DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

10/07/2014

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On July 3, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On September 23, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to him, under 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

[1] Item 5 ((SF 86), dated July 3, 2013).

made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines F (Financial Considerations) and J (Criminal Conduct), and detailed reasons why the DOD adjudicators were unable to find 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. In a statement notarized November 15, 2013,[2] Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. He was informed that his Answer was incomplete and that it was necessary for him to either admit or deny each allegation in each paragraph and subparagraph of the SOR.[3] He responded appropriately on December 6, 2013.[4] A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on March 10, 2014, 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.

Imbedded in the FORM as § III, Department Counsel, citing ¶ E.3.1.13., Encl. 3, of the Directive,[5] amended the SOR by adding additional allegations and security concerns under Guideline E (Personal Conduct). The amendment consisted of one additional paragraph and two subparagraphs. No separate document containing the proposed amendment was generated. Although Applicant was furnished instructions related to responding to the FORM, there was no separate letter of instruction addressing how the amendment was to be handled. Additionally, Applicant was not informed that in his Answer to the Amended SOR, it was necessary for him to either admit or deny each allegation in each paragraph and subparagraph. Applicant received the FORM on March 31, 2014, but as of September 10, 2014, he had not submitted any further documents or other information. Applicant did not submit an Answer to the Amended SOR. Accordingly, I consider his nonresponse to be a denial. The case was assigned to me on September 15, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with explanations, all of the factual allegations pertaining to financial considerations and criminal conduct (¶¶ 1.a. through 1.u., and 2.a. through 2.e.) in the SOR. As noted above, he failed to answer the Amended SOR. Applicant's admissions and other 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:

[2] Item 4 (Applicant's Answer to the SOR, dated November 15, 2013).

[3] Item 3 (Letter, dated November 20, 2013).

[4] Item 4, *supra* note 2. Applicant's Answer to the SOR was amended and notarized again on December 6, 2013.

[5] "As far in advance as practical, Department Counsel and the applicant shall serve one another with a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge."

Applicant is a 60-year-old employee of a defense contractor. He has been serving as a welder with his current employer since December 2011.[6] He was unemployed from September 2011 until December 2011.[7] He received a General Educational Development (GED) diploma in June 1970. Applicant has never served in the U.S. military.[8] He was married in February 1985 and separated in April 1985.[9] He reports no children.

On May 17, 2004, the DOD issued a SOR to him alleging security concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct).[10] Following a hearing before an Administrative Judge with the Defense Office of Hearings and Appeals (DOHA), Applicant's previous application for a security clearance was denied in December 2004.[11] The facts and circumstances of the SOR and Decision will be discussed further below.

Financial Considerations

It is unclear when Applicant first started having financial difficulties, but a review of his September 2013 credit report reveals that judgments were filed against him as far back as 2006.[12] For some unexplained reason, Applicant failed to maintain his monthly payments and accounts became delinquent. Some accounts were placed for collection, charged off, or went to judgment. Applicant's wages were garnished.

The SOR identified 19 delinquent debts, including 3 that went to judgment, as generally reflected by his September 2013 credit report.[13] Some of the accounts in the credit report have been transferred, reassigned, or sold to other creditors or collection agents. Some of the accounts listed in the SOR do not reflect an account number. Those debts listed in the SOR and their respective current status, according to the credit report, and other evidence submitted by the Government and Applicant regarding the same, are described below.

Applicant resolved the following delinquent debts and furnished documentary evidence to support his contentions that they had been resolved: SOR ¶ 1.a. ($1,370.13

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[6] Item 5, *supra* note 1, at 10.

[7] Item 5, *supra* note 1, at 11.

[8] Item 5, *supra* note 1, at 16-17.

[9] Item 5, *supra* note 1, at 19-20.

[10] Item 10 (SOR, dated May 17, 2004).

[11] Item 9 (ISCR Case No. 03-26962 (Dec. 6, 2004)).

[12] Item 7 (Equifax Credit Report, dated September 16, 2013), at 1.

[13] Item 7, *supra* note 12. It should be noted that the SOR does not contain allegations or subparagraphs 1.j. or 1.l.

judgment satisfied July 29, 2011);[14] SOR ¶ 1.b. ($955 judgment satisfied by garnishment March 7, 2008);[15] SOR ¶¶ 1.n. and 1.p. (same debt with two collection agents for $88 and $44 paid October 15, 2013);[16] SOR ¶ 1.o. ($100 paid August 7, 2012);[17] SOR ¶ 1.r. ($25 paid October 15, 2013);[18] SOR ¶ 1.s. ($64 paid October 16, 2013);[19] and SOR ¶¶ 1.t. and 1.u. (two accounts with same creditor for $147 and $276 satisfied by $117.92 payment October 15, 2013).[20]

Applicant contended that he entered into repayment arrangements with certain creditors for the following delinquent debts but failed to furnish any documentary evidence to support his contentions that they are in the process of being resolved: SOR ¶ 1.c. ($4,003 judgment); SOR ¶ 1.d. ($100); SOR ¶ 1.e. ($1,338); SOR ¶ 1.f. ($354); SOR ¶ 1.g. ($268); SOR ¶ 1.h. ($852); SOR ¶ 1.i. ($232); and SOR ¶ 1.k. ($389).[21] I conclude that these accounts have not been resolved.

There are two remaining delinquent accounts. Applicant said he approached one collection agent (SOR ¶ 1.m. for $369), and attempted to return equipment and pay the remaining balance, but the collection agent refused to accept the payment.[22] Once again, he failed to furnish any documentary evidence to support his story. As to the other account (SOR ¶ 1.q. for $90), Applicant indicated he was under the impression that his insurance had covered the charges, but he failed to say what he planned to do about the unpaid balance.[23] Neither of these accounts has been resolved.

There is no evidence that Applicant ever received financial counseling. Since Applicant never described his current finances, it is not known if he has any other delinquent debts or if his financial problems are under control.

Criminal Conduct

Applicant also has a lengthy history of criminal conduct, commencing in September 1974. (SOR ¶ 2.a.): That month, when he was 20 years old, Applicant was

[14] Item 4, Atch. 1 (General District Court Civil Case Details, undated).

[15] Item 4, Atch. 2 (Letter, dated October 11, 2013).

[16] Item 4, Atch. 5 (Letter, dated October 15, 2013).

[17] Item 4, Atch. 4 (Account, dated October 9, 2013).

[18] Item 4, Atch. 8 (E-mail, dated November 11, 2013).

[19] Item 4, Atch. 6 (Letter, dated October 16, 2013).

[20] Item 4, Atch. 3 (E-mail, dated October 15, 2013). Applicant stated he met with the creditor and was advised that he only owed $117.96, and that was what he paid the creditor.

[21] Item 4, *supra* note 2, at 1-3.

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

[23] Item 4, *supra* note 2, at 3.

arrested and charged with three counts of housebreaking and grand larceny, a felony, and one count of housebreaking, a felony. He was convicted of two counts of housebreaking and sentenced to one to three years confinement for each charge under the Youthful Offender Act.[24] This allegation was also alleged in his 2004 SOR.[25] Based on the evidence submitted, the Administrative Judge found the allegation against Applicant.[26]

(SOR ¶ 2.b.): In August 1976, Applicant was arrested and charged with three counts of housebreaking and grand larceny, a felony. He was subsequently convicted of three counts of grand larceny and sentenced to four years confinement for each count, to be served consecutively. He was paroled in May 1980.[27] This allegation was also alleged in his 2004 SOR.[28] Based on the evidence submitted, the Administrative Judge found the allegation against Applicant.[29]

(SOR ¶ 2.c.): In September 1991, Applicant was arrested and charged with one count of assault and battery. The charges were eventually dismissed.[30] This allegation was not alleged in his 2004 SOR.

(SOR ¶ 2.d.): In August 2001, Applicant was arrested and charged with one count of stalking. Applicant had furnished the down-payment for a female friend who was purchasing a vehicle, and when his friend failed to make any payments, the dealer looked to Applicant for them. When he could not find the friend, Applicant placed a note under the windshield wiper of her car. He was later told that the police wanted to see him, and when he arrived at the police station, he was told his friend had filed a stalking complaint against him.[31] The charges were eventually dismissed.[32] This allegation was also alleged in his 2004 SOR.[33] Based on the evidence submitted, the Administrative Judge found the allegation in favor of Applicant.[34]

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[24] Item 4, *supra* note 2, at 3; Item 8 (Federal Bureau of Investigation (FBI) Identification Record, dated April 1, 2012), at 2.

[25] Item 10, *supra* note 10, at 1.

[26] Item 9, *supra* note 11, at 7.

[27] Item 4, *supra* note 2, at 3; Item 8, *supra* note 24, at 2.

[28] Item 10, *supra* note 10, at 1.

[29] Item 9, *supra* note 11, at 7.

[30] Item 4, *supra* note 2, at 3; Item 8, *supra* note 24, at 2.

[31] Item 9, *supra* note 11, at 3.

[32] Item 4, *supra* note 2, at 3; Item 8, *supra* note 24, at 2.

[33] Item 10, *supra* note 10, at 2.

[34] Item 9, *supra* note 11, at 7.

(SOR ¶ 2.e.): In 2010, Applicant was arrested and charged with assault and battery – family member and violation of a protective order, misdemeanors.[35] He was attempting to evict a long-time girlfriend from his home, so she called the police and claimed Applicant had hit her, an action he denied.[36] A 24-hour protective order was filed; another follow-up order was also filed. When Applicant returned to his residence, the police were waiting for him and arrested him for violation of the protective order.[37] Applicant was required to complete an anger management program and placed on probation for two years. The disposition was *nolle prossed* until March 2001, at which time Applicant completed his program. The probation was terminated and the charges were dismissed.[38]

Personal Conduct

On July 3, 2013, when Applicant completed his SF 86, he responded to certain questions pertaining to his employment activities. The questions in Section 12A – Employment Activities asked the general question of the reason for leaving an employment activity, and associated with that question, if, in the last seven years, he had been fired, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance. Applicant answered "no" to all of those questions.[39] 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, false. On July 31, 2013, less than 30 days after he had completed the SF 86, Applicant informed the investigator from the U.S. Office of Personnel Management (OPM) that in September 2011, he was fired by his employer for what appeared to be an incident of unsatisfactory performance, and described the omission as "oversight."[40] There is no evidence that the investigator had confronted Applicant with the true facts.

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."[41] 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

[35] Item 4, *supra* note 2, at 3; Item 8, *supra* note 24, at 3.

[36] Item 6 (Personal Subject Interview, dated July 31, 2013), at 1.

[37] Item 6, *supra* note 35, at 1.

[38] Item 4, *supra* note 2, at 3; Item 4, Atch. 9 (Order, dated March 14, 2012).

[39] Item 5, *supra* note 1, at 13.

[40] Item 6, *supra* note 36, at 1.

[41] *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."[42]

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."[43] 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.[44]

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."[45]

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

[43] "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).

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

[45] *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."[46] 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 generally predate his 2006 judgment. He apparently found himself with insufficient funds to continue making his routine monthly payments and various accounts became delinquent, and were placed for collection, charged off, or went to judgment. AG ¶¶ 19(a) and 19(c) have been established.

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

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[46] *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*.[47]

AG ¶¶ 20(a), 20(b), and 20(c) do not apply. AG ¶ 20(d) minimally applies. The nature, frequency, and relative recency of Applicant's continuing financial difficulties since before 2006 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Although he claimed to have insufficient funds to continue making his payments, Applicant never offered any evidence that his financial condition was caused by any factors beyond his control. While there are a number of relatively moderate medical accounts over the years, there is no evidence that they were caused by unexpected medical emergencies. Applicant was separated in 1985, only a few months after his marriage, and there is no evidence that his separation contributed to his financial difficulties two decades later. He was unemployed from September 2011 until December 2011, but that situation took place substantially after his 2006 and 2007 judgments. There is no evidence that Applicant ever received financial counseling. Because he never described his current finances, it is not known if he has any other delinquent debts or if his financial problems are under control.

One of Applicant's judgments was resolved by garnishment in 2008. One account was satisfied in 2011, and another was resolved in 2012. Several relatively small accounts were resolved in 2013. With the exception of two accounts, Applicant contends he has entered into repayment arrangements with his other creditors, but as noted above, he did not furnish any documentary evidence to support his contentions that they are in the process of being resolved. As noted by the Appeal Board, promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner.[48]

Applicant has not acted responsibly in failing to address the majority of his delinquent accounts and by making little, if any, proven efforts of working with his

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[47] 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)).

[48] *See* ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999).

creditors.[49] Despite his assertions that he has established repayment arrangements with many creditors, he failed to furnish any documentary evidence to support those contentions. Thus, there is little, if any, evidence that he is in the process of resolving those accounts. Applicant's actions under the circumstances presented cast doubt on his current reliability, trustworthiness, or good judgment.[50]

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), *a single serious crime or multiple lesser offenses* is potentially disqualifying. Similarly, under AG ¶ 31(c), if there is an *allegation of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*, security concerns may be raised. In addition, under AG ¶ 31(f), a security concern may be raised when there is a *conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year*. Applicant's history of criminal conduct consists of five alleged incidents involving criminal charges, arrests, or convictions for a variety of actions. AG ¶¶ 31(a), 31(c), and 31(f), have been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where *so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.* Also, AG ¶ 32(d) may apply when *there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.*

AG ¶¶ 32(a) and 32(d) apply. The 1974 and 1976 criminal incidents and resulting convictions, sentences, and periods of incarceration, are approximately four decades old. The charges from 1991 and 2001 were both eventually dismissed. Also,

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[49] "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.

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

significantly, the 2001 incident was presented to the Administrative Judge in 2004, and after considering the available evidence in a DOHA proceeding identical to this one, that Administrative Judge determined the allegation in favor of Applicant. There have been no further alleged criminal activities since 2010. A person should not be held forever accountable for misconduct from the distant past. So much time has elapsed since the most recent of Applicant's criminal incidents occurred, or they happened under such unusual circumstances, I conclude that Applicant's criminal conduct is unlikely to recur and does not cast doubt on Applicant's reliability, trustworthiness, or good judgment.

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), security concerns may be raised when 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.*

Applicant's responses to the SF 86 inquiries were false and concealed the fact that he had been fired by his employer in September 2011 for what appeared to be an incident of unsatisfactory performance. Applicant's responses provide sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the Amended SOR, or merely the result of a simple oversight as Applicant had claimed. Applicant did not submit an Answer to the Amended SOR, and I consider his nonresponse to be a denial of the allegations. As noted above, in the decision-making process, facts must be established by "substantial evidence" which a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record, and which is more than a scintilla but less than a preponderance. Considering the allegation, which is unsupported by evidence of Applicant's intent to falsify, and Applicant's imputed denial of such intent, as well as his expressed explanation that the omission was due to an oversight, I conclude there is more than a scintilla of evidence of a deliberate omission, and that AG ¶ 16(a) has been established.

The guideline also includes an example of a condition that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if *the individual made*

prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. The sole evidence of Applicant's being fired by his employer appears in the report of his Personal Subject Interview. The interview was conducted less than 30 days after Applicant had completed the SF 86. The admission appears as the third item discussed by Applicant, and there is no indication that the investigator had previously known about, or confronted Applicant with, the facts about the firing. Thus, I conclude that Applicant made a prompt, good-faith effort to correct the omission, concealment, or falsification before being confronted by the investigator with the facts. AG 17(a) applies.

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 this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[51]

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[52]

> 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

[51] *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).

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

> 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.

There is some evidence in favor of mitigating Applicant's conduct. While Applicant's criminal history included two serious incidents from 1974 and 1976, as well as some lesser incidents in 1991 (dismissed), 2001 (dismissed), and 2010, he has essentially been a good citizen throughout extensive periods of his life. He was generally a hard worker, with the exception of one incident of unsatisfactory performance in September 2011. He has been with his current employer since December 2011. He paid some of his delinquent accounts.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has had a long-standing problem with his finances since before 2006. He had insufficient funds to continue making his routine monthly payments and various accounts became delinquent, and were placed for collection, charged off, or went to judgment. Applicant never offered any evidence that his financial condition was caused by any factors beyond his control. Despite his assertions that he has established repayment arrangements with many creditors, he failed to furnish any documentary evidence to support those contentions. While Applicant may have satisfied some delinquent debts as recently as 2013, his overall track record is not very good. Applicant's handling of his financial issues raises questions about his reliability, trustworthiness and ability to protect classified information. *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.:	For Applicant
Subparagraph 1.b.:	For 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
Subparagraph 1.h.:	Against Applicant

Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	(no allegation)
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	(no allegation)
Subparagraph 1.m.:	For Applicant
Subparagraph 1.n.:	For Applicant
Subparagraph 1.o.:	For Applicant
Subparagraph 1.p.:	For Applicant
Subparagraph 1.q.:	For Applicant
Subparagraph 1.r.:	For Applicant
Subparagraph 1.s.:	For Applicant
Subparagraph 1.t.:	For Applicant
Subparagraph 1.u.:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant
Subparagraph 2.c.:	For Applicant
Subparagraph 2.d.:	For Applicant
Subparagraph 2.e.:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a.:	For Applicant
Subparagraph 3.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.

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ROBERT ROBINSON GALES
Administrative Judge