DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 06-13610
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nichole L. Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

April 28, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate security concerns regarding personal conduct and financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 6, 2004, Applicant submitted a Security Clearance Application (e-QIP version) (hereinafter SF 86) (Government Exhibit (GE) 1-4). On June 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,[1] pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR alleges security concerns under Guidelines F (Financial Considerations), and E

[1]Government Exhibit (GE) 1-1 (Statement of Reasons (SOR), dated June 29, 2007). GE 1-1 is the source for the facts in the remainder of this paragraph unless stated otherwise.

(Personal Conduct).[2] The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing.[3] A complete copy of the file of relevant material (FORM), dated November 1, 2007, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.[4] On December 10, 2007, Applicant requested a 90-day delay to submit his response to the FORM (GE 5 at 3). Department Counsel concurred with a 30-day delay, but objected to a 90-day delay (GE 5). On January 15, 2008, the case was assigned to me. For at least a year prior to his hearing, Applicant was assigned to a combat zone overseas, and collection of evidence was difficult for him (Tr. 22-23). After a series of e-mail communications, Applicant requested to provide a statement in the format of a teleconference. In an e-mail dated March 19, 2007 (GE 7), Applicant stated:

> I appreciate everyone's efforts [to attempt to arrange a video teleconference (VTC)). It looks like the VTC isn't going to work out as well as we had planned. I will put this in writing so everyone will know that I am requesting this. I [Applicant's name], am requesting a tele-conference for my interview with the personnel listed in this email. My VTC personnel here will email you with the phone number to the room I will be using for this tele-conference. I look forward to speaking with you.[5]

---

[2]On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case because his SOR was issued after Sep. 1, 2006.

[3]GE 1-2 (Applicant's undated response to SOR).

[4]The Defense Office of Hearings and Appeals (DOHA) transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

[5] At the hearing the following exchange occurred:

> Administrative Judge: . . . I want to make it clear that [Applicant] has requested that we do a speaker, non-video type hearing today. Is that correct, [Applicant]?
>
> Applicant: That is correct, sir.
>
> Administrative Judge: You understand that under the Directive, you have a right to an in-person hearing or at least a video teleconference type hearing. Is that correct?
>
> Applicant: Yes.
>
> Administrative Judge: And knowing you have those rights, you've decided to waive those rights and present your case in the format of a speaker hearing. Is that correct?

The teleconference proceeding itself was conducted in manner consistent with a typical DOHA security clearance hearing; however, it was not a hearing as I could not observe Applicant's demeanor during the interview. This interview was conducted on March 20, 2008, and Department Counsel was present with me in the room with the speaker phone. There were no objections to my consideration of GEs 1-6 (Transcript (Tr.) 11). The interview transcript was received on March 28, 2008. Applicant's final submissions were received on April 5 and 16, 2008 (GE 8 and 9). He also made a brief statement in an e-mail submission (GE 10). GEs 1 -10 are admitted.

Procedural Rulings

Department Counsel objected to my communications with Applicant using e-mail (with a copy electronically provided to Department Counsel), arguing such a procedure is not permitted under the Directive and is unfair to the Government. Department Counsel recommended selection of one of three options: (1) use of video teleconference (VTC), (2) delay until in-person presentation or (3) close of the record without further presentation of evidence.

Department Counsel contended use of e-mail to collect evidence[6] is too helpful to the Applicant because the process will reveal how disqualifying conditions might be mitigated,[7] and unfairly facilitates gathering and presenting documentary evidence. Moreover, it does not permit Applicant's cross-examination, or observation of an Applicant's demeanor.

Department Counsel's observations about the limitations of written evidence and e-mail in regard to cross-examination and assessment of demeanor are well taken. E-

---

Applicant: That's correct.

Tr. 13-14.

[6] An Administrative Judge has some discretion to research issues, especially to protect the rights of a *pro se* Applicant, so long as the product of the research if used to decide an issue is provided to the parties, and the parties have an opportunity to comment on the information. *See Hines v. Department of Health and Human Services*, 21 Cl.Ct. 634 (1990); *Illinois v. Swart*, 860 N.E.2d 1142 (Ill. App. 2006), *but see Kershner v. Massanari*, 16 Fed. Appx. 606 (9th Cir. 2001) (unpublished opinion) (stating the administrative law judge (ALJ) "should not have gone outside the record to perform his own medical research," and noting the ALJ incorrectly applied a medical summary of an article to determine a *pro se* claimant was not credible without providing the article to the parties). *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 547 (2006) (providing an example of an appellate decision with several citations to internet documents).

[7] "[A]n ALJ has a heightened obligation to assist a *pro se* claimant, in particular to "assist [him or her] affirmatively in developing the record." *Carroll v. Secretary of Health and Human Services*, 872 F.Supp. 1200, 1204 (E.D.N.Y. 1995) (citing *Smith v. Bowen*, 687 F.Supp. 902, 906 (S.D.N.Y. 1998)). "Especially where an unrepresented claimant's record is inconsistent and incomplete, an ALJ must 'scrupulously and conscientiously probe into, inquire of and explore all the relevant facts.'" *Id*. (Citing *Hankerson v. Harris*, 636 F.2d 893, 895 (2d Cir. 1980)). *See also Garrett v. Richardson*, 363 F. Supp. 83 (E.D.S.C. 1973) (discussing ALJ's responsibility to obtain reports for full and fair hearing).

mail and speaker phone evidence presentations are not equivalent to in-person testimony and do not constitute a "hearing." The cross-examination and full evaluation of demeanor and credibility through a hearing are critical due process components. However, Applicant can waive his hearing as under the FORM process and in this case affirmatively chose to do so.

I overruled Department Counsel's motion to preclude consideration of e-mailed information. The Directive does not address methods of collecting evidence such as VTC, e-mail and speaker phones. Moreover, VTC is routinely used and encouraged to conduct security clearance hearings because travel expenses are saved. E-mail and speaker phones should also be encouraged as a substitute for written correspondence as they allow an almost real time response and more timely clarification, speeding the processing of cases and improving the quality of the evidence received.

Findings of Fact[8]

In his SOR response, Applicant admitted responsibility for the federal and state tax debts listed in the SOR, and that he did not disclose his debts and two felonies on his 2004 SF 86. He said he did not intend to deceive the government. Applicant explained why he believed the security concerns were mitigated. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 51 years old (Tr. 4).[9] He served on active duty from 1978 to 1982 in the Navy. He has two years of college (Tr. 4). He has been employed by government contractors since 1998 (Tr. 17-18),[10] and began working for the current government contractor on November 30, 2006 (Tr. 17). He has an interim, locally approved clearance (Tr. 5-6). He has been married four times, and his most recent marriage occurred in 2003 (Tr. 37-38). His two children were born in 1997 and 2005 (Tr. 38).

Financial Considerations (Guideline F)

Applicant's SOR lists seven debts. On January 31, 2008, Applicant sent an e-mail which includes the statement, "I have been making payments to clear my debts, and as they are completed, I have asked them to send me documentation for the payment in full and that my matters with these debts are cleared." (GE 10). Specific information about each debt follows:

SOR ¶ 1.a. describes a federal tax lien filed on April 27, 1998, in the amount of $5,512. Applicant filed his federal tax returns, and was unclear about why there was a federal tax lien (Tr. 19-23).

[8] The facts in this decision do not specifically describe employment or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

[9] Applicant's SF 86 (GE 1-4) is the source for the facts in this paragraph, unless stated otherwise.

[10] He indicated in an e-mail dated January 31, 2008, that he has been working hard for his country for 12 years (GE 10).

SOR ¶¶ 1.b to 1.d list state tax liens filed on November 15, 1999, in the amounts of $911; $1,591; and $1,814. Applicant remembered when he filed his Oregon state tax return in 1998 he owed less than $1,000 (Tr. 20). He suspected that his former spouse (who also charged $20,000 in bills when she visited his overseas location in the late 1990s) took the money that was supposed to be paid to Oregon (Tr. 21). Around mid-January 2008, Applicant's cousin contacted the state of Oregon to obtain information about his state tax debt (Tr. 21-22).

For SOR debts ¶¶ 1.a to 1.d, Applicant said he was not notified of these debts and was unaware of them (GE 1-2). In his response to interrogatories, dated April 3, 2007, he said for SOR debts ¶ 1.a, he was overseas for the past nine years and was tax exempt (GE 1-5). On April 15, 2008, in an email he said the federal and state taxes owed are being resolved using direct withdrawal from his bi-weekly pay (GE 6). He provided his pay statement showing a payment of $1,394 towards his federal tax debt (GE 6). His next five pay statements will result in full payment of his federal tax debt (GE 6). His state tax payments should appear on his next pay statement (GE 7).

SOR ¶ 1.e describes Applicant's credit card account, which became delinquent in 2002 in the amount of about $8,708. Applicant said he charged travel expenses incurred on behalf of his employer, and he believed his employer was responsible for paying the creditor (Tr. 24-26). In his response to the SOR and to interrogatories, he said his employer told Applicant that this debt was resolved in 2003 (GE 2, 5). In his response to interrogatories, dated April 3, 2007, he said he was "taking action to rectify this situation and have it removed from [his] files" (GE 5). In his SOR response he promised to investigate removal of this delinquent debt from his records (GE 1-2). On February 19, 2008, I specifically asked Applicant by email to provide copies of documentation he used to investigate and dispute this debt (GE 6-V). On March 20, 2008, he said he contacted the creditor and the creditor was attempting to obtain resolution from his former employer (Tr. 24). He told the creditor he would pay the debt, and the creditor offered to cut the debt by one third (Tr. 25). Applicant had no correspondence with the creditor—all of his communications with the creditor were verbal, over the telephone (Tr. 25). On April 15, 2008, in an email he said the creditor "are/have sent me a settlement that would be reimbursed in the event [his former employer] were to pay off this debt." (GE 6).

SOR ¶¶ 1.f and 1.g are two credit card accounts, which became delinquent in 2003 in the amounts of $772 and $516. In Applicant's SOR response, he said his former spouse incurred these debts without his knowledge and he paid them in March 2007 (GE 1-2). At his hearing, he said his wife was responsible for one account, he was responsible for the other, and both were taken care of (Tr. 28). On January 31, 2008, Applicant provided a letter from the creditor indicating that an account from the creditor for $222 was settled and paid on March 26, 2007 (Tr. 28, GE 6-C). The account number in GE 6-C matches the account number in the credit report for the $516 debt, and I find "For Applicant" on SOR ¶ 1.g (Tr. 28-29, GE 1-10 at 2). On February 19, 2008, I asked Applicant by e-mail to provide documentation showing proof of payment for the other

debt (GE 6-V). On April 15, 2008, he said in an email, “A settlement is being sent me which when paid will be considered paid in full.” (GE 6).

His pay statement for April 3, 2008, shows bi-weekly pay of $5,104 (GE 6). He said he worked very diligently from December 2007 to March 20, 2008 (his hearing date) to investigate and resolve his delinquent debts (Tr. 23-24). He promised “100 percent to take care of” his debts (Tr. 24).

Personal Conduct (Guideline E)

Applicant answered, “No” on his SF 86, executed on May 6, 2004, to three questions that are relevant to the issue of whether Applicant falsified his SF 86:

> **Question 21. Your Police Record – Felony Offenses** Have you ever been charged with or convicted of any felony offense? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.
>
> **Question 38. Your Financial Delinquencies - 180 Days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?
>
> **Question 39. Your Financial Delinquencies - 90 Days** Are you currently over 90 days delinquent on any debt(s)?

Applicant was arrested on February 27, 1997, and charged with: (1) forgery 1st degree, (2) theft 1st degree, (3) failure to appear 2nd degree and (4) negotiating a bad check. On February 12, 1998, he was convicted of negotiating a bad check, a felony, fined $1739.00, and sentenced to two years probation.

Applicant was arrested on May 14, 1997, and charged with: (1) failure to appear 1st degree, (2) forgery 1, and (3) failure to appear 1st degree theft I. On February 12, 1998, he was convicted of failure to appear 1st degree, a felony, fined $669.00, and sentenced to two years probation, and forgery 1, a felony, fined $919.00, and sentenced to two years probation.

The two felony convictions resulted from thefts using a forged check from Applicant’s father, and forgery of a credit card purchase (Tr. 39-41). Applicant provided extenuating information concerning the felony convictions, essentially blaming his former wife for the offenses. *Id*. In his SOR response he denied that he was aware of the delinquent debt, and admitted the felony charges and convictions (Tr. 30-32, GE 1-2). He explained why he did not disclose the requested information about the felonies:

> I admit that the findings are in my past record. I was instructed in writing, of which I unfortunately do not have copies of, when filling out the forms,

> while working [for a contractor overseas], to follow the instructions as presented. I was to fill out these forms under the timeframe Year 2000 – 2004. I followed the instructions as directed. I did not list these cases as it did not fall into the instructed timeframe.

GE 1-2. At his hearing, he described the circumstances of completing his SF 86 as follows:

> . . . I asked them when I was there, I said I - - I do have some things on my record, I was not - - you know, I didn't tell them exactly what I had. The time frame that they told me [about was] from 2000 and 2004[.] [W]hen we were filling this out[, they said] to go back four years. I said I have some other things. Is that going to be a problem? And they said no. As we went through this, and again, this is what's really bad about this, is I'm - - I'm following the direction that they were giving me and as they were telling everybody. They wanted the - - and their explanation for that, by the way, was we need to get these through as fast as we can. Therefore, they said, four years go back, do this. And that's what we turned in.

Tr. 32-33. On February 19, 2008, I specifically asked Applicant by email to provide the name of any witness who could corroborate his statement about these instructions (GE 6-V). At his hearing, he said his employer's security officers provided the instructions about completing his SF 86 (Tr. 35-36). Applicant said he did not have any documentation to provide concerning the instructions he was given about completing the SF 86 (Tr. 31).

In regard to his failure to disclose his delinquent debts on his SF 86, he said he thought his employer paid the debt in SOR ¶ 1.e (Tr. 33). He was not aware of the other debts (Tr. 33-34).

Employee Performance

Applicant worked for his current employer in a combat zone and deserves substantial credit for his patriotism and dedication to the national defense (Tr. 42). He has sacrificed for his country through his multiple overseas tours for nine years (Tr. 42-43). He enjoys contributing to the national defense. He receives satisfaction from supporting his family and the troops in the combat zone (Tr. 42-44). His supervisors are pleased with his performance and are in the process of promoting him (Tr. 42-44). His assistance is very important to the information technology mission in the combat zone (GE 10).

Policies

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines

are divided into disqualifying conditions and mitigating conditions, which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."[11] The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." 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).[12]

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

[11] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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).

[12] "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

as well. It is because of this special relationship 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 under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or 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.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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* Executive Order 12968 (Aug. 2, 1995), Section 3. Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. 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.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

> Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." AG ¶ 19(f), "financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern," and AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same" do not apply. Applicant does not have a problem with drug abuse, alcoholism, or gambling. There is no evidence he failed to file his income tax returns.

Applicant's history of delinquent debt is well documented; however, he deserves credit for the progress he has made in the resolution of his debts. He established that he paid the debt in SOR ¶ 1.g on March 27, 2007. He has almost paid federal tax debt

described in SOR ¶ 1.a. He has not made sufficient progress on his other five delinquent debts, and they are currently delinquent. He has provided insufficient documentation to show progress resolving these five debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
>
> (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
>
> (d) the individual initiated 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 receives partial credit under AG ¶ 19(b) because a condition that caused some financial problems was largely beyond his control, that is, his difficult marriage, and eventual divorce which ended it in 2003. He does not receive full credit because he did not act responsibly under the circumstances from 2003 to present. He was employed and had the means to address his delinquent debt after he became aware of his debts around June 29, 2007 (the SOR's date). He did not provide proof that he made the first payment on these five debts prior to the date the record was closed (on April 16, 2008). He did not do enough to resolve the five remaining delinquent debts soon enough.

Applicant said he disputed the debt in SOR ¶ 1.e. However, he did not provide correspondence with the creditor disputing this delinquent debt, as required by AG ¶ 19(e). He did not establish that he made a good faith effort to repay the five delinquent debts, or otherwise resolve them to a sufficient degree to mitigate them. His financial problems are continuing and likely to recur. He should have been more diligent, providing documentation showing greater, more timely efforts to resolve his five delinquent debts. He has not carried his burden of proving his financial responsibility. There are <u>not</u> clear

indications his five delinquent debts are being resolved. His overall conduct with the five creditors casts doubt on his current reliability, trustworthiness, and good judgment, and I conclude no mitigating conditions fully apply.

Personal Conduct (Guideline E)

AG ¶ 15 expresses the security concern pertaining to personal conduct:

> 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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant's May 6, 2004 SF 86 asked about his delinquent debt. He answered, "No," and did not disclose the debts discussed in the previous section. However, his answers were not deliberately false because he was unaware of his delinquent debts. He has successfully refuted this allegation.

Applicant's May 6, 2004 SF 86 asked, "**Question 21. Your Police Record – Felony Offenses** Have you ever been charged with or convicted of any felony offense?" He answered, "No," and did not disclose his two felony convictions. He provided deliberately false information. His statement that he was told not to provide information about offenses prior to 2000 is not credible. AG ¶¶ 16(a) and 16(b) apply.

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

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of

authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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 caused 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; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

As indicated previously, Applicant's answers about his delinquent debts were not deliberately false because he was unaware of his delinquent debts. The allegations about providing false answers to Questions 38 and 39 are unsubstantiated and therefore mitigated under AG ¶ 17(f).

None of the mitigating conditions in AG ¶ 17 apply to his false answer to Question 21. Although Applicant's falsification of his SF 86 on May 6, 2004, is not recent, he falsely stated that security officials told him not to include information about offenses prior to 2000. No one advised him to falsify his SF 86. His failure to present corroboration about his allegation that security personnel told him not to list pre-2000 offenses or information is a minimal factor in this decision.[13] He did not promptly inform

[13]Administrative judges "must look at the record for corroboration of Applicant's testimony." ISCR Case 02-03186 at 3 (App. Bd. Feb. 16, 2006). Moreover, a judge may consider "Applicant's failure to present documentary evidence in corroboration of his denials and explanations." ISCR Case 01-20579 at 5 (App. Bd. Apr. 14, 2004) (holding Applicant's failure to provide reasonably available corroborative evidence may be used in common sense evaluation to determine whether Applicant's claims are established). In ISCR Case 01-02677 at 7 (App. Bd. Oct. 17, 2002), the Appeal Board explained:

> While lack of corroboration can be a factor in evaluating the reliability or weight of evidence, lack of corroboration does not automatically render a piece of evidence suspect, unreliable, or incredible. . . . Evidence that lacks corroboration must be evaluated in terms of its intrinsic believability and in light of all the other evidence of

the government of the falsification. He did not receive counseling designed to improve his conduct. He admitted the information he provided about his two felonies was not correct, and the falsification of his SF 86 is substantiated. The falsification of his 2004 SF 86, as compounded by his statements blaming the falsification on security personnel casts doubt on his current reliability, trustworthiness, and good judgment.

Whole Person Concept

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole person concept, the Administrative Judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1:

> (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 voluntariness of participation; (6) The presence or absence of rehabilitation and other pertinent 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 Directive ¶ E2.2.3, "The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration" of the guidelines and the whole person concept.

Applicant went through a difficult marriage and divorce. Delinquent debt resulted in the 1999 to 2003 timeframe. He paid $222 in March 2007, resolving the debt in SOR ¶ 1.g. He paid some of the debt in SOR ¶ 1.a, and has a well-established payment plan for the remainder of this $5,512 federal tax debt. In the last 90 days he has contacted the other creditors, and will soon begin his payment plan on his state tax debts (SOR ¶¶ 1.b to 1.d), as well as his other two creditors holding delinquent debts (SOR ¶¶ 1.e and 1.f). He has earned substantial credit for his service to his country overseas for many years, especially his current service in a combat zone.

> record, including evidence that tends to support it as well as evidence that tends to detract from it.

I recognize Applicant is assigned overseas in a combat zone and obtaining corroboration from other employees about the advice of security personnel would be difficult. Accordingly, the absence of corroboration in this case is a much lesser factor than it would otherwise be.

Applicant did not provide evidence that he did anything to resolve his debts until about 90 days ago. He did not act responsibly after he became fully employed and received the SOR to resolve five delinquent debts. His failure to show financial responsibility is a much lesser security concern than his falsification of his SF 86, compounded by his false explanation about receiving bad advice from security personnel.

Applicant deliberately failed to disclose his two felonies on his 2004 security clearance application. This falsification has a serious negative impact on my security clearance determination because it damages his integrity and trustworthiness. He said security personnel told him not to list conduct prior to 2000, and his two felony convictions occurred in 1998. His false statement about receiving this bad advice on March 20, 2008, is recent. An Applicant should not receive a clearance when they provide recent, false explanations for failing to disclose information on their SF 86.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my "careful consideration of the whole person factors"[14] and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision (especially his contributions to his employer and his country, while serving in a combat zone) and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is not eligible for access to classified information.

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
Subparagraphs 1.b to 1.f:	Against Applicant
Subparagraph 1.g:`	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b and 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Mark W. Harvey
Administrative Judge

[14] *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).