



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 14-00072

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

12/10/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations and personal conduct. Eligibility for access to classified information is granted.

Statement of Case

On February 28, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR (undated), and requested a hearing. The case was assigned to me on August 28, 2014, and was scheduled for hearing on October 22, 2014. At hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on two witnesses (including himself) and 20 exhibits (AEs A-S). The transcript (Tr.) was received on October 30, 2014.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documentation of his payment efforts with creditors not documented in Applicant's credit reports as paid. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded five days to respond.

Within the time permitted, Applicant supplemented the record with documentation of payments of debts covered by subparagraphs 1.b-1.h, 1.j, and 1.q. Applicant provided statements covering his efforts to find listed creditors 1.i, 1.k, 1.p, and 1.r-1.t. Applicant's post-hearing submissions were admitted as AEs T-GG.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 23 delinquent debts. The alleged debts exceed \$26,000.

Under Guideline E, Applicant allegedly falsified his electronic questionnaires for investigation processing (e-QIP) of April 2013 by omitting his delinquent debts alleged in Guideline F. His alleged omissions covered delinquent debts that were either charged off, turned over to a collection agency, or over 120 days delinquent at any time within the previous seven years, or which are currently over 120 days delinquent on any debt.

In his response to the SOR, Applicant admitted the debts alleged in the SOR with explanations but denied falsifying his e-QIP. He claimed that he provided money to his ex-wife to cover their bills during their lengthy separation and assumed she paid them as agreed. Applicant further claimed his ex-wife managed his finances and did not tell him of the debts listed in the SOR that she failed to pay.

Applicant claimed he did not become cognizant of the listed debts in the SOR until after his wife vacated their home and left five moving boxes full of mail. Applicant claimed that "it was only then that I became aware that these accounts (i.e. those accounts listed in the SOR) were delinquent." Applicant claimed, too, that he has since paid all of the listed debts, which no longer appear on his updated credit reports.

In his response to the SOR allegations that he falsified his e-QIP application by omitting his delinquent debts, Applicant denied any attempt to falsify. He claimed he was not aware of any delinquent debts when he completed the e-QIP in April 2013. He further claimed that the debts at issue were beyond his control, and he made prompt and good-

faith efforts to correct the mistake. And he claimed the inadvertent mistake cannot be used to exploit or manipulate him.

Findings of Fact

Applicant is a 44-year-old vice president of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in May 1999 and has four children from this marriage. (GE 1) He separated from his wife in March 2009, remained separated from her during recurrent months of residence sharing, and divorced her in December 2011. (GEs 1 and 2 and AE O) Applicant has since remarried (GE 2; Tr. 35, 43-44) He earned a bachelor of arts degree in political science from a recognized university in January 1993 (GE 2) and claims no military service.

Applicant received his first security clearance in 2008 while employed by a previous employer. (GE 2; Tr. 51) His 2013 e-Qip reveals several overlapping employment relationships. He described his current employment with Company A as a full-time consulting position that commenced in May 2007 and is ongoing. (GE 1; 25-29) He listed contemporaneous employment as well in his e-QIP with Company B, a publicly traded software company (September 2012 and ongoing) as a vice president of public sector affairs, Company C (August 2009 through September 2012), and Company D (April 2007 through January 2009). (GE 1; Tr. 46)

Although Applicant's relationship with Company A is characterized by his Company A manager as "as an industry partner and employee consultant" (AE S; Tr. 26), the developed understandings between Applicant and the principals of these two overlapping firms regarding work and compensation is less than clear. Applicant's checking statement for September-October 2014 lists deposits from Company B and a deposit from an unidentified source of \$107,685 in September 2014. (AE I) Applicant described his employment with Company A as an extension of his employment with Company B. (GE 2) His explanations are reconcilable with the statements he provided in his e-QIP and are accepted. (GEs 1 and 2)

Applicant's finances

Throughout a lengthy period of marital separation (i.e., between March 2009 and December 2011), marked by recurrent months of residence-sharing, Applicant accumulated 23 delinquent debts that were either charged off or placed for collection. In the aggregate, they exceeded \$26,000. (GEs 2-4 and AE O) During this separation period, Applicant relied on his ex-wife to pay their bills and was unaware that his wife did not pay them (inclusive of the debts listed in the SOR) as he assumed she would. (Tr. 49-51) In their marital settlement agreement of May 26, 2011, Applicant and his wife

allocated the debts accrued during their marriage and accepted individual responsibility for all credit card debts executed in their individual names during their marriage and for all individual debts incurred after March 31, 2011. (AE P; Tr. 47-48)

Applicant assured that his ex-wife accepted responsibility for the medical debts included in the SOR as part of the alimony and support Applicant agreed to provide under their marital settlement agreement. (AE P; Tr. 42) Applicant, in turn, made his agreed bi-weekly monetary payments to his ex-wife to cover their marital debts during the period of their marital separation while she continued to reside in the family residence (i.e., between 2008 and 2012). (Tr. 42-43) With the money Applicant provided his ex-wife during their separation, he fully expected her to bear financial responsibility for his children's medical care. (Tr. 42) This she neglected to do. (Tr. 43)

Following their 2009 separation, Applicant continued to reside with his wife and their four children in their family residence before selling the home in December 2010 and moving into their new residence in January 2011. (GEs 1-2) Two months later (in March 2011), Applicant moved out of the new family residence. His wife, in turn, continued to reside in the residence with their four children until sometime in 2012 while the home was listed for sale. (GEs 1 and 2) In 2012, with the family residence still unsold, Applicant's ex-wife also vacated the premises and moved into a local residence with her children. (GE 2 and AE's response; Tr. 38)

When Applicant's ex-wife moved out of the family residence in 2012, she left five mail-filled boxes (including the unpaid bills) with him. (Tr. 49-50) Because he was too busy with his work at the time, he did not open the boxes right away to check for any outstanding billings. (Tr. 50-51) Only after he opened the boxes and checked the mail for old billings did he become aware of the delinquent debts (some covered by the SOR, and some not). See Applicant's response and AEs O-P; Tr. 38-40. Whether these delinquent debts were charged off, in collection, or over 120 days delinquent was unknown to Applicant at the time.

Applicant's ex-wife corroborated Applicant's account of their payment arrangements in her undated correspondence. She stressed that this period of separation was a difficult transition period for Applicant and herself and that some of the bills "likely slipped through the cracks." (AE O) Her accounts are reconcilable with Applicant's understandings and are accepted.

All of the SOR debts are listed in Applicant's credit reports (inclusive of the judgment debt covered in subparagraph 1.a) as accounts opened by him in his individual capacity. (GEs 3-4; Tr. 49-50)) To what extent any of these debts were generated by his ex-wife was not fully developed at hearing and is unclear. Without identifying specific debts, Applicant claimed that some of the listed debts covered children's medical debts, credit card usage, and parking tickets incurred by his ex-wife. (Tr. 47-48)

When Applicant's ex-wife did not satisfy the debts allocated to her in their marital settlement agreement, Applicant opened discussions with her about their individual

payment responsibilities. (Tr. 47-48) By late 2013, Applicant's ex-wife had still not addressed any of the delinquent debts covered in the SOR. (Tr. 48). Thereafter, Applicant took it upon himself to pay the delinquent bills she was responsible for. (Tr. 48-49) By 2014, he had paid off most of them. (AEs H and P) These debts encompass most of the debts listed in the SOR. Applicant's credit reports, bank statements, and creditor correspondence document Applicant's payment of the following debts: creditor 1.a (a \$1,143 judgment), creditor 1.b (\$1,699), creditor 1.c (\$401), creditor 1.d (\$368), creditor 1.e (\$330), creditor 1.g (\$104), creditor 1.f (\$544), creditor 1.h (\$24), creditor 1.j (\$199), 1.m (\$218), creditor (1.n (\$2,486), creditor 1.o (\$199), creditor 1.q (\$391), creditor 1.u (\$15,725), and creditor 1.w (\$425). (GE 4 and AEs K, M-N, P, T-V, and X; Tr. 40-42, 47-48, 64-67)

Still lacking in documented evidence of actual payment are several of the listed debts in the SOR, i.e., creditors 1.i (\$89), 1.k (\$213), 1.l (\$1,092), 1.p (\$34), 1.r (\$55), 1.s (\$205), 1.t (455), and 1.v (\$65). See AEs D, H, K, M-N, T-V, and GG. Collectively, these remaining debts (13 in all) do not exceed \$2,000. Because they no longer appear on Applicant's most recent credit reports, he has encountered difficulty contacting some of them to trace them and double-check their payment status. (Tr. 50-51) Most of these debts are very small and quite possibly were already paid by his ex-wife.

Following the hearing, Applicant did make concerted efforts to contact his remaining creditors with previously listed open accounts charged, in collection status, or over 120 days delinquent. Some he could not locate; one did not exist anymore; while others declined to respond to his inquiries. (AEs W, Z, and BB) Under these circumstances, these unaccounted for debts merit credit as either paid or otherwise resolved debts. Applicant now understands the importance of maintaining regular access of updated credit reports and checks them periodically each year for accuracy. (Tr. 45)

Applicant has completed credit counselling and received a certificate documenting his completion of the course requirements in 2014. (AE L; Tr. 45) Lessons learned from his credit counselling include "the importance of credit and how things come on and off." (Tr. 45, 62-63)

Applicant reported annual gross income of \$1.379 million in 2013, \$589,432 in 2012, \$363, 824 in 2011, and \$391,994 in 2010. (AE A-C, J, and CC-FF; Tr. 36, 64) For 2014, he reported net monthly income of \$36,453, monthly expenses of \$10,000, no monthly debt payments, and a net monthly remainder of \$26,453. (AEs F and G) Applicant currently owns a home that he purchased for cash in October 2013 for \$400,000 and is now worth an estimated \$500,000. (AE E; Tr. 38) In his checking accounts, he maintains "in the neighbourhood of a couple hundred thousand dollars" (Tr. 37), and relies on his current wife to manage his checkbooks. (Tr. 44)

Applicant's e-QIP omissions

In April 2013, Applicant completed an e-QIP application. He answered "no" to the questions asked of him in Section 26 about any debts charged off, in collection, or over

120 days delinquent in the previous seven years or currently over 120 days delinquent. (GE 1; Tr. 55-56) Applicant denied any deliberate intention to provide false information and attributed his denials to an inadvertent mistake on his part due to his lack of information at the time about any delinquent debts charged off, in collection, or over 120 days delinquent in the previous seven years or currently over 120 days delinquent. (AE response; Tr. 55-59)

When Applicant first learned of the specific debt delinquencies covered in the SOR and their payment status (i.e., whether charged off, in collection, and/or over 120 days delinquent in the previous seven years or currently) is less than clear. In his unverified response to the SOR, he claimed awareness of the listed delinquent debts (without describing his understanding of their delinquent payment status) only after his ex-wife moved out of the family residence and left boxes containing bills, some covered by the SOR and some not. (Applicant's response)

Earlier in the security clearance application process (in May 2013), Applicant was interviewed by an agent from the Office of Personnel Management (OPM). Asked about delinquent debts in the interview, Applicant reportedly told the inquiring agent of other debts in collection or default status whose details he could not identify (mostly medical bills and credit cards). (GE 2) Reportedly, he volunteered that he did not list them all on his "case papers" (e-QIP) "because he did not find a place to list multiple accounts when filling them out" and did not pay them "because he did not earn enough money to pay all of the bills as well as his required child support and alimony payments." (GE 2)

Asked about the accuracy of his response statements to the SOR, Applicant verified their accuracy and incorporated his answers in his hearing testimony. (Tr. 40) In his SOR response, he claimed that "it was only *then* [emphasis added] that I became aware that these accounts (i.e. those listed in the SOR) were delinquent." Applicant never indicated what kind of delinquent status he found the accounts to be in before addressing them (i.e., whether charged off, in collection, or over 120 days delinquent within the previous 120 days or currently 120 days delinquent).

Without more clarification of the state of his understanding of the delinquent status of the referred-to accounts, his use of the term "delinquent" to describe the debts in question is ambiguous and insufficient to attribute any definitive understanding of the status of the specific debts listed in the SOR. More evidence of an intent to conceal his delinquent debts is required before any inferences of falsification can be drawn.

When questioned by Department Counsel at hearing about statements attributed to him in his 2013 OPM interview, Applicant disputed any statements ascribed to him about his prior knowledge of the specific debts and his poor financial status at the time without disavowing any knowledge of delinquent debts generally. (Tr. 55-59) He cited his 2013 wage statement as corroborative proof of his good financial health at the time. (AS A J; Tr. 60-61)

Because the OPM summary of the interview lacks any prior verification by Applicant, it cannot be assigned any controlling weight when considering Applicant's disputed interview statements without more corroborating proof. Applicant's explanations on the whole are plausible and credible considering the state of his finances and knowledge and all of the circumstances extant at the time.

Only after Applicant volunteered his unspecified delinquent account information in his 2013 OPM interview did the OPM agent confront him on the specific delinquent accounts listed in his credit report. (GE 2) Applicant responded to the agent with the best information known to him about the specific debts covered by the SOR that were listed in his April 2013 credit report as charged off, in collection, or over 120 days delinquent within the previous seven years or currently over 120 days delinquent. (GEs 1-2 and AE P; Tr. 39-40)

Applicant's volunteered general acknowledgments in his OPM interview of debts he had that were either in collection or default are compatible with the time-line he provided in his SOR response and hearing claims about the state of his knowledge of the delinquent debts in issue. His acknowledgments reflect good-faith corrections before being confronted with the details of the specific accounts and their collection status.

While Applicant's e-QIP omissions reflect judgment lapses, they do not reveal omissions of debts known at the time to be debts charged off, in collection, or over 120 days delinquent within the past seven years or currently over 120 days delinquent. Without this specific understanding of the status of his accounts when he completed his e-QIP, no inferences of knowing and willful omission can be attributed to Applicant.

Moreover, the voluntary corrective information Applicant provided in his May 2013 OPM interview about his awareness of other debts in collection or default before he was confronted with the list of specific debts covered are entitled to acceptance as voluntary and timely corrections of his e-QIP omissions. His corrections reflect an overall mistaken understanding about the status of his debts, both when he completed his e-QIP and again when he was asked about his debts in his OPM interview

Awards and endorsements

Applicant is well-regarded by his managers. (AE S; Tr. 25-29) The manager of the Company A technology group that Applicant has consulted for since 2007 characterized Applicant as honest and trustworthy. (Tr. 26-28) He credited Applicant with providing support for the firm's customers on technology matters. (Tr. 26) Company A is a recognized Federal 100 award winner and has received numerous accolades in the government industry. (Tr. 28)

Other colleagues with Company A who have worked with Applicant over the course of his consulting relationship with the company describe Applicant as "a truthful upstanding citizen" who can be trusted in the most sensitive of circumstances. (AE R)

Applicant is highly regarded as well by friends and his landlord as a person who is trustworthy in his personal and business relationships. (AE R)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate

funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG, ¶ 18.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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. AG, ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's history of delinquent debts, attributable in part to historical reliance on his ex-wife's management of their family finances. Security concerns are also raised over Applicant's omission of his delinquent debts in the e-QIP he completed in April 2013 and the disparate explanations he furnished about the time-lines for becoming aware of his delinquent debts.

Financial issues

Following his marital separation in 2009, Applicant continued to rely on his ex-wife to maintain their bills in current status with the money he provided for child support and alimony while she remained in each of their family residences with their four children. Over the course of their separation and divorce, Applicant continued to provide his wife money for child support and alimony to defray family bills and assumed she was doing so in accordance with their mutual understandings reached in their marital agreement.

Unbeknownst to Applicant, his ex-wife did not pay the bills she committed to paying (including all of the debts listed in the SOR, except for the judgment debt covered by subparagraph 1.a). By the time she turned the bills over to Applicant in 2012, they had reached delinquent status. Applicant's debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts;" and DC ¶ 19(c) "a history of not meeting financial obligations."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Once Applicant learned of the delinquent debts covered in the SOR from the OPM agent who interviewed him in May 2013, he addressed his unclear payment responsibilities with his ex-wife for several months before going ahead and paying them himself. Payment records and credit reports document Applicant's payment or satisfactory resolution of all of the debts in question, inclusive of those debts assigned to his wife under the terms of their marital settlement agreement. Applicant's payment efforts merit application of MC ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances."

Applicant documented his completion of a financial counseling course in 2014 and is entitled to take full advantage of MC ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," is warranted in these circumstances. By addressing his

delinquent medical and consumer debts identified in the SOR, Applicant has established a promising track record for resolving his debts. MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” fully applies to Applicant’s situation.

Applicant’s documented medical and consumer debt payment history reflects satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant’s efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant has paid or satisfactorily resolved all of the listed debts in the SOR.

That Applicant is currently unable to document the payment of several remaining delinquent debts identified in his earlier credit reports and SOR following demonstrated good-faith efforts to identify and reach settlements with these creditors is not enough to deprive him of the mitigation benefits achieved from his recent payment efforts. Each of these remaining debts has been removed from Applicant’s most recent credit reports and entitles Applicant to either payment credit or satisfactory resolution. Applicant’s efforts to date meet the Appeal’s Board requirements for stabilizing his finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008). See 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).

From a whole-person standpoint, Applicant’s meritorious record of civilian employment as a high-performing officer and consultant with well-established defense firms has earned him the praise and trust of his managers, colleagues, and close friends who know him and have worked with him. While his history of debt accruals is considerable, with the help of his current wife, he has developed a solid track record of debt management and is committed to maintaining his finances to respectable levels consistent with holding a security clearance.

Overall, Applicant’s corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

Personal conduct issues

In the process of completing an e-QIP in April 2013, Applicant omitted his delinquent debts that had either been charged off, assigned for collection, or which were over 120 days delinquent. Applicant’s “no” answer was intentional, but it was based on his uncertainty at the time as to the identities of the debts and whether they had reached charge-off, collection, or 120-day delinquent status.

Security concerns over Applicant’s judgment, reliability and trustworthiness are raised under Guideline E as the result of his omission of his delinquent debts in the e-QIP he completed in April 2013. By his statements and actions, Applicant placed in issue his

judgment and fiducial commitment to safeguarding classified and other sensitive materials.

One of the disqualifying conditions covered by Guideline E are applicable. DC ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts to 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.” DC ¶ 16(a) may be considered in evaluating Applicant’s April 2013 e-QIP, his May 2013 OPM statements, and his hearing testimony.

Applicant’s “no” answer regarding his debt delinquencies in his 2013 e-QIP, while intentional, was made without specific knowledge at the time of the creditor identities and payment status of the listed debts in the SOR at issue (i.e., whether charged off, in collection, or over 120 delinquent within the past seven years or currently 120 days delinquent). Due diligence on his part should have prompted him to investigate the condition of his debts to ensure accurate reporting.

Certainly, Applicant’s negative response, lacked any due diligence research or investigation on his part. Even with his business commitments and limited understanding of the payment status of the debts, he could have been reasonably expected to make more concerted efforts to check the status of his debts before completing his e-QIP. Still, his “no” answer lacks any probative proof of motive required to establish specific intent to conceal. To the contrary, Applicant’s testimony and checking records established that he had ample assets to satisfy any delinquent debts rightly attributable to him. His negative response to the financial question inquiring about his debt delinquencies was not accompanied by any signs or indicia of a desire to conceal debts from evaluators assessing the information provided in his e-QIP.

Traditional assessments of falsification in ISCR proceedings include considerations of motive in determining whether particular applicants engaged in knowing and willful concealment. Both Guideline E and relevant case authorities underscore the importance of motive and subjective intent considerations in gauging knowing and willful behavior. See ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006)(citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See, generally, *United States v. Chapin*, 515 F.2d 1274, 1283-84 (D.C. Cir. 1975); *United States v. Steinhilber*, 484 F.2d 386, 389-90 (8th Cir. 1973); *United States v. Diogo*, 320 F.2d 898, 905 (2d Cir. 1963). Put differently, the Government must be able to negate any reasonable interpretation that will make Applicant’s explanations about his debt omissions in his e-QIP factually justifiable. Use of a subjective intent test is not intended to straightjacket either party with particular words and phrases, but rather to avert definitional traps.

Under the facts and circumstances of this case, Applicant’s omissions were neither knowing nor willful, but were based on misjudgments of how he needed to respond to e-QIP questions that inquire about debts that have reached a certain level of delinquent status. While a yes answer with explanations of his uncertainty about the status of some

potentially delinquent accounts meeting the question's criteria would have better served himself and the Government, Applicant's no answers do not reflect any knowing and willful intent to conceal.

To the extent mitigating considerations are necessary to correct any judgment lapses associated with Applicant responses to the financial questions covered in Section 26 of his e-QIP, Applicant is entitled credit for his disclosing general information about other debts that were either referred for collection or in default when first questioned by the OPM agent who interviewed him in May 2013.

Applicant's volunteered corrections meet the prompt, good-faith requirements of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," as well as the infrequent, unique circumstances requirements of MC ¶ 17(c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Both MC ¶ 17(a) and MC ¶ 17(c) of Guideline E apply to Applicant's situation.

In evaluating all of the circumstances surrounding Applicant's withholding of material information about his financial status in the e-QIP he completed and his corrections and clarifications in his ensuing OPM interview and hearing testimony, his explanations and timing of his corrections are sufficient to convincingly refute and mitigate the deliberate falsification allegations. Questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, are each core policy concerns of the personal conduct guideline (AG ¶ 15).

Considering all of the circumstances surrounding his May 2013 e-QIP omissions and ensuing accounts, Applicant's omissions of delinquent debts attributed to him are refuted as to any knowing and willful omissions. Imputed judgment lapses associated with his omissions are mitigated

From a whole-person standpoint, the evidence is sufficient to demonstrate that Applicant has mounted responsible, good-faith efforts to provide accurate background information to the Government in the 2013 e-QIP he completed. Any judgment lapses demonstrated in his completion of his 2013 e-QIP are more than off-set by the positive judgment impressions he has forged with his manager, friends, and landlord. The employment relationships he has developed with his Company A and Company B employers have been very productive and rewarding for Applicant and were instrumental in demonstrating his overall reliability and trustworthiness necessary to meet security eligibility requirements.

In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the AGs, and the facts and circumstances of this case in the context of the whole person. Favorable conclusions warrant with respect to the allegations covered by subparagraph 2.a.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas. 1.a through 1.w: For Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subpara. 2.a: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

