



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



In the matter of: )  
)  
) ISCR Case No. 12-10207  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

09/18/2013

**Decision**

MASON Paul J., Administrative Judge:

Applicant has made regular payments to restore his student loan to deferment eligibility. He has satisfied two additional debts. However, he has not provided sufficient documented evidence showing resolution of the remaining eight delinquent debts. In view of his deliberate falsifications of three security forms over a 13-year-period, Applicant's evidence is insufficient to mitigate the security concerns arising from the financial considerations and personal conduct guidelines. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on October 19, 2011. He was

interviewed by an investigator from the Office of Personnel Management (OPM) on January 6, 2012, and in a previous investigation on July 20, 2006. The interview summaries and Applicant's interrogatory responses appear in GE 2, dated October 26, 2012. Applicant agreed that the two summaries could be admitted into evidence at a hearing to determine his security suitability. (GE 2)

On January 11, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on April 24, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 6, 2013, for a hearing on July 11, 2013. The hearing was held as scheduled. GE 1-11 were admitted in evidence without objection. Applicant's 15 exhibits (AE A-O) were admitted without objection. Applicant's five post-hearing exhibits (AE O-AE S) were admitted into evidence without objection. The post-hearing exhibit identified as AE O, a copy of the divorce complaint with an attachment requesting a division of marital assets and liabilities, will become AE O1. The transcript (Tr.) was received on July 22, 2013. The record closed on July 26, 2013.

### **Rulings on Procedure**

On May 21, 2013, Government counsel filed a motion to amend the SOR. The motion has been identified as Hearing Exhibit (HE 1). The Government seeks to amend the SOR by adding ¶ 1.k under the financial considerations guideline, and adding ¶¶ 2(c) and 2(d) under the personal conduct guideline:

k. You are indebted to [an educational institution] for a judgment that was entered against you in approximately September 2012 in the approximate amount of \$6,178. As of the date of this amendment to the SOR, it remains unpaid.

In the same motion, the Government moved to amend the SOR by adding ¶¶ 2.c and 2.d:

c. You deliberately falsified material facts in a Security Clearance Application (SCA) dated April 12, 2004, in response to the following question: "35 - Your Financial Record - Repossessions - In the last 7 years, have you had any property repossessed for any reason?" You answered No. You thereby

deliberately failed to disclose that you had a car repossessed in approximately 2008.

d. You deliberately falsified material facts in a Questionnaire for Nation Security Positions certified by you on April 4, 1998, in response to the following question: "27-b. Your Financial record - In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?" You answered No. You thereby deliberately failed to disclose that you had a home foreclosed on in approximately 1997 and a car repossessed in approximately 1996.

In the Government's motion, Applicant was instructed to admit or deny each of the three additional allegations, initial each response, and sign the amendment to the SOR. On May 30, 2013, Applicant entered a denial to each of the three allegations, initialed each denial, and provided his signature. (HE 2)

During the hearing, Government counsel moved to amend ¶ 2.c of the SOR by replacing the year "2003" with "approximately 1998." Clearly, Government counsel's reference to "2003," rather than "2008" (the year cited in the allegation), is incorrect. There is testimonial evidence indicating an auto repossession occurred in approximately 1998, an event that was within 7 years of Applicant's April 2004 SCA. The written motion to amend filed on May 21, 2013, and the oral motion to modify ¶ 2.c made during the hearing, are hereby granted. (E3.1.17. of the Directive; Tr. 48-50, 58-60)

### **Findings of Fact**

The first paragraph of the SOR contains eleven allegations under the financial considerations guideline and the second paragraph contains four allegations under the personal conduct guideline. Applicant provided a general denial to all allegations with several qualifying explanations. He provided specific denials to ¶¶ 1.a, 1.b, 1.c, 1.g, 1.h, 1.i, and 1.j, contending that the debts belonged to his estranged wife even though the credit reports show that he is individually or jointly responsible. He claimed his son was responsible for the student loan judgment (¶ 1.k). (Tr. 37-38, 69) After a thorough record review, I make the following factual findings.

Applicant is 45 years old. He married his wife in August 1986. He is seeking a divorce. He has four children, ages 23, 19, 16, and 13. The two oldest were in college, but apparently the oldest son withdrew for unknown reasons. Applicant, a licensed foster care parent, adopted his youngest son in June 2006. Applicant has held security clearances for 20 years. He received an honorable discharge from the U.S. Army after serving from June 1985 to November 1992. (GE 1 at 17, 31-32; GE 2, July 2006 interview at 3; Tr. 27-28, 30, 76, 83, 89-91)

Applicant is working for a subcontractor as an information assurance engineer/manager. Before his current employment, he was employed as information assurance engineer from December 2010 to approximately May 2012. Previous to that job, he was employed as a program security officer. In 2009, Applicant was an information system security representative for a contractor. In October 2005, Applicant became a licensed realtor. From January 1997 to December 2008, he was employed in information security support for a contractor. He testified he had two periods of unemployment: October 2012 to January 2013; and four months in 2008. He also was unemployed from September 2005 to February 2006, when he began working in real estate. Applicant has no security violations. (SOR answer; GE 1 at 11-13; GE 2, July 2006 interview at 4; AE A-B; Tr. 81-82)

In May 2006, Applicant received his associate degree in divinity. He has always been active in the church. Currently, he volunteers 10 hours a week preaching at a church ministry. He received a master's certificate in information security in January 2013. He anticipates that in December 2013, he will complete a bachelor of science degree in computer information systems. (GE 1; AE A-B; Tr. 46)

### **Reasons for Financial Problems**

In his July 2006 OPM interview, Applicant did not identify a reason for his delinquent debts. He stated that in approximately 1997, his house, located in one part of the United States, was foreclosed and sold at auction by the Veteran's Administration (VA). The reason was that he could not pay the mortgage and meet his living expenses in another part of the United States. In January 2012, Applicant did not identify a reason for his delinquent debts. He acknowledged he was aware of some debts, but unaware of others. In an attachment to his interrogatory responses dated October 21, 2012, Applicant provided information about the steps he had taken to resolve the tax lien with the Internal Revenue Service (IRS, ¶ 1.c of the SOR) and his student loan debt (¶ 1.d of the SOR). He contended he did not know about the tax lien until October 2012. He believed the delinquent student loan account was in deferment. He claimed the other debts were not his responsibility. He hired a law firm in October 2012 to dispute the delinquent accounts. (GE 2, January 2012 interview at 4; GE 2, July 2006 interview at 1; GE 2 October 2012 attachment)

In his answer to the SOR, Applicant faulted his estranged wife for the debts alleged in ¶¶ 1.a, 1.b, 1.c, 1.g, 1.h, 1.i, and 1.j. As noted earlier, he claimed the student loan (¶ 1.k) was his son's responsibility, even though Applicant was a cosigner of the loan. He indicated that his wife had the responsibility for handling the finances and taxes throughout the marriage. In addition to his debt resolution firm, he is disputing the identified accounts in his divorce petition that he filed on April 13, 2013. He anticipates the divorce action will be heard in February 2014. (SOR answer; AE A, O, O1; Tr. 48)

Though Applicant claimed he did not become aware of the IRS tax lien and most of the other debts until sometime between October 2012 and January 2013, when he received the SOR, the record reflects that he knew about the judgments and other delinquent debts in January 2012.<sup>1</sup> (Tr. 27-29) The debts will be addressed in the order they appear in the SOR.

¶ 1.a, medical account, \$652. The plaintiff obtained a judgment against Applicant in September 2008. The judgment is listed in the credit reports. Applicant testified that the account represents a debt his wife incurred for surgery. Applicant indicated he registered a dispute through his law firm and divorce action. (SOR answer; GE 3, 4, 5, 6; AE C, O1; Tr. 27-29) No additional information was provided. The medical debt remains unpaid.

¶ 1.b, unknown loan type, \$5,233. GE 6 indicates that Applicant is individually liable for the account. The collection agency obtained a judgment against Applicant in May 2009, which he is disputing through the debt resolution firm and in his divorce action. Other than the one-page letter from the firm, Applicant provided no updated documented information about the status of the judgment. The judgment remains unresolved.

¶ 1.c, IRS lien, \$29,551. The lien was filed in March 2011. Applicant provided corroboration that the lien had been reduced to a little over \$11,000. He has not finalized a payment plan because his wife incorrectly claimed all the children in her 2012 federal tax return. The tax lien stems from Applicant's sale of a house in 2005. In approximately 2009, the IRS claimed he owed more taxes than he claimed in the sale. Even though he did not believe he underreported the taxes due, in 2012, he negotiated the deficiency amount down to \$11,000. He maintained his claim that he did not know about the lien until October 2012 or more recently. He is trying to get half of the lien paid by his wife in the upcoming divorce action. The lien remains unresolved. (GE 2; AE E, P; Tr. 66-72)

¶ 1.d, student loans, \$20,321. The accounts became delinquent between February 2011 and October 2011. In October 2012, Applicant set up a payment plan requiring monthly payments of \$55 a month for nine months. Applicant made 12 payments between October and June 24, 2013. The loan has been rehabilitated and is eligible for deferment. (GE 2; GE 3, 4, 5, 6; AE E, Q; Tr. 34, 74) ¶ 1.d is found in Applicant's favor.

¶ 1.e, telecommunications debt, \$122. The last activity on the account was in September 2011. Applicant received a letter on October 24, 2012, indicating the account

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<sup>1</sup> In the January 2012 interview summary, the OPM investigator questioned Applicant about the SOR judgments and delinquent accounts. The investigator also asked Applicant about a tax lien totaling \$29,551. The interview summary lists an accurate tax lien identification number, but names a city instead of the IRS as filing the lien. Applicant indicated he intended to obtain a credit report and establish payment arrangements for those debts that were determined to be his responsibility. (GE 2, January 2012 interview at 3-5; GE 3)

was paid-in-full. Though the account numbers in the credit reports and Applicant's documentation do not match, the debt amount is the same in all reports. (GE 3, 4, 5; AE G) The account is resolved in Applicant's favor.

¶ 1.f, returned check for insufficient funds, \$85. In April 2013, Applicant stated he paid the debt immediately. At the hearing, he was not certain he had paid the debt and testified he would have to get proof of payment. Though he provided no additional information, the credit reports show the account was paid before April 2013. (GE 3; SOR answer; Tr. 36-37) The account is resolved.

¶ 1.g, bank account, \$958. GE 6 shows that Applicant is individually responsible for the account. The last activity on the account was November 2010. Applicant is disputing this account through the debt resolution firm and his divorce action. (GE 6; AE C, O1; Tr. 37) The account is unresolved.

¶ 1.h, telecommunications debt, \$411. GE 6 indicates that Applicant is individually responsible for the account. The last activity on the debt was September 2011. In October 2012, Applicant's debt resolution firm submitted a letter to the credit bureau disputing the account. Applicant is also disputing this debt in his divorce action. (GE 6; SOR answer; AE O1; Tr. 38-39) The account remains unpaid.

¶ 1.i, unknown loan type, \$761. GE 6 reflects that Applicant is individually responsible for the account. In October 2012, Applicant's debt resolution firm submitted a letter to the credit bureau disputing the account. Applicant is also disputing this debt in his divorce action. (GE 6; AE C, O1) The account has not been paid.

¶ 1.j, insurance, \$928. The activity date was May 2009. Though he was never insured by this company, he surmised that his wife may have been at some time. In October 2012, Applicant's debt resolution firm submitted a letter to the credit bureau disputing the account. Applicant is also disputing this debt in his divorce action. (GE 6; AE C) the account has not been paid.

¶ 1.k, student loan, \$6,178. The plaintiff obtained a judgment in September 2012. Applicant testified that his son owes the loan even though Applicant cosigned for the loan. According to Applicant, during the loan application process, the loan officials mistakenly identified Applicant as the loan applicant. He testified his son has a job and has paid \$100 on the loan balance. Applicant also submitted an undated letter from his son stating that the son made a second payment of \$100. There is no evidence of a documented repayment plan that has been agreed to by the educational institution. The loan remains unpaid. (GE 3; AE R; Tr. 41, 76-77, 89-91)

Applicant currently earns approximately \$160,000 a year. Most of his net monthly remainder of about \$4,000 is utilized to pay: his wife's home and utility bills; his youngest children's expenses; his two oldest children's educational expenses; and the family's car insurance. Even without a court order, Applicant pays his wife about \$1,500 a month and gives his children about \$300 to \$400 a month. He helped his daughter repair her car engine. In the week following the hearing, he was scheduled to complete \$700-a-month car payments for his son, who works. (Tr. 29-30, 74, 77-80)

Applicant hired a debt resolution firm to handle his car repossession in 1998. (¶ 2.c) He hired a debt resolution law firm after he submitted his October 2011 e-QIP. The documentation shows that the firm was able to remove seven delinquent unlisted debts from Applicant's credit report. Unlike a dispute submitted to one of the three credit agencies, the reports do not explain why the entries were removed. The only information provided is that removal of the negative entry improved Applicant's overall credit score. (GE 2, July 2006 interview at 1; GE 2, debt resolution law firm documentation; Tr. 63-65)

In March 2013, Applicant participated in three hours of financial counseling by a money management organization. The counseling, which he received by letter and telephone, provided instruction on how to achieve control over his debts. The budget assessment compiled by the management service contains different figures from those in Applicant's personal financial statement (PFS). The documentation provided by the management service is unsigned and there is no indication that Applicant actually enrolled in the service. He did not seek financial counseling before March 2013 because he was not focused and he was working temporary duty. He was unaware of how serious the financial problems were. (AE O; AE S; Tr. 84-88)

The record reveals that Applicant owes approximately \$25,843 for delinquent debts identified in ¶¶ 1.a, 1.b, 1.c, 1.g, 1.h, 1.i, 1.j, and 1.k. He has made his student loan (¶ 1.d) eligible for deferment with 12 consecutive monthly payments of \$55 under the creditor's rehabilitation plan. He has rehabilitated the student loan and satisfied the debts set forth in ¶¶ 1.e, and 1.f.

Applicant testified that he is managing his finances regularly. He is talking with credit and financial counselors about handling debt. He promises not to repeat his financial problems and plans to have his delinquent debt paid by the summer of 2014. (Tr. 46-48)

## **Personal Conduct**

¶ 2.a. On October 19, 2011, Applicant signed and certified an Electronic Questionnaires for Investigations Processing (e-QIP). In response to section 26b requiring information about voluntary or involuntary repossessions in the last 7 years, Applicant answered "No," failing to disclose a car repossession within 7 years of his e-QIP

submission. Applicant admitted he made a mistake, but was given only 15 minutes to answer the e-QIP. He was aware of his vehicle situation. He did not intend to intentionally mislead or conceal information. Applicant testified that his “No” answer was true at the time he answered the question on the e-QIP. He did not review the financial situation until some time subsequent to filling out the security form in October 2011. He did not know his car was repossessed in 2008, but learned about the repossession before the hearing. (GE 1; SOR answer; Tr. 49, 93)

¶ 2.b. In the same e-QIP, Applicant answered “No” to Section 26d requiring information in the last 7 years of whether a lien was placed against his property for failure to pay taxes or other debts. He answered “No” to section 26e (judgments), section 26m (over 180 days delinquent on any debt), section 26n (currently 90 days delinquent on any debt), and section 26n (delinquent on any federal debt), within the last 7 years. He did not disclose any financial problems on the security form. (GE 1)

Applicant testified he did not know about the federal tax lien until after he took over the financial responsibilities in October 2012. He continued to explicitly or implicitly deny he was aware of most of the other financial accounts listed in ¶ 2.b of the SOR. (GE 1; SOR answer; Tr. 42-44)

¶ 2.c. On April 12, 2004, Applicant signed and certified an SCA. He answered “No” to question 35 requiring information about repossessions in last 7 years. He failed to disclose he had a van repossessed in approximately 1998. Applicant testified:

“I was thinking I didn’t have any repossessions because I didn’t. In my mind, I didn’t because I think around that time I had just bought another car. And so when I answered the form out I didn’t know I had a repossession until it was discovered later on it was not a vehicle that I owned.” (Tr. 44)

Applicant believed his wife owned the car. She was paying the monthly car note while taking care of the finances. GE 8 reflects that Applicant had individual responsibility for the account. In his July 2006 interview summary, Applicant remembered purchasing a van in 1996 and becoming delinquent in payments in 1998. The van was repossessed and he negotiated a settlement. (GE 2, July 2006 interview at 1; GE 8 at 7; GE 10 at 6; Tr. 45, 53-54, 58-60)

¶ 2.d. On April 24, 1998, Applicant signed and certified a Questionnaire for National Security Positions. He answered “No” to question 27-b requiring information about wage garnishments or repossessions in the last seven years. Applicant failed to disclose he had a car repossessed in approximately 1996. He testified he was not aware of a car repossession at the time. I am unable to find Applicant’s 1997 home foreclosure to be a repossession within scope of question 27-b. (GE 8 at 1; Tr. 45)

The evidence reflects that Applicant leased the ¶ 2.d car in February 1994, and the last activity on the account was June 1994. The car was repossessed (reclaimed by the leasing company for nonpayment under lease terms) while Applicant was unemployed. On October 1, 1996, the car lease company and Applicant entered into a deficiency judgment agreement of \$5,418. (GE 10 at 3; GE 11; Tr. 56-58, 59-60)

### **Character Evidence**

Applicant submitted five character references into evidence. On March 25, 2013, reference J, a program security representative, has known Applicant for about four years and selected him for a flight testing project because of his expertise in computer security. Based on his performance, reference J believes Applicant's loyalty and honesty earned him leadership qualities. Reference K, a security engineer, has known Applicant for two years and believes he is very responsible and trustworthy. Reference L, a contractor, met Applicant when they were working on the same contract. Applicant's familiarity in quality assurance brought focus to a classified project. Reference M, a software engineer, contractor, believes Applicant's 30 years of service to the United States in the military and as a civilian contractor establishes his deep commitment to the security of the nation. In a letter dated September 14, 2012, a potential employer described a compelling need for Applicant's services because of his knowledge of another Government agency's information system. (AE J, K, I, M, N)

### **Credibility Finding**

Applicant's credibility is undercut by inconsistent and contradictory explanations for deliberately providing false information on the security forms. After viewing the falsifications as a whole, I find that he deliberately omitted relevant information from three security forms over a 13-year period.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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 of establishing that it is clearly consistent with the national interest to grant him a security clearance.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

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

The Government has the responsibility of presenting sufficient information to support all allegations under the financial considerations guideline. The Government case is established by the credit reports, Applicant's interview summaries, and the record transcript. The federal tax lien was filed for underpayment of taxes after the sale of real estate in 2005. Judgments were obtained against Applicant in September 2008 and in May 2009. There are eight other delinquent accounts. AG ¶¶ 19(a) and 19(c) are applicable.

Five mitigating conditions under AG ¶ 20 are potentially pertinent:

- (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 reliability, trustworthiness, and good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant still owes approximately \$25,843 to eight creditors. Considering his age and deliberate falsification of three security forms, his failure to make material changes in his financial practices before October 2012, raises ongoing doubt about his judgment and trustworthiness. AG ¶ 20(a) does not apply.

Applicant has been unemployed on three occasions since 1995. The two most recent periods of employment were four months in 2008 and four months between October 2012 and January 2013. He has regained employment and is earning about \$160,000 a year. He filed for divorce in February 2013, and wants the family court to order his wife to pay all or part of the accounts alleged in ¶¶ 1.a, 1.b, 1.c, 1.g, 1.h, 1.i, and 1.j. Applicant is entitled to some mitigation under the condition due to the two periods of unemployment. Though the presence of negative financial indicators should have prompted Applicant to act much earlier to correct the financial issues, he gains some mitigation for his remedial action in 2011 and October 2012.

Applicant's only financial counseling occurred in March 2013. He spent three hours with a financial counselor who created a budget assessment and a debt repayment plan that he decided not to activate. He hired a debt resolution firm in October 2011 to correct his credit report. Although there is documentation indicating that several unlisted debts were removed from his credit report in November 2011, the documentation is inadequate to mitigate the unpaid status of the eight debts in the SOR. I have considered Applicant's divorce action seeking an order to require his wife pay or all or part of disputed accounts, but the action will not be heard until at least February 2014, and assets and liabilities of the marriage may be the subject to further negotiation or modification. While recognizing Applicant's success in reducing the amount of the federal lien, without documentation of an ongoing payment plan with the IRS or the son's educational institution, I am unable to

conclude that he has his financial problems resolved or under control. AG ¶ 20(c) partially applies.

Applicant's dispute of ¶¶ 1.a, 1.b, 1.c, 1.g, 1.h, 1.i, and 1.j, entitles him to some mitigation under AG ¶ 20(e) for the work of the debt resolution firm in removing seven unlisted debts in November 2011, even though no substantive reason was provided for their removal. On the other hand, no mitigation is justified based on the one-page letter from the debt resolution firm and the divorce action debt settlement request. Missing is documentation from the credit agencies identifying the status of each account, and the reasons why the accounts are not Applicant's responsibility.

## **Personal Conduct**

The security concern for personal conduct is set forth in AG ¶ 15:

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 disqualifying condition potentially pertinent under AG ¶ 16 is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personnel security statement, or similar form to conduct investigations, determine employment qualifications, award benefits and status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Security concerns are raised by an omission of information from a Government security questionnaire or an interview. However, not every omission under the personal conduct guideline should be construed as a falsification. Occasionally, omissions may result from haste, oversight, or misinterpretation of the questions in the security form. To fall within the scope of AG ¶ 16(a), the omission must be a deliberate concealment or falsification of relevant facts used to determine whether a security clearance should be granted or denied. An applicant's financial record is relevant if the information could affect an agency decision regarding an applicant's security suitability. Between April 1998 and October 2011, Applicant engaged in a pattern of deliberate omissions on his security forms. AG ¶¶ 16(a) applies. About two years before he completed his April 1998 security form, his car was repossessed for not paying according to the lease terms. Even though Applicant was only about 26 years old when he completed the 1998 security form, given the recency

of the car repossession, coupled with Applicant's subsequent security form omissions of the same information, his explanation of not being aware of the 1996 repossession is not credible.

Regarding Applicant's deliberate omission of his April 2004 security form, his explanation about not thinking about the car until he discovered later the vehicle was not his, is not credible. In his July 2006 interview, Applicant remembered a 1998 repossession of a car he purchased in 1996. He remembered negotiating a settlement. The credit reports show he was individually responsible.

Applicant submitted a third security form on October 19, 2011. During the hearing, Applicant provided several explanations that are not true given his SOR answer admitting he was aware of his car repossession. His answers denying he was aware of a tax lien, a judgment, debts over 180 days delinquent or currently 90 days delinquent, or any Federal debt, defies probability given his security clearance experience in the military and in the contract industry.

There are three mitigating conditions under AG ¶ 17 that are potentially pertinent to the circumstances in this case. Those conditions are:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts;
- (c) the offense was 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; and
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

There is no evidence showing that Applicant attempted or made efforts to correct his admissions before being confronted with the facts. At the hearing, Applicant continued to deny he falsified the security forms. His assumption of the financial responsibilities in October 2012, and his financial counseling in March 2013, are positive developments, but do not overcome his ongoing denials of providing false information on his security forms. Neither AG ¶¶ 17(a) or 17(d) are applicable. Providing false information to the Government about negative financial issues cannot be considered minor. Applicant's repeated deliberate falsifications of security forms continue to cast doubt on his reliability and judgment. AG ¶ 17(c) does not apply.

## Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial and personal conduct guidelines. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 45 years old and has four children, with one in college. His seven years of military service culminated in an honorable discharge in November 1992. He has several educational and security information degrees and certificates. He has held a security clearance for many years without any security infractions. He continues to voluntarily pay the utilities and car insurance for his wife, along with educational and other expenses of his children, while awaiting the divorce action in February 2014. He is considered by colleagues to be a dedicated team player with admirable leadership qualities.

The adjudicative process of the Directive indicates that the all reliable information should be evaluated in reaching a decision. The unfavorable evidence reflects that Applicant's financial problems resulted in delinquent debts to 11 listed creditors. The fact that Applicant is disputing the remaining debts through a debt resolution firm and in a February 2014 divorce action does not constitute sufficient mitigating evidence without supporting documentation.

In his April 1998 security form, Applicant denied his car was repossessed. In his April 2004 security form, he denied he had a second car repossessed in 1998. In his October 2011 security form, after admitting in his SOR answer that he was aware of his car repossession, he retracted his admission at the hearing, claiming that when he entered the answer to the question, he believed the answer was true. His lack of forthrightness regarding his financial problems continues to raise doubts about his reliability,

trustworthiness, and judgment. Having weighed the disqualifying and mitigating conditions under Guidelines F and E, and in the context of the whole-person concept, Applicant has not mitigated the security concerns associated with the financial considerations and personal conduct guidelines.

### **Formal Findings**

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

Paragraph 1 (Guideline F):                      **AGAINST APPLICANT**

    Subparagraphs 1.a-1.c, 1.g-1.k:    Against Applicant

    Subparagraphs 1.d-1.f:                      For Applicant

Paragraph 2 (Guideline E):                      **AGAINST APPLICANT**

    Subparagraphs 2.a-2.d:                      Against applicant.

### **Conclusion**

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

Paul J. Mason  
Administrative Judge