



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00587
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

01/04/2024

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines E (personal conduct) and F (financial considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On June 6, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and F. Applicant submitted an undated response to the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 4, 2023. The hearing was originally scheduled for October 19, 2023, but it was rescheduled at the Government’s request to November 7, 2023. The hearing convened as rescheduled.

Government Exhibits (GE) 1 through 11 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted documents that I have marked AE E

(bankruptcy documents) and F (child support documents) and admitted without objection.

### **Findings of Fact**

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since August 2022. He served in the National Guard from 1994 to 1995 and on active duty in the U.S. military from 1995 until he was honorably discharged in 2001. He is a high school graduate. He married in 1995 and divorced in 2005. He lived with a cohabitant from about 2012 or 2013 to 2019. He currently lives with a different cohabitant. He has seven children. He also tragically lost a child at birth. (Transcript (Tr.) at 31, 58, 133-136, 151-153; GE 1, 3, 7)

Applicant was an E-5 and stationed overseas in May 2000. Military police were notified that at about 0215, Applicant and a first lieutenant from his company violated a policy when they purchased food from a vendor after 0200. They were warned not to purchase food, but they refused to leave until they purchased the food. They were escorted to the military police station. The report indicated that the first lieutenant “was extremely belligerent and used indecent language towards the military police.” The report indicated there was sufficient probable cause to charge Applicant and the first lieutenant with failure to obey an order or regulation, drunk and disorderly conduct, conduct unbecoming an officer and a gentleman, and indecent language. It appears that most of the alleged charges referred to the first lieutenant and not Applicant because as an enlisted person, Applicant could not be charged with conduct unbecoming an officer, and the report did not state that Applicant was belligerent or used indecent language. (GE 5)

Applicant stated that he recognized a first lieutenant from his unit fighting with another individual. He tried to break up the fight and get the lieutenant to leave. At that point, the military police arrived, and the lieutenant started arguing with the military police. Applicant stated that he tried to take the lieutenant back to base, but the MPs arrested him for drunk and disorderly and failure to obey an order. (Tr. at 18-19, 85-87; Applicant’s response to SOR; GE 3, 5)

Applicant stated in an October 2022 background interview that he received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for the incident. He did not recall what he was charged with nor what punishment was awarded. In his response to the SOR and during his testimony, he stated that he refused nonjudicial punishment and requested a court-martial. He stated that his command convinced him to perform extra duties without formally going through nonjudicial punishment. (Tr. at 18-21, 86-87, 134-135; Applicant’s response to SOR; GE 3)

Applicant was stopped by the police in October 2005 for speeding. The police report indicated that Applicant’s speech was slurred and there was a strong odor of alcohol. He was belligerent and uncooperative. He cursed at the police officers and

refused to take a breath or blood test. He was arrested and charged with driving while intoxicated (DWI). (Tr. at 87; GE 4, 6)

Applicant stated that he wanted a breath or blood test, but the police did not give him one. He stated that the video camera and breathalyzer were not working. He denied that he was belligerent with the police officers. He received some type of diversion program in which he had to report to the probation office, attend an alcohol class, and pay fines and fees. The charge was dismissed in 2006 after he successfully completed the diversion program. (Tr. at 88-92; GE 3)

Applicant was arrested again for DWI in about 2007. He testified that he received a deferred adjudication in which he completed a class, and the charge was then dismissed. (Tr. at 88-92, 128-129) There is no independent evidence of the 2007 DWI, and it was not alleged in the SOR. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be used to assess Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) in May 2011. He answered "No" to a police record question that asked, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150.)" He did not report that he was arrested in May 2005 and 2007 and charged with DWI. (Tr. at 105-107; GE 2)

Applicant also answered "No" to a question on the 2011 SF 85P that asked, "Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." He failed to list any of the delinquent debts that were listed on an August 2011 credit report, including an \$8,211 charged-off auto loan. (Tr. at 114; GE 2)

Applicant denied intentionally providing false information on the SF 85P. He stated that he misunderstood the police record question to be asking if he had been convicted. He also stated that he thought his DWI charges were more than seven years old. He testified that he was unaware that he had delinquent debts. (Tr. at 107-118; Applicant's response to SOR)

Police responded to a bar just after midnight in February 2012. The police report indicates that Applicant and another man refused to leave the bar after security told them to leave. They still did not leave after the police told them to leave. They finally left and were separated by the police. The other individual apparently resisted apprehension. Applicant was arrested as he started to walk toward the other individual and the police officer. He was charged with criminal trespassing and public intoxication. The owner of the bar did not want to pursue criminal charges, and the charges were dismissed in April 2012. (Tr. at 92-96; Applicant's response to SOR; GE 3, 4, 7)

Applicant was living with a cohabitant (Ms. A) in January 2014 when the police responded to a domestic violence call. Ms. A reported that she and Applicant had an argument, and he told her that she had to leave. She responded that they both lived

there, and she was not leaving. She told the police that he grabbed her, spun her around, placed her in a “choke hold,” took her to the ground, and choked her. After he released her, he again told her to leave. He choked her again when she refused. (GE 7)

When the police arrived, they noticed redness on the Ms. A’s neck, bruising on her arm, and a welt on her knee. She told the police that Applicant had also mistreated her in the past. Applicant was arrested and charged with the felony offense of assault family/house member impeding breath/circulation. An emergency protective order (EPO) was issued by a magistrate forbidding Applicant from communicating with the cohabitant or returning to the property. (Tr. at 96; GE 4, 7)

An investigator contacted Ms. A about nine days later, and she told the investigator that she did not want Applicant to be prosecuted. She admitted that she and Applicant had been in contact, and that he had returned to the residence. The investigator met with Applicant a few days later in February 2014. Applicant told the investigator that he placed his hands on the cohabitant, but it was after she swung at him, and he was trying to restrain her to avoid being hit. He admitted that he spoke with Ms. A over the phone, but she called him. He also admitted that he returned to the residence to pick up his things. He was charged with violating the EPO. The case was “no billed” in April 2014 and all charges dismissed. (GE 7)

Applicant stated that he and Ms. A had been drinking when they started arguing. He told her to leave, and she “attacked” him. He grabbed her just to restrain her. He denied striking and choking her. He stated that his daughter lived with him, and he returned to the property because there was nowhere else for him and his daughter to go, and Ms. A was staying with her mother. (Tr. at 97-105; Applicant’s response to SOR)

Applicant has not been arrested or charged with anything since the 2014 charges. He testified that he “quit drinking a long time ago,” and that “I don’t even drink today.” He then clarified that he still drinks socially in moderation, but he no longer goes out and parties. (Tr. at 131-132, 147, 151-153)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in September 2022. He answered “No” to all the police record questions. The questions were in two sections. The first section requested information from the previous seven years. The second section asked:

Other than those offenses already listed, have you **EVER** had the following happen to you?

\* \* \*

- Have you **ever** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses)

\* \* \*

- Have you **ever** been charged with an offense involving alcohol or drugs?

Applicant was interviewed for his background investigation in November 2022. He provided negative answers to all the criminal questions, including whether he had ever been charged with a felony or an offense related to alcohol. The interviewer reminded him that they were “ever” questions and not limited to the last seven years. He then discussed his criminal history, including the matters discussed above, except he never discussed the 2007 DWI. He stated that he did not think he had to report the 2005 DWI because he had not been convicted. He stated that he had never been charged with any other offense related to alcohol or drugs. He stated he did not report the 2014 arrest for domestic violence because he did not know he had been charged with a felony. (GE 3)

Applicant denied intentionally providing false information on the 2022 SF 86. He stated that he misunderstood the police record questions to be asking if he had been “convicted.” He also stated that he thought he only had to go back seven years. He stated that he discussed the 2007 DWI with the background investigator, but the investigator did not include it in the report. He also stated that he filled out the SF 86 quickly, and he “breezed through” the application. (Tr. at 25, 120-131, 135-137, 148-149; Applicant’s response to SOR; GE 3)

I did not find Applicant credible. I find the police reports associated with his arrests to be more reliable than his testimony. I also find that he intentionally provided false information on the 2011 SF 85P and the 2022 SF 86, as discussed further in the analysis section.

Applicant has a history of financial problems, including a Chapter 13 bankruptcy case and delinquent debts. He filed a Chapter 13 bankruptcy case in February 2023. Under Schedule D, Creditors Holding Secured Claims, the petition listed an auto loan of \$9,782. Under Schedule E/F, Creditors Who Have Unsecured Claims, the petition listed \$4,058 owed to his bankruptcy attorney and 13 additional claims totaling \$36,051. A \$3,500 claim was for a student loan. As part of the bankruptcy, Applicant surrendered three vehicles to the holders of the auto loans. From March 2023 through November 2023, he paid \$6,438 into the bankruptcy plan. He received financial counseling as a requirement of the bankruptcy. (Tr. at 22-24, 45-48; Applicant’s response to SOR; GE 8; AE E)

The SOR alleges the Chapter 13 bankruptcy case (SOR ¶ 1.a) and 15 delinquent debts as listed on an October 2022 credit report (SOR ¶¶ 1.c-1.p) or an April 2023 credit report (SOR ¶ 1.b). The debts include a student loan that was \$5,442 past due with a balance of \$10,358 (SOR ¶ 1.b); an auto loan that was \$5,777 past due with a balance of \$52,660 (SOR ¶ 1.o); \$1,193 in child support arrearages (SOR ¶ 1.p); and 12 miscellaneous delinquent debts totaling about \$23,600 (SOR ¶¶ 1.c-1.n).

Applicant attributed his financial problems primarily to a job change in which he made substantially less in the new job. He changed jobs because he had an extreme commute for the first job, and he was moving closer to his current cohabitant. He also overextended himself on auto loans and helping his children. He had five vehicles with loans in his name, including the vehicle and loan that was \$5,777 past due with a balance of \$52,660 (SOR ¶ 1.o). That vehicle and a car were his vehicles. Two other vehicles were for his adult children, and another was for Ms. A's child. They were supposed to pay the loans but had financial issues associated with the COVID-19 pandemic and loss of employment. As part of the bankruptcy, Applicant surrendered the three vehicles for the children to the holders of the auto loans. The truck with the \$52,660 balance was voluntarily repossessed before the bankruptcy. He still has the fifth vehicle, which was reported under Section D of the bankruptcy petition. (Tr. at 22, 28-37, 42-45, 55-63, 76-77, 80-84, 152; Applicant's response to SOR; GE 3, 8)

SOR ¶ 1.b alleges a student loan that was \$5,442 past due with a balance of \$10,358. Applicant stated this loan was for an online school that lost its accreditation, after which the school forgave the loan. The debt is not listed on the October 2022 combined credit report. The April 2023 Equifax credit report indicates the account was opened in July 2020, with a last payment date of March 2021. The debt is not included in the Chapter 13 bankruptcy petition. Both credit reports list four Department of Education student loans totaling \$14,750 in good standing. It is unclear why the bankruptcy petition only listed one student loan for \$3,500. (Tr. at 48-55; Applicant's response to SOR; GE 10, 11: AE F)

The SOR debts alleged in SOR ¶¶ 1.c-1.n are reported as delinquent on an October 2022 credit report. They are included in the Chapter 13 bankruptcy case. He discussed the debts during his background interview in November 2022. (GE 3, 10)

SOR ¶ 1.p alleges \$1,193 in child support arrearages. That account is listed by all three credit reporting agencies on the October 2022 combined credit report. It is not listed on the April 2023 Equifax credit report. Applicant stated the child support payments are automatically deducted from his pay, but the deductions were disrupted when he changed jobs. He indicated he has caught up to the payments, and there are no more arrearages. (Tr. at 39-40, 78-79; AE F)

Applicant submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his reliability, work ethic, dedication, and integrity. (AE A-D)

## **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

#### **SOR ¶ 2.a**

SOR ¶ 2.a alleges that Applicant intentionally falsified the 2022 SF 86 when he failed to report the January 2014 arrest for the felony offense of assault family/house member impeding breath/circulation under the question that asked:

Have you **ever** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses)

Applicant denied intentionally providing false information on the 2022 SF 86. He stated he did not report the 2014 arrest for domestic violence because he did not know he had been charged with a felony. I am not convinced by substantial evidence that Applicant intentionally falsified the SF 86 by failing to divulge the 2014 charges. AG ¶ 16(a) is not applicable to SOR ¶ 2.a, and that allegation is concluded for Applicant.

#### **SOR ¶¶ 2.b, 2.c, and 2.d**

The SOR alleges that Applicant intentionally falsified the 2022 SF 86 when he failed to his 2012 arrest for criminal trespass (SOR ¶ 2.b); his 2005 arrest for DWI (SOR ¶ 2.c); and his 2000 nonjudicial punishment for failure to obey an order or regulation, drunk and disorderly conduct, conduct unbecoming an officer and a gentleman, and indecent language (SOR ¶ 2.d) under the question that asked: "Have you **ever** been charged with an offense involving alcohol or drugs?"



### **SOR ¶ 2.b**

I am not convinced by substantial evidence that Applicant intentionally failed to divulge the 2012 arrest for criminal trespass. SOR ¶ 2.b is concluded for Applicant.

### **SOR ¶ 2.c**

SOR ¶ 2.c is somewhat poorly drafted because it does not allege that Applicant failed to report that he was *charged* with DWI; it alleges that he failed to report that he was *arrested* for DWI, which was not part of the question on the SF 86. I find that Applicant was on notice of what he had to defend against, and the allegation is not so deficient as to require me to find it for him.

Applicant stated that he misunderstood the police record questions to be asking if he had been “convicted.” He also stated that he thought he only had to go back seven years. He stated that he filled out the SF 86 quickly, and he “breezed through” the application.

After assessing Applicant’s credibility and considering all the evidence, including the straightforward nature of the question, I find that he intentionally provided false information on the 2022 SF 86 when he failed to report that he was charged with DWI in 2005. AG ¶ 16(a) is applicable to SOR ¶ 2.c.

### **SOR ¶ 2.d**

I am convinced that Applicant was arrested by the military police in 2000 for one or more violations of the UCMJ, but it is not clear that he was *charged* with an offense involving alcohol. There is no evidence that charges were preferred against him under the UCMJ. AG ¶ 16(a) is not applicable to SOR ¶ 2.d, and that allegation is concluded for Applicant.

### **SOR ¶ 2.e**

SOR ¶ 2.e alleges that Applicant intentionally falsified the May 2011 SF 85P when he failed to report the delinquent debts that were on his August 2011 credit report. I am not convinced by substantial evidence that Applicant intentionally falsified this question. AG ¶ 16(a) is not applicable to SOR ¶ 2.e, and that allegation is concluded for Applicant.

### **SOR ¶ 2.f**

SOR ¶ 2.f alleges that Applicant intentionally falsified the May 2011 SF 85P when he failed to report that he was arrested in 2005 and charged with DWI under the question that asked, “In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150.)” I am considering the 2007 DWI arrest and charge when assessing Applicant’s credibility as to his explanation as to why he did not report the 2005 DWI. He denied intentionally

providing false information on the SF 85P. He stated that he thought the police record question only asked if he had been convicted. He also stated that he thought his DWI charges were more than seven years old.

I do not believe those explanations. The question is clear. I find that Applicant intentionally provided false information on the 2011 SF 85P when he failed to report that he was arrested and charged with DWI in 2005. AG ¶ 16(a) is applicable to SOR ¶ 2.f.

### **SOR ¶¶ 2.g-2.k**

Applicant's criminal conduct in 2000 (incident overseas), 2005 (DWI), 2012 (criminal trespass), January 2014 (assault), and February 2014 (violation of EPO) were alleged as personal conduct. His conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by 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 was last charged with a criminal offense in February 2014, almost nine years ago. That conduct would be mitigated if I believed Applicant. I do not. His conduct continues to cast doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations. The above mitigating conditions, individually or collectively, are insufficient to alleviate those concerns. Additionally, having determined that Applicant intentionally provided false information in an attempt to mislead the government, I have also determined that his testimony about those statements was also false. False statements at a security clearance hearing show a lack of rehabilitation, and it would be inconsistent to find his conduct mitigated.<sup>1</sup>

## **Guideline F, Financial Considerations**

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

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<sup>1</sup> See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

Applicant has a history of financial problems, including multiple delinquent debts. The above disqualifying conditions are applicable.

A Chapter 13 bankruptcy case, known as a wage earner's plan, involves a debtor repaying his or her debts under a plan approved and supervised by the court. It can be a mitigating factor. The SOR alleges numerous debts that are included in the bankruptcy. The Chapter 13 bankruptcy case does not generate any security concerns beyond the delinquent debts that are already alleged in the SOR. SOR ¶ 1.a is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, 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.

Applicant appears to have a legitimate dispute with the online university holding the student loan alleged in SOR ¶ 1.b. He also provided an acceptable explanation for the child support arrearages alleged in SOR ¶ 1.p. Those two debts are mitigated.

Applicant attributed his financial problems primarily to taking a lower-paying job because he had an extreme commute for the first job, and he was moving closer to his cohabitant. He helped his children and the son of his cohabitant financially, and they had their own financial issues associated with the COVID-19 pandemic and loss of employment. He also overextended himself on auto loans. He had five auto loans in his name.

Applicant filed a Chapter 13 bankruptcy case in February 2023, after he submitted an SF 86 in September 2022 and was interviewed for his background investigation in November 2022. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. ISCR Case No. 17-03229 at 6 (App. Bd. Jun. 7, 2019).

Depending on the circumstances, a Chapter 13 bankruptcy can be sufficient to mitigate financial considerations security concerns. However, Applicant's Chapter 13 bankruptcy case still has years to run, and I cannot take him at his word that he will continue with the plan until completion. There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The above mitigating conditions are not applicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E and F in my whole-person analysis. I also considered Applicant's favorable character evidence. Most importantly, Applicant cannot be trusted to tell the truth.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines E and F.

## Formal Findings

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

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c-1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a-2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraphs 2.d-2.e:	For Applicant
Subparagraphs 2.f-2.k:	Against Applicant

## Conclusion

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.

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Edward W. Loughran  
Administrative Judge