



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



In the matter of:)
)
) ISCR Case No. 23-00457
)
Applicant for Security Clearance)

Appearances

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

10/16/2023

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding Financial Considerations and Personal Conduct. Eligibility for a security clearance is denied.

Statement of the Case

On January 29, 2008, and again on September 27, 2022, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). He was interviewed on two separate occasions by investigators from the U.S. Office of Personnel Management (OPM) – February 22, 2018, and again on December 22, 2022. On March 28, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On April 20, 2023, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 2) A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on June 7, 2023, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on June 17, 2023. His response was due on July 17, 2023. Applicant chose not to respond to the FORM, for as of September 28, 2023, no response had been received. The case was assigned to me on September 28, 2023. The record closed on July 17, 2023.

Findings of Fact

In his response to the SOR, Applicant admitted, or partially admitted, with brief comments, all the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.c.). He denied the personal conduct allegation with brief comments. (SOR ¶ 2.a.). Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 53-year-old employee of a defense contractor. He has been serving as a ramp operations technician with his current sponsor since July 2022. He previously served as a truck driver (August 2021 – July 2022), a transportation coordinator (January 2021 – August 2021), a mission performance analyst (September 2019 – January 2021 and October 2018 – September 2019), military operations analyst staff (July 2017 – October 2018), military operations analyst (June 2016 – June 2017), and senior load planner (February 2015 – May 2016). an able seaman with another employer from February 2003 until December 2007. He has never served with the U.S. military. He was granted a security clearance at an unspecified level either in 2002 or 2004 until 2008, but he no longer has that clearance. He was married in 2001 and divorced in 2011; remarried in 2015 and separated in 2018; and he currently cohabits since 2018. He has four children, born in 1998, 2000, 2013, and 2016.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 7 (Combined Experian, TransUnion, and

Equifax Credit Report, dated April 5, 2019); Item 6 (Equifax Credit Report, dated November 4, 2019); Item 5 (Equifax Credit Report, dated November 16, 2020); Item 4 (Equifax Credit Report, dated July 1, 2021); and Item 9 (Enhanced Subject Interview, dated May 7, 2019).

Applicant was interviewed by an investigator with the U.S. Office of Personnel Management (OPM) on May 7, 2019. During that interview, he acknowledged, for the first time, that he had had repossessions; had defaulted on loans; had bills turned over to collections; had accounts suspended, charged off, or cancelled for failure to pay; had been evicted for non-payment; had wage benefits or assets garnished; and had been over 120 days delinquent on any debt. Despite being offered the opportunity to furnish specifics regarding those issues, he was unable, or chose not, to do so. (Item, 9, at 6) Upon being confronted with specific accounts, he finally became more open about his accounts and described the reasons for his financial difficulties. Because of an oil spill in 2012, his income decreased \$20,000 per year. He did not give any additional information regarding the specific oil spill, how it impacted his employer, or why his salary was reduced. He claimed that he intended to resolve the delinquent account when he is able to do so because, as of the date of the interview, he was still suffering from the decreased income. (Item 9, at 7)

In his Answer to the SOR, Applicant added:

Due to the uncertainty and ups and downs of the oil and gas industry, I received a \$50,000 pay cut that caused a massive financial strain on my finances. But during the past year, I have been working on settling my debts. I have made repayment agreements with several of these creditors, and I am working on resolving these matters.

(Item 2, at 5)

He failed to explain how his salary loss increased from \$20,000 to \$50,000; to specify with which creditors he had engaged; which accounts had repayment agreements; whether he had made any payments; or if any accounts had been settled or otherwise resolved. He offered no documentation, such as repayment agreements, statements from creditors, receipts, or cancelled checks, to support his claims.

The SOR alleged 17 still-delinquent accounts totaling approximately \$56,439, as set forth below:

SOR ¶ 1.a. is an unspecified type of account with what appears to be a residential complex with an unpaid balance of \$4,887 that was placed for collection. Although the account was in dispute, no reason was indicated for the dispute. (Item 7, at 11; Item 6, at 2; Item 5, at 2) The account has not been resolved.

SOR ¶ 1.b. is a cellular phone account with an unpaid balance of \$3,649 that was placed for collection. It was charged off in February 2019. (Item 7, at 6; Item 5, at 2; Item 4, at 2-3; Item 9, at 9) The account has not been resolved.

SOR ¶ 1.c. is an unspecified type of account with an unpaid balance of \$1,462 that was placed for collection and charged off. (Item 6, at 2; Item 5, at 2; Item 4, at 5) The account has not been resolved.

SOR ¶ 1.d. is a cellular phone account with an unpaid balance of \$1,120 that was placed for collection. (Item 5, at 2-3; Item 4, at 1) The account has not been resolved.

SOR ¶ 1.e. is an unspecified type of account with an unpaid balance of \$970 that was placed for collection and charged off in September 2015. (Item 7, at 7; Item 6, at 2; Item 5, at 3; Item 4, at 5) The account has not been resolved.

SOR ¶ 1.f. is a medical account with an unpaid balance of \$679 that was placed for collection. (Item 5, at 3; Item 4, at 2) The account has not been resolved.

SOR ¶ 1.g. is a medical account with an unpaid balance of \$89 that was placed for collection. (Item 5, at 3; Item 4, at 2) The account has not been resolved.

SOR ¶ 1.h. appears to be an automobile lease with an unpaid and past-due balance of \$15,542 that was placed for collection. (Item 7, at 6; Item 6, at 1; Item 9, at 10) The account has not been resolved.

SOR ¶ 1.i. is an unspecified type of secured account with an unpaid balance of \$5,033 that was placed for collection and charged off in September 2013. (Item 7, at 6; Item 9, at 9) The account has not been resolved.

SOR ¶ 1.j. is an unspecified type of account with an unpaid balance of \$4,342 that was placed for collection. (Item 7, at 11; Item 9, at 8) The account has not been resolved.

SOR ¶ 1.k. is an unspecified type of lease account with an unpaid balance of \$2,382 that was placed for collection and charged off. (Item 7, at 7; Item 9, at 7, 9) The account has not been resolved.

SOR ¶ 1.l. is an unspecified type of account with an unpaid balance of \$8,857 that was placed for collection. Although the account was in dispute, no reason was indicated for the dispute. (Item 7, at 10; Item 9, at 8) The account has not been resolved.

SOR ¶ 1.m. is an unspecified type of account with an unpaid balance of \$2,692 that was placed for collection. Although the account was in dispute, no reason was indicated for the dispute. (Item 7, at 11; Item 9, at 7-8) The account has not been resolved.

SOR ¶ 1.n. is an unspecified type of account with an unpaid balance of \$2,568 that was placed for collection. Although the account was in dispute, no reason was indicated for the dispute. (Item 7, at 11; Item 9, at 7) The account has not been resolved.

SOR ¶ 1.o. is a cellular phone account with an unpaid balance of \$1,569 that was placed for collection. (Item 7, at 12; Item 9, at 7) The account has not been resolved.

SOR ¶ 1.p. is an unspecified type of account with an unpaid balance of \$500 that was placed for collection. Although the account was in dispute, no reason was indicated for the dispute. (Item 7, at 12; Item 9, at 6) The account has not been resolved.

SOR ¶ 1.q. is a cellular phone account with an unpaid balance of \$98 that was placed for collection. (Item 7, at 12; Item 9, at 6) The account has not been resolved.

It is noted that despite Applicant's claimed inability to maintain the accounts alleged in the SOR in a current status because of insufficient funds to do so, he described his overall financial situation in May 2019 as merely "ok." (Item 9, at 10) It should be noted that there is no evidence of financial counseling, a budget, or anything to describe with any specificity his current financial situation. He did not report his net monthly income, his monthly household expenses, or any monthly debt payments. In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. There is a paucity of evidence to indicate that his financial problems are now under control, and it is difficult to determine if Applicant is currently in a better position financially than he had been.

Personal Conduct

SOR ¶ 2.a. – Applicant failed to register, as required by law, for the Selective Service. In his SF 86, during his OPM interview, and in his Answer to the SOR, he claimed he was unaware that doing so was a requirement, or he did not know how or where to register. (Item 2, at 3, 5; Item 3, at 14; Item 9, at 4) There is no provision to enable him to register after the age of 26.

The registration requirement is set forth in 50 U.S.C. 3802:

(a) Except as otherwise provided in this chapter it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder. The provisions of this section shall not be applicable to any alien lawfully admitted to the United States as a nonimmigrant under section 1101(a)(15) of title 8, for so long as he continues to maintain a lawful nonimmigrant status in the United States.

(b) Regulations prescribed pursuant to subsection (a) may require that persons presenting themselves for and submitting to registration under this section provide, as part of such registration, such identifying information (including date of birth, address, and social security account number) as such regulations may prescribe.

(June 24, 1948, Ch. 625, title I, §3, 62 Stat. 605 ; June 19, 1951, Ch. 144, title I, §1(c), 65 Stat. 76 ; Pub. L. 92–129, title I, §101(a)(2), Sept. 28, 1971, 85 Stat. 348 ; Pub. L. 97–86, title IX, §916(a), Dec. 1, 1981, 95 Stat. 1129 .)

The law identifies the places and time for registration, as well as the manner of registration:

1–201. Persons who are required to be registered and who are in the United States shall register at the places and by the means designated by the Director of Selective Service. These places and means may include but are not limited to any classified United States Post Office, the Selective Service Internet web site, telephonic registration, registration on approved Government forms, registration through high school and college registrars, and the Selective Service reminder mail back card.

1–202. Citizens of the United States who are required to be registered and who are not in the United States, shall register via any of the places and methods authorized by the Director of Selective Service pursuant to paragraph 1–201 or present themselves at a United States Embassy or Consulate for registration before a diplomatic or consular officer of the United States or before a registrar duly appointed by a diplomatic or consular officer of the United States.

1–203. The hours for registration in United States Post Offices shall be the business hours during the days of operation of the particular United States Post Office. The hours for registration in United States Embassies and Consulates shall be those prescribed by the United States Embassies and Consulates.

1–301. Persons who are required to be registered shall comply with the registration procedures and other rules and regulations prescribed by the Director of Selective Service.

1–302. When reporting for registration each person shall present for inspection reasonable evidence of his identity. After registration, each person shall keep the Selective Service System informed of his current address.

Under 50 U.S.C 3811(g), any individual who failed to timely register, may not be denied any federal right or benefit if he can show by a preponderance of evidence (e.g. more-likely-than-not) that his failure to register was not *knowing* and *willful*. By simply stating he was unaware that registering was a requirement, or he did not know how or where to register, without more, does not meet that preponderance of evidence standard. (<https://www.sss.gov/register/men-26-and-older/>)

SOR ¶ 2.b. – On March 19, 2019, when Applicant completed his SF 86, he responded to questions pertaining to his financial record. Several of those questions in

Section 26 – Financial Record – asked if, in the past seven years, he had any bills or debts turned over to a collection agency; if he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or if he was currently over 120 days delinquent on any debt. He answered “no” to those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, incorrect for at that time Applicant had several accounts that fell within the stated parameters.

During his OPM interview, after being confronted with information regarding specific delinquent accounts, he acknowledged the existence of those accounts, and he stated that his omissions were due to oversight, not otherwise explained. (Item 9) In his Answer to the SOR, Applicant admitted the allegation, but added:

At the time of submitting my answers, I was working towards paying off my debts and at the time, I didn't recall having accounts, such as credit cards, that were 120 days past due. I answered every question to the best of my knowledge and didn't deliberately falsify my answers.

(Item 2, at 5)

SOR ¶ 2.c. – On the same day, Applicant also responded to questions pertaining to his police record. Several of those questions in Section 22 – Police Record – asked if he had “EVER” been charged with any felony offense; or been charged with an offense involving firearms or explosives; or been charged with an offense involving alcohol or drugs. He answered “no” to those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false. In September 1996, at the age of 17, he was charged with: (1) carrying a concealed weapon, a misdemeanor; and (2) possession of marijuana, a misdemeanor. He was sentenced to probation for three months, and ordered to perform community service. (Item 8, at 4-5; Item 9, at 6) In December 1996 (as opposed to February 1996, as erroneously alleged in the SOR), he was charged with damage to property and criminal mischief, a felony. The charge was eventually dropped or abandoned by the prosecutor. (Item 8, at 5-6; Item 9, at 5-6) He told the OPM investigator that he did not list this information due to oversight. (Item 9, at 6)

In his Answer to the SOR, Applicant admitted the allegation, but added:

I have never deliberately withheld any information. I've answered the above questions to the best of my knowledge without having a report to reference. I was a teen when this incident took place, and I didn't really remember the outcome. I've answered these questions exactly as I did when I held a clearance from 2004 to 2008. This incident took place over 20 years ago and without pulling a report, I tried to answer the question to the best of my knowledge.

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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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 and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified

information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan, 484 U.S. at 531*)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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. 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 guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The SOR alleged 17 still-delinquent accounts totaling approximately \$56,439. Applicant attributed his inability to maintain those accounts in a current status to an oil spill in 2012, which led to a massive financial strain on his finances due to a reduction of his annual salary by either \$20,000 or \$50,000, depending on when he described the situation. In May 2019, he described his overall financial situation as merely “ok.” AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence that Applicant has been unwilling to satisfy his debts regardless of an ability to do so, and AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(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

AG ¶¶ 20(b) minimally applies, but none of the other conditions apply. 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))). He apparently disputed several of the accounts, but failed to furnish any reasonable basis to do so. Applicant’s references to an otherwise unexplained oil spill; and references to a substantial loss of wages without describing his actual income during the period 2012 through 2021, raise the possibility of a business downturn that might have been largely beyond his control. But, without more information, it is impossible to determine what the financial impact may have been. Moreover, although he claimed that during the year preceding his Answer to the SOR he had been working on settling his

debts; had made repayment agreements with several of the creditors; and was working on resolving the matters; he offered no documentary evidence of a good-faith effort to support any of those claims, and he did not identify with which creditors he had any resolution discussions.

Based on the evidence, it appears that he actually ignored his delinquent accounts for a substantial period after 2012. He offered no documentary evidence to support any contentions that resolution efforts had been made. Because of his failure to confirm payment of even his smallest delinquent accounts (a \$89 medical account and a \$98 cellular phone account) and his failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the conclusion that his financial problems are not under control. He has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors. The Appeal Board has previously commented on such a situation:

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.

An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in 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. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018) In this instance, Applicant has failed to offer any evidence that he has even begun making such efforts even after the SOR was issued in March 2021.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant offered no specifics regarding any repayment plan; submitted no documentary evidence to reflect any payments made; and only made promises of proposed actions. Not one delinquent debt has been resolved.

The nature, frequency, and recency of Applicant's financial difficulties, and his general failure to voluntarily and timely start to resolve them until substantial investigatory action was taken, is sufficient to conclude that his financial difficulties were not infrequent. The timeliness of his efforts to resolve his debts is not good, and the delay in commencing to do so, is another negative factor. The subsequent positive and successful efforts are good. However, the source of the funds he used to resolve his delinquent accounts is still shrouded in mystery.

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."

(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. Jun. 4, 2001)).

There is no evidence of financial counseling, a budget, or current financial information. Applicant's delayed, if not non-existent, actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes two conditions that could raise security concerns. Under AG ¶ 16, it is potentially disqualifying if there is:

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

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

With respect to the alleged omissions, concealments, or falsifications on March 19, 2019, when Applicant completed his SF 86, he responded to certain questions pertaining to his financial record (concerning delinquent debts, collection activities, credit card suspensions, etc.) and police record (felony arrests or charges involving firearms or drugs). He answered “no” to those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, incorrect for at that time Applicant had several accounts, as well as one arrest, that fell within the stated parameters. As noted above, in his Answer to the SOR, although he admitted the two allegations, he claimed that the incorrect answers were due to oversight, and that he did not deliberately falsify his answers.

Applicant’s responses provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely the result of misunderstanding of the true facts. I have considered the very limited available information pertaining to Appellant’s background and professional career, and his seemingly superficial understanding of his financial matters, in analyzing his actions. Proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning Appellant’s intent or state of mind at the time the falsification or omission occurred. 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.

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

While there may have been some confusion in Applicant’s mind regarding his police record regarding an incident that occurred over 20 years ago, his admission as to the financial record is unambiguous (he knew the accounts existed, but he was working towards paying them off at the time). Nevertheless, AG ¶ 16(a) has been established.

With respect to Applicant's failure to register, as required by law, for the Selective Service before the age of 26, it is unchallenged, and AG ¶ 16(d) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct under AG ¶ 17:

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

(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; and

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

AG ¶ 17(c) partially applies to the allegation regarding Applicant's failure to register for the Selective Service – something he was required to do no later than 2004 – because he was candid when he submitted his SF 86. AG ¶¶ 17(c) also applies to the police record, but not to the finance record. As noted above, over two decades ago, when he was a minor, Applicant was arrested and charged with carrying a concealed weapon, a misdemeanor; and possession of marijuana, a misdemeanor. He was sentenced to probation for three months, and ordered to perform community service. That same year, he was charged with damage to property and criminal mischief, a felony. The charge was eventually dropped or abandoned by the prosecutor. He did not admit that his intention was to falsify, omit, or conceal the police-related information. Over two years have passed since Applicant completed the SF 86, and he has not been involved in any more recent personal conduct issues. His responses to the police record questions were about an isolated incident two decades earlier. Substantial periods of time have passed since the incident occurred and the SF 86 was completed. While Applicant's financial record response was made at the same time, the issues related to his finances continue to this day, so they are considered more significant.

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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial considerations. He is a 43-year-old employee of a defense contractor. He has been serving as a "bosun" – a merchant mariner – with his current sponsor since September 2008. He previously served as an able seaman with another employer from February 2003 until December 2007. He was granted a security clearance at an unspecified level either in 2002 or 2004 until 2008, but he no longer has that clearance.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant omitted, concealed, or falsified his financial history in his SF 86. He failed to timely register with the Selective Service before he turned 26. He has 17 still-delinquent accounts totaling approximately \$56,439. Although he claimed that during the year preceding his Answer to the SOR he had been working on settling his debts; had made repayment agreements with several of the creditors; and was working on resolving the matters; he offered no documentary evidence of a good-faith effort to support any of those claims, and he did not identify with which creditors he had any resolution discussions.

Because of Applicant's failure to confirm payment of even his smallest delinquent accounts (a \$89 medical account and a \$98 cellular phone account) and his failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the conclusion that his financial problems are not under control. He has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors. There are lingering questions if Applicant is currently in a better position financially than he had been, as well as continuing doubt about his current reliability, trustworthiness, and good judgment.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial

situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's track record of zero verifiable efforts to resolve the debts, and the lengthy period of non-contact with his creditors, is negative and disappointing. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

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.q.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.:	Against Applicant
Subparagraph 2.c.:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge