



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-01508
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on some \$50,366 in credit-card debt on four accounts. In December 2019, he reached settlement agreements for two of the debts, but he has not made any payments. Financial considerations security concerns are not mitigated. Personal conduct security concerns were not established because Applicant did not deliberately falsify his security clearance application (SCA). Eligibility for a security clearance is denied.

Statement of the Case

On July 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive);

and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On August 16, 2019, while working as a linguist for the U.S. military in Afghanistan, Applicant answered the SOR allegations and requested a decision on the written record without a hearing. On November 22, 2019, the Government submitted a File of Relevant Material (FORM), including documents identified as Items 1 through 5. The Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on December 7, 2019. Applicant responded to the FORM on January 7, 2020. On January 16, 2020, Department Counsel indicated that the Government had no objection to Applicant's response to the FORM. On January 24, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on February 3, 2020.

Evidentiary Rulings

Department Counsel submitted, as Item 3 a summary report of a personal subject interview (PSI) of Applicant conducted on July 30, 2018. The summary report was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to the File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may

determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Applicant did not mention the PSI in his response to the FORM. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the PSI, to comment on the PSI, and to make any corrections, deletions, or updates to the information in the PSI. Applicant is deemed to have waived any objections to the PSI.

Accordingly, Items 1 through 5 were accepted into the record as exhibits for the Government. Applicant's response to the FORM was admitted as Applicant exhibit (AE) A.

Findings of Fact

The SOR alleges under Guideline F that, as of July 26, 2019, Applicant owes charged-off credit-card debts of \$22,580 (SOR ¶ 1.a), \$11,737 (SOR ¶ 1.b), and \$7,953 (SOR ¶ 1.d), and a collection debt of \$8,096 (SOR ¶ 1.c). Under Guideline E, Applicant is alleged to have falsified his June 19, 2018 SCA by responding negatively to inquiries concerning whether, in the past seven years, he had any bills or debts turned over to a collection agency, and any account or credit card suspended, charged off, or cancelled for failing to pay as agreed (SOR ¶ 2.a). (Item 1.)

When Applicant answered the SOR, he admitted the debts and asserted they arose to pay for expenses he incurred while he owned a liquor store business that failed. He explained that he was then unemployed for about a year before taking minimum wage jobs. Applicant had an attorney attempting to negotiate settlements for the debts. Applicant responded "Admit" to the Guideline E allegation, but explained in an affidavit that he would never willingly falsify and that he misunderstood the questions on the SCA. (Item 1.) After considering Items 1 through 5, which includes Applicant's response to the SOR (Item 1), and Applicant's response to the FORM (AE A), I make the following findings of fact:

Applicant is 65 years old and a native of Afghanistan. Applicant and his spouse married in October 1978. They have two grown children ages 38 and 33. Applicant, his spouse, and son came to the United States in February 1985 seeking asylum. In May 2000, Applicant became a naturalized U.S. citizen. (Items 2-3.)

From October 1992 to July 2009, Applicant was managing partner of a wholesale business until it closed. From July 2009 to November 2009, Applicant worked for his current employer, a defense contractor, as a linguist in Afghanistan for the U.S. military.

(Item 2.) He lost his job after he had left his post to get some food with two co-workers. Applicant knew he was not supposed to leave his post, but he had seen others leaving, and he was only off the post for 10 to 15 minutes. (Item 3.) Applicant explained on his SCA, and to an OPM investigator on July 30, 2018, that he was also having problems at home at the time. (Items 2-3.)

When he responded to the SOR, Applicant explained that he had purchased a liquor store for \$300,000 in 2010 with all his savings and a loan obtained from refinancing the mortgage on his home. (Item 1.) Available financial information indicates that Applicant paid off the \$81,933 mortgage on his home and obtained a new mortgage of \$150,000 in July 2010, to be repaid at \$2,323 per month. (Item 4.)

Applicant inaccurately reported on his SCA that he worked for his spouse only from January 2011 to November 2011. (Item 2.) He apparently managed his spouse's liquor store on his return from Afghanistan. Applicant explained that the liquor store was in a bad location with low customer traffic, and that almost from the beginning, he "had a hard time running the store." Applicant was new to the business, and he lacked knowledge about inventory and customer preferences. Almost from the start, he relied on his personal credit to stock inventory for the business. He also used his credit cards to pay personal expenses, which included monthly expenses of \$2,323 for his mortgage, \$500 for utilities, \$200 for phone service, \$1,000 for groceries, and \$300 for car insurance. Applicant paid the monthly minimums on his credit cards for awhile. (Item 1.) He defaulted on four credit-card accounts between September 2014 and September 2015 (SOR ¶¶ 1.a-1.d). (Item 4.) In approximately 2015, he and his spouse sold the liquor store. According to Applicant, he "received very little money for the store and had to practically give it away just to stop [him] having to use [his] credit cards anymore." Applicant asserts that he could not find another job for over a year. (Item 1.) On his June 2018 SCA, Applicant indicated that he held two part-time jobs from August 2016 to May 2018, as a front-desk clerk at a motel and as a cashier at a convenience store. (Item 2.)

In January 2017, Applicant retained an attorney to negotiate settlements for his four seriously delinquent credit-card accounts (SOR ¶¶ 1.a-1.d). Applicant had a little money from his minimum-wage jobs to make small payments. (Item 1.) In mid-January 2017, Applicant's attorney faxed letters to Applicant's creditors for three of Applicant's debts, indicating that Applicant could pay ten percent of his balances in settlement, so \$1,173 on the debt in SOR ¶ 1.b, \$809 on the debt in SOR ¶ 1.c, and \$795 on the debt in SOR ¶ 1.d. According to Applicant, his largest debt of \$22,580 had not yet been referred to collections, so his attorney did not propose a settlement at that time. However, Applicant could not pay the amounts that his credit lenders wanted to settle his debts. (Item 1.)

In May 2018, Applicant applied for a linguist position with his current employer. On June 18, 2018, Applicant completed a personal financial statement on which he listed net monthly income totaling \$4,600 for him and his spouse. After paying their monthly expenses of \$2,050 and \$2,300 for their mortgage, they had \$250 in monthly discretionary income. Applicant listed two accounts other than his mortgage which were current: a credit card with a \$2,972 balance and an account with a \$180 balance. He reported no monthly

payment on those debts. He also listed the four delinquent accounts in the SOR totaling \$50,366. The personal financial statement included a remark that "CANDIDATE is in contact with the creditors for HIS unresolved debt." (Item 5.)

On June 19, 2018, he completed and certified to the accuracy of an SCA. He responded negatively to the SCA inquiries into any delinquency involving routine accounts, including the following:

In the last seven (7) years, you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor);

In the last seven (7) years, you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor); and

You are currently over 120 days delinquent on any debt? Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor).

Applicant listed some foreign travel on his SCA, including to Germany in July 2016 to visit family, and to Mexico in August 2017, reportedly for volunteer purposes. (Item 2.)

Applicant was interviewed by an OPM investigator on July 30, 2018. He told the investigator that he worked at his spouse's liquor store until August 2016 when the business closed. He explained that he had not yet started working as a linguist. About his trip to Mexico, Applicant stated that it was a pleasure trip with family and that he had been mistaken when he listed it as a volunteer trip. A review of his U.S. passport showed that he traveled to Germany in April 2010, February 2011, August 2011, May 2012, August 2012, September 2013, and July 2015. When asked about any financial problems, Applicant acknowledged that because of his spouse's liquor store not being profitable, he has been late about six months on the credit-card accounts with the lenders identified in the SOR, but that he has contacted the creditors and advised them that he would contact them about repayment arrangements once he began working with his employer. He explained that the credit cards were used for his spouse's liquor business. (Item 3.) There is no indication in the record that Applicant was asked why he had not disclosed the delinquencies on his SCA.

As of April 17, 2019, Applicant owed charged-off credit-card balances of \$22,580 (SOR ¶ 1.a, no activity since September 2014); \$11,737 (SOR ¶ 1.b, no activity since September 2015); and \$7,953 (SOR ¶ 1.d, no activity since November 2014). Additionally, \$8,096 was owed on a credit-card account placed for collection in October 2016 due to inactivity since February 2015 (SOR ¶ 1.c). (Item 4.)

On a date not specified in the record, Applicant began working as a linguist in Afghanistan for his employer. He was apparently granted a DOD clearance because he asks that his security clearance not be revoked. (Item 1.) After Applicant received the SOR, he retained the services of his attorney to again enter into settlement negotiations for him with his creditors. Applicant's attorney faxed letters to Applicant's creditors offering settlements of ten percent of Applicant's outstanding balances. The creditor owed the debts in SOR ¶¶ 1.a and 1.b countered by asking for half of Applicant's balances. The attorney then offered settlement terms of 20 percent. If that offer was rejected by the creditor, Applicant's attorney planned to offer a settlement amount of 25 percent "as a full and final offer." The collection entity for the debt in SOR ¶ 1.c could not locate the file. The creditor owed the debt in SOR ¶ 1.d demanded full payment of Applicant's \$7,953 balance. Applicant's attorney countered by offering 25 percent of the debt "as a full and final offer." As of Applicant's August 16, 2019 response to the SOR, no settlements had been reached on Applicant's delinquent accounts. In notifying Applicant of his attempts to arrange settlements, the attorney added:

I have asked all the credit card companies for a written answer to our settlement offer because it is important to us to prove to the judge in a hearing that you tried to settle the debts with the limited money you have but they will not settle with you on reasonable amounts. We will also let the judge know that you are trying very hard to settle but you can't make an offer for more money than you actually have. (Item 1.)

While working in Afghanistan, Applicant executed an affidavit in response to the SOR in which he expressed his intention to settle his debts because he is in a better financial situation "now working in this current job with the Department of Defense." Applicant stated with regard to his failure to disclose his delinquencies on his June 2018 SCA:

I am a very honest person and would never willingly falsely answer a question on an application for employment. In regard to the [SCA], I mistakenly answered in the negative to the questions about current and past credit debts because I did not understand the question. (Item 1.)

Applicant did not elaborate in the affidavit about the nature of his reported misunderstanding of the SCA inquiries.

In response to the FORM, Applicant provided a letter from the collection entity for the \$8,095 debt (SOR ¶ 1.c) confirming that Applicant, through his attorney, arranged on December 17, 2019, to pay \$5,262 by January 30, 2020, in full settlement. Applicant's attorney had arranged, as of December 9, 2019, for Applicant to pay \$4,773 by December 27, 2019, to settle his \$7,953 balance with the creditor in SOR ¶ 1.d. Applicant consented to an entry of judgment against him for the full \$7,953 minus any payments if he failed to pay the settlement amount by the deadline. In a January 7, 2020 affidavit, Applicant indicated that his attorney was still waiting for the creditor owed the delinquencies in SOR ¶¶ 1.a and 1.b to "send [its] settlement agreements on [his] two accounts before I can

make payments on any of the cards because I have to see if I have enough money to pay all these credit- card companies now.” Applicant added that he needs his job as a linguist to make the settlement payments and that he is trying his best to save the money to make the payments. Should he not have enough money to pay off the settlements in full, he asks that he be given more time to make the payments “or waive the requirement that [he] must pay them off all in full in order to keep [his] job with the DOD.” He asserts that he loves the United States and his job working as a linguist in Afghanistan for the U.S. military, and that he is a reliable and trustworthy person who “just fell on hard times through a business loss and for no other reason.” (AE A.)

Applicant provided no evidence of any payments toward the debts in the SOR. He submitted no information about his current income or his savings, thus precluding a reasonable assessment of his financial situation. No information was submitted as to whether Applicant has had any financial counseling.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of 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 F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

Guideline F security concerns are established when an individual fails to pay financial obligations according to terms. Between September 2014 and September 2015, Applicant defaulted on four credit-card accounts that presently total \$50,366. Under AG ¶ 19, disqualifying conditions 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Regarding AG ¶ 20(a), although the debts have been delinquent for some time, they remain unresolved. Applicant's debts are considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). AG ¶ 20(a) does not apply.

Applicant attributes his financial problems to his spouse's failed liquor-store business. He indicated, with no evidence to the contrary, that he used his personal credit to purchase inventory and cover other business expenses, and to pay household expenses when finances were tight because of the lack of income from the business. While AG ¶ 20(b) is implicated because he had no control over economic conditions or customer decisions, he took a risk that the business venture may not be profitable. Applicant was apparently unemployed for a year after he and his spouse closed her business in 2015 before working two low-paying part-time jobs from August 2016 to May 2018. His unemployment and under-employment trigger AG ¶ 20(b) with respect to his failure to make payments on his delinquent credit cards at that time.

Even when factors outside of his control contributed to or caused his financial problems, I have to consider whether Applicant acted in a responsible manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29,

2005)). A component is whether Applicant maintained contact with his creditors. Applicant retained an attorney in January 2017 to negotiate settlement terms with his creditors. The attorney proposed settlements for the debts in SOR ¶¶ 1.b-1.d that were not accepted by Applicant's creditors. Applicant acted responsibly in that regard, and he had no control over whether the creditors would accept payments that he could afford. However, he also took a family vacation to Mexico in August 2017, when he reportedly could not afford to settle his debts. There is no documentation of any ongoing efforts on his part to address his debts after January 2017 until August 2019, when he again retained the services of the attorney to negotiate settlements on his behalf. When he completed a personal financial statement on June 18, 2018, he indicated that he was in contact with his creditors about his unresolved debts. However, he provided no corroborating documentation of any such contacts. Sometime between his July 30, 2018 PSI and his August 16, 2019 response to the SOR, Applicant began working as a linguist in Afghanistan. Without knowing his start date or his income for that employment or his income, I cannot make a reasonable finding as to whether he acted responsibly under his circumstances by waiting until the SOR was issued to resume settlement negotiations for his delinquencies.

The timing of resolution of financial problems is an important consideration in evaluating mitigation. Applicant exhibited some good faith toward his creditors under AG ¶ 20(d) by attempting to settle his debts in January 2017, well before he sought security clearance eligibility, but he failed to show adequate justification for why he waited until the SOR was issued to re-engage in settlement negotiations. In ISCR Case No. 17-03229 at 6 (App. Bd. June 7, 2019), the Appeal Board stated that "an applicant who takes action to resolve his financial problems only after being placed on notice that his or her clearance is in jeopardy may lack the judgment, and self discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests."

Neither AG ¶ 20(c) nor AG ¶ 20(d) fully applies. There is no evidence that Applicant has had any credit counseling, which is required under AG ¶ 20(c), and could assuage concerns about his financial judgment raised by him incurring personal debt to keep an unprofitable business afloat, and taking on a higher mortgage obligation for his home to purchase the business. Without any payments on any of the four debts, I cannot reasonably conclude that "there are clear indications" that his financial issues are being resolved. Concerning AG ¶ 20(d), while Applicant is credited with initiating efforts to resolve his debts, without evidence of any payments, it would be premature to conclude that he is adhering to a plan that would result in resolution of his delinquencies.

Applicant is not required, as a matter of law, to establish that he has satisfied each debt in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. June 5, 2006). However, he is required under Appeal Board precedent to demonstrate not only that he has a plan to resolve his financial problems, but that he has taken significant actions to implement that plan. See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. July 6, 2006.) Applicant indicated on January 7, 2020, that he is trying his best to save the money needed to settle his debts. The Appeal Board has consistently held that a promise to pay a debt in the future is not a substitute for a track record of paying debts in a timely manner. See e.g., ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010). Applicant has yet to demonstrate a

track record of timely repayment on his financial obligations to enable a predicative judgment that his financial problems are safely behind him. More progress is needed toward reestablishing financial stability to fully mitigate the financial considerations security concerns.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated in AG ¶ 15:

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

Applicant completed and certified to the accuracy of an SCA on June 19, 2018, on which he responded negatively to the financial record inquiries concerning any delinquency on routine accounts in the last seven years and denied that any of his accounts had been charged off or placed for collection in the last seven years (SOR ¶ 2.a). Available information establishes that he knew about the delinquencies well before his SCA because he retained an attorney to help him negotiate settlements in January 2017. A reasonable inference of deliberate falsification of his SCA could be drawn because of the debts in SOR ¶¶ 1.a-1.d. There had been no activity on any of the accounts since September 2015. Although Applicant does not dispute that he answered "No" to the financial record inquiries, he asserts that he misunderstood the question and did not willfully falsify his SCA. Thus, I find that the falsification allegation is controverted.

The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shift to the applicant to present evidence to explain the omission. ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

The delinquency dates for the accounts are sufficient to shift the burden to Applicant to explain his inaccurate denial to the SCA queries concerning any delinquency involving routine accounts. Applicant did not elaborate as to his claimed misunderstanding of the

question. In viewing the evidence as a whole, I note that, on June 18, 2019, the day before Applicant completed his SCA, he submitted as a “candidate” a personal financial statement (Item 5) on which he listed the four delinquent credit-card debts and their balances totaling \$50,366. He indicated that he was making no payments on the debts but that he was in contact with the creditors. Although this did not relieve him of his obligation to report the debts on his SCA, it supports his denial of any intentional falsification of his SCA. The evidence falls short of establishing intentional concealment needed under AG ¶ 16(a), which does not apply when omissions are due to mistake, lack of recall, or other reason negating willful intent. AG ¶ 16(a) provides:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

The personal conduct security concerns related to deliberate falsification are not sufficiently proven.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

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

Applicant requested a decision on the written record, so it was incumbent on him to submit evidence that might extenuate or mitigate the poor judgment raised by his financial delinquencies. Applicant did not provide information about his current savings or income from which I could conclude that he will be able to settle his past-due debts in the near future. Two creditors had agreed to settle his debts for reduced balances. The payment to settle the debt in SOR ¶ 1.c was not due until January 30, 2020, after the deadline for his response to the FORM. However, his payment of \$4,773 to resolve the debt in SOR ¶ 1.d was due by December 27, 2019. He provided no evidence of any payment with his January 7, 2020 response to the FORM.

Applicant certainly deserves credit for his work for the U.S. military in Afghanistan. However, it is well settled that once a concern arises regarding an applicant’s security

clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge