisor did not notify the other patrolmen. He stated that, when he was taken to the police station, the matter was resolved, and he was released. The report of the first incident indicated that Applicant was processed and released on his own recognizance.¹⁵

SOR ¶¶ 2.g-2.k, 2.m, 2.q, 2.s, and 2.u – bad check allegations. Applicant was charged with issuing seven bad checks totaling about \$366 in 1992 and 1993 (SOR ¶¶ 2.g-2.k), issuing five bad checks totaling about \$386 to a grocery store in February 2005 (SOR ¶ 2.q), issuing one bad check for about \$51 to a grocery store in January 2007 (SOR ¶ 2.s), and issuing eight bad checks totaling about \$975 in November 2009 (SOR ¶ 2.u). He was also charged with failure to return rental property in November 2009. He was investigated for, but not charged with, issuing six bad checks totaling about \$230 to a military billeting office in October 1993 (SOR ¶ 2.m). Applicant testified that the charges were dismissed after he made restitution. A bad check charge and the failure to return rental equipment charge were dropped when the company went out of business. Court records reflect that he was convicted of six bad check offenses in 1993. The remaining charges were dismissed.¹⁶

¹³ Tr. 128-130; Applicant's Answer to the SOR (Exhibit J).

¹⁴ Tr. 88-93; Gx 5; Ax AO.

¹⁵ Tr. 93-94; Gx 6; Ax AR.

¹⁶ Tr. 50-52, 94-96, 99-101, 110-111, 113; Gx 8, 10, 14, 16, 18; Ax AD, AN, AQ, AW, AX, AY. The military police investigation dated February 18, 1994, also reflected that Applicant was suspected of

SOR ¶ 2.i – misuse of a government credit card in May 2003. A military police investigation reflected that there was probable cause to establish that Applicant committed the offenses of theft of government property, wire fraud, and forgery. It indicated that he used a government credit card to purchase gas for his personally owned vehicle and forged another person's signature on the credit card receipt. The U.S. Attorney's Office declined to prosecute and the command took no administrative action. Applicant testified that, while he was working in a temporary position at a military command, an employee asked him to fill the employee's truck with gas using a credit card. He agreed to do it, but told the employee that he was going to sign the employee's name to the bill. He stated the employee later asked him for the receipt for a log, but Applicant had not retained the receipt. Applicant claimed the amount of gas purchased was more than the amount that could be put in the gas tank of his car. He stated that everything was dropped, and he left that position for another job.¹⁷

SOR ¶ 2.o – driving while impaired (DWI) and other offenses in December 1993. Applicant failed to appear in court for these charges in November 1994. In August 2011, the DWI charge was dismissed without adjudication because the state was unable to locate the original documents or they were destroyed. In September 2011, Applicant paid a fine for the civil revocation of his driver's license charge.¹⁸

SOR ¶ 2.p – misrepresentation to obtain unemployment benefits in 2002 and 2003. Applicant was released from a job and collected unemployment benefits. He stated that he was going back-and-forth from an employed to an unemployed status, and this looked suspicious to state authorities. He claimed he did not receive unemployment benefits while he was working, but acknowledged that he was overpaid \$7,000 in unemployment benefits. He was charged with multiple counts of misrepresentation to obtain unemployment benefits. He testified that those charges were dismissed and he never was arrested or went to jail for those charges. He also claimed that he was on probation for two years to pay restitution and, when the money was paid, the charges were dismissed. Court records reflect that he was convicted of two counts of misrepresentation to obtain unemployment benefits in December 2004 and was sentenced to pay restitution of \$7,661 and serve 75 days of community service. In his Answer to the SOR and at the hearing, Applicant provided a copy of his state rap sheet that reflected two charges of this nature that were dismissed. His rap

submitting a fraudulent travel voucher for the period of August 27, 1993, to September 10, 1993, after he was sent home for misconduct on August 27, 1993, and was suspected of issuing 35 bad checks to the military exchange system between July 1985 and September 1993. The suspected fraudulent travel voucher and 35 bad check offenses were not alleged in the SOR. Unalleged conduct will not be considered in applying the disqualifying conditions, but may be considered in assessing credibility and the whole person. See Gx 10.

¹⁷ Tr. 96-99; Gx 9; Ax R, AC.

¹⁸ Tr. 102-105, 131-134; Gx 12; Ax AV. In the criminal record, "FTA" means failure to appear. See: http://www.nccourts.org/Training/Documents/ACIS_Inquiry_RG.pdf.

sheet contained no entries showing the convictions, but it also did not contain entries reflecting the file numbers for the offenses for which he was convicted.¹⁹

SOR ¶¶ 2.n, 2.r, 2.t, 2.v, 2.w, 2.x – driving-related offenses. Applicant was charged with unauthorized use of a vehicle in August 1993 (SOR ¶ 2.n), speeding and driving while license revoked in August 2006 (SOR ¶ 2.r), use of foreign license when driving while license was revoked in May 2009 (SOR ¶ 2.t), driving while license revoked in November 2009 (SOR ¶ 2.v), use of foreign license when driving while licensed revoked in June 2010 (SOR 2.w), and driving while license revoked in November 2010 (SOR ¶ 2.x). The unauthorized use of a vehicle involved keeping a rental car a couple of days longer than the rental contract provided, which was dismissed after he paid restitution. He traveled frequently for work and obtained driver's licenses in other states, which was the basis of the foreign license charges. He initially testified the traffic-related offenses were dismissed until confronted with evidence to the contrary. Court records reflect he was convicted of a no operator's license charge (February 2008) and three charges of failure to notify the DMV of an address change (April 2011, June 2011, and July 2011). None of the fines awarded were greater than \$300. He provided proof that his state driver's license was restored in 2011. He also maintains driver's licenses from other states. The latest criminal records check involving Applicant is dated October 2014²⁰

SOR ¶¶ 2.a-2c – three falsification allegations

In his e-QIP dated August 16, 2013, Applicant responded “No” to questions that asked (1) whether he had been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him in the last seven years; (2) whether he had been arrested by any police officer, sheriff, marshal or any other type of law enforcement official in the last seven years; and (3) whether he had ever been charged with an offense involving alcohol or drugs. The question involving the issuance of citations also contained the following qualification, “(Do not check if all the citations involved traffic infractions where the fine was less than \$300 and did not involve alcohol or drugs).”²¹

¹⁹ Tr. 105-110, 134-136; Gx 13; Ax C, S, AS, AU. In the criminal record, “SENT LEN: 030 D – SENT TYPE: C” means 30 days of community punishment. In the state court records, a file number (e.g., XXCR XXX767 – numerals have been replaced by Xs for Privacy Act purposes) represents a separate charge. Applicant was convicted of offenses with file numbers ending in 767 and 768. Those file numbers do not appear on the rap sheet he presented. Only the file numbers ending in 764 and 765 appear on the rap sheet he presented and those charges were dismissed. File numbers ending in 766 and 769 were also missing from his rap sheet and those charges were also dismissed. Of note, his rap sheet had three or four charges listed per page and four known charges are not listed on his rap sheet. Consequently, it appears the rap sheet is missing a page. See: website in note 18, supra, for definition of “file number.”

²⁰ Tr. 101-102, 111-115; Gx 11, 15, 17, 19, 20, 21; Ax R, AE, AH, AI, AJ, AT, AZ.

²¹ Gx 1; Applicant's Answer to the SOR.

Besides his DUI conviction in 1991 (discussed above), Applicant was also charged with DWI in March 1993. Court records reflect the March 1993 DWI charge was dismissed in September 1994.²²

Applicant testified that he did not list the summons and citations that he received in the seven-year period prior to submission of the e-QIP because each was less than \$300 or was dismissed. Upon being informed his \$300 qualification only applied to traffic infractions, he stated that he misinterpreted the question. He also testified that he was not arrested for any offense in the seven-year period prior to submitting the e-QIP and each of the listed offenses or infractions during that period only resulted in the issuance of a citation. Furthermore, he stated that he believed alcohol-related charges needed to be reported only if they had occurred within the past seven or ten years. He also claimed people informed him that he had to go back only ten years in reporting the alcohol-related charges. He admitted he made mistakes in interpreting the questions and in paying attention to what he was reading. He also stated that the questions on the e-QIP and procedures for completing it were different than those for his previous security clearance applications.²³

In his post-hearing submission, Applicant provided documentation showing a national agency check in 1982 reflected he received a favorable FBI result. He also provided a correction form for his August 2013 e-QIP in which he stated “[a]ll checks and traffic tickets [were] taken care of and [paid]” in discussing Section 26 – Financial Record. The correction form did not address any information in Section 22 – Police Record. Additionally, he provided an e-QIP certified on August 9, 2013, in which he also answered “No” to all of the Section 22, Police Record questions.²⁴

Character Evidence. Applicant’s sister testified that she is a pastor, and Applicant is a member of her congregation. She said that he had a good reputation for being truthful and honest and described him as a good-hearted person. She believed that his financial problems arose because he was trying to help others. Applicant also provided character reference letters and performance appraisals indicating that his performance met or exceeded expectations. In 2009, a commanding officer strongly recommended that he remain in the unit.²⁵

²² Gx 7; Ax AP, AV. Applicant’s DWI arrest in December 1993 (SOR ¶ 2.o) was not alleged in SOR ¶ 2.b.

²³ Tr. 20-25, 50-52, 88, 115-128, 131; Ax AK.

²⁴ Ax AH, AI, AJ, AK.

²⁵ Tr. 61-64; Ax E-K, BA.

Policies

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

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavourable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

Analysis

Guideline F, Financial Considerations

AG ¶ 18 sets forth the security concern for 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 overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 sets forth several conditions that raise potential security concerns. The evidence presented at the hearing established two of those disqualifying conditions:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts that he was either unable or unwilling to resolve for an extended period. AG ¶¶ 19(a) and 19(c) apply.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;

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

(e) 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 action to resolve the issue.

Applicant has a few delinquent debts that remain unresolved. He did not establish that his delinquent debts were the result of conditions beyond his control or that he has acted responsibly under the circumstances in attempting to resolve them. Nevertheless, he receives credit under AG ¶¶ 20(c), 20(d), and 20(e) for the debts that he has resolved.

Applicant's unresolved debts total less than \$2,500, which is a relatively small amount. Those debts do not establish financial instability. However, they do cast doubt on his reliability, trustworthiness, and good judgment. From the evidence presented, I am unable to find that Applicant will resolve the remaining delinquent debts in a responsible manner and that his financial problems are unlikely to recur. None of the mitigating conditions apply to the unresolved debts.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

AG ¶ 16 describes conditions that could raise security concerns and may be disqualifying in this case:

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

(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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available evidence information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior. . . ; (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer's time or resources.

While I found that Applicant was not a credible witness, I did find convincing his testimony that he was not arrested for any offenses within the seven-year period before he submitted his e-QIP in August 2013. None of the charges brought against him during that period were of the nature to have likely resulted in his arrest. Instead, they most likely would have only resulted in summons or citations to appear in court. I find for Applicant on SOR ¶ 2.b. Furthermore, he testified that all of his traffic citations within that seven-year period were either dismissed or resulted in fines less than \$300. The evidence supports his testimony. Given that he was not required to disclose traffic citations that only resulted in fines of less than \$300, his interpretation that he also was not required to disclose dismissed traffic citations is reasonable. He did not falsify his e-QIP by not disclosing that he received the traffic citations reflected in SOR ¶¶ 2.r, 2.t, 2.v, 2.w, and 2.x.

On the other hand, Applicant falsified his e-QIP by failing to disclose his summons and citations for the nine bad check charges reflected in SOR ¶¶ 2.s and 2.u and for failing to disclose his prior charges for alcohol-related offenses, *i.e.*, his DUI conviction in 1991 and his DWI arrest in 1993. I did not find persuasive his claim that he misinterpreted the pertinent questions and received bad advice concerning those questions from others. He is well educated and has submitted security clearance applications in the past. I find that he knew that he should have disclosed those citations and charges and deliberately failed to do so. AG ¶ 16(a) applies to SOR ¶ 2.c and a portion of SOR ¶ 2.a.

Applicant was convicted of DUI in 1991 and of two counts of misrepresentation to obtain unemployment benefits in 2004. Probable cause existed to suspect that he misused a government credit card and committed forgery in 2003; however, the U.S. Attorney's Office declined to prosecute those offenses. He has a history of issuing bad checks and of receiving traffic citations. Viewed in its entirety, his conduct reflects a

long-term pattern of unreliability, untrustworthiness, and poor judgment. AG ¶¶ 16(c) and 16(d) applies.

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

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

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

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

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

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

Applicant's latest traffic infraction/criminal conduct involved him being charged with driving while license revoked in November 2010 and being convicted of failure to notify DMV of address change in July 2011. His latest criminal records check in the record is dated October 2014. His e-QIP falsification occurred in August 2013. While much of his misconduct is dated, it should be viewed in its entirety and, when examined in that manner, establishes a pattern of questionable conduct. From the evidence presented, I am unable to find that his questionable conduct happened so long ago, was so infrequent, or occurred under unique circumstances that it is unlikely to recur. None of the Guideline E mitigating conditions fully apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

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

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

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. After considering the whole-person evidence in the record, I continue to have questions and doubts about Applicant's eligibility and suitability for a security clearance. For foregoing reasons, I conclude that Applicant failed to mitigate the financial considerations and personal conduct security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Withdrawn
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraphs 2.c-2.x:	Against Applicant

Decision

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

James F. Duffy
Administrative Judge