DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 12-12065
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On July 24, 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 May 1, 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 3 (e-QIP, dated July 24, 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. On July 13, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on August 21, 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 1, 2015. A response was due by October 1, 2015. Applicant did not submit any response to the FORM. The case was assigned to me on November 12, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.c., and 1.f. through 1.l.), and one of the factual allegations pertaining to personal conduct (¶ 2.a.). The remaining allegations were either denied (¶¶ 1.d. and 1.e.) or seemingly not answered (¶ 2.b.). Applicant's admissions 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 61-year-old employee of a defense contractor. He has been an equipment specialist with his current employer since July 2011. He was a driver for one particular company from October 1993 until he was laid off in July 2010. After a brief period of unemployment, Appellant obtained temporary employment, with less hours and reduced salary, in a warehouse with a company from August 2010 until December 2010, and then with another company from February 2011 through June 2011.[2] He is a 1972 high school graduate.[3] Applicant enlisted in a component of the U.S. Air Force in November 1972, and he was honorably discharged in July 1975.[4] He held a security clearance while he was in the Air Force.[5] He was married to his first wife in 1988 and

[2] Item 8 (Personal Subject Interview, dated August 30, 2012), at 3; Item 3, *supra* note 1, at 9-10.

[3] Item 8, *supra* note 2, at 5.

[4] Item 3, *supra* note 1, at 10-11; Item 8, *supra* note 2, at 5. Some confusion exists regarding the Air Force component, for in his e-QIP, Applicant indicated he was in the Inactive Reserve of the U.S. Air Force, but during his interview with an investigator from the U.S. Office of Personnel Management (OPM), he stated he was on active duty.

[5] Item 3, *supra* note 1, at 20-21.

divorced in 1995. He married his second wife in 2001. He was widowed when she passed away in November 2011.[6]

Financial Considerations

It is unclear when Applicant first experienced financial difficulties, but in reviewing his credit reports from August 2012,[7] December 2014,[8] and August 2015,[9] as well as his comments to the OPM investigator, it appears that several delinquent accounts existed as far back as 2007, with additional ones entering that status over the ensuing years. Applicant had delinquent mortgage loans, home equity loans, automobile loans, multiple cellular telephone accounts, and satellite television accounts. Although he does not specifically attribute any one particular cause to his financial problems, he did mention the lay-off, temporary employment, and the death of his second wife. As to some specific accounts, he offered some brief explanations.

The SOR identified 12 purportedly continuing delinquent accounts, totaling approximately $108,105, which had been placed for collection, charged off, or involved a repossession. Although Applicant offered comments regarding each of the accounts, he failed to submit any documentation to support his contentions pertaining to his actions or activities to resolve them. Those debts and their respective current status, according to the above-cited credit reports, Applicant's comments to the OPM investigator, and his Answer to the SOR, are described as follows:

SOR ¶ 1.a. – This is a conventional home mortgage account with a high credit of $91,597, an over 120 days past-due balance of $30,512, and a remaining balance of $100,259. It was placed for collection and sold or transferred to another company in October 2014.[10] During his OPM interview, Applicant acknowledged that the account became five months past due, but contended that he was enrolled in an unspecified government program to provide loan assistance to lower his monthly payments.[11] His December 2014 credit report reflected that the past-due balance had increased to $57,866.[12] In his Answer to the SOR, Applicant contended that the house had been sold.[13] The account does not appear in his August 2015 credit report. Nevertheless, there is no documentary evidence to support a finding that the account has been resolved.

[6] Item 8, *supra* note 2, at 6; Item 3, *supra* note 1, at 13.

[7] Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 3, 2012).

[8] Item 6 (Equifax Credit Report, dated December 5, 2014).

[9] Item 5 (Equifax Credit Report, dated August 19, 2015).

[10] Item 7, *supra* note 7, at 6.

[11] Item 8, *supra* note 2, at 3.

[12] Item 6, *supra* note 8, at 1.

[13] Item 2 (Answer to the SOR, dated July 13, 2015), at 1.

SOR ¶¶ 1.b. and 1.k. – This is an automobile loan account with a high credit reflected as both $10,616 and $19,696 and past-due balance of $11,483 that was placed for collection, and charged off.[14] Applicant contended the vehicle needed to be repaired and he had lost his job so he returned it,[15] and his 2012 credit report lists it as a repossession.[16] The account was obtained by another collection agent who listed the reacquisition as an involuntary repossession and increased the past-due and unpaid balance amounts to $11,972.[17] The account is listed two times in the SOR, but both items refer to the same account. There is no evidence of any effort by Applicant to resolve the account.

SOR ¶¶ 1.c. – This is an automobile loan account with a high credit of $20,011, a past-due balance of $782, and a remaining balance of $19,503, that was placed for collection, and $10,703 was charged off.[18] Applicant contended the vehicle was in his brother-in-law's name and that it was "turned in" when he got a new car.[19] He did not explain what the term "turned in" means or if the vehicle was traded or simply relinquished. There is no evidence of any effort by Applicant to resolve the account.

SOR ¶ 1.d. – This is a cellular telephone account with an unpaid balance of $891 that became delinquent in February 2013 and was subsequently placed for collection in December 2014.[20] Applicant noted that although he had the account for approximately a decade, the monthly charges kept increasing, and he obtained a better deal with another company.[21] There is no evidence of any effort by Applicant to resolve the account.

SOR ¶ 1.e. – This is a cellular telephone account with a past-due and unpaid balance of $450 that became delinquent in June 2012 and was subsequently placed for collection, charged off, and transferred or sold to another debt collection company.[22] Applicant explained that he opened the account to be used by the son of his stepson. The bill was too much to pay, so he transferred to another plan.[23] He claimed he was

[14] Item 7, *supra* note 7, at 8; Item 8, *supra* note 2, at 4.

[15] Item 2, *supra* note 13, at 1-2.

[16] Item 7, *supra* note 7, at 8.

[17] Item 6, *supra* note 8, at 2; Item 5, *supra* note 9, at 2.

[18] Item 7, *supra* note 7, at 8; Item 8, *supra* note 2, at 4; Item 5, *supra* note 9, at 3.

[19] Item 2, *supra* note 13, at 1.

[20] Item 5, *supra* note 9, at 2.

[21] Item 2, *supra* note 13, at 2.

[22] Item 7, *supra* note 7, at 9; Item 6, *supra* note 8, at 2.

[23] Item 8, *supra* note 2, at 4.

unaware of any remaining balance.[24] There is no evidence of any effort by Applicant to resolve the account after learning that there was a past-due balance.

SOR ¶ 1.f. – This is a satellite television account with an unpaid balance of $299 that became delinquent in December 2012 and was subsequently placed for collection in April 2014.[25] Applicant explained that he switched providers when he obtained a better deal with another company.[26] There is no evidence of any effort by Applicant to resolve the account.

SOR ¶ 1.g. – This is an electric utility account, incorrectly alleged in the SOR as a satellite television account, with a high credit of $477 and a past-due balance of $126, that became delinquent in August 2013. It was subsequently placed for collection and charged off in the amount of $477.[27] In addition to the charged-off amount, the account is still $35 past due.[28] Applicant contended he paid the account,[29] but he failed to submit any documentation to support his contention. Under the circumstances, I am unable to conclude that Applicant has resolved the account.

SOR ¶ 1.h. – This is an account with a furniture rental company with a high credit of $194 and a past-due and remaining balance of $109. It became delinquent in April 2013 and was subsequently placed for collection and charged off in the amount of $194.[30] Applicant contended he paid the account,[31] but he failed to submit any documentation to support his contention. Under the circumstances, I am unable to conclude that Applicant has resolved the account.

SOR ¶ 1.i. – This is a medical account with an unpaid balance of $70 that became delinquent in February 2012 and was placed for collection in July 2012.[32] There is no evidence of any effort by Applicant to resolve the account.

SOR ¶ 1.j. – This is a home equity line of credit with a high credit of $15,000 and a past-due and remaining balance of $14,851 that was placed for collection and charged off in 2010.[33] Applicant contended that the account was taken over by same

[24] Item 2, *supra* note 13, at 2.

[25] Item 6, *supra* note 8, at 2.

[26] Item 2, *supra* note 13, at 2.

[27] Item 6, *supra* note 8, at 2; Item 5, *supra* note 9, at 3.

[28] Item 5, *supra* note 9, at 3.

[29] Item 2, *supra* note 13, at 2.

[30] Item 6, *supra* note 8, at 2; Item 5, *supra* note 9, at 4.

[31] Item 2, *supra* note 13, at 2.

[32] Item 6, *supra* note 8, at 2; Item 5, *supra* note 9, at 1.

[33] Item 7, *supra* note 7, at 7; Item 8, *supra* note 2, at 4.

bank that initially held the first mortgage, identified in SOR ¶ 1.a.,[34] but he failed to submit any documentation to support his contention. Under the circumstances, I am unable to conclude that Applicant has resolved the account.

SOR ¶ 1.l. – This is an automobile insurance account with a remaining balance of $279 that was placed for collection in June 2012.[35] Applicant claimed he was unaware of any delinquency, and he stated he would make a payment if he actually owes the debt.[36] In his Answer to the SOR, he contended he had paid it,[37] but he failed to submit any documentation to support his contention. Under the circumstances, I am unable to conclude that Applicant has resolved the account.

While Applicant had stated during his OPM interview, that he was "capable of meeting his current financial obligations," he failed to furnish a personal financial statement setting forth his net monthly income; his monthly household expenses; and his monthly debt payments. In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. Thus, it is nearly impossible to determine if Applicant's finances are under control or if he is still experiencing financial difficulties. There is no evidence that Applicant ever sought the services of a financial advisor, or that Applicant ever received financial counseling. As of the date of his OPM interview, he had not done either.[38] There is a paucity of evidence to indicate that his financial problems are now under control.

Personal Conduct

SOR ¶ 2.a. – On July 24, 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; 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; 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,[39] 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 a

[34] Item 8, *supra* note 2, at 4.

[35] Item 7, *supra* note 7, at 11.

[36] Item 8, *supra* note 2, at 5.

[37] Item 2, *supra* note 13, at 2.

[38] Item 8, *supra* note 2, at 5.

[39] e-QIP, *supra* note 1, at 21-22, 25.

mistake.[40] In his Answer to the SOR, Applicant admitted the allegation, without comment.[41]

SOR ¶ 2.b. – On the same day, Applicant also responded to questions pertaining to his police record. Several of those questions in Section 22 – Police Record – asked if he had "EVER" been charged with any felony offenses; or been charged with an offense involving alcohol or drugs. Applicant answered "no" to those questions. He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief,[42] but the responses to those questions were, in fact, false for, in June 1991, at the age of 35, Applicant was charged with: (1) purchasing over 20 grams of marijuana, a felony; (2) possession of marijuana, a misdemeanor; and (3) possession of marijuana with intent to distribute, a felony. No action was taken with respect to counts (1) and (2), but he was prosecuted for count (3). Adjudication was withheld, and Applicant was sentenced to probation for four years.[43] He told the OPM investigator that "he did not realize this information was to be included on the [e-QIP]."[44] In his Answer to the SOR, Applicant failed to admit or deny the allegation, but simply commented: "I went to a hearing for this two or three years ago."[45]

During his OPM interview, Applicant claimed he was unable to "complete" unspecified information on his e-QIP because he lacked experience with computers.[46] A cursory review of the e-QIP reveals various errors or omissions in his responses in a number of areas such as employment record, military history, former spouse summary, relatives, police record, investigations and clearance record, and financial record.

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."[47] 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. The President has authorized the Secretary of Defense or his

[40] Item 8, *supra* note 2, at 5.

[41] Item 2, *supra* note 13, at 3.

[42] e-QIP, *supra* note 1, at 18-19, 25.

[43] Item 4 (Criminal History Record, dated August 3, 2012), at 1-3; Item 8, *supra* note 2, at 1-2.

[44] Item 8, *supra* note 2, at 1.

[45] Item 2, *supra* note 13, at 3.

[46] Item 8, *supra* note 2, at 3.

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

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."[48]

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."[49] 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.[50]

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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[51]

---

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

[49] "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).

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

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

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."[52] 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 has had a long-standing problem with his finances which started as early as 2007. It is unclear if he had insufficient funds to continue making his routine monthly payments or if he simply neglected to do so. Vehicles were relinquished or repossessed, mortgages and home equity lines went unpaid, and electric utility, satellite television, and cellular telephone accounts became delinquent. Accounts were placed for collection, and in some instances were charged off. 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 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

[52] *See* Exec. Or. 10865 § 7.

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."[53]

AG ¶¶ 20(a), 20(c), and 20(d) do not apply. AG ¶ 20(b) minimally applies. The nature, frequency, and recency of Applicant's continuing financial difficulties since about 2007 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Although Applicant did not attribute any one particular cause to his financial problems, he did mention a lay-off, temporary employment, and the death of his wife, as possible factors. Those factors were largely beyond Applicant's control, but the impact of them individually or collectively, were not discussed. Applicant failed to demonstrate what actions he has taken to address his delinquent debts, and he has offered no documentary evidence of a good-faith effort to resolve any of them. He essentially ignored them, and seemingly continues to do so.

There is no evidence to indicate that Applicant ever received financial counseling. In the absence of a personal financial statement, or any current information pertaining to his monthly income, expenses, and available funds for discretionary savings or spending, it is impossible to determine the current state of his financial affairs. Because of his failure to confirm payment of even his smallest delinquent account (a $70 medical account) and his failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control. Applicant has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors.[54] Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment.[55]

---

[53] 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)).

[54] "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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

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.

On July 24, 2012, when Applicant completed his e-QIP, he responded to certain questions pertaining to his financial record. The questions in Section 26 asked if, in the past seven years, he had any possessions or property voluntarily or involuntarily repossessed; 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; or if he was currently over 120 days delinquent on any debt. Appellant answered "no" to those questions. He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief. The responses to those questions were, in fact, incorrect for at that time Appellant had several accounts that fell within the stated parameters. As noted above, in his Answer to the SOR, Applicant admitted the allegation, without comment.

Applicant also responded to questions pertaining to his police record. Several of those questions in Section 22 asked if he had "EVER" been charged with any felony offenses; or been charged with an offense involving alcohol or drugs. Applicant answered "no" to those questions. He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief. The responses to those questions were, in fact, false for, in June 1991, Applicant was charged with two drug-related felonies and one drug-related misdemeanor. While no action was taken with respect to two of the counts, Applicant was prosecuted for one count. Adjudication was withheld, and Applicant was sentenced to probation for four years. He told the OPM investigator that he did not realize the information was to be included on the e-QIP. In his Answer to the SOR, Applicant failed to admit or deny the allegation.

Applicant's responses provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely the result of

misunderstanding of the true facts, or difficulty in processing the e-QIP on the computer, 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.[56] While there may have been some confusion in Applicant's mind regarding his police record, his admission as to the financial record is unambiguous. Nevertheless, AG ¶ 16(a) has been established.

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."

AG ¶ 17(c) partially applies to the allegation regarding the police record, but not to the finance record. AG ¶¶ 17(a) and 17(e) do not apply to either question. As noted above, 24 years ago, Applicant was involved with drugs, the police, and the court system over one isolated drug-related incident. In 2012, over two decades later, he failed to accurately respond to the questions pertaining to his "EVER" being involved with a drug-related felony. He subsequently told the OPM investigator that he did not realize the information was to be included on the e-QIP. He did not admit that his intention was to falsify, omit, or conceal the drug-related information. Three years have passed since Applicant completed the e-QIP, and he has not been involved in any more recent personal conduct issues. His responses to the police record questions were about an isolated incident two decades earlier. Substantial periods of time have passed since the incident occurred and the e-QIP was completed. While Applicant's financial record response was made at the same time, the issues related to his finances continue to this day, so they are considered more significant.

[56] 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)).

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.[57]

There is some evidence in favor of mitigating Applicant's conduct. He was a driver for one employer from October 1993 until he was laid off in July 2010. He has been with his current employer since July 2011. He was honorably discharged from the U.S. Air Force. He has not been involved with drugs for approximately 24 years.

The disqualifying evidence is more substantial. Applicant has repeatedly declared his intentions of bringing his accounts current and repaying them. However, to date, he has not. Instead, Applicant has seemingly continued to ignore those delinquent accounts. Applicant offered no evidence as to his reputation for reliability, trustworthiness, and good judgment. Applicant's long-standing failure over the years to voluntarily repay his creditors, even in the smallest amounts, or to arrange even the most reasonable payment plans, reflects traits which raise concerns about his fitness to hold a security clearance. Although he made declarations that some accounts had been resolved, he offered no documentary evidence to support his declarations. There are clear indications that Applicant's financial problems are not under control. Applicant's actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. Considering the absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

[57] *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. Jun. 2, 2006).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[58]

> 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.

Applicant has demonstrated an essentially negative track record of voluntary debt reduction and elimination efforts, generally ignoring his delinquent debts. In addition, his personal conduct issue, which arose when he falsely reported no delinquent debts when, in fact, he had significant debts, continues to be of significance. 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 concerns. *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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

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

Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Duplicate of 1.b.
Subparagraph 1.l:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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