DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 12-11152
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

03/07/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has failed to mitigate the security concerns regarding financial considerations and public conduct considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On May 16, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On February 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

[1] Item 4 (e-QIP, dated May 16, 2012).

September 1, 2006. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR, as there is no receipt in the case file. Applicant initially responded to the SOR on an unspecified date, but failed to either admit or deny any of the allegations, and failed to indicate the method of processing he had chosen.[2] In a sworn statement, dated July 27, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.[3] A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on August 31, 2015, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on September 3, 2015. A response was due by October 3, 2015. On an unspecified date in October 2015, Applicant submitted his response, but that response consisted solely of the documents in the FORM without any other comments or attachments. Department Counsel had no objections to the documents submitted, and since they were merely duplicates of documents already in the case file, they were not separately marked. The case was assigned to me on October 16, 2015.

Findings of Fact

In his Answers to the SOR, Applicant admitted two of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.l. and 1.m.) and commented regarding the remaining allegations, but still failed to specifically use the terms "admit" or "deny." Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 62-year-old employee of a defense contractor. He has been serving as an instructor with his current employer since September 2011, and had previously served in various other positions with other defense contractors from September 2004 until September 2011.[4] A 1972 high school graduate, Applicant continued his education, but has not earned a degree.[5] He enlisted in the U.S. Army in October 1973 and served on active duty in a variety of positions, including First Sergeant, at locations throughout the world, until he was honorably retired in January

[2] Item 2 (Applicant's Initial Answer to the SOR, undated).

[3] Item 3 (Applicant's Answer to the SOR, dated July 27, 2015).

[4] Item 4, *supra* note 1, at 11-15; Item 7 (Personal Subject Interview, dated August 6, 2012), at 1-2.

[5] Item 4, *supra* note 1, at 9-10; Item 7, *supra* note 4, at 1.

2003.[6] His awards and decorations during nearly three decades of service were not revealed. Applicant was unemployed from January 2003 until September 2004.[7] Applicant was granted a top secret security clearance in 1980, and he has held a secret security clearance since 2002.[8] He was married in November 1978.[9] He has three children, born in 1974, 1976, and 1982.[10]

Financial Considerations[11]

It is unclear why or how Applicant first experienced financial difficulties. He filed for bankruptcy under Chapter 7 on two separate occasions, and unspecified debts were discharged in both 1992 and 1999. A review of his May 2012 credit report reveals that commencing in 2004, various accounts were refinanced or renewed over the next few years. In 2007, accounts started to become delinquent for unspecified reasons. Applicant contends that in about 2006 or 2007, he decided that he was tired of paying different creditors and thought it would be more manageable if he could consolidate all of his debts and have them paid through one company. While he acknowledged that he had bills and debts placed for collection, he denied that he was having trouble paying his debts.

At some point during that period, Applicant selected a law firm, acting as a debt settlement organization, to consolidate his debts and, if possible, negotiate settlements or enter into repayment plans. Under the program, an escrow account was set up for Applicant to make monthly payments to the law firm for the sole purpose of paying off his outstanding debt. Applicant started paying the law firm $294.87 each month to build up his escrow account. He submitted documentation reflecting such payments as far back as November 2007, and he explained that his bank statements only went back seven years. Applicant contended that during the course of the professional relationship, he had paid the law firm over $7,000 to be used to make payments to his creditors. The law firm sent Applicant receipts and quarterly reports, and Applicant was of the belief that his debt consolidation and repayment plans were taking place as he had envisioned.

Applicant was surprised to learn that in mid-2007, the law firm was placed into receivership by the state attorney general based on a number of complaints that led to an investigation into the law firm's practices. The investigation revealed that the law firm

[6] Item 4, *supra* note 1, at 17-18; Item 7, *supra* note 4, at 2.

[7] Item 7, *supra* note 4, at 2.

[8] Item 7, *supra* note 4, at 3; Item 4, *supra* note 1, at 31-32.

[9] Item 4, *supra* note 1, at 35-36.

[10] Item 7, *supra* note 4, at 2. At the time of his interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant's son was serving overseas with the U.S. Army.

[11] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 25, 2012); Item 6 (Equifax Credit Report, dated November 21, 2014); Item 7, *supra* note 4; Item 2, *supra* note 2; Item 3, *supra* note 3.

had not performed as advertised, and that it had misappropriated $12 million received from consumers seeking its assistance.[12] An action was filed by the attorney general in the state court, and it resulted in a settlement agreement in which the law firm and its principals and employees were permanently enjoined from:

> Engaging in consumer debt-related services, whether secured or unsecured, including debt settlement services, debt management services or any other service related to the consolidation, invalidation, reduction or dispute of consumer debts, either directly or indirectly, whether as the practice of law through a law office or law firm or as a business through any type of business or entity that is not a law officer, law form, or engaged in the practice of law;
>
> Representing and/or soliciting through print, electronic, or verbal advertising or communication, either directly or indirectly, that he offers, provides, or otherwise renders consumer debt-related services, whether secured or unsecured, including debt settlement services, debt management services or any other service related to the consolidation, invalidation, reduction or dispute of consumer debts, either directly or indirectly, whether as the practice of law through a law office or law firm or as a business through any type of business or entity that is not a law office, law firm or engaged in the practice of law;
>
> Accepting, receiving or otherwise obtaining payment from consumers for consumer debt-related services….

Although Applicant had paid the law firm over $7,000 to be used to make payments to his creditors, nothing was paid. As a result of the litigation, Applicant was refunded between $400 and $500. The remainder of the monies paid to the law firm was lost.

When Applicant discussed his delinquent accounts with the OPM investigator in August 2012, he said he would follow up on the accounts discussed and attempt to resolve them. He intended to contact the creditors for additional information, and either dispute those he did not know about, or make payment arrangements for the other accounts. He claimed his financial status was good. With the exception of two of the accounts discussed, Applicant failed to submit any documentation to indicate that he had done so, or to reflect the actual status of his financial condition.

The SOR identified 11 delinquent debts that had been placed for collection or charged off, as well as one vehicle that had been repossessed. These debts are reflected by his May 2012 credit report and his November 2014 credit report. His 11 debts total approximately $34,039. Those allegations and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

[12] Item 2 (Suspension News Blogs, various dates).

Applicant has already either resolved, or is in the process of resolving, the following accounts: a telephone account with an unpaid balance of $483 (SOR ¶ 1.c.) that was settled when $254.28 was paid in April 2015;[13] and an unspecified type of account with an unpaid balance of $1,382 (SOR ¶ 1.k.) that was charged off, but subsequently reduced to $744, and according to Applicant, is in the process of being resolved. Other than evidence of the one April 2015 payment, Applicant failed to submit any documentation that additional payments have been made.

Applicant purportedly entered eight accounts into the loan consolidation agreement with the law firm. Other than his statements claiming that fact, he offered no documentation to support his contention that the eight accounts were in the agreement. Despite learning of the scam to which he was a victim sometime around 2008, he submitted no evidence of subsequent contacts made, attempted or established repayment arrangements, or actual payments, with any of those creditors. As noted above, in August 2012 he said he would take those various steps, but there is no evidence to indicate that over the subsequent three and one-half years, he has done so.

Those accounts remaining unaddressed are: a credit card that was charged off in the amount of $1,838 or $1,839 (SOR ¶ 1.b.); an installment sales contract that was charged off in the amount of $479 (SOR ¶ 1.d.); a mail order charge account that was charged off in the amount of $228 (SOR ¶ 1.e.); a mail order charge account that was charged off in the amount of $75 (SOR ¶ 1.f.); an unspecified type of account with an unpaid balance of $1,379 (SOR ¶ 1.g.); a credit card that was charged off in the amount of $16,974 (SOR ¶ 1.h.); a credit card that was charged off and sold to a debt purchaser who established a remaining balance of $1,903 (SOR ¶ 1.i.); and a credit card that was charged off and sold to a debt purchaser who established a remaining balance of $1,166 (SOR ¶ 1.j.). None of these accounts have been resolved.

The one remaining account pertains to an automobile loan for which Applicant was a co-signer for his son for $12,066 that was charged off in the amount of $8,158 (SOR ¶ 1.a.). Both Applicant and his son claim that the son's 2013 Chapter 7 discharge should have absolved Applicant of continuing responsibility for the loan.[14] Applicant failed to submit any documentation related to the bankruptcy itself or evidence regarding his argument that he is not legally responsible for the unpaid balance.

Applicant did not submit a Personal Financial Statement reflecting his net monthly income, his estimated monthly expenses, his debt payments, or any monthly remainder available for discretionary spending or savings. There is no evidence that Applicant ever received financial counseling. In light of Applicant's substantial inaction with respect to the majority of his delinquent accounts over the past three and one-half years, it appears that Applicant's financial problems are not under control and that his financial status is unchanged.

[13] Item 2 (Receipt, dated April 13, 2015); Item 2 (Statement, dated May 1, 2015).

[14] Item 2 (Statement, dated March 15, 2015).

Personal Conduct

On May 16, 2012, when Applicant completed his e-QIP, he responded to questions pertaining to his financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years, he had any possessions or property voluntarily or involuntarily repossessed or foreclosed; if he had defaulted on any type of loan; if he had bills or debts turned over to a collection agency; if he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; if he had been over 120 days delinquent on any debt not previously entered; or if he was currently over 120 days delinquent on any debt. Applicant answered "no" to those questions. He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief,[15] but the responses to those questions were, in fact, incorrect, for at that time Applicant had several accounts that fell within the stated parameters.

During his OPM interview, Applicant stated that his omissions were merely an oversight.[16] In his Initial Answer to the SOR, Applicant failed to address the allegation.[17] In his Answer to the SOR, while not specifically admitting or denying the allegation, he submitted what appear to be new answers to the e-QIP questions. He acknowledged having had bills or debts turned over to a collection agency and having had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He continued to deny that he had defaulted on any type of loan, that he had been over 120 days delinquent on any debt not previously entered, or that he was currently over 120 days delinquent on any debt.[18]

Character References and Work Performance

Applicant's division manager and his program manager/supervisor are both very supportive of Applicant's retaining his security clearance. They consider him to be a very competent subject matter expert who is very responsible, professional, dependable, trustworthy, and an excellent employee.[19]

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[20] As Commander in Chief,

[15] Item 4, *supra* note 1, at 33-34, 37.

[16] Item 7, *supra* note 4, at 3.

[17] Item 2, *supra* note 2.

[18] Item 3, *supra* note 3.

[19] Item 2 (Character Reference, dated April 29, 2015); Item 2 (Character Reference, dated April 29, 2015).

[20] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[21]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[22] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[23]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions 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 as to potential, rather than actual, risk of compromise of classified information.

---

[21] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[22] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

[23] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Furthermore, "security clearance determinations should err, if they must, on the side of denials."[24]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[25] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts*"* is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations*"* may raise security concerns. Applicant's delinquent accounts were discharged in bankruptcy in 1992 and 1999. In 2007, accounts started to become delinquent. As of February 2015, he had 11 delinquent debts totaling approximately $34,039 that had been placed for collection or charged off, as well as one vehicle that had been repossessed. Most of his delinquent accounts are still unresolved. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted

[24] *Egan*, 484 U.S. at 531.

[25] *See* Exec. Or. 10865 § 7.

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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[26] Under AG ¶ 20(e) it is potentially mitigating if "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), 20(b), 20(d), and 20(e) do not apply. AG ¶ 20(c) minimally applies. The nature, frequency, and recency of Applicant's continuing financial difficulties for over two decades make it difficult to conclude that it occurred "so long ago" or "was so infrequent." I recognize that Applicant was unemployed from January 2003 until September 2004. Nevertheless, the cause of Applicant's financial problems has not been established for Applicant did not identify any particular cause to those problems. In fact, Applicant minimized the status of his finances when he initially denied having trouble paying his debts. Instead, he stated the sole purpose of hiring the law firm was because he was tired of paying different creditors and thought it would be more manageable if he could consolidate all of his debts and have them paid through one company.

Applicant is credited with commencing a debt consolidation and repayment plan at some point in 2006 or 2007. Unfortunately, the law firm he was dealing with was guilty of fraudulent consumer practices involving the misappropriation of monies received from individuals such as Applicant. Instead of using the more than $7,000 that Applicant paid the law firm to distribute to his creditors, the law firm used the funds for other purposes. The state attorney general managed to get between $400 and $500 returned to Applicant, and the law firm was permanently enjoined from engaging in consumer debt-related services. However, Applicant's good-faith efforts ceased when the situation became known. Although he promised the OPM investigator in August 2012 that he would attempt to establish repayment arrangements, or actual payments, with those creditors, to date he has failed to do so. Furthermore, he rejects any financial

[26] The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

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

responsibility on the co-signed note for his son's vehicle loan. He did settle one debt and is in the process of resolving another one.

In the absence of any evidence on point, and considering Applicant's past financial history (the two bankruptcies) and his denial that he was having trouble paying his bills, it is difficult to conclude that Applicant's financial problems were not caused by frivolous or irresponsible spending. The period of Applicant's inaction since he learned of the consumer scam perpetrated by the law firm is over seven years. Yet, with the exception of the two accounts, his financial problems are not being resolved, and there is no conclusive evidence that his finances are under control. Applicant's actions over the past seven years, under the circumstances confronting him, do cast doubt on his current reliability, trustworthiness, and good judgment.[27]

Security clearance adjudications are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously. Nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. Applicant's original plan was good, but his eventual inaction seems to portray an individual who is no longer interested in resolving his delinquent debts.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out 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 guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

> 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.

[27] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

On May 16, 2012, when Applicant completed his e-QIP, he responded to questions pertaining to his financial record. Several of those questions in Section 26 – Financial Record – asked if, in the past seven years, he had any possessions or property voluntarily or involuntarily repossessed or foreclosed; if he had defaulted on any type of loan; if he had bills or debts turned over to a collection agency; if he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; if he been over 120 days delinquent on any debt not previously entered; or if he was currently over 120 days delinquent on any debt. Applicant answered "no" to those questions. He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief, but the responses to those questions were, in fact, incorrect, for at that time Applicant had several accounts that fell within the stated parameters.

During his OPM interview, Applicant stated that his omissions were merely an oversight. In his Initial Answer to the SOR, Applicant failed to address the allegation. In his Answer to the SOR, while not specifically admitting or denying the allegation, he submitted what appear to be new answers to the e-QIP questions. He acknowledged having had bills or debts turned over to a collection agency and having had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He continued to deny that he had defaulted on any type of loan, that he had been over 120 days delinquent on any debt not previously entered, or if he was currently over 120 days delinquent on any debt.

Applicant's responses provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely the result of oversight or misunderstanding of the true facts on his part. I have considered the very limited available information pertaining to Appellant's background, professional career, including his military service, and his seemingly superficial understanding of his financial matters, in analyzing his actions. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the falsification or omission occurred. As administrative judge, I must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning Appellant's intent or state of mind at the time the falsification or omission occurred.[28] I have considered his subsequent attempts to minimize the status of his finances by claiming that the debt consolidation efforts were merely to make the handling of his accounts more manageable; his denial that he was having trouble paying his debts; and his unfortunate experience with the unethical law firm, I have concluded that his admission as to the financial record is false and unambiguous. AG ¶ 16(a) has been established.

[28] The Appeal Board has explained the process for analyzing falsification cases, stating:

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

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. If "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," AG ¶ 17(a) may apply. AG ¶ 17(c) may apply if "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." Also, AG ¶ 17(e) may apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." None of the mitigating conditions apply.

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 the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[29]

There is some evidence in favor of mitigating Applicant's conduct. He is a retired military veteran who served honorably for two decades. He has had a security clearance since 1980. His reputation in the workplace is excellent. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. Applicant's efforts to consolidate and pay his accounts in 2006 or 2007 by engaging the professional services of a law firm to facilitate the handling of those accounts was a positive action on his part. Unfortunately, after paying the law firm over $7,000 it was determined that the law firm was engaged in fraudulent consumer practices, and it was subsequently permanently enjoined from engaging in consumer debt-related services. Applicant resolved or is in the process of resolving two delinquent accounts.

[29] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966). *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. June 2, 2006).

The disqualifying evidence is more substantial and compelling. Applicant's delinquent accounts were discharged in bankruptcy in 1992 and 1999. In 2007, accounts started to become delinquent again. As of February 2015, he had 11 delinquent debts totaling approximately $34,039 that had been placed for collection or charged off, as well as one vehicle that had been repossessed. Most of his delinquent accounts are still unresolved. The cause of Applicant's financial problems has not been established, for he did not identify any particular cause of those problems. In fact, Applicant minimized the status of his finances when he initially denied having trouble paying his debts. Applicant's good-faith efforts ceased when the situation involving the law firm became known. Although Applicant promised the OPM investigator in August 2012 that he would attempt to establish repayment arrangements, or actual payments, with his creditors, to date he has failed to do so. He rejects any financial responsibility on the co-signed note for his son's vehicle loan. As noted above, the period of Applicant's inaction since he learned of the consumer scam perpetrated by the law firm is over seven years. Yet, with the exception of the two accounts, his financial problems are not being resolved, and there is no persuasive evidence that his finances are under control.

Applicant falsified his e-QIP responses by denying the existence of financial problems. He stated that his omissions were merely an oversight. He failed to address the issue in his Initial Answer to the SOR. In his Answer to the SOR, while not specifically admitting or denying the allegation, he submitted what appear to be new answers to the e-QIP questions. He acknowledged having had bills or debts turned over to a collection agency and having had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He continued to deny that he had defaulted on any type of loan, that he had been over 120 days delinquent on any debt not previously entered, or if he was currently over 120 days delinquent on any debt. In light of his poor financial history, including two bankruptcies and additional delinquent debt, as well as his actions since 2008, there is substantial doubt on his current reliability, trustworthiness, and good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is

> no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of 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. [30]

Applicant has demonstrated an essentially poor track record of debt reduction and elimination efforts since 2008, as well as a poor history of financial candor, and he continues to do so. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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. and 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. through 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Subparagraphs 1.l. and 1.m.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge

[30] ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).