



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 12-04746
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: Christopher P. Heise, Esq.

05/29/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) lists 28 collection, charged-off, or delinquent accounts totaling more than \$38,000. He has addressed some, but not all of the delinquent accounts. Additionally, he provided false information on a security clearance questionnaire. He has failed to mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 20, 2013, the DoD issued an SOR detailing security concerns. DoD adjudicators could not

¹ Executive Order 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) effective within the DoD on September 1, 2006.

find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On September 23, 2013, Applicant answered the SOR and requested a hearing. On December 30, 2013, I was assigned the case. On December 30, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing to be convened on January 15, 2014. Applicant requested a continuance in the case, which for good cause was granted. On February 19, 2014, a second Notice of Hearing was issued for a hearing to be held on March 3, 2014. Due to inclement weather the case was continued. On March 27, 2014, the third Notice of Hearing was issued for a hearing which was convened on April 14, 2014.

At the hearing, eight Government's Exhibits (Ex) 1 through 8 and two Applicant's Exhibits A and B were admitted, without objection. Applicant, his wife, and step-son testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. C through P) was submitted and admitted into the record without objection. On April 22, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted 14 delinquent obligations including unpaid taxes, collection, charged-off, and past-due accounts, which total \$27,415. He denied 14 charged-off, collection, and past-due accounts, which total \$11,422. He also denies the personal conduct factual allegations in SOR 2.a. His admissions are incorporated herein. After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 64-year-old systems administrator who has worked for a defense contractor since May 2010, and seeks to maintain a secret clearance. (Ex. 2) He served honorably in the U.S. Air Force from April 1971 through May 1978. (Ex. 3) When discharged, he was a sergeant (E-4). (Ex. 1) In his SOR Response he stated, "I have served in some capacity of the defense department for over 35 years." A coworker who has known Applicant for 14 years and last worked with him in 2005, stated Applicant was a team player, polite, respectful, easy to work with, whose work ethic was professional and resourceful, and who was focused on results. (Ex. G) Another coworker who worked with Applicant for ten years and last worked with in him 2005, stated Applicant was professional, competent, had unquestioned integrity, was dedicated to doing his best, and "the only one we would ask for when we needed help with our secured computers." (Ex. H)

From March 1987 through September 2005, Applicant worked for the Department of the Army. (Ex. 2) He was unemployed from September 2005 to January 2006. From August 2009 through May 2010, he worked for a DoD contractor at an Army post. (Ex. 2) From May 2007 to June 2009, he worked full-time as a systems security engineer at a private company. He received severance pay when he left the company. (Ex. 2)

In September 2005, Applicant, then a GS 12, received a letter of unacceptable performance. (Tr. 52) A week later, he agreed to leave government service in lieu of

removal action for unacceptable work performance and a negotiated settlement agreement was signed (Ex. 5) between Applicant and the Department of the Army. That agreement reads in part:

b. It is mutually recognized that management would have initiated removal proceedings under 5 CFR 432 based on his [Applicant's] recent performance deficiencies documented in the memorandum for record attached hereto. (Ex. 5)

The agreement indicated Applicant would submit a discontinued service retirement application immediately after the effective date of his removal. (Ex. 5) The Agency agreed to support the retirement application. (Ex. 5) If the retirement application was disapproved, Applicant would return to work and immediately have his grade changed from GS 12, Step 5 to GS 11, Step 10. The grade change would reflect that it was at Applicant's request. (Ex. 5) Applicant states that after he filed a grievance he was given the option to retire or to take a downgrade in position. (Tr. 41-42)

In December 2005, three months after signing the negotiated settlement agreement, Applicant completed a Questionnaire for National Security Positions, Standard Form (SF) 86. (Ex. 4, Tr. 54) He answered "no" to question 22 which asked if during the previous seven years he had been fired from any job, quit after being told he would be fired, left a job by mutual agreement following allegations of misconduct, or left a job by mutual agreement following allegations of unsatisfactory performance. (Ex. 4) In January 2006, a month after completing his SF 86, Applicant completed a Declaration for Federal Employment. (Ex. 3) He answered "no" to question 12 which asked if during the previous five years he had been fired from any job, quit after being told he would be fired, or left by mutual agreement because of specific problems. (Ex. 3, Tr. 55)

Applicant, in his Personal Subject Interviews in early 2012, told the investigator he left in September 2005 after retiring from civil service employment. (Ex. 2) On December 2, 2011, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). He answered "no" when asked if had left a job within the last seven years following notice of unsatisfactory performance.

Applicant alleged he misinterpreted the questions about leaving a job after being told he would be fired. (Tr. 40) He interpreted the question to mean, did he have any problems before receiving the negative performance evaluation that resulted in his termination. (Tr. 40, 58) Additionally, he answered as he did because he had been allowed to retire from his position with the Department of the Army. (Tr. 56)

Applicant's credit report dated December 2011, lists 11 delinquent accounts. (Ex. 7) The April 2013 credit report, lists 15 of the delinquent SOR debts. (Ex. 8) During his PSI in early 2012, Applicant was asked about his delinquent accounts which are listed in the SOR. (Ex. 2) In May 2013, he answered written financial interrogatories. (Ex. 2) As of May 2013, his monthly net remainder (net monthly income less monthly expenses and monthly debt payments) was \$2,898. (Ex. 2) From January 2012, the time of his interviews with an Office of Personnel Management agent when he was questioned

about his delinquent accounts, until the hearing in April 2014, he had made payments of \$175 on the SOR debts. (Tr. 68, 95) He was unable to document payments to the IRS, but claimed he made a \$100 payment. (Tr. 69)

In August 1999, Applicant filed for bankruptcy protection due to a divorce and debts. (Tr. 86) He stated his financial problems started in May 2006, when another divorce proceeding was commenced. (Ex. 2) In June 2005, Applicant cosigned on a loan when his stepson purchased a vehicle. (Ex. 7, Tr. 95) The loan went into default (SOR 1.n, \$11,474). He now disputes this debt, and it was listed as disputed on his December 2011 credit report. (Ex. 7) He contacted the creditor on the loan and was told the lender could locate no delinquent account using his social security number. (Ex. N, O)

In 2007, Applicant purchased a \$22,763 vehicle with \$530 monthly payments. In late 2011, the loan went to default. (Ex. 2) Applicant stated he had made payments on the vehicle for four years and was told he still had to make payments for two additional years. (Tr. 32) He decided to allow the vehicle to go to repossession so he could use the money for other bills. (Tr. 34) The credit report indicates he was late 30 to 90 days for each of the 24 months prior the repossession. (Ex. 7, Tr. 88) At the time of the hearing, he had yet to contact this creditor to discuss the repayment of this debt. (Tr. 67) Following the hearing, Applicant contacted the creditor who offered to settle the debt for \$4,378. (Ex. J) The first payment was to be made on April 28, 2014. No documentation showing payment was received. Applicant currently drives a 2006 Ford car, on which he has missed some monthly payments, but has brought his vehicle payments current. (Tr. 36)

In 2007, Applicant entered into an on-line arrangement where he would receive checks, deposit them to his credit union account, withdraw ten percent as his fee, and forward the balance to a person by Western Union. (Tr. 31) He cashed two or three checks at his credit union. The checks were not honored and the credit union demanded repayment. (Ex. 2) He made a complaint with the FBI. (Tr. 32) At the time of the hearing, he had yet to contact his credit union to arrange repayment of this debt. (Tr. 67) Following the hearing, Applicant paid \$1,420 by debit card and obtained a \$4,260 loan to pay the balance of this debt. (Ex. M)

During his 2012 PSI, Applicant stated he had obtained two signature loans from the credit union (SOR 1.r, \$414 and SOR 1.aa, \$1,500). (Ex. 2) During the same PSI, he stated he would start making monthly payments on the accounts "as soon as possible." (Ex. 2) He provided documentation showing any payments made to resolve these two debts.

In 2010, Applicant took out a \$5,280 loan to repay two previous loans used to purchase a vehicle. (Ex. O) In April 2012, the note was paid in full.

In 2011, Applicant worked for two divisions of his company at two separate locations. When his 2011 taxes were prepared and submitted in 2012, one W-2 showing \$28,000 in income was not reported on his federal income return. (Tr. 46) The error in

reporting resulted in \$5,800 of additional taxes owed. He asserted, but did not document, that he and the IRS had an agreement whereby he initially paid \$100 monthly on his back taxes. Applicant asserts the first three checks he sent the IRS were returned. (Tr. 49) Applicant asserted, but did not document, that he arranged a new agreement with the IRS whereby he was to pay \$85 monthly. (Tr. 47, 49) In February 2013, he asserted he was paying this debt. (Ex. 2) On April 15, 2014, the day after the hearing, he sent the IRS two checks paying the balance on the back taxes. (Ex. E) He presented the front side of the two checks, but failed to show the checks were negotiated or that he had made any previous payment to the IRS.

From July 2010 to October 2011, Applicant employed a debt consolidation company paying them \$40 monthly. (Ex. 2) He stopped the service when he realized the company was not making significant progress on his debts. The company had submitted letters disputing his debts, but he received no response to those dispute letters. (Tr. 65) No debt counseling was received from this company. (Ex. 2) Between October 2011, when he left the company, and March 2014, the date of his second scheduled hearing, he took no action to dispute any of his delinquent accounts discussed in his 2012 PSIs. (Tr. 66)

In March 2014, the day before Applicant's second scheduled hearing appearance he entered into a debt management agreement with a new company. (Ex. B, L, Tr. 27, 66) The agreement requires him to pay a \$40 monthly maintenance fee plus a \$296 monthly payment. A portion of this monthly payment is then to be applied to 17 accounts listed in the agreement. (Ex. B) Applicant was to pay \$75 to establish the account and was to make the initial \$336 payment on April 10, 2014. (Ex. B) Additional monthly payments were to be made on the 28th of every month thereafter. The agreement also authorized the company to electronically transfer \$336 from his checking account each month starting May 28, 2014. (Ex. B) The company sent an email stating a \$75 draft had been submitted to his bank account on April 7, 2014 and another draft of \$336 was scheduled for April 28, 2014. (Ex. K) No documentation was received showing payments made under the agreement. He asserted he intended to continue paying this company. (Tr. 97) He received very limited financial counseling by telephone from the company. (Tr. 37, 94)

Applicant has had four surgeries in the last two years to remove a kidney stone, prostate surgery, to repair a triple hernia, and hip surgery. (Tr. 26, 74) The SOR lists a delinquent dental bill (SOR 1.y, \$200) for service received in February 2011, a hospital bill (SOR 1.z, \$250) for service received in May 2011, and 12 delinquent medical bills, which total \$1,949. Applicant had federal retirement health insurance and health insurance from his DoD contractor. (Tr. 73) During his 2012 PSI, he stated he would start that month making monthly payments on the dentist account. This he never did. (Ex. 2) On April 22, 2014, one week after the hearing Applicant paid the \$200 dental bill for the treatment received in May 2011. (Ex. 2) During his 2012 PSI, he stated he had made two monthly payments of \$25 each and would continue with monthly payments until the balance was paid. (Ex. 2) He provided no documentation of payment of this debt.

Applicant denied 11 delinquent medical accounts (SOR 1.a, b, c, e, f, g, j, k, t, w, and x). Each of the medical debts was less than \$500. In his PSI, he asserted the debts listed in SOR 1. a and 1.b (\$32 and \$30) had been paid. However, these two debts are listed in Applicant's March 2014 debt management agreement. The debt management agreement also lists the medical debt listed in SOR 1.e (\$268), SOR 1.g (\$93), SOR 1.w (\$200), and SOR 1.y (\$114). (Ex. B) The debt management agreement lists an additional \$204 medical debt, which Applicant did not indicate was SOR debt.

The debt management agreement includes a \$142 delinquent account for television service (SOR 1.d), a \$144 debt for telephone service (SOR 1.i), a \$472 credit card debt (SOR 1.o), a \$248 debt for garbage service (SOR 1.u) and a \$2,391 bank debt (SOR 1.p). (Ex. B) The debt management agreement also contains four other creditors: \$629, \$268, \$568, and \$956. Applicant failed to indicate which SOR debts, if any, these four accounts referenced.

During Applicant's 2012 PSIs, he stated he was disputing an internet service debt (SOR 1.h, \$141) indicating he was overcharged. (Ex. 2) However, in his 2012 PSIs, he said he would make payment on this account after paying off the repayment agreements he had already established. (Ex. 2) He provided no documentation substantiating the basis of the dispute or showing the action had been resolved. The same debt is listed in SOR 1.s (\$141).

Applicant's annual salary with the DoD contractor is \$78,000. (Tr. 79) He makes \$11,000 annual from a part-time job at a home improvement store. A division of his federal retirement provided him with \$34 monthly and his ex-wife receives \$385 monthly. (Tr. 78) His current wife's annual salary is approximately \$82,000. (Tr. 79) The household's annual gross income is more than \$171,000. He has a \$1,600 monthly mortgage payment on a \$172,000 home. (Tr. 80) His wife has \$240 monthly car payment. (Tr. 81) He pays \$450 monthly for his health insurance. (Tr. 82) His wife owns two rental properties. One of the properties recently suffered fire damage. (Tr. 103) The properties' expenses are covered by the rent received. (Tr. 84) Monthly auto and property insurance is \$338. (Tr. 84) His wife has a \$664 loan payment. (Tr. 85)

Applicant is helping to support his stepson who receives \$2,896 monthly social security disability payments following five back surgeries. (Tr. 113) He is totally disabled. (Tr. 108) The stepson's wife is a school teacher with a \$21,000 annual income. (Tr. 113) Applicant's wife helps her son financially by paying his rent (\$995) each month and helps pay for groceries, doctor bills for him and his two children, and other expenses. (Ex. 34, 109) Applicant and his wife married in January 2007, but have known each other for forty-nine years. (Tr. 38) There have been times when their employment required them to maintain two households and the expenses associated with each. (Tr. 90)

Policies

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 must be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 interests of security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor 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.

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 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 Executive Order (EO) 10865 provides that 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. The SOR lists 28 delinquent accounts which totaled in excess of \$38,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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.

Following the hearing, Applicant paid three SOR debts: the \$200 dentist bill (SOR 1.y) that had been delinquent since February 2011 and paid his credit union debt (SOR 1.m, \$5,681), and his federal taxes for tax year 2011 (SOR 1.bb, \$5,000). The mitigating condition listed in AG ¶ 20(d) does apply to these three debts, and I find for him on these debts.

Applicant has had four surgeries which resulted in delinquent medical bills of less than \$2,000. He maintained health insurance from his DoD contractor job and as a retired federal employee. Following the hearing, he has included some of the delinquent medical accounts in a debt management agreement. Due to him having medical insurance when the treatment was obtained and due to the small amounts of the medical debts, six of which were under \$100 each and all of which were under \$500 each, I find for Applicant as to the delinquent medical accounts.

In Applicant's 2012 PSI, he admitted obtaining two loans from his credit union and stated he would start making payment on them as soon as possible. He provided no documentation showing payment on the obligations. I find against Applicant as to SOR 1.r (\$414) and SOR 1.aa (\$1,500).

In March 2014, Applicant entered into a debt management agreement. The agreement requires him to pay a \$40 monthly maintenance fee plus a \$296 monthly payment. A portion of this monthly payment is then to be applied to 17 accounts listed in the agreement. He paid \$75 to set up the account and was required by the wording of the agreement to make the initial \$336 payment on April 10, 2014. This he did not do. Additional monthly payments were to be made by electronic transfer on the 28th of every month starting May 28, 2014. He asserted he intended to continue with his payments once they start. The company sent an email stating a \$75 draft had been submitted to his bank account on April 7, 2014. There is no documentation showing the \$336 draft, scheduled for April 28, 2014, was made.

The debt management agreement included the following SOR debts: SOR 1.a (\$32), SOR 1.b (\$30), SOR 1.d (\$142), SOR 1.g (\$93), SOR 1.i (\$144), SOR 1.l (\$1,288), SOR 1.o (\$472), SOR 1.p (\$2,391), (SOR 1.q (\$2,552), SOR 1.u (\$248), SOR 1.w (\$200), and SOR 1.x (\$144). The debt management agreement also contains payment arrangements with four additional creditors: \$629, \$268, \$568, and \$956, however, Applicant failed to indicate which SOR debts, if any, these accounts referenced.

A promise to make future payments is insufficient to establish a "meaningful track record" of financial responsibility. The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. An applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. There is no requirement

that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. He has made a repayment plan but has only paid the \$75 set-up fee. This does not constitute significant action to implement the plan.

The current debt management agreement must be viewed in the context of Applicant's prior conduct. In his 2012 PSIs, he made similar promises to pay his debts which he failed to meet. It is noted the debts have existed for a number of years. He was made aware of the Government's concern about his finances during his 2012 PSIs, his May 2013 written financial interrogatories, and in the August 2013 SOR. Although aware of the Government's concerns he appeared at the hearing having paid less than \$200 on his debts. Without payment on the new agreement, he has failed to establish a track record. Although the debt management agreement lists the debts in SOR 1.d (\$142), SOR 1.i (\$144), SOR 1.l (\$1,245), SOR 1.o (\$472), SOR 1.p. (\$2,337), SOR 1.q (\$2,477), and SOR 1.u (\$248), the agreement without a history of payments does not mitigate these debts.

For similar reasons, I find against Applicant as to the debt listed in SOR 1.n (currently \$14,624) arising from a vehicle repossession. Following the hearing, he provided an offer whereby the creditor agreed to settle the debt for \$4,378. However, he failed to provide any documentation that he accepted the offer or made any payment in accord with the offer. The first payment was to be made on April 28, 2014, following the hearing.

The mitigating condition listed in AG ¶ 20(e) does not apply to the telephone service charge listed in SOR 1.h (\$141), because Applicant has not provided documented proof to substantiate the basis of the disputed account. He disputed this debt, but stated in his 2012 PSIs that he would pay the account. I find against Applicant as to SOR 1.h. SOR 1.s (\$141) is a duplication of this debt, and I find for him as to SOR 1.s due to the duplication. AG ¶ 20(e) does not apply to the debt listed in SOR 1.v (\$5,955). Applicant admits cosigning with his stepson on a vehicle that was later repossessed. He now disputes the debt and sent letters to each of the credit bureaus disputing the debt. He also says he talked to the bank, but he provided no proof that the loan on which he cosigned has been paid or otherwise resolved. I find against him as to SOR 1.v. (\$5,955).

The mitigating condition listed in AG ¶ 20(c) does not apply. Applicant received limited financial counseling by telephone from the debt management company. It is too soon to state his financial difficulties are resolved or are under control. I conclude Guideline F against Applicant.

Personal Conduct

Adjudicative Guideline (AG) ¶ 15 articulates the security concerns relating 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.

The Personal Conduct Disqualifying Conditions under AG ¶ 16 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 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.

In September 2005, Applicant received a letter of unacceptable performance. He agreed to leave government service in lieu of removal action for unacceptable work performance and a negotiated settlement agreement. The agreement stated management would have initiated removal proceedings based on Applicant's recent performance deficiencies.

Applicant agreed to submit a discontinued service retirement application immediately after the effective date of his removal, and the Agency agreed to support the retirement application. Three months after signing the negotiated settlement agreement, Applicant completed an SF 86 in which he answered "no" to question 22. The question asked if he had been fired from any job, quit after being told he would be fired, left a job by mutual agreement following allegations of misconduct, or left a job by mutual agreement following allegations of unsatisfactory performance during the previous seven years. A month after completing his SF 86, he completed a Declaration for Federal Employment in which he answered "no" to a question which asked if during the previous five years he had been fired from any job, quit after being told he would be fired, or left by mutual agreement because of specific problems.

Applicant, in his Personal Subject Interviews in early 2012, told the investigator he left in September 2005 after retiring from civil service employment. He never mentioned he left by mutual agreement following allegations of unsatisfactory duty performance. Six years later, in December 2011, he completed an Electronic Questionnaires for Investigations Processing (e-QIP) in which he answered "no" when asked if had left a job within the last seven years following notice of unsatisfactory performance.

I do not believe Applicant's explanation that he misinterpreted the questions about leaving a job after being told he would be fired. None of the personal conduct mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose his termination even at his subject interview. His failure to disclose that he left his job after allegations of unsatisfactory performance shows a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his lack of willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate Government interests. Guideline E, personal conduct, is resolved against Applicant.

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(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) 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's efforts to address his delinquent accounts have been minimal. At the time of the hearing, Applicant's gross household income was in excess of \$170,000. He had paid less than \$200 on the SOR debts. After his hearing, he provided proof that he paid 1.m (\$5,681), the dentist bill (SOR 1.y, \$200), and his taxes (SR 1.bb, \$5,000). As of 2012, he knew of the Government concern about his delinquent debts.

The Government does not have to prove that an applicant poses a clear and present danger to national security, or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history

of unresolved financial difficulties that may make him more vulnerable to financial pressures. Additionally, Applicant provided false answers on numerous government security questionnaires which specifically asked if he had left a job by mutual agreement following allegations of unsatisfactory performance.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to meet the financial considerations security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness as to financial considerations. However, a clearance at this time is not warranted.

His long-standing failure to repay his creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance as does his falsification of his answers on security clearance questionnaires. Overall, Applicant has failed to mitigate the financial considerations and personal conduct security concerns.

Formal Findings

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

Paragraph 1, financial considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e – 1.g:	For Applicant
Subparagraphs 1.h and 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n – 1.r:	Against Applicant
Subparagraphs 1.s and 1.t:	For Applicant
Subparagraphs 1.u and 1.v:	Against Applicant
Subparagraphs 1.w - 1.z:	For Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	For Applicant
Paragraph 2, personal conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge