

KEYWORD: Criminal Conduct; Personal Conduct; Financial

DIGEST: Applicant has a history of criminal conduct, including numerous worthless checks between 1992 and 2002, and a felony conviction for grand theft in 1998. He also made several false official statements on his security clearance application in April 2003. Applicant mitigated the security concerns arising from his history of not meeting financial obligations, by paying off almost all the delinquent debts for which he was responsible. However, he failed to mitigate the security concerns arising from his criminal conduct and personal conduct. Clearance is denied.

CASENO: 04-10500.h1

DATE: 02/17/2006

DATE: February 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10500

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Neal L. Betancourt, Esq.

SYNOPSIS

Applicant has a history of criminal conduct, including numerous worthless checks between 1992 and 2002, and a felony conviction for grand theft in 1998. He also made several false official statements on his security clearance application in April 2003. Applicant mitigated the security concerns arising from his history of not meeting financial obligations, by paying off almost all the delinquent debts for which he was responsible. However, he failed to mitigate the security concerns arising from his criminal conduct and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On April 9, 2003, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On May 31, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline J, Criminal Conduct, Guideline E, Personal Conduct, and Guideline F, Financial Considerations.

Applicant answered the SOR in writing on June 20, 2005. He elected to have a hearing before an administrative judge.

I received the case on September 28, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on November 3, 2005. The government introduced Exhibits 1 through 19. Applicant presented Exhibits A and B, and testified on his own behalf. Department counsel moved to amend the SOR as follows: ¶¶ 1.h and 1.i were amended by changing the dates "August 7, 2002" to "August 15, 2002," and changing the dates "March 28, 1992" to

arch 28, 2002"; and ¶ 1.k was amended by deleting the words, "2.c, 2.d, 2.e, 2.f, 2.g, 2.h, 2.i." There being no objection, I granted the motion. At Applicant's counsel's request, I left the record open to allow him the opportunity to present additional materials. Subsequently, Applicant's counsel offered Exhibits C through G, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 17, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.a through 1.j, ¶¶ 2.a, 2.c through 2.f, 2.i through 2.k, and ¶ 3.a of the SOR, with explanations. (Applicant's Answer to SOR, dated June 20, 2005.) Those admissions are incorporated herein as findings of fact. Applicant denied the allegations in ¶¶ 2.b, 2.g, and 2.h of the SOR. (*Id.*) After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in September 1969. (Ex. 1 at 1.) After graduating from high school he enlisted in the U.S. Navy, where he served from July 1988 to July 1992. (*Id.* at 4; Tr. at 51; Ex. A.)

At about the time he separated from the U.S. Navy, Applicant made and uttered four worthless checks to obtain property. (SOR, ¶¶ 1.a, 1.b, 1.c, and 1.d; Tr. at 124.) In each case, a criminal information was filed, a warrant was issued for Applicant's arrest, he made restitution for the checks, and the charge was later dropped. (Ex. E; Tr. at 125.)

After leaving the Navy, Applicant worked in the trucking business and as a heavy equipment operator. (Tr. at 56.) After about one year living in his home state, he moved to another state to live with his girlfriend, her two children from another relationship, and their two children. (Tr. at 56.)

Applicant worked as a truck driver. (Ex. 12 at 2.) He accumulated delinquent debts, including payments due on an automobile destroyed in an accident. (Tr. at 78.) In August 1996, he filed for bankruptcy under Chapter 7 of the bankruptcy code. (Ex. 13.) His listed debts were discharged in bankruptcy in November 1996. (Tr. at 76.)

In about 1997, Applicant moved back to his home state. He lived there with his girlfriend and the four children. (Tr. at 57, 60.)

In January 1998, he wrote a worthless check to a grocery store (SOR, ¶ 1.f; Answer to SOR, *supra*, at 1.) The state's attorney later charged him with obtaining property with a worthless check. The case was later closed. (Ex. 6.)

Applicant worked as a route driver for a vitamin supplement retailer, delivering the products to stores and collecting payment by check, money order, or cash. (Tr. at 58.) Applicant wrongfully kept some of the cash payments, rather than turning them in to his employer. (Tr. at 59.) The employer discovered the theft, terminated Applicant immediately (Tr. at 62), and filed a formal complaint. (Ex. 4 at 3.) In September 1998, the state's attorney charged Applicant with grand theft in the amount of \$8,441.71. (Ex. 4 at 1.) In December 1998, Applicant pled *nolo contendere* to the charge. (Ex. 4 at 5.) The court sentenced him to probation before verdict. (Ex. 4 at 5.) Applicant was required to repay the amount he stole from his employer, along with fees and assessments. (Tr. at 61.)

In November 1998, Applicant wrote a worthless check to a medical center (SOR, ¶ 1.f). (Answer to SOR, *supra*, at 1.) The state's attorney charged Applicant with the misdemeanor offense, but the charge was later dropped.

In January 1999, Applicant wrote a worthless check to obtain property (SOR, ¶ 1.g). (Answer to SOR, *supra*, at 1.) In June 1999, the state's attorney filed formal charges against Applicant for the crime. (Ex. 7.) Applicant pled guilty; adjudication was withheld pending payment of court costs and fees. (*Id.*)

After being fired for the theft from his employer described above, Applicant began working as a long-distance truck driver. (Tr. at 63-64.) He was a contractor for a large trucking company, responsible for all his equipment and expenses while the trucking company paid him a certain sum for each delivery. (Tr. at 64.) The trucking company gave the contractors an advance equal to 30% of the price of the job, and paid the balance after the delivery.

In about May 2000, Applicant applied to work for the trucking company at its corporate headquarters, advising truckers working with the company on business practices such as money management and organizing freight. (Tr. at 65.) Applicant falsified his application by omitting his employment with the vitamin supplement retailer and any mention of the theft that resulted in his termination. (Tr. at 65-66.) He was hired.

Applicant worked for the trucking company until October 2001, when he was fired for giving two advances in excess of \$1,000.00, contrary to company policy. (Ex. 11 at 1.) Applicant asserts the payments (to a trucker who is now his wife) were post-trip payments, not advances, that he was never advised of such a policy, and that he and others in the same job had authorized many similar payments in the past without incident. (Tr. at 70-73.)

From about October 2001 until the present, Applicant worked as an over-the-road truck driver, serving as a contractor

for the same trucking company that terminated him for the unauthorized advance. (Ex. 1 at 1; Tr. at 81-83, 85-87.) He and his wife drive together. They also haul special cargo for the Department of Defense, including explosives. (Tr. at 82, 87.)

In March 2001, Applicant's former girlfriend (and the mother of his two children) filed a petition to determine paternity in the county court of Applicant's home state. (Ex. 17 at 1.) The sheriff served the action on Applicant in May 2001. (*Id.*) The court set amounts for child support to be paid through the court.

On March 28, 2002, Applicant wrote three different checks to businesses to purchase property; all three were dishonored for insufficient funds (SOR, ¶¶ 1.h, 1.i, 1.j). On August 7, 2002, the state's attorney charged Applicant with two counts of obtaining property by worthless check, a misdemeanor, and one count of felony worthless check. (Ex. 8; Ex. 9; Ex. 10.) Upon returning from a cross-country delivery, Applicant received the notices, contacted the sheriff, and surrendered to authorities. (Tr. at 78-79; Ex. 10 at 4.) The sheriff's office formally arrested and booked Applicant on the charges. (Ex. 10 at 4.) Applicant pled guilty to the consolidated misdemeanor charges, and paid the fines and fees. The felony charge was later dismissed.

In October 2002, Applicant's former landlord sued Applicant for \$4,800.00 in unpaid rent. (Ex. 15 at 4.) Applicant rented an apartment in 1998, and lived there with his girlfriend and four children. (*Id.* at 10.) Applicant asserts he did not sign a lease. In about May 2001, Applicant moved out, leaving his girlfriend in the apartment. (*Id.*; Ex. 14. at 1; Tr. at 91.) The rent was not paid, and the landlord sued Applicant. Applicant was served with the petition but did not respond in court. Applicant contacted the landlord to arrange settlement. Believing the case would be settled, Applicant did not attend the hearing. The landlord obtained a judgment by default. (Ex. 15. at 5.) After several unsuccessful attempts, the sheriff served Applicant with notice of the judgment on April 15, 2003. (Ex. 15 at 2.) Thereafter, Applicant filed a pleading entitled "Motion to Set Aside Final Judgment," asking the judge to set aside the final judgment on the grounds that the landlord's action induced Applicant to believe the case would be settled, rather than litigated. (Ex. 15 at 13; Tr. at 128.) Applicant argued the matter personally in the judge's chambers. (Tr. at 111.) The judge denied the motion. (*Id.* at 14.) Applicant refused to pay the judgment, denying responsibility for the debt. (Ex. 14 at 2; Tr. at 90.)

On April 9, 2003, Applicant submitted an SF 86, Security Clearance Application, to obtain the security clearance necessary to haul classified cargo, including explosives, for the DoD. (Ex. 1 at 1; Tr. at 102-03.) He was told that he needed to be accurate and candid when completing the form. (Tr. at 103.)

Question 6 on the SF 86 required Applicant to list all his employers for the previous 10 years. (Ex. 1 at 2; Ex. 2 at 8; Tr. at 103-04.) Applicant deliberately provided false information by omitting previous employers, including the vitamin supplement retailer that fired him for grand larceny. Applicant did so to prevent the trucking company from learning of his felony offense. (Tr. at 105.)

Question 20 on the SF 86 required Applicant to report whether he had been fired from a job within the previous 10 years. (Ex. 1 at 5; Ex. 2 at 22.) Applicant did not report being fired from the vitamin supplement retailer for grand theft in order to keep that information from the trucking company. (Tr. at 105-06.)

Question 21 of the SF 86 asked Applicant to indicate whether he had ever been charged with or convicted of a felony. (Ex. 1 at 5.) Applicant reported being charged with grand larceny in 1998, but did not list the felony charge for worthless checks in August 2002. (*Id.*) Applicant later asserted he was unaware that one worthless check charge was a felony. (Tr. at 107.)

Question 26 of the SF 86 asked Applicant whether, within the previous seven years, he had been arrested for, charged with, or convicted of any offense not otherwise reported on the application. (Ex. 1 at 6.) Applicant answered "No." Applicant later indicated he did not report the charges and convictions for worthless checks because he did not think about them. (Tr. at 110.)

Question 33 of the SF 86 required Applicant to indicate whether he filed for bankruptcy within the previous seven years. Applicant answered "No." (Ex. 1 at 7.) Applicant did not report his bankruptcy in 1996. At the hearing, he testified he mistakenly thought the bankruptcy occurred in 1993-more than seven years before he completed the application. (Tr. at 75-76.)

Question 37 of the SF 86 asked Applicant whether he had any judgments against him in the previous seven years that had not been paid. (Ex. 1 at 7.) Applicant answered "No." He did not list the unpaid judgment in favor of his former landlord. In his answer to the SOR, Applicant contended he was unaware of the judgment when he filled out the application in April 2003. (Answer to SOR, *supra*, at 3.)

Question 38 of the SF 86 asked whether Applicant had been over 180 days delinquent on any debts within the preceding seven years. Applicant answered "No." (Ex. 1 at 7.) Similarly, Question 39 asked if Applicant was then over 90 days delinquent on any debts. Applicant answered, "No." (*Id.*) Applicant denied knowledge of any delinquent debts when he completed the application. (Tr. at 118.)

Question 40 of the SF 86 asked Applicant if he had been a party to a civil court action within the previous seven years that was not otherwise listed on the form. Applicant answered "No." (Ex. 1 at 7.) Applicant did not report the lawsuit for child support, claiming he did not know it was a "civil action." (Tr. at 120.)

After Applicant submitted his security clearance application, security investigators obtained a copy of his credit report,

which listed several delinquent accounts. On March 25, 2004, Applicant provided a statement to security investigators indicating the status of the debts, and those he intended to repay. (Ex. 14.) At the hearing, Applicant testified about the status of the debts listed in the SOR. (Tr. at 113-17.) After the hearing, Applicant provided documents reflecting payment of some debts. (Exs. C-G.)

Currently, Applicant still refuses to pay the \$4,800.00 judgment in favor of his former landlord (SOR, ¶ 2.h(1) obtained by default, on the grounds it was never his debt. He has paid the following debts: the \$552.00 debt to the collection agency listed as SOR ¶ 2.i(1) (Tr. at 113-14; Ex. C); the \$299.00 debt to the mail-order retailer listed as SOR ¶ 2.i(2) (Ex. D); the \$223.00 hospital bill handled by the collection agency listed as SOR ¶ 2.i(3) (Ex. 19; Ex. E); the \$935.00 claim by the former apartment management company handled by debt collectors listed as SOR ¶ 2.i(4) (Ex. 19; Ex. F); and the \$811.00 bill by a telephone service provider handled by a collection agency listed as SOR ¶ 2.i(5) (Tr. at 116; Ex. G). Applicant has not paid the \$125.00 medical bill listed as SOR ¶ 2.i(6).

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988)). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. (Directive, ¶ E2.A10.1.1.)

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. (Directive, ¶ E2.A5.1.1.)

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (Directive ¶ E2.A6.1.1.)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline J, Criminal Conduct

Paragraph E2.A10.1.2.1 of the Directive provides that "allegations or admission of criminal conduct" may be disqualifying. Similarly, under ¶ E2.A10.1.2.2 of the Directive, it may be disqualifying where an applicant committed "a single serious crime or multiple lesser offenses." Applicant's theft of more than \$8,000.00 from his employer and his conviction for grand larceny in December 1998 was a "single serious crime." Similarly, his guilty pleas to worthless check offenses in 1999 and 2002 clearly constituted "multiple lesser offenses." I note Applicant had several criminal charges for worthless check offenses between 1992 and 1999 that did not result in convictions. Although Applicant denies knowingly or intentionally uttering worthless checks, I do not find his explanations plausible under all the circumstances. I find these potentially disqualifying conditions are raised in this case.

The SOR, ¶ 1.k, alleges Applicant violated Title 18 U.S.C. § 1001 by providing false official statements to the government as part of his security clearance application, specifically, in response to questions 2.j and 2.k. As discussed below, I conclude Applicant did not deliberately provide false information in response to these questions; therefore I conclude the evidence does not support the allegation that this constituted criminal conduct.

Under the Directive, the security concerns arising from a history of criminal conduct may be mitigated in certain circumstances. Under ¶ E2.A10.1.3.1 of the Directive, it may be mitigating when "the criminal behavior was not recent." The Directive does not define the term "recent"; the recency of an incident is determined by considering all the circumstances, including the Applicant's age, his pattern of behavior over a period of time, and the number of years since the last incident relative to the entire course of conduct. Applicant has a long history of criminal charges for financial offenses, including worthless check offenses beginning in 1992 and continuing until 2002. Considering the overall period of these similar offenses, Applicant's worthless check offenses in 2002 are "recent." I conclude this potentially mitigating condition does not apply.

The Directive, ¶ E2.A10.1.3.2, also provides that it may be mitigating where "the crime was an isolated incident." As noted above, Applicant has a long history of financially-related crimes. His crimes are not isolated incidents; therefore, this potentially mitigating condition does not apply.

Paragraph E2.A10.1.3.4 of the Directive states it may be mitigating where "the factors leading to the violation are not likely to recur." Similarly, under ¶ E2.A10.1.3.6 of the Directive, it may be mitigating where "there is clear evidence of successful rehabilitation." Applicant's offenses occurred at different periods of his life: when he was just out of the Navy, when he was working full-time and supporting a family, and when he was married and gainfully employed. Although Applicant asserts he is now financially secure and living a stable lifestyle, he failed to persuade me that he is successfully rehabilitated, or that similar violations are not likely to occur in the future. I conclude these potentially mitigating conditions do not apply.

I carefully considered the disqualifying and mitigating conditions in this case, in light of the "whole person" concept. I

conclude Applicant has not mitigated the security concerns arising from his history of criminal conduct.

Guideline E, Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph E2.A5.1.2.1 of the Directive provides that "reliable, unfavorable information" demonstrating questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations may be disqualifying. Applicant stole over \$8,000.00 from his employer in 1998, resulting in his termination from employment and subsequent conviction for grand theft (SOR, ¶ 2.a). The available evidence raises this potentially disqualifying condition.

Paragraph 2.b of the SOR cites as unfavorable personal conduct Applicant's termination from the trucking company for making unauthorized financial advances to a trucker. Considering all the circumstances, I am not persuaded Applicant knowingly violated any company policy or otherwise engaged in improper conduct during this incident.

Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. The SOR alleges several incidents of falsification by Applicant on his personnel security questionnaire.

The available evidence indicates Applicant deliberately falsified material facts in response to question 6 of his SF 86 by failing to report several of his previous employers, including the vitamin supplement retailer that terminated him for grand theft (SOR, ¶ 2.c). He also deliberately falsified material facts in response to question 20 when he failed to report his termination from the vitamin supplement company in 1998 (SOR, ¶ 2.d). Applicant provided a false statement concerning material facts in response to question 26 when he failed to list his arrests, charges, and convictions for worthless check offense in 2002 (SOR, ¶ 2.f)-his suggestion that he did not recall the incidents is not credible. Applicant also lied about a material matter when, in response to question 33, he denied having filed for bankruptcy within the preceding seven years (SOR, ¶ 2.g). Applicant knew the bankruptcy occurred while he lived in another state-his contention that he did not remember when he lived there is not believable. I conclude this potentially disqualifying condition applies.

Paragraph 2.e of the SOR alleges Applicant deliberately failed to report on question 21 of his SF 86 his arrest for a felony offense in 2002. Applicant denied that he intended to deceive the government. He asserted he was not aware that one of the three worthless check offenses for which he was arrested on August 15, 2002, was a felony charge. Considering that similar crimes were treated as misdemeanors, that two other charges lodged at the same time were misdemeanors, that Applicant was not represented by counsel, and the felony charge was resolved by *nolle prosequi*, I am persuaded Applicant was not aware it was a felony.

Paragraph 2.h of the SOR alleges Applicant, in response to question 37 of his SF 86, deliberately failed to report the unpaid judgment to his former landlord. The available evidence reveals Applicant signed the SF 86 on April 9, 2003 (Ex. 1 at 8), and was served with a copy of the judgment on about April 15, 2003 (Ex. 15 at 2). I find Applicant was not aware of the judgment when he completed the SF 86, and thus did not intend to make a false or misleading statement.

Paragraphs 2.i and 2.j of the SOR allege Applicant provided false information in response to questions 38 and 39 on the SF 86 when he denied delinquent debts more than 180 or 90 days overdue. Applicant denied that he was aware of the delinquent debts listed in the SOR at the time he completed the security questionnaire. Considering the frequency of Applicant's moves and the nature of the debts, I find Applicant did not knowingly provide false information about these delinquent debts.

Paragraph 2.k of the SOR alleges Applicant deliberately failed to report that he was involved in a paternity action in response to question 40 on his SF 86. Applicant indicated he did not understand that the request for information about "public record civil court actions" included the paternity proceeding. I carefully considered all the circumstances, including Applicant's open acknowledgment of paternity and that the purpose of the action was to determine the amount of child support. I find Applicant had little motivation to conceal this court case, lending credibility to his claim that he was simply mistaken. I conclude Applicant did not deliberately provide misleading information in response to question 40.

Under the Directive, an applicant may mitigate the security concerns arising from questionable personal conduct. (Directive, ¶ E2.A5.1.3.) Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." Applicant's termination from employment because of grand theft was substantiated by his detailed admissions and was pertinent to a determination of his judgment, trustworthiness, and reliability. Applicant's falsification of his security clearance application in response to questions 6 (SOR ¶ 2.c), 20 (SOR ¶ 2.d), 26 (SOR ¶ 2.f), and 33 (SOR ¶ 2.g) also raises a significant security concern. I find this mitigating factor does not apply.

Paragraph E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." Applicant provided false information deliberately to several separate questions on the security clearance form, and lied on an employment application (Ex. 12); therefore I do not find any one falsification was an isolated incident. The security clearance application in issue was recent, because it was executed in April 2003. I conclude this potentially mitigating condition does not apply.

Under ¶ E2.A5.1.3.3 of the Directive, it may be mitigating where, "[t]he individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts." Applicant has not met his burden of proving that he made good-faith efforts to correct the falsifications in his security clearance application. I find this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do

not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude Applicant has not mitigated the security concerns arising from his termination from employment for larceny and the falsification of his security clearance application.

Guideline F, Financial Considerations

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of not meeting his financial obligations. He had several debts totaling over \$7,000.00 that remained unpaid for many years. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Most of Appellant's delinquent debts arose between about 1998 and 2000, and were not resolved until 2004 or 2005. (Exs. C through G.) I find the debts were recent, and this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." The debts included unpaid bills for rent and services remaining after Applicant moved, medical bills and credit card debts that were neglected. The debts did not arise from conditions beyond Applicant's control; therefore this potentially mitigating condition does not apply.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant has not sought or received financial counseling. I conclude this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (Directive, ¶ E2.A6.1.3.6.) When confronted with the delinquent debts, Applicant paid all of them (Exs. C through G), except for the judgment to the former landlord, which Applicant insists is improper, and one small medical bill. The former landlord has taken no action to collect on the judgment, and Applicant certainly feels no compunction to make payment. I conclude this mitigating condition applies.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant paid substantially all the delinquent debts. Balancing the disqualifying conditions and the mitigating conditions, I conclude Applicant has mitigated the security concerns arising from his financial difficulties.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline J: 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

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: For Applicant

Subparagraph 2.i: For Applicant

Subparagraph 2.j: For Applicant

Subparagraph 2.k: For Applicant

Paragraph 3, Guideline F: FOR APPLICANT

Subparagraph 3.a: For Applicant

DECISION

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 or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin
Administrative Judge