



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



In the matter of:)
)
) ISCR Case No. 19-01970
)
Applicant for Security Clearance)

Appearances

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

05/26/2020

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient information about his efforts to resolve 8 of 12 delinquent debts alleged in the statement of reasons (SOR). He failed to disclose any delinquent debts and repossession of his vehicle on his Questionnaire for National Security Position (SF 86) or security clearance application (SCA). Guidelines F (financial considerations) and E (personal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 26, 2018, Applicant completed and signed an SCA. (Item 3). On July 26, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Item 1)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines F and E. (Item 1)

On August 24, 2019, and October 25, 2019, Applicant provided responses to the SOR, and he requested a decision without a hearing. (Item 2) On February 13, 2020, Department Counsel completed the File of Relevant Material (FORM). On February 26, 2020, Applicant was served with a copy of the FORM. Applicant's response, if any, was due on March 27, 2020. No response was received. On May 15, 2020, the case was assigned to me.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/doha/isp.html>.

Findings of Fact

In Applicant's SOR response, he denied all of the SOR allegations. He also provided some mitigating information. (Item 2)

Applicant is a 35-year-old mechanical technician, and he has worked for a DOD contractor since May 2018. (Item 3 at 7, 13) From November 2011 to May 2018, he worked as a technician. (*Id.* at 14) From September 2009 to October 2011, he worked in quality assurance. (*Id.* at 15) In 2006, he received a General Educational Development (GED). (*Id.* at 12) He has never served in the U.S. military. (*Id.* at 17) In 2012, he married, and he has two children who are ages six and nine. (*Id.* at 20, 22-23)

Financial Considerations

The SOR alleges 12 delinquent debts totaling \$31,389, and record evidence for each debt is as follows:

SOR ¶ 1.a is a debt placed for collection for \$12,697. Applicant said he is currently in the process of disputing the amount he owes to the creditor. (Item 2 at 1) Applicant's August 18, 2019 Equifax/Credit Karma credit report shows this account was opened on March 31, 2018, and the status is "Consumer disputes this account information." (*Id.* at 16)

SOR ¶ 1.b is a charged-off vehicle loan for \$11,250. Applicant's December 6, 2018 Office of Personnel Management (OPM) personal subject interview (PSI) states that the debt resulted from a vehicle loan upon which he defaulted. (Item 7 at 7) His vehicle was repossessed on an unspecified date. (*Id.*) Applicant said he intended to satisfy the debt in 2019. (*Id.*) Applicant said the account was opened in June 2012, and closed in June 2015. (Item 2 at 1) He believed this account exceeded the reportable period of seven years. (*Id.*) Applicant's August 18, 2019 Equifax/Credit Karma credit report shows this

account was opened on June 9, 2012, and his last payment was on November 1, 2015. (*Id.* at 5)

SOR ¶ 1.c is a charged-off bank debt for \$999. Applicant said he believed this account was opened in May 2012, and it was over seven years old. (Item 2 at 3) Applicant's August 18, 2019 Equifax/Credit Karma credit report shows the account was opened on May 1, 2012, and his last payment was on April 1, 2013. (*Id.* at 11)

SOR ¶ 1.d is a telecommunications debt placed for collection for \$949. Applicant said he is currently disputing the information in his credit report. (Item 2 at 3) Applicant's August 18, 2019 Equifax/Credit Karma credit report shows this account was opened on May 16, 2016, and the status is "Consumer disputes this account information." (*Id.* at 16)

SOR ¶ 1.e is a charged-off department store debt for \$606.

SOR ¶ 1.f is a charged-off department store debt for \$452.

SOR ¶ 1.g is a telecommunications debt placed for collection for \$859.

SOR ¶ 1.h is a credit union debt placed for collection for \$1,333.

SOR ¶ 1.i is a telecommunications debt placed for collection for \$869.

SOR ¶ 1.j is a telecommunications debt placed for collection for \$675.

For SOR ¶¶ 1.e through 1.j, Applicant had the same explanation. Applicant said his credit report was erroneous, and the negative entry was removed from his credit report. (Item 2 at 3) In his August 24, 2019 SOR response, for the debts in SOR ¶¶ 1.f through 1.j, he stated that the negative entry was "removed." (*Id.* at 3) In his October 25, 2019 SOR response, for the debts in SOR ¶¶ 1.e through 1.j, he wrote "I deny" for each debt and explained the entry was removed from his credit report. (*Id.* at 21-22) Applicant's August 18, 2019 Equifax/Credit Karma credit report does not include any of these six accounts. (*Id.*)

SOR ¶ 1.k is a telecommunications debt placed for collection for \$404. In his December 6, 2018 OPM PSI, Applicant acknowledged he had the account in SOR ¶ 1.k. (Item 7 at 5) He said he was erroneously charged for telecommunications equipment that he returned, and he disputed the debt. (*Id.*) In his SOR response, he indicated the debt was removed from his credit report, and his August 18, 2019 Equifax/Credit Karma credit report does not include this debt. (Item 2)

SOR ¶ 1.l is a telecommunications debt placed for collection for \$296. Applicant said the account was fraudulent, and it was removed from his credit report. (Item 2 at 3) The creditor has an open fraud investigation. (*Id.* at 3) Applicant's August 18, 2019 Equifax/Credit Karma credit report does not include this account.

In his SOR response with respect to his trustworthiness, Applicant said:

I am loyal to the United States, and would never do anything to jeopardize national security or [the] safety of our servicemen and women especially not for financial gain. I have never had a history of drug, alcohol or gambling issues. [The] only issue I have had was being [the] sole provider in my household and getting behind on my financial obligations due to job transitions and amount of bills. However, I would not jeopardize my honor, freedom or reputation for financial incentive. Also I have cleared up [my] credit report and continue to meet my financial obligations. (Item 2 at 2)

In the FORM, Department Counsel noted the absence of corroborating or supporting documentation of resolution of the SOR debts. Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the SOR debts. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM informed Applicant that he had 30 days from the receipt of the FORM **"in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.** If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 4 (emphasis in original)) He did not respond to the FORM.

Personal Conduct

Section 26, **"Financial Record – Delinquency Involving Routine Accounts,"** of Applicant's June 26, 2018 SCA asked whether in the previous seven years: (1) Applicant had any property voluntarily or involuntarily repossessed; (2) Applicant defaulted on any loan; (3) Applicant had bills or debts turned over to a collection agency; and (4) Applicant had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? Applicant answered "No," to all of these questions, and did not disclose any negative financial information or the repossession of his vehicle on his SCA.

Applicant's December 6, 2018 OPM PSI states "Subject verified no to all financial record questions." (Item 7 at 5) In response to follow-up questions during his OPM PSI, Applicant verified that he had accounts pertaining to the debts in SOR ¶¶ 1.b (\$11,250), 1.c (\$999), 1.d (\$949), 1.e (\$606), 1.h (\$1,333); 1.j (\$675), and 1.k (\$404). (*Id.* at 3-8) He had problems paying the debt in SOR ¶ 1.e, and he said he would pay it through a credit counseling service. (*Id.* at 6) He had problems paying the debt in SOR ¶ 1.h in 2015, and he attempted to set up a payment plan with the creditor. (*Id.* at 4) He denied knowledge of the accounts in SOR ¶¶ 1.a (\$12,697), 1.f (\$452), 1.g (\$859), 1.i (\$969), and 1.l (\$296). (*Id.* at 3-8)

Applicant denied that he intended to provide false information on his SCA. (Item 2 at 4) He explained that at the time he completed the SCA, he had not obtained a copy of his credit report. (*Id.*) He "was not aware of errors and discrepancies I have now had

removed from report as well as accurate dates and accounts showing delinquent which was a huge oversight on my part.” (*Id.*, emphasis in original)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines 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 overarching 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 unfavorable.

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 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. 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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 therein 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 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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 individual has received or is receiving financial 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;

(d) the individual initiated and is adhering to 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 actions to resolve the issue.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access

to classified information will be resolved in favor of the national security.”
Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

The SOR alleges 12 delinquent debts totaling \$31,389. In his OPM PSI, Applicant denied knowledge of the five accounts in SOR ¶¶ 1.a (\$12,697), 1.f (\$452), 1.g (\$859), 1.i (\$969), and 1.l (\$296). Applicant’s August 18, 2019 Equifax/Credit Karma credit report does not include the accounts in SOR ¶¶ 1.f, 1.g, 1.i, and 1.l; however, the account in SOR ¶ 1.a (\$12,697) is in his most recent credit report of record. Applicant presented sufficient evidence to rebut the information in his earlier credit reports, and I have credited him with mitigating the debts in SOR ¶¶ 1.f, 1.g, 1.i, and 1.l.

Applicant said he had periods of job transitions (unemployment), and he was the sole provider in his household, which are circumstances largely beyond his control. He does not receive full mitigating credit under AG 20(b) because he did not establish that he acted responsibly under the circumstances. He did not indicate when or how long he was unemployed or in transition between jobs. He did not provide sufficient evidence of progress resolving his delinquent debts.

“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” 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 he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

A debt that became delinquent several years ago is still 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)).

Several of Applicant’s delinquent debts have been either charged off or dropped from his credit report. “[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off. Applicant’s failure to

provide more evidence of debt resolution precludes mitigation of the charged-off debts on his credit report.

The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

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

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

Applicant disputed several negative entries on his credit report. Under AG ¶ 20(e), Applicant has the burden of proving that he “has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” He did not provide “documented proof” of the basis of the disputes or actions to resolve the issue. AG ¶ 20(e) is not applicable with respect to the debts he contested, but nevertheless are documented in his most recent credit report or that he admitted during his OPM PSI.

Applicant did not provide documentation relating to his SOR debts such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve a debt; or (5) other evidence of progress or resolution.

Applicant did not provide sufficient documentation about why he was unable to make greater documented progress resolving the eight debts in SOR ¶¶ 1.a through 1.e, 1.h, 1.j, and 1.k. There is insufficient assurance that his financial problems are being resolved and will not recur in the future. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 lists one condition that could raise a security concern 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose any delinquent debts or the repossession of his vehicle on his June 26, 2018 SCA. The Appeal Board has cogently 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 shifted 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 record evidence establishes AG ¶ 16(a).

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(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 advice of legal counsel or of a person with

professional responsibilities for advising or instructing the individual specifically concerning security processes. 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 contributed to 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 SOR does not allege that he lied when initially questioned during his December 6, 2018 OPM PSI which he stated: "Subject verified no to all financial record questions." (Item 7) When the OPM investigator confronted him during follow-up questioning about his delinquent debts, he admitted knowledge of several delinquent accounts, and that his vehicle was repossessed resulting in a debt for \$11,250. He also falsely denied in his SOR response that he was aware of negative financial information at the time he completed his SCA. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). His false initial response to the OPM investigator and his failure to candidly admit the falsification of his SCA in his SOR response, will not be considered except for the five purposes listed above. He receives some positive credit for admitting during his OPM PSI that he knew about some of the delinquent debts listed in the SOR and the repossession of his vehicle.

None of the mitigating conditions fully apply to Applicant's failure to disclose at least one delinquent debt and the repossession of his vehicle on his SCA. In his SOR response, Applicant failed to take responsibility for the falsification of his SCA when he falsely denied that at the time he completed his SCA he was aware of delinquent debts and repossession of his vehicle. His behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

Whole-Person Concept

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

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 35-year-old mechanical technician, and he has worked for a DOD contractor since May 2018. From November 2011 to May 2018, he worked as a technician. From September 2009 to October 2011, he worked in quality assurance. He indicated he was the sole provider in his household and had less income due to job transitions (unemployment). In 2006, he received a GED. In 2012, he married, and he has two children who are ages six and nine. There is no evidence of workplace misconduct.

The evidence against grant of a security clearance is substantial. Applicant owes eight delinquent SOR debts totaling \$28,913. There is no evidence of progress (payments or payment plans) in the last two years in the resolution of these eight debts. His lack of financial actions raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

The protection of national security relies on applicants to self-report conduct that jeopardizes security, even when that disclosure might damage the applicant's career. AG ¶ 15 emphasizes the importance to security of applicants providing accurate security-

related information. Applicant cannot be trusted to disclose potentially derogatory security-related information about himself. He did not establish his reliability, trustworthiness, and ability to protect classified information.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)). I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations and personal conduct security concerns.

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 through 1.e:	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j and 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge