



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 12-09196
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/30/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on November 7, 2011. On February 14, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. DOD acted under 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) implemented by DOD on September 1, 2006.

Applicant received the SOR on February 21, 2013; answered it on April 4, 2013; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 28, 2013, and the case was assigned to me on July 15, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

August 9, 2013, scheduling the hearing for September 4, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. GX 9 and 10 were admitted over Applicant's objection and are discussed below. Applicant testified and submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. I kept the record open to enable Applicant to submit additional documentary evidence. He timely submitted AX N through S. Department Counsel's comments regarding AX N through S are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on September 12, 2013. The record closed on September 20, 2013.

Evidentiary Issue

Applicant objected to the admission of GX 9 and 10, pertaining to his termination of employment alleged in SOR ¶ 2.a, on the ground that the documents did not reflect his signature or any indicia that he received them. I overruled his objection but reserved judgment on the factual question whether he had actual knowledge that he had been terminated for cause instead of voluntarily resigning. (Tr. 28-31.)

Findings of Fact

In his answer to the SOR and follow-up correspondence, Applicant admitted SOR ¶¶ 1.a-1.i and 1.k-1.p. He provided evidence that the debts in SOR ¶¶ 1.f and 1.h had been paid. He denied the debt alleged in SOR ¶ 1.j. He denied the conduct alleged in SOR ¶¶ 2.a and 2.b. At the hearing, he recanted his admission of SOR ¶ 1.k. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 46-year-old information technology security specialist employed by a federal contractor. He has worked for his current employer since April 2013. He has held clearances from other government agencies since June 2002, but he does not currently hold a clearance.

Applicant graduated from high school in June 1985. He received an associate's degree in electronic technology from a technical school in October 1987. He attended a junior college from January 1989 to September 1990 but did not receive a degree. He intermittently attended a technical school from March 1999 to September 2006 but did not receive a degree.

Applicant worked for federal contractors from September 2000 to August 2005. The circumstances under which he left his employment in 2005 resulted in the allegation in SOR ¶ 2.a. He was self-employed from August 2005 to August 2009.¹ He worked for non-federal employers from September 2008 to September 2010, overlapping his self-employment. He was unemployed from October 2010 to January 2011. He worked for a non-federal employer from January 2011 to September 2011. He

¹ In his security clearance application, Applicant stated that he was fired in April 2006 and self-employed after that date. (GX 1 at 18-20.) However, the termination notice is dated August 31, 2005, and Applicant testified that he worked for this federal contractor until August 2005. (GX 10; Tr. 52.)

held a part-time second job with a department store in September and October 2011, and he left this job under circumstances that resulted in the allegation in SOR ¶ 2.b. He worked for a federal contractor from September 2011 to April 2012, when he was terminated because his application for a security clearance, submitted in November 2011, had not been resolved. (GX 2 at 11.) He was unemployed from April 2012 to April 2013. He was offered a job in July 2012, but could not accept it because it required a security clearance. (GX 2 at 9; AX C at 2.)

Two senior supervisors from the government agency supported by Applicant from 2000 to 2005 submitted letters on his behalf. One supervisor described Applicant as technically proficient, knowledgeable, and “a consummate professional who can be [relied] on to follow through and resolve complex issues before they get out of hand and [require] escalation.” The supervisor stated that he “would not hesitate to bring him back on board if the situation presents itself.” (AX D at 1.) Another senior supervisor praised Applicant’s knowledge, technical skills, loyalty, and integrity. He described Applicant as willing to accept assignments, easy to work with, and timely and accurate with his work. (AX D at 2.) A former employer described Applicant as a talented technician with good judgment and acute awareness of safety issues, who instilled a sense of pride and dedication in members of his crew. (AX D at 7.)

An engineer manager for a federal agency for whom Applicant has been a security specialist since April 2013 strongly supports his application for a clearance. He states that Applicant has a “high level of conscientiousness,” attention to detail, and focus on customer service and satisfaction. He describes Applicant as a person with an exemplary work ethic, focus on the mission, and “an intangible energetic quality which can only be described with example—he is the first one on the scene to get into a boom bucket or get into a confined space to solve a challenging problem.” (AX D at 3.)

The service account engineer for Applicant’s current employer submitted the following comments:

In addition to his technical skills, [Applicant] is trustworthy, has great character, and is an upstanding citizen and proactive member of our community. I have always trusted him with confidential company information and I have never found a reason to doubt or question him. I can confidently attest that he will never let anyone down.

(AX P.)

Applicant’s supervisor from 1997 to 2002 also commented on his knowledge, skill, “thankless troubleshooting,” and calm demeanor during difficult assignments. He stated that Applicant would be a “great addition” to any company seeking to expand and become more competitive. (AX D at 4.)

Applicant married in June 2008 and divorced in May 2011. He has two daughters, now ages 18 and 6, and he is obligated to pay child support for them.

Applicant is actively involved in his community and his church. He has been a volunteer high school basketball coach for ten years, and enjoys a reputation for excellence, commitment, and integrity. (AX D at 5-6.) The assistant principal at the high school where Applicant is a volunteer coach described him as “an extremely effective coach and volunteer,” who “strives for excellence in everything he participates in.” He considers Applicant a “hardworking, trustworthy man of integrity.” (AX Q.)

Applicant began operating his own company around 2004, in addition to his employment by a federal contractor. His personal company provided integration services for security systems. He testified that he informed the owner of the company that employed him about his personal business, and the owner told him that his personal business was not a problem so long as he did not directly compete with his employer or use his employer’s time or material for his own business. (Tr. 54, 57-58.) His personal business and his employer’s business overlapped, because they both dealt with security systems. (AX D at 1-2; Tr. 56.)

In January 2005, the senior vice-president and chief operating officer for Applicant’s employer sent an email to numerous employees, including Applicant, reminding them of the company policy that prohibited employees from “pursuing activities which, in the judgment of the company, may be in conflict with our general welfare, have the appearance of impropriety or which might otherwise damage the company’s reputation and/or ability to conduct business.” The email listed certain improper employee activities, including “Employment as an employee, contractual, or otherwise with a competitor or adversary.”

On August 17, 2005, the program manager for Applicant’s employer prepared to bid on a contract. He received several documents pertaining to the contract, including an attendance sheet for a pre-bid walk-through with prospective bidders that had occurred on August 11, 2005. The attendance sheet reflected that Applicant participated in the walk-through and identified himself as representing his personal company. Applicant testified that he informed his employer’s on-site contracting officer that he would be away from the work site and that he used his personal vacation time to attend the pre-bid walk-through. He testified that he did not know that his employer intended to bid on the contract when he attended the pre-bid event. When he found out that his employer intended to bid on the contract, he informed the owner of the company that employed him, who told him that he could not bid on the contract. (Tr. 54-60.)

Because Applicant’s time sheet reflected that he worked a full eight-hour day for his employer, his program manager concluded that he visited the prospective client on behalf of his own business while charging his time to his employer. The program manager requested that Applicant be terminated for improper conduct, a conflict of interest, and falsifying his time sheet. (GX 9.) A termination notice was prepared and signed by the company’s director of human services on August 31, 2005. (GX 10.) There are no indicia on the termination notice reflecting that it was delivered to Applicant.

Applicant testified that his employer told him that his personal business presented a conflict of interest. (Tr. 61-63.) During a personal subject interview (PSI) in December 2011, he told the investigator that he was given a choice between working solely for his employer or keeping his personal business, and he chose to keep his personal business. (GX 3 at 5.) At the hearing, Applicant testified that he did not receive a termination notice, and he believed that he left his job by mutual agreement. (Tr. 53, 61.) In his security clearance application, he stated that he quit after being told that he would be fired. (GX 1 at 20.)

Applicant testified that his personal business thrived during the first year after he left his job with the federal contractor, but his business began declining in 2008. He purchased a luxury vehicle in 2007, even though he took a pay cut when he became self-employed. After he married in June 2008, he commuted between his work site and his wife's place of residence in another state. In 2009, he moved to the state where his wife lived and was employed by a state government agency. (Tr. 63-68.)

Applicant began a part-time job with a department store in September 2011, working nights and weekends. On his security clearance application, Applicant disclosed that he was fired in October 2011 "for not clocking out." (GX 1 at 13-14.) The summary of his December 2011 PSI recites the following:

The incident occurred when subject came in to work on one day and forgot to clock in and out. To correct subject's work time, subject came in the following day, which was his day off and clocked back in, with the idea that he would return at the end of the day and clock [out], without actually working. The reason he did this was to ensure that he was paid the correct amount of hours worked for the previous day.

(GX 3 at 4.)

In September 2012, DOHA sent Applicant interrogatories asking him to verify the accuracy of the PSI summary. The first interrogatory asked, "Does the report of investigation reflect accurately the information that you provided to the authorized investigator for the Department of Defense on the days you were interviewed?" Applicant answered, "Yes." The second and third questions asked him to identify and correct anything that was not accurate in the PSI summary and invited him to add any additional information. He did not make any corrections or add any information. The fourth question asked, "Subject to any additions or deletions made above, do you agree with and adopt the investigator's summary as accurately reflecting your interviews?" Again, he answered, "Yes." (GX 3 at 2.)

At the hearing, Applicant disputed the accuracy of the PSI summary regarding the circumstances of his termination from the part-time job. He testified that he went to the store on a Sunday morning to check his work schedule. He was a probationary employee because he had not yet worked for 90 days. He testified it was necessary to clock in to see the work schedule. He then left the store, went to church, and returned in

the afternoon. A store manager asked where he had been after he clocked in. When he explained what he had done, he was fired. (Tr. 99-105.) When asked why he did not correct the inaccuracies in the summary of his PSI when he was given the opportunity to do so in September 2012, he responded that he misunderstood the questions in the DOHA interrogatories. (Tr. 116-18.)

Applicant attributed his financial problems to the business downturn that caused the failure of his personal business, his divorce, the illnesses of his mother and grandmother, and his unemployment from April 2012 to April 2013. The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a, unsatisfied judgment for \$700, filed in June 2010. Applicant's cousin hired him to install security monitoring equipment in his home and paid him a deposit. Installation was delayed because his cousin was deployed to another location, and when his cousin returned he changed his mind about installing the equipment. The cousin asked for his money back, but Applicant could not afford to repay him. In response to the SOR and at the hearing Applicant stated that he sent two \$125 money orders to his cousin, but his cousin had not received them. He did not present any documentation that he purchased or sent the money orders. (Tr. 69-71.) However, after the hearing, he submitted evidence that he sent \$150 to his cousin on September 11, 2013. (AX O; AX R.)

SOR ¶ 1.b, unpaid cable bill for \$264, referred for collection in September 2012. Applicant voluntarily disclosed this debt in his response to the DOHA financial interrogatories, and it is reflected in the September 2012 credit bureau report (CBR) that he attached to his responses. In response to the SOR, Applicant stated that he paid \$20 on this debt. However, he testified at the hearing that he had been unable to make any payments on this debt. (Tr. 72.)

SOR ¶¶ 1.c and 1.d, a credit card account for \$1,882 and a repossession deficiency of \$16,626, both owed to the same creditor and charged off in March 2011. Applicant was offered a payment agreement providing for biweekly \$225 payments that covered both debts, to begin in September 2012. (AX J.) He has not accepted the offer or made any payments. He testified that he needs to renegotiate the payment agreement because he cannot afford the \$225 payments. (Tr. 75.)

SOR ¶ 1.e, student loan for \$11,406, referred for collection in November 2009. Applicant entered into a loan rehabilitation program in August 2012, requiring him to make nine consecutive monthly payments of \$100. (GX 2 at 2-8.) He was unable to make the payments due to his unemployment. (GX 3 at 13.) At the hearing he submitted evidence that he made a credit card payment of \$103 on August 28, 2013. (AX G at 1.) He also presented evidence that he has a payment agreement for another student loan, not alleged in the SOR, reflecting a balance due of \$310 and providing for monthly \$10 payments beginning on August 15, 2013. (AX G at 2-3.) After the hearing, he submitted evidence of a payment agreement on the loan alleged in the SOR, providing for monthly

\$104 payments and documentation reflecting that the first payment was posted on September 11, 2013. (AX N.)

SOR ¶¶ 1.f, 1.g, and 1.h, parking tickets for \$55, \$300, and \$55, referred for collection in June 2011. Applicant has paid the two \$55 tickets. (AX K.) In his response to the SOR, he stated that he paid \$25 on the \$300 ticket, but he provided no documentation of payment. At the hearing, he testified that he paid \$50 on the \$300 ticket, but he provided no documentation. (Tr. 78.)

SOR ¶ 1.i, repossession deficiency of \$36,730, referred for collection in October 2008. Applicant purchased a vehicle for \$47,918 in 2007, when his personal business was thriving, but after the business downturn he voluntarily surrendered his vehicle. He testified that he was promised that he would not owe any deficiency, but he did not provide any documentation of this promise. He testified that he contacted the creditor several times but was unable to negotiate a payment plan. (Tr. 79-81.) His December 2011 CBR reflects a balance due of \$33,287; and his July 2012 CBR reflects a balance due of \$35,515. (GX 4 at 2; GX 5 at 8.) In August 2012, the creditor offered to settle the debt for \$23,642, but Applicant was financially unable to accept the offer. (AX F.)

SOR ¶ 1.j, credit card account for \$1,845, referred for collection in October 2008. Applicant denied this debt in his response to the SOR. At the hearing, he testified that he disputed the debt with the credit bureau and that the dispute was resolved in his favor. (Tr. 82-83.) However, the debt was reflected on his December 2011 and July 2012 CBRs. (GX 4 at 1; GX 5 at 8.) He did not present any documentation of his dispute or its resolution.

SOR ¶ 1.k, medical account for \$215, referred for collection in November 2011. Applicant admitted this debt in response to the SOR, but he recanted his admission at the hearing. He testified that he successfully disputed the debt and it was removed from his credit record. (Tr. 85-87.) He did not present any documentation of his dispute or its resolution. However, it was not reflected on his July 2012 CBR, suggesting that it was deleted as a result of the dispute. (GX 4; GX 5 at 9.)

SOR ¶ 1.l, child support arrearage of \$9,124. At the hearing, Applicant admitted that he fell behind on his child support payments while he was unemployed. His court-ordered child support payments are now being automatically deducted from his pay. (AX I at 8-13; Tr. 87-89.)

SOR ¶¶ 1.m and 1.n, federal income tax debts (\$2,028 for 2011; \$3,325 for 2010). Applicant testified that his federal tax debts arose when his personal business was audited and some of his business deductions were disallowed. (Tr. 95-96.) He did not file his federal income tax return for 2010 until August 2012, and he did not file his 2011 return until May 2012. (GX 3 at 71, 74.) He attributed the untimely returns to his divorce and the illness of his mother and grandmother. (Tr. 94.) He testified that he timely filed his 2012 return. (Tr. 97.) In April 2013, the Internal Revenue Service (IRS)

notified him that it was closing the collection case for his debts because of his inability to pay the taxes due. (Answer to SOR.) In May 2013, the U.S. Tax Court determined that he owed the following additional amounts for the years preceding 2010 and 2011: \$10,315 for 2006; \$1,229 for 2007; \$7,075 for 2008; and \$9,570 for 2009. (AX M.) Applicant testified that he had negotiated a payment plan with the IRS providing for monthly \$50 payments, but he did not provide any documentation of the agreement or payments on the debt. (Tr. 93.)

SOR ¶ 1.o, state tax debt of \$2,075 for tax year 2010. Applicant testified that he had negotiated a payment plan for this debt in July 2013 but had not made any payments under the plan. (Tr. 97-98.) He tendered a \$95 payment on this tax debt but it was returned unpaid because no bank account number was on the check. (AX H.)

SOR ¶ 1.p, state tax debt (different state than SOR ¶ 1.o) of \$1,568 for tax year 2011. In September 2012, Applicant negotiated a 24-month payment agreement for this debt, providing for monthly \$73.35 payments. (AX E.) However, he was unable to make the payments. (Tr. 98-99.)

In September 2012, Applicant submitted a personal financial statement (PFS) to DOHA in response to financial interrogatories. At that time, his only income was unemployment benefits of \$430 per week. (Answer to SOR.) His PFS reflected gross monthly income of \$1,600, deductions from gross income of \$320, expenses of \$1,633, debt payment obligations of \$1,756, and a monthly shortfall of about \$2,400. (GX 3 at 19.)

Applicant currently earns about \$42,000 per year. (Tr. 49-50.) In his previous employment from 2000-2005, he was earning between \$60,000 and \$70,000 per year. (Tr. 51-53.) He estimated that his net income during the first full year of operating his own business was between \$30,000 and \$40,000. (Tr. 66.)

Applicant recently moved to another state and lives with his family because of his limited income. He pays his mother \$200-\$300 per month and his cousin about \$150 per month. He helps care for his grandmother, who is in a nursing home, and spends small sums of money for her, buying her dinner, snacks, and small gifts. (Tr. 73-74.)

Applicant presented no evidence that he contacted the creditors alleged in SOR ¶¶ 1.c, 1.d, 1.i, and 1.p or resumed his agreed payments after April 2013, when he returned to the workforce. He claimed to have made a payment on the debt alleged in SOR ¶ 1.g, but he provided no documentation of the payment. He claimed to have negotiated a payment plan for his federal tax debt, but he provided no documentation of an agreement or any payments. He has taken no action to resolve the debt in SOR ¶¶ 1.b.

Applicant contacted a credit counselor in July 2013. (AX B.) He testified that he hopes to include all his unresolved debts in a debt management plan. As of the date of the hearing, he had not yet signed a contract with the counselor or formulated a

payment plan for his delinquent debts. (Tr. 71-72.) After the hearing, he presented an email reminding him of his first appointment with a financial counselor. (AX S.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The SOR alleges 16 delinquent debts totaling \$88,198. The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(e): consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant's CBRs, admissions during the PSI, responses to DOHA interrogatories, answer to the SOR, and testimony at the hearing establish AG ¶ 19(a) and AG ¶ 19(c). His purchase of an expensive vehicle in 2007, after taking a substantial pay cut to establish his own business, was an imprudent and extravagant expense. However, this single purchase does not establish "consistent spending beyond one's means" within the meaning of AG ¶ 19(e).

Applicant's failure to timely file his federal income tax returns for 2010 and 2011 establishes AG ¶ 19(g). However, failure to file tax returns was not alleged in the SOR, and thus it may not be an independent basis for denying his application for a clearance. His failure to file timely returns contributed to the tax debts alleged in SOR ¶¶ 1.m and 1.n. Conduct not specially alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered his failure to file timely tax returns for these limited purposes.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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) is not established. Applicant's delinquent debts are numerous, recent, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant encountered several conditions beyond his control: the business downturn that contributed to the failure of his business; his marital breakup; and his one-year unemployment preceding his current employment. However, his loss of employment in 2006 was the product of his choice to keep his private business rather than close it and keep the well-paying job he had held since 2000. His loss of his part-time job in October 2011 was due to his failure to follow the rules regarding time cards. Furthermore, Applicant has not acted responsibly. His purchase of an expensive vehicle after taking a pay cut and before establishing a pattern of profitability in his private business was irresponsible. His failures to timely file his income tax returns in 2010 and 2011 exacerbated his tax problems. Even though he has been employed since April 2012, he has not satisfied the judgment in SOR ¶ 1.a, made any payments on the debts in SOR ¶¶ 1.b, 1.m, or 1.n, or resumed payments on the debts in SOR ¶¶ 1.c, 1.d, 1.o, and 1.p.

AG ¶ 20(c) is not fully established. Applicant has arranged for financial counseling, but has just begun the program, and there are no “clear indications” that his financial problems are being resolved.

AG ¶ 20(d) is not fully established. “Good faith” within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999).

A security clearance adjudication is aimed at evaluating an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant made a \$150 payment on the judgment in SOR ¶ 1.a after the hearing. The timing of his payment suggests that it was motivated more by his desire to obtain a clearance and protect his job than a sense of obligation to the creditor. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant paid the two parking tickets alleged in SOR ¶¶ 1.f and 1.h. He has payment plans in place to resolve the debts in SOR ¶¶ 1.c, 1.d, 1.e, 1.l, 1.o, and 1.p. He has begun to made payments on the debts in SOR ¶¶ 1.e and 1.l. He has not addressed the unpaid cable bill in SOR ¶ 1.b, resumed the payments on the debts in SOR ¶¶ 1.c and 1.d, paid the balance of the parking ticket alleged in SOR ¶ 1.g, or taken any action to resolve the repossession deficiency in SOR ¶ 1.i. Even if he is able to establish a payment plan for the delinquent federal taxes alleged in SOR ¶¶ 1.m and 1.n, he will need to establish a track record of compliance to establish this mitigating

condition. He is hoping that his financial counselor will help him devise a plan to resolve his remaining unpaid debts, but he does not yet have a plan. I conclude that AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.e, 1.f, 1.h, and 1.i, but it is not established for the other delinquent debts alleged in the SOR.

AG ¶ 20(e) is established for the medical debt in SOR ¶ 1.k. It is not established for the other delinquent debts alleged in the SOR.

Guideline E, Personal Conduct

The SOR alleges that Applicant was terminated from a job in August 2005 for a conflict of interest and falsifying a time sheet (SOR ¶ 2.a). It also alleges that he was terminated from a job in October 2011 for falsifying a timecard (SOR ¶ 2.b.). The concern under this guideline is set out in AG ¶ 15 in pertinent part as follows: “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.”

The evidence is conflicting regarding the circumstances under which Applicant left his job in August 2005. Applicant testified that he voluntarily left his employment after being given the option of closing his personal business or resigning. In his security clearance application, he stated that he quit after being told he would be fired. The Government submitted a termination notice, but no evidence that it was delivered to applicant. Whether Applicant was fired or resigned because of the conflict of interest need not be resolved, because the evidence establishes that he left his job under unfavorable circumstances.

Applicant testified that he used vacation time to attend a pre-bid conference, but his program manager’s request for termination recites that Applicant submitted a time sheet reflecting that he worked a full eight hours for his employer on the day in question. Applicant presented no documentary evidence supporting his assertion that he used vacation time to attend the pre-bid conference. However, I am not satisfied that Applicant intentionally falsified his time sheet. I conclude that it was more likely that he simply conducted personal business during the workday, which was a violation of the company policy.

With respect to the termination of Applicant’s part-time job in October 2011, the uncontroverted evidence shows that he was fired. However, I am not satisfied that he falsified his timecard, as alleged. The evidence reflects that, during his short period of employment, he did not follow the rules for clocking in and out. Instead, he retroactively manipulated the timecards to reflect his time actually worked. In doing so, he subverted the purpose of the timecard system.

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

While evidence regarding the two terminations of employment falls short of proving deliberately fraudulent conduct, it establishes Applicant's inability or unwillingness to follow rules, and it proves conduct that adversely affects his personal and professional standing. Thus, I conclude that AG ¶¶ 16(c), (d), and (e) are established.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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;

AG ¶ 17(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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) is not established. Applicant's termination for a timecard infraction in October 2011 was arguably a minor offense, and his unfavorable termination because of a conflict of interest in August 2005 was more than eight years ago. However, Applicant's conflict of interest in August 2005, failure to file income tax returns in 2010 and 2011, timecard infraction in October 2011, and his neglect of financial responsibilities show a pattern of rule violations and irresponsible behavior that casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 17(d) is not established. Applicant has not acknowledged the irresponsible behavior that led to his two job terminations, he has not received behavioral counseling, and he faces the same stressors and circumstances that contributed to his behavior.

AG ¶ 17(e) is partially established. Applicant disclosed his two unfavorable job terminations on his current security clearance application, but the record does not reflect whether he disclosed his employment history to his current employer.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is amiable, personable, hardworking, and skilled. These traits make it understandable why former supervisors and clients regard him highly. He was candid and sincere at the hearing. However, his terminations of employment and financial problems occurred when he was in his 40s, at an age when he was expected to exercise mature judgment and responsibility. He has taken some steps to right his financial ship, but he does not yet have a comprehensive, realistic plan to resolve his financial problems, nor has he established a track record of financial responsibility.

After weighing the disqualifying and mitigating conditions under Guideline F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations and personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i-1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraphs 1.m-1.p:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a-2.b:	Against Applicant
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Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge