



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



In the matter of: )  
)  
) ISCR Case No. 20-02350  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha L. Manns, Esq., Department Counsel  
For Applicant: Ronald C. Sykstus, Esq.

07/01/2022

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant did not intend to deceive when he omitted financial information from his February 13, 2020 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA) and initially during his May 4, 2020 Office of Personnel Management (OPM) personal subject interview (PSI). Guideline E (personal conduct) security concerns are refuted. However, he failed to show he had good cause for failing to maintain currency on three federally-insured student loans listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 13, 2020, Applicant completed and signed an SCA. (Government Exhibit (GE) 1). On February 25, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (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. (Hearing Exhibit (HE) 2)

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. (HE 2)

On August 24, 2021, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On October 29, 2021, Department Counsel was ready to proceed. On February 18, 2022, the case was assigned to me. On March 7, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 22, 2022. (HE 1) The hearing was held as scheduled.

Department Counsel offered 4 exhibits into evidence, and Applicant offered 11 exhibits into evidence. (Transcript (Tr.) 12-18; GE 1-GE 4; Applicant Exhibit (AE) A-AE K) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 15-16) On May 5, 2022, DOHA received a transcript of the hearing. The record was held open until May 23, 2022, to enable Applicant to provide additional documentation. (Tr. 113, 155) One post-hearing document was received and admitted without objection. (AE L) The record closed on May 23, 2022.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

In Applicant's SOR response, he partially admitted and partially denied the allegations in SOR ¶¶ 1.a through 1.i, 2.a, and 2.b. (HE 3) He also provided mitigating information. (*Id.*) His admissions are accepted as findings of fact.

Applicant is a 36-year-old technical writer who has worked for two defense contractors during the previous year. (Tr. 19, 21) He was unemployed in February and March 2022, and he began working for his current employer three weeks before his hearing. (Tr. 19-20) His current employer sponsored him for a security clearance. (Tr. 67) He has been married 14 years and has two children ages 11 and 13. (Tr. 21) He honorably served in the Marine Corps from 2006 to 2011. (Tr. 23, 25) Applicant and his spouse met when they were serving in the Marine Corps. (Tr. 21) His Marine Corps specialty was avionics technician. (Tr. 21, 24) He was a sergeant when he left the Marine Corps. (Tr. 73)

In 2004, Applicant graduated from high school, and in 2011, he received a bachelor's degree in technical management. (Tr. 23, 25, 49-50) He had a 3.76 grade point average in college, and he graduated Magna Cum Laude. (Tr. 25; AE K)

Applicant loves to play golf. (Tr. 31) He coaches his son's baseball, football, and basketball teams, which are sponsored by a recreation center. (Tr. 31; AE K) He volunteers in his community. (AE K)

## Financial Considerations

From 2012 to 2017, Applicant worked for the same company. (Tr. 28) In 2014, Applicant went on a mission trip to Ghana, and he and his spouse decided to try to adopt from an orphanage. (Tr. 32) After two years of background checks and paying almost \$17,000, adoptions from Ghana to the United States were terminated. (Tr. 33, 81-83, 107) In 2018, Applicant's spouse's father had dementia, and he moved in with Applicant and his spouse. (Tr. 29) Applicant and his spouse's current gross annual income is about \$200,000. (Tr. 61-62, 66, 98) They may have earned less in previous years. Applicant's spouse uses a budget and handles payment of the family bills. (Tr. 61, 79-80, 88, 92-93) He and his spouse are receiving financial counseling at their church. (Tr. 62, 88) He and his spouse purchased a house; however, it is listed in her name. (Tr. 64)

The February 25, 2021 SOR alleges six federal student loans placed for collection totaling \$94,179 as follows: ¶ 1.a for \$21,217; ¶ 1.b for \$21,063; ¶ 1.c for \$19,572; ¶ 1.d for \$19,453; ¶ 1.f for \$6,420; and ¶ 1.g for \$6,420. (HE 2) The SOR alleges three additional delinquent debts as follows: ¶ 1.e is a charged-off credit union debt for \$10,817; ¶ 1.h is a charged-off debt for \$520; and ¶ 1.i is a utility debt placed for collection for \$87. (*Id.*)

Applicant's six SOR-alleged federal student-loan debts resulted from his college and post-graduate education. In 2011, Applicant received a bachelor's degree after attending classes for two years while he was on active duty in the Marine Corps. (Tr. 52, 68) In 2012, he started a master's degree program, and in 2013, he left his master's program after attending a university for four quarters. (Tr. 68-69) Applicant and his spouse estimated his student loans totaled about \$40,000 rather than the \$94,179 alleged in the SOR. (Tr. 50, 84, 111-112) Applicant had an education deferment for repayment of his student loans in 2012 to 2013 because he was taking classes towards a master's degree. (Tr. 35) Then he moved several times, and the account was transferred. (Tr. 56, 69) He never made any student-loan payments. (Tr. 57, 69)

I asked Applicant to provide documentation after the hearing showing the status of the student loans to enable an assessment of whether some debts were duplications of other debts, and he provided the requested documentation. (Tr. 112-113; AE L) On March 3, 2017, the Department of Education (D. Ed.) informed Applicant that he had three delinquent student loans totaling \$47,173 (\$37,357 principal and \$9,816 interest). (AE L) The three student loans were: \$19,545; \$21,181; and \$6,447, and they were made in 2013, 2012, and 2011, respectively. (*Id.*) The debts in SOR ¶ 1.a for \$21,217; SOR ¶ 1.c for \$19,572; and SOR ¶ 1.g for \$6,420 are duplications of other SOR debts, and these three debts are mitigated.

In 2019 or 2020, Applicant's federal income tax refund was transferred to pay a portion of his student-loan debt. (Tr. 57, 70) Repayment of his student loans was not a priority to him because of other issues, such as raising a family, adopting a child from Ghana, and establishing his and his spouse's employments after leaving the Marine Corps. (Tr. 86) He was also waiting to see if the federal government would forgive his student-loan debt. (Tr. 58) He wanted to check to see if he could get a disability rating

from the Department of Veterans Affairs (VA), and then maybe he could use the disability rating to have some of his student loans forgiven. (Tr. 58) Applicant said he was working on establishing a payment plan for his student loans. (Tr. 33) He and his spouse sent in their W-2s, 2019 and 2020 federal income tax returns, and other information to the D. Ed. (Tr. 33, 85; AE L) Applicant intends to initiate the D. Ed.'s rehabilitation program to get his loans out of default status. (Tr. 36, 85) The student-loan debts in SOR ¶ 1.b for \$21,063; SOR ¶ 1.d for \$19,453; and SOR ¶ 1.f for \$6,420 are unresolved. Applicant's spouse's student loans total about \$55,000, and they are current. (Tr. 101, 105)

In March 2020, as a result of the COVID-19 pandemic, the D. Ed. placed federal student loans in forbearance. (Tr. 36) On December 22, 2021, the D. Ed. extended the student loan payment pause through May 1, 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collections on defaulted loans. See Federal Student Aid website, <https://studentaid.gov/announcements-events/covid-19>. His student loans are not listed on his April 12, 2022 credit report. (Tr. 36-37; GE 4)

The debt in SOR ¶ 1.e is a charged-off credit union debt for \$10,817. Applicant and his spouse used the funds to rehabilitate a residence they received from his grandfather to enable them to rent out the residence. (Tr. 38) The rent was insufficient to cover the mortgage, and the property was foreclosed in 2014 or 2015. (Tr. 59) The property was auctioned, and there is no deficiency balance on the mortgage because the mortgage was a VA-guaranteed loan. (Tr. 65-66) The VA did not seek any payment from Applicant. (Tr. 66) Applicant said he made four payments to address the debt in SOR ¶ 1.e; however, the creditor turned the debt over to collections. (Tr. 38-39) He said he is making \$432 monthly payments to address the debt in SOR ¶ 1.e. (Tr. 39, 86; AE E; AE F) He believed the current balance is about \$5,900. (Tr. 50) They expect the debt to be resolved in March 2023. (Tr. 86) This debt is being resolved.

The debt in SOR ¶ 1.h is a charged-off debt for \$520. Applicant said he paid the debt. (Tr. 39) He disputed the status of the debt as indicated on his credit report. (Tr. 39) This debt is resolved.

The debt in SOR ¶ 1.i is an \$87 utility debt placed for collection. Applicant said he paid the debt when he learned about it. (Tr. 40, 87; AE G) This debt is resolved.

## **Personal Conduct**

SOR ¶ 2.a alleges Applicant failed to disclose on his February 13, 2020 SCA the information in SOR ¶¶ 1.a through 1.i concerning his delinquent debts. Applicant did not disclose any debts placed for collection or charged off in the previous seven years on his February 13, 2020 SCA. (HE 2)

Applicant said he completed an SCA in 2017, and then he changed employment. (Tr. 41-42) In 2020, he was supposed to complete his SCA because his 2017 SCA was apparently not processed. (Tr. 43) For his 2020 SCA, he updated the employment history; however, he hurried through the remainder of the SCA and did not read the questions

carefully. (Tr. 43) He completed the SCA as quickly as he could. (Tr. 46) He was just checking off the no blocks without really reading the questions. (Tr. 71-72) He compared it to completion of a medical questionnaire when one has an appointment with a physician. He did not disclose his foreclosure or the other delinquent debts on his SOR. (Tr. 60; GE 1) He was “complacent” about his SCA. (Tr. 72) He did not intend to deceive the government. (Tr. 44) He held a security clearance for 17 years, and he did not believe his SCA or background raised any security issues. (Tr. 44)

SOR ¶ 2.b alleges Applicant failed to disclose the debts listed in SOR ¶¶ 1.a through 1.i during his May 4, 2020 OPM PSI. (HE 2) He admitted that he told the OPM investigator he paid his bills on time and was not behind on any payments at the beginning of the financial interview. (Tr. 45, 54) When the investigator asked him about his student-loan debt, he admitted that he owed the student loans, and he had not made any payments since 2012. (GE 2 at 8) His tax refunds for two years were diverted to pay his student loans. (*Id.*) He suggested to the OPM investigator that he might receive some forgiveness of his student loans if the VA decided he was disabled. (*Id.*) He also discussed his charged-off credit union debt for \$10,817 alleged in SOR ¶ 1.e, and he said he was in settlement negotiations with the creditor. (*Id.* at 9) He did not intend to mislead the investigator about his finances. (Tr. 45) His failure to be scrupulously accurate was based on complacency and his belief that his background did not raise any security issues. (Tr. 45-46) He did not intend to conceal security-relevant information.

Applicant promised to be more careful in his future completion of security documents and forms. (Tr. 47) He will ensure his answers are accurate and complete. (Tr. 47-48) He has served the United States faithfully for 17 years, and he would not intentionally falsify the information he provides to security officials. (Tr. 48) He believes he can continue to provide valuable contributions to the nation’s defense. (Tr. 48)

## **Character Evidence**

Four character witnesses, including his spouse and three friends, made statements supporting approval of his access to classified information. (Tr. 74-138) The general sense of their statements is that Applicant is honest, diligent, loyal, patriotic, helpful, and trustworthy.

During his Marine Corps service, he received the following awards: Certificate of Appreciation; Navy and Marine Corps Achievement Medal; Letter of Appreciation; National Defense Service Medal; Global War on Terrorism Service Medal; Marine Corps Good Conduct Medal; and Expert Rifle Badge (2). (Tr. 26; AE J) He completed several Marine Corps training courses. (*Id.*)

## **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 [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

### 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.

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 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. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

- (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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

Applicant experienced unemployment, transition expenses after leaving the Marine Corps, and illness in his family, which are circumstances largely beyond his control, which adversely affected his finances. However, "[e]ven 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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Another component under AG ¶ 20(a) is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. He did not prove that he maintained contact with several of his creditors or that he made offers to make partial payments to them.

Applicant is credited with mitigating the debts in SOR ¶¶ 1.a, 1.c, and 1.g as duplications of other SOR debts. He established payment plans or paid the debts in SOR ¶ 1.e, 1.h, and 1.i, and these three debts are also mitigated.

Applicant is not credited with mitigating his student-loan debts in SOR ¶¶ 1.b, 1.d, and 1.f. His latest credit reports do not show these three debts are delinquent. However, he admitted he did not establish payment plans for these three debts. The absence of these debts from his credit reports does not show meaningful evidence of mitigation. See Megan Leonhardt, “Freezing student loan payments helped boost borrowers’ credit scores,” *Fortune*, (Mar. 4, 2022), <https://fortune.com/2022/03/04/freezing-student-loan-payments-helped-boost-credit-scores/> (indicating credit reporting companies are bringing federal student loans to current status because of Presidential orders).

Complete reliance on the COVID-19 pandemic-based student loans deferment to establish mitigation for security clearance purposes is misplaced. Applicant’s student loans were delinquent from 2013 to 2020. See ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021); ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021) (noting student loans totaling about \$20,000 that were delinquent before the COVID-19 federal deferment may be the basis for revocation of access to classified information). Applicant did not establish he was unable to establish a payment plan and make some payments for several years before the federal deferment in 2020. See ISCR Case No. 14-03612 at 3 (Aug. 25, 2015) (“Indeed, even if a credit report states that a debt has been paid, that fact alone does not, in and of itself, resolve concerns arising from the dilatory nature of an applicant’s response to his debts or other circumstances that detract from an applicant’s judgment and reliability. In this case, the Judge commented on the absence of detailed evidence about how Applicant addressed his finances and reasonably had doubts about his clearance eligibility based on that lack of evidence”).

Applicant’s history of non-payment of his federal student-loan debt from 2013 to 2020 has important security implications. His resumption of activity to begin a payment plan, after receipt of notice of the security concern during his OPM interview and SOR, suggests that he may have resumed payments to address security concerns and not because of his recognition of his financial responsibilities. See ISCR Case No. 20-01004 at 3 (App. Bd. June 28, 2021) (“Resolution of a delinquent debt does not preclude further inquiry or examination regarding it. Even if an alleged debt has been paid or canceled, a Judge may still consider the circumstances underlying the debt as well as any previous

actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance") (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017)). "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information." ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015).

Applicant did not establish that he was unable to make more progress sooner in the resolution of his student-loan debts. There is insufficient assurance that his financial problems are being resolved. 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.

AG ¶ 16 lists conditions that could raise a security concern and may be disqualifying including:

(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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's mens rea in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

Applicant said he did not intend to deceive when he omitted financial information from his February 13, 2020 SCA and initially during his May 4, 2020 OPM PSI. He raced through his SCA and checked the boxes answering no to financial questions without reading them because he assumed he did not have any financial information that raised a security concern. Similarly, at the start of his OPM interview, he indicated his accounts were current and he did not have any financial problems. When he was confronted with negative financial information, he readily admitted his delinquent debt and provided explanations. His spouse handles the family finances, and he was not focused on financial issues. His candid and forthright explanations at his hearing refuted personal conduct security concerns.

### **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 E and F 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 36-year-old technical writer who has worked for two defense contractors during the previous year. He honorably served in the Marine Corps from 2006 to 2011. His Marine Corps specialty was avionics technician. He was a sergeant when he left the Marine Corps. He received several awards and completed training courses while in the Marine Corps. In 2011, he received a bachelor's degree in technical management. He had a 3.76 grade point average in college, and he graduated Magna Cum Laude. He completed several courses towards a master's degree. He volunteers in his community. The general sense of his character statements is that Applicant is honest, diligent, loyal, patriotic, helpful, and trustworthy.

Applicant provided important mitigating information. His finances were harmed by several circumstances largely beyond his control. He mitigated all of the SOR allegations except for SOR ¶¶ 1.b, 1.d, and 1.f.

The evidence against grant of a security clearance is more substantial at this time. Applicant failed to provide persuasive information to explain why he was unable to make greater progress sooner resolving the three student loans in SOR ¶¶ 1.b, 1.d, and 1.f totaling about \$45,000. He did not show a track record of consistent payments to address his student loans. His financial history raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debt, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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 refuted personal conduct security concerns; however, he failed to mitigate financial considerations 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g, 1.h, and 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge