

DATE: October 15, 2007

In re:)
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)
 -----) ISCR Case No. 06-19090
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
MARK W. HARVEY**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has 10 delinquent debts listed on his statement of reasons. He paid two debts, two are duplications, one is disputed, and the other five are being resolved through payment plans. In 2005, he failed to list delinquent debts as required on his Security Clearance Application (SF 86); however, he did disclose on his SF 86 that financial considerations were an issue. Security concerns pertaining to financial considerations and personal conduct are mitigated. Eligibility for a security clearance is granted.

STATEMENT OF THE CASE

On June 2, 2005, Applicant submitted a Security Clearance Application (SF 86).¹ On April 11, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,² under 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, modified and revised.³ The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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.

In an answer notarized on May 9, 2007, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing.⁴ A complete copy of the file of relevant material (FORM), dated July 30, 2007, was provided to him on August 8, 2007, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁵ Submissions were due by September 7, 2007.⁶ On August 31, 2007, Applicant responded to the FORM and provided additional documents. On September 10, 2007, Department Counsel declined to object to Applicant's additional documents. The case was assigned to me on September 14, 2007.

FINDINGS OF FACT

In his response to the SOR, Applicant admitted some debts, said two debts were duplications of each other, and asserted two debts were paid. He denied one debt. The details of his debt situation will be described in detail in the findings of fact, *supra*. He denied knowingly

¹Item 4 (Electronic Questionnaires for Investigations Processing (e-QIP) also known as Standard Form (SF) 86, Security Clearance Application). There is an allegation of falsification of Sections 28a and 28b of this SF 86.

²Item 1 (Statement of Reasons (SOR), dated April 11, 2007). Item 1 is the source for the facts in the remainder of this paragraph unless stated otherwise.

³On August 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 January 1987, as amended, in which the SOR was issued on or after September 1, 2006. The revised Adjudicative Guidelines apply to this case.

⁴Item 2 (Applicant's response to SOR, notarized on May 9, 2007).

⁵Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated July 31, 2007, and Applicant's receipt is dated August 8, 2007.

⁶*Id.* The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

falsifying his SF 86. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is 52 years old.⁷ He attended a state university for several months in 1975, and a technical university for several months in 1976. From 1979 to 2000, he was on active duty in the Air Force, and retired with at the rank of Master Sergeant (E-7). He married in 1977 and divorced in 1991. He married again in 1991 and divorced in 2004. His three children were born in 1977, 1979, and 1980.⁸ He recently remarried.⁹ A defense contractor has employed him since 2002 as an engineer in quality assurance. The Veterans Administration provides Applicant a disability payment for his 60% disability rating (Ex. 2, atch. 9).

Financial Considerations

The SOR listed ten debts, which are described as follows:

SOR ¶	SOR Amount	Account Type and Current Status
¶ 1.a	\$1,371	Debt for dental care—payment plan, but only payment made was in June 2007 (Item 2 at 1; Response to FORM at 6)
¶ 1.b	\$1,954	Credit card—payment plan (Item 2 at 1 & atch. 2; Response to FORM at 6)
¶ 1.c	\$2,438	Duplication of ¶ 1.f—payment plan (Item 2 at 1; Response to FORM at 6)
¶ 1.d	\$3,472	Credit account—payment plan (Item 2 at 1; Response to FORM at 6)
¶ 1.e	\$1,395	Credit card account—paid (Item 2 at 1 and atch. 3)
¶ 1.f	\$6,210	Duplication of ¶ 1.c—payment plan (Item 2 at 2; Response to FORM at 6)
¶ 1.g	\$2,161	Duplication of ¶ 1.h—payment plan (Item 2 at 2; Response to FORM at 6)
¶ 1.h	\$2,280	Duplication of ¶ 1.g—payment plan (Item 2 at 2; Response to FORM at 6)
¶ 1.i	\$1,275	Paid on June 26, 2003—(Item 2 at 3 and atch. 4)
¶ 1.j	\$350	Unknown account (Item 2 at 2)

Applicant’s debt in SOR ¶ 1.a is for \$1,371. In his response to the SOR, Appellant said this debt was for dental care, and it was in a payment plan (Item 2 at 1). He previously filed to get the debt paid by his insurance; however, his insurance declined to pay (Item 2 at 1). The original debt was reported in January 2007 in the amount of \$832 (Item 5 at 27). The Response to the FORM at 6, shows a payment on June 14, 2007, of \$46.

⁷Item 4, *supra* n. 1, is the source for the facts in this paragraph, unless otherwise stated.

⁸ His divorce decree indicates there was a child born of that marriage in 1991 (Item 2, atch. 6). This child is not listed on his SF 86.

⁹ Response to FORM at 2.

Applicant's debt in SOR ¶ 1.b is for \$1,954. He set up a payment plan, and agreed to pay a credit counseling company (CCC) \$330 per month (Item 5 at 10-15). CCC agreed to disburse payments to Applicant's creditors. *Id.* For the creditor in SOR ¶ 1.b, his CCC account statement shows payments on June 14, 2007 (\$62), July 16, 2007 (\$70) and August 14, 2007 (\$70) to the creditor in SOR ¶ 1.b (Response to FORM at 6).

Applicant's debt in SOR ¶¶ 1.c and 1.f are duplications and the total debt is \$6,210 (Item 2 at 2, Item 5 at 15). The CCC statement shows payments to the creditor in SOR ¶¶ 1.c and 1.f on February 14, 2007 (\$139), March 14, 2007 (\$139), April 17, 2007 (\$281), May 14, 2007 (\$139), June 14, 2007 (\$138), and July 16, 2007 (\$155) (Response to FORM at 6).

Applicant's debt in SOR ¶ 1.d is \$2,753 (Item 2 at 2, Item 5 at 15). CCC disbursed seven payments to the creditor in SOR ¶ 1.d between February 14, 2007, and August 14, 2007, ranging in amounts from \$126 to \$155 (Response to FORM at 6).

Applicant's debt in SOR ¶¶ 1.g and 1.h are duplications and the total debt is \$2,343 (Item 2 at 2, Item 5 at 15). CCC disbursed seven payments to the creditor in SOR ¶¶ 1.g and 1.h between February 14, 2007, and August 14, 2007, ranging in amounts from \$47 to \$53 (Response to FORM at 6).

Applicant had a bitter divorce and attributes his financial problems to the divorce. He has recently remarried and his wife has a positive attitude towards financial responsibility and good credit (Response to the Form at 2). His wife is a federal employee (GS 7, Step 7) and earns an annual salary of about \$42,000 per year (Item 5 at 21). She has a federal service comp date of 1989. *Id.* Applicant's gross pay is also about \$42,000 per year (Item 5 at 14). Applicant has had a clearance for more than twenty years, and there is no evidence of a security violation. *Id.* He received financial counseling.

Personal Conduct

Section 28 of Applicant's June 2, 2005, SF 86 asks, "**Section 28: Your Financial Delinquencies** Answer the following questions.

- a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?
- b. Are you currently over 90 days delinquent on any debt(s)?

Applicant placed an "x" in the "No" portion after each question. In the Additional Comments portion of Section 28 on this SF 86 he indicated, "**After divorce I enrolled in Consumer Credit Counseling and Debt Management**" (emphasis in original).

SOR ¶¶ 2.a and 2.b allege that the correct answer is "Yes," and that he deliberately failed to disclose the delinquent debts listed in SOR ¶¶ 1.a through 1.j. In the FORM at 6, Department

Counsel noted that a credit report showed that two delinquent debts listed in SOR ¶¶ 1.b and 1.h were delinquent prior to Applicant signing his SF 86.¹⁰

In his response to the SOR, Applicant said he referred back to his SF 86 worksheet “Module [2]8,” and his answer was “Yes.” He admitted he made a mistake, apparently when he failed to ensure the worksheet and the SF 86 included the same information. He made another mistake when he failed to carefully read his answers to the two financial questions in Sections 28a and 28b on the printed SF 86 before signing it (Item 2 at 2). I accept his statement about making these mistakes as accurate. I conclude he did not intend to deceive security officials.

POLICIES

In an evaluation of an applicant’s security suitability, an administrative judge must consider the “Adjudicative Guidelines for Determining Eligibility For Access to Classified Information” (AG). In addition to brief introductory explanations for each guideline, the AGs are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which a judge uses to determine an applicant’s eligibility for access to classified information.

These AGs are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. AG ¶ 2. A judge’s over-arching 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,” a judge considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, a judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) 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.”

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 “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” AG ¶ 2(b). In reaching this decision, a judge must draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, a judge must avoid drawing inferences grounded on mere speculation or conjecture.

¹⁰ Department Counsel accurately cited a credit summary dated June 11, 2005, in support of his contention that Applicant was well aware of his delinquent debts. The debt in SOR ¶ 1.b was charged off in 2003, and the debt in SOR ¶ 1.h was reported delinquent in March 2005. *See* Item 8.

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 case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by the [Government], and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. 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. 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 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 a judge’s decision is limited. 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. Executive Order 10865, § 7.

CONCLUSIONS

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:

Guideline F (Financial Considerations)

AG ¶ 18 articulates the Government’s concern concerning 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

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, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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."

Two Financial Considerations Disqualifying Conditions could raise a security concern and may be disqualifying in this case: "inability or unwillingness to satisfy debts," and "a history of not meeting financial obligations." AG ¶¶ 19(a) and (c).

Applicant had ten delinquent debts alleged in the SOR. The debts in SOR ¶¶ 1.e and 1.i were paid. The debts in SOR ¶¶ 1.h and 1.f were duplications. The debt in SOR ¶ 1.j for \$350 was not established. Moreover, the only proof of the SOR ¶ 1.j debt is a credit report, and Applicant consistently denied the debt.

The five remaining debts were placed into payment plans (although only one payment was made on the debt in SOR ¶ 1.a). Repayment of all debts is particularly noteworthy because collection of at least one debt (the debt in SOR ¶ 1.b) may have been barred by Texas' 4-year statute of limitations.¹³

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;

¹³ See Tex. Civ. Prac. & Rem. Code §§ 16.004(c) and 16.051 (statute of limitations for contracts); 16.004(a)(3) (statute of limitations for debts); *Cont'l Casualty Co. v. Dr. Pepper Bottling Co. of Tex.*, 416 F.Supp. 2d 497, 505-507 (W.D. Tex. 2006); *Facility Ins. Corp. v. Employers Ins. of Wausau*, 357 F.3d 508, 513-514 (5th Cir. 2004) (discussing statute of limitations for open or revolving accounts). Creditor collection of the debts legally barred by the Texas statute of limitations is barred. However, Applicant's payments on his debts have reinstated them, ending the statute of limitations defense to collection. See *Stine v. Stewart*, 80 S.W.3d 586, 591, 45 Tex. Sup.J. 966 (Tex. 2002).

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). The reduction in the magnitude and number of debts that creditors can legally enforce because of the application of the Texas statute of limitations reduces the potential vulnerability to improper financial inducements, and the degree that a debtor is "financially overextended," is also reduced. However, it does not negate the debtor's past conduct, which failed to take more aggressive actions to resolve the financial jeopardy.

(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.

AG ¶ 20(a) does not provide a temporal or specific definition of what constitutes "recent" conduct. Applicant has five unpaid debts, which were delinquent for significant periods of time. They are now in a payment plan, and their status is now "current." He has shown sufficient effort and/or unusual circumstances to establish his financial problems are "unlikely to recur." His conduct over the last six or seven months with his creditors removes my doubts about his current reliability, trustworthiness, and good judgment. Based on my evaluation of the record evidence as a whole,¹⁴ I conclude AG ¶ 20(a) does apply.

Applicant disclosed sufficient information to support partial application of AG ¶ 20(b). He went through a bitter divorce in 2004. The record did not disclose any information indicating his actions were in bad faith. However, Applicant's conduct does not warrant full application of AG ¶ 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debts.¹⁵ He has not provided evidence showing he maintained communication with his creditors prior to 2007.

Applicant receives full credit under AG ¶ 20(c) because he received financial or credit counseling, and he has a payment plan with his creditors. He has been paying his delinquent debts for the past six or seven months. There are "clear indications that the problem is being resolved or is under control."

AG ¶ 20(d) does not fully apply because there is insufficient information to establish that Applicant showed good faith in the resolution of his delinquent debts.¹⁶ He does, however,

¹⁴See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis all debts are considered as a whole.

¹⁵"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside 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)).

receive some credit for the application of the 4-year Texas statute of limitations, which would have applied to at least one of his SOR debts.¹⁷

AG ¶ 20(e) is not applicable. He did not provide “documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue” with respect to his delinquent debt.

In sum, he has demonstrated sufficient effort to resolve financial concerns to merit application of the mitigating conditions described in AGs ¶¶ 20(a) and 20(c). However, he has not presented sufficient evidence to support application of the other mitigating conditions.

Guideline E (Personal Conduct)

Under AG ¶ 15, “[c]onduct involving . . . lack of candor [or] dishonesty . . . 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 . . . clearance process” One personal conduct disqualifying conditions is particularly relevant and may be disqualifying in this case. AG ¶ 16(a) provides, “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.”

Applicant gave an incorrect answer to two questions in Section 28 of his 2005 SF 86. The evidence of record, however, establishes his erroneous answer was not a deliberate falsification.¹⁸ Section 28 seeks information about all debts delinquent over 180 days for the last

¹⁶The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

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

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

¹⁷See ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment). See also n. 13, *supra*.

¹⁸The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the

seven years. He was also required to disclose debts currently delinquent over 90 days. I conclude, however, that his intent was not to conceal the information about his delinquent debts from clearance officials.¹⁹ He disclosed in the comments that he had financial issues from his divorce and received financial counseling, alerting security officials to the pertinent financial issue. He explained that he answered, “Yes” on his SF 86 worksheet, and failed to insure his answers were accurately transferred to his electronic SF 86. His explanation is logical, and consistent with the other available facts. I conclude Applicant has refuted the allegation of deliberate falsification.

“Whole Person” Analysis

In addition to the facts discussed in the enumerated disqualifying and mitigating conditions, I have considered each of the factors related to the whole person concept under AG ¶ 2(a). As noted above, Applicant’s failure to make greater progress resolving his delinquent debts is sufficiently serious to raise a security concern. His actions with respect to financial considerations were knowledgeable and voluntary. Five debts are currently unpaid. He is 52 years old, sufficiently mature to be fully responsible for his conduct. Failure to pay his debts is not prudent or responsible. A person “who is financially overextended is at risk of having to engage in illegal acts to generate funds” and as such the potential for pressure and exploitation is raised.

Applicant presented substantial extenuating and mitigating evidence. His financial difficulties resulted from a bitter divorce. He is paying all delinquent debts using payment plans. Applicant received financial counseling. Knowledge from financial counseling will help him budget, set repayment priorities, and avoid future financial problems. Changes in his financial habits will enable construction of a solid financial foundation. The absence of evidence of any prior violation of his employer’s rules or requirements, his candid admissions concerning his debts, and his promise to continue his future financial progress weigh in his favor. The likelihood of recurrence is low. He is making his payments. His wife has solid, long-term employment and makes about \$42,000 per year. Most importantly, their overall financial situation has improved with the increase in family income.

This process has made him aware of the necessity to show financial responsibility and to ensure his debts are not delinquent. “Applicant is now alert to the security concerns presented by his circumstances and the responsibilities incumbent on him as a result.” ISCR Case No. 04-07360 at 3 (App. Bd. Sep. 26, 2006). This case has sensitized him to the importance of accurate information on his SF 86.

applicant’s intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

¹⁹ In ISCR Case No. 04-08934 at 2 (App. Bd. Aug. 17, 2006) the Board stated an applicant’s statements about his or her intent and state of mind when an SF 86 or SF 85P was executed were relevant but not binding information. Moreover, an applicant’s statements are considered in light of the record evidence of a whole. *Id.* “The security concerns raised by an applicant’s falsification are not necessarily overcome by applicant’s subsequent disclosures to the government.” *See* ISCR Case No. 01-19513 at 5 (App. Bd. Jan. 22, 2004).” *Id.*

In sum, the likelihood of recurrence is very low because of improvement in Applicant's overall financial situation, and evidence about his efforts to pay his delinquent debt. Evidence of rehabilitation is sufficient to resolve my doubts about his reliability, trustworthiness, and good judgment. His actions establish that he is well on the road to complete financial rehabilitation.

The overall record evidence leaves me without questions or doubts as to his security eligibility and suitability. 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"²⁰ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. I conclude he is eligible for a security clearance.

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: FOR APPLICANT
Subparagraphs 1.a to 1.j: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT
Subparagraphs 2.a to 2.b: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Eligibility for a security clearance is granted.

Mark W. Harvey
Administrative Judge

²⁰See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).