



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 07-13837
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: James W. Green, Esquire

July 20, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the hearing transcript, pleadings, and exhibits, I conclude that Applicant mitigated security concerns under Guideline J, Criminal Conduct, but he failed to mitigate security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Applicant executed a security clearance application (SF-86) on June 19, 2006. On April 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, Criminal Conduct, Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On September 4, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on March 4, 2010. Applicant and Department Counsel agreed that his hearing would be held April 28, 2010. On April 27, 2010, Applicant requested a continuance so that he could be represented by counsel. I granted Applicant's request, and with the consent of the parties, rescheduled Applicant's hearing for May 4, 2010. The hearing was held, as rescheduled, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced 38 exhibits, which were marked Ex. 1 through 38 and admitted to the record without objection. The Government also offered an explanatory chart, identified as an allegation matrix, which showed where information relating to specific allegations could be found in the Government's exhibits. I marked this document as Hearing Exhibit (HE) 1. Applicant did not object to my review of HE 1. Applicant testified on his own behalf and called one witness. He offered four exhibits, which were marked as Ex. A through D and admitted without objection. At the conclusion of the hearing, I left the record open for two weeks, at Applicant's request, so that he could provide additional information for the record. Applicant timely submitted six additional exhibits, which were marked as Ex. E through Ex. J and admitted without objection. DOHA received the transcript (Tr.) of the hearing on May 12, 2010.

Findings of Fact

The SOR contains 12 allegations of disqualifying conduct under AG J, Criminal Conduct (SOR ¶¶ 1.a. through 1.l.); 15 allegations under AG F, Financial Considerations (SOR ¶¶ 2.a. through 2.o.); and seven allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 3.a. through 3.g.). In his Answer to the SOR, Applicant admitted all Guideline J, Guideline F, and Guideline E allegations and provided additional information. Applicant's admissions are admitted as findings of fact. (Answer to SOR; Tr. 21, 35; Ex. D.)

Applicant is 50 years old and employed as an aircraft mechanic by a federal contractor. He was awarded a security clearance for the first time in 1978, when he was serving in the military. He held the clearance during his 20 years of military service. After his retirement from the military and honorable discharge in 1998, he was employed in several jobs that did not require a security clearance. He was also unemployed from June to October 2001, from October 2002 until August 2003, and from January to March 2004. However, from March 2000 until October 2002 he was employed by the federal government as an aircraft mechanic in a position that required a clearance. He has worked for his present employer in a position requiring a security clearance since April 2004. He now seeks renewal of his eligibility for access to classified information. (Ex. 1; Tr. 55-58.)

Applicant married in 1985. He and his wife divorced in 1991. In 1994, Applicant began a relationship with another woman. During this relationship, from 1994 to 1998, Applicant was deployed for approximately six months of every year. He gave his girlfriend power of attorney so that she could handle his financial responsibilities while

he was deployed. He and his girlfriend also were joint owners of a checking account. (Ex. 1; Tr. 60-62, 106-108.)

In October 1996, Applicant's girlfriend gave birth to their daughter. Applicant and his girlfriend were married in 1997. At some time during her marital relationship with Applicant, his wife became involved with another man. Applicant and his wife became estranged and separated, although their financial relationship continued until about 2002. Applicant's wife was physically abusive to him and they were unable to share custody of their child without animosity and physical confrontations. Applicant determined that his wife had not divorced her former husband before marrying him, and in 1998 he undertook court action to dissolve his marriage as bigamous. The custody issue was not resolved, and in 2003, at Applicant's request, a domestic relations court terminated his parental rights as in the best interest of his daughter. (Ex. 3; Tr. 65-66, 108-111.)

After he and his wife separated, Applicant became involved with another woman. Applicant and the woman lived together, and the relationship lasted for about two years. (Tr. 66-69.)

Applicant is now married to his third wife. Applicant's wife testified as a witness on his behalf, and she stated that she and Applicant have been married "almost five years."¹ (Tr. 58-59, 129.)

Criminal Conduct

The SOR alleged, and Applicant admitted, that for a five-year period between 1996 and 2001, he presented worthless checks to obtain property. The SOR alleged at ¶ 1.a. that in April 1996, Applicant engaged in the criminal act of Worthless Check-Obtain Property (WC-OBT Prop), and the charge was *nolle prosequere* in November 1996. The SOR alleged at ¶ 1.c. that Applicant engaged in three counts of WC-OBT Prop in February 1997, and the charge was *nolle prosequere* in November 1997. The SOR alleged at ¶ 1.b. that Applicant was arrested in October 1997 and charged with WC-OBT Prop, in violation of state law. (SOR; Answer to SOR; Ex. 2; Ex. 4; Ex. 5; Ex. 6; Ex. 17.)

The SOR alleged at ¶ 1.d. that Applicant was arrested in September 1998 and charged with obtaining property with a worthless check. The SOR also alleges at ¶ 1.e. that in April 1998, Applicant committed three counts of WC-OBT Prop, and in December 1998, the court ordered him to pay \$160. (SOR; Ex. 2; Ex. 7; Ex. 8; Ex. 17.)

The SOR alleged at ¶ 1.f. that Applicant engaged in seven criminal acts of WC-OBT - - five in March, April, and May of 1998 and two in March 2000 - - and in October

¹ When he executed and signed his SF-86 on June 19, 2006, Applicant listed his first wife only. He did not list his second and third wives, even though the testimonial evidence suggests he was married to his third wife when he executed his SF-86.

2001, he pled *nolo contendere* to all charges and was sentenced to pay court costs, which were waived. (SOR; Ex. 9; Ex. 15.)

The SOR alleged at ¶¶ 1.h. and 1.i. that Applicant was charged with obtaining property for worthless check on February 26, 2000, and, on the next day, February 27, 2000, he was cited with an additional worthless check charge. The SOR alleged at ¶ 1.k. that on April 19, 2001, Applicant was charged with nine counts of obtaining property for worthless check. (SOR; Ex. 2; Ex. 17; Ex. 18; Ex. 20.)

Applicant denied ever intentionally writing a worthless check. He opined that his second wife wrote many of the checks on their joint account without his knowledge when they were disputing the custody of their daughter or when he was deployed. He provided a document from the county court in the jurisdiction in which many of the worthless checks were written. The document recited that on October 31, 2001, Applicant had been placed on probation for four months and ordered to make restitution for some of the worthless checks. The document further recited that Applicant's probation had been terminated in February 2002 upon satisfactory compliance with the terms of the probation. (Ex. D; Tr. 62-64.)

Applicant acknowledged that he had not satisfied all of the worthless check charges during his four-month probationary period. He stated that he satisfied some of the charges individually at other times. He did not provide documentation to establish the resolution of specific worthless check charges. (Tr. 62-64, 103.)

In February 2000, after separating from his second wife, Applicant was involved with a woman. She complained to police that Applicant was bothering her. Applicant was arrested and charged with Trespassing after Warning and Resisting and Opposing a Police Officer. He was found guilty of Trespassing After Warning and sentenced to two days of incarceration, with credit for two days served. The charge of resisting and opposing a police officer was *nolle prossed*. This conduct is alleged at SOR ¶ 1.g. (SOR; Ex. 16; Ex. 17; Tr. 66-68.)

Applicant denied any violence in the relationship with the girlfriend. He claimed that that the girlfriend initiated contact with him. He told the girlfriend that he did not want any more contact with her, and she reported to the police that he had contact with her. In March 2000, Applicant was arrested and charged with Trespass Occupy. He pled *nolo contendere*, was found guilty, and was sentenced to two days imprisonment. The court issued a restraining order forbidding Applicant to contact the girlfriend. Applicant's criminal conduct is alleged at SOR ¶ 1.j. (SOR; Ex. 19; Tr. 68-69.)

The SOR alleged at ¶ 1.i. that in October 2001, Applicant was arrested and charged with Violation of Injunction for Protection Against Domestic Violence. He was placed on probation, required to complete a first step program, and to have no contact with the girlfriend. Applicant took part in a domestic violence program, although he denied any violence in the relationship with the girlfriend. On August 13, 2002, Applicant completed the first step program, and January 9, 2003, his probation was terminated.

He has not been charged with domestic violence since 2001. Applicant's wife, who testified as a witness on his behalf, stated that during their five-year marriage, there had been no incidents of domestic violence. (SOR; Ex. 2; Ex. 17; Ex. 21 to Ex. 23; Ex. A; Ex. B; Tr. 69-72, 111-113, 130.)

Financial Considerations

Applicant is responsible for 14 unresolved delinquent debts. The SOR alleged at ¶ 2.a. that a creditor obtained a judgment against him for a \$958 debt to a computer company, and, as of April 7, 2009, the debt had not been paid. Applicant claimed he had satisfied the judgment in 2006. The judgment was listed on Applicant's credit report of April 9, 2009. At his hearing Applicant stated he intended to provide proof of payment in a post-hearing submission. However, he failed to do so. (SOR; Ex. 25; Tr. 75-76.)

The SOR alleged at ¶ 2.b. that Applicant owed a communications company \$311 on an account shown as past due on his April 7, 2009 credit report. The SOR alleged at ¶ 2.c. that he owed a telecommunications company a delinquent debt of \$161. Applicant stated that he had satisfied the \$311 debt in 2007 or 2008, and he stated that he had satisfied the \$161 debt at an unspecified time. He failed to provide documentation to establish that either debt had been satisfied. (SOR; Ex. 25; Tr. 76-77.)

The SOR alleged at ¶ 2.d. that Applicant owed a creditor \$636 on a delinquent debt in collection status. The debt was listed on Applicant's credit report of April 7, 2009. Applicant admitted the debt but did not know if it had been paid or otherwise satisfied. He stated he would try to provide documentation to establish the status of the debt, but he failed to provide documentation. (SOR; Ex. 25; Tr. 77-78.)

The SOR alleged at ¶ 2.e. that as of April 7, 2009, Applicant was making partial payments on his home mortgage. Applicant stated that he was late in paying his mortgage and unable to make full monthly payments because he had to allocate money to unexpected and expensive car repairs. He claimed he was renegotiating the amount of his home mortgage payments with the creditor and would provide documentation to corroborate the new mortgage payment plan. However, he failed to do so. (SOR; Ex. 25; Tr. 79-80.)

The SOR alleged at ¶ 2.f. that in 2002, a creditor had obtained a judgment against Applicant on a \$2,575 debt, and the judgment remained unsatisfied. Applicant claimed that the judgment was being satisfied through a \$50 allotment deducted each month from his military retirement pay. He also claimed that he had made payments totaling over \$1,600 on the debt. As a post-hearing submission, he provided a copy of his retirement pay monthly summary for January 4, 2010. The summary showed that two allotments of \$50 were deducted from Applicant's monthly retirement pay. However, neither allotment identified the creditor listed at SOR ¶ 2.f. (SOR; Ex. 26; Ex. J; Tr. 80-81.)

The SOR identified eight judgments of restitution ordered against Applicant in 2001 for property he acquired by writing worthless checks. The judgments of restitution and the amount Applicant was ordered to pay on each of them are as follows: SOR ¶¶ 2.g. (\$50); 2.h. (\$14); 2.i. (\$38.59); 2.j. (\$75); 2.k. (\$75); 2.l. (\$47.60); 2.m. (\$225); 2.n. (\$303.35.). Applicant did not know if the judgments of restitution had been satisfied. He stated that in 2001 he was going through financial and domestic stress. He stated he would try to obtain and provide documentation establishing that the judgments of restitution had been satisfied. However, he failed to do so. (SOR; Ex. 27; Ex. 28; Ex. 29; Ex.30; Ex. 31; Ex. 32; Ex. 33; Ex. 34; Tr. 81-83.)

The SOR cross-alleged under the financial consideration adjudicative guideline the financial criminal conduct alleged at ¶¶ 1.a. through 1.f.; ¶ 1.h.; ¶ 1.i.; and ¶ 1.k. (SOR ¶ 2.o.)

Applicant discussed his monthly budget at his hearing, and, as a post-hearing submission, he provided a current budget. His budget documents that his net monthly salary is \$3,135 and his wife's net monthly salary is \$1,600. Applicant also receives \$1,202 in military retirement pay. However, after taxes, deductions, and allotments² are subtracted, Applicant's net monthly retirement pay is approximately \$518. His net monthly income, then, is approximately \$5,253. (Ex. E; Ex. J; Tr. 84-85.)

Applicant listed the following monthly expenses: mortgage: \$2,900; groceries: \$450; clothing: \$150; utilities: \$380; car expenses: \$520; medical expenses: \$35; miscellaneous: \$389. His monthly household expenses total \$4,824. (Ex. E.)

Applicant reported that he and his wife pay \$395 each month on six current debts, five of which are credit card debts. The sixth debt identified on his payment list is the debt alleged at SOR ¶ 2.f. Applicant's budget shows that he pays \$50 a month on that debt. Applicant shows a net monthly remainder after expenses and debt payment of \$34. (Ex. E.)

Applicant listed real estate assets valued at \$220,000 and 401(k) plan balances for himself and his wife of approximately \$28,000. He has \$188 in his personal savings account. He supports his mother with an allotment of \$135 from his paycheck every two weeks. (Ex. E; Ex. G; Ex. I; Tr. 100-101, 121-122.)

Before he purchased his home in 2006, Applicant consulted a debt management firm. The firm provided him with a plan for resolving his debts. Applicant did not hire the firm to act on his behalf to resolve his debts because he concluded that the firm's fee was too high. However, he followed the debt management program and paid off some of his debts. (Tr. 101-102.)

² From his military retirement pay, Applicant authorized the following allotments: a \$35 health insurance premium, two discretionary payments of \$50 to creditors not identified in the SOR, and a loan payment of \$288 to a creditor not identified in the SOR. (Ex. J.)

Personal Conduct

Applicant was served with final judgments deriving from his eviction from four apartments for failure to pay rent. In September 1998, a final judgment was entered, giving a landlord the right to recover an apartment leased to Applicant. Applicant stated that this apartment had been occupied by his second wife, who shared occupancy of the apartment with her lover while he was on deployment. Applicant did not know about the lover, and he had provided his former wife with money to pay the rent, but she had not used the money for that purpose. When he returned from deployment, he learned that she no longer resided in the apartment and had not paid the rent for several months. The landlord took action to evict Applicant. The final judgment is alleged at SOR ¶ 3.d. (SOR; Ex. 38; Tr. 85-86.)

A year later, in November 1999, Applicant was again served with a final judgment of eviction entered against him for failure to honor his lease agreement. Applicant stated that he was filing for divorce from his second wife when he rented the apartment. He was paying legal fees, experiencing financial difficulties, and lacked sufficient funds to pay the rent. The final judgment is alleged at SOR ¶ 3.c. (SOR; Ex. 37; Tr. 88.)

In August 2000 and February 2001, another landlord twice obtained final judgments to evict Applicant from an apartment for failure to pay his rent and honor his lease agreement. These evictions also occurred when Applicant was experiencing financial difficulties. The final judgments authorizing the evictions are alleged at SOR ¶¶ 3.a. and 3.b. (SOR; Ex. 35; Ex. 36; Tr. 88-89.)

In June 2006, Applicant executed an SF-86. Section 23f on the SF-86 reads:

In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug-related.)

Applicant answered "No" to Section 23f. He did not disclose his 2000 and 2001 arrests, charges, citations, and convictions, which were alleged in SOR ¶¶ 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l. Applicant stated that he did not deliberately fail to list his 2000 and 2001 offenses. He stated that he thought the offenses had occurred more than seven years before 2006, and he therefore was not required to report them. (SOR; Ex. 1; Tr. 93-94.)

Section 27d on the SF-86 reads: "In the last 7 years, have you had any judgments against you that have not been paid?" Applicant answered "No" to Section 27d and did not disclose the judgments listed in SOR ¶¶ 2.a., 2.f., 2.g., 2.h., 2.i., 2.j., 2.k., 2.l., 2.m., and 2.n. When asked to explain his state of mind when he answered as he did, Applicant stated:

I did not know I had the judgments even in - - I didn't - - I did not know I had the judgments at that time. I just - - I thought that was part of what happened. I thought I - - I just didn't know I had those on me. It was so long ago. That's why I answered no.

(Ex. 1; Tr. 94-95.)

Section 29 on the SF-86 reads: "In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?" Applicant answered "No" to Section 29. He failed to disclose the civil judgments alleged at SOR ¶¶ 2.a., 2.f. through 2.n., and 3.a. through 3.d. Applicant stated that he did not disclose the civil judgments because "I did not know that it was there." (Ex. 1; Tr. 95.)

Applicant acknowledged that he had completed several security clearance applications in the 20 years that he had held a security clearance. He denied ever intentionally falsifying any information on a security clearance application. (Tr. 95-96.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion in seeking a favorable security decision.

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. The Government reposes a high degree of trust and confidence in 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 protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

Under the Criminal Conduct guideline “[c]riminal 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.” AG ¶ 30.

Applicant admits writing worthless checks to obtain property from 1996 to 2001. While he stated that some of the worthless checks were written by his second wife during his deployments, many were written after he retired from military service in 1998. In his answer to the SOR, he admitted all allegations of writing worthless checks. He provided documentation establishing that, in 2002, he was released from four months of probation to which he had been sentenced for obtaining property in exchange for worthless checks. He was released from probation because he had made restitution for some of the worthless checks. Applicant was unable to specify the specific checks or amounts that he had repaid in restitution.

In 2000, Applicant was arrested, found guilty of trespassing, and enjoined from contact with a woman who had complained of receiving unwanted attention from him. He was incarcerated for two days. In 2001, after contact with the woman again, he was arrested and charged with Violation of Injunction for Protection Against Domestic Violence. He was placed on probation, required to complete a first step program, and ordered to have no further contact with the woman. Applicant complied with the terms of his probation.

Applicant's criminal history raises concerns under AG ¶ 31(a) and AG ¶ 31(c). AG ¶ 31(a) reads: "a single serious crime or multiple lesser offenses." AG ¶ 31(c) reads: "allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

Two Criminal Conduct mitigating conditions might apply to Applicant's case. If "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," AG ¶ 32(a) might apply. If "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 involvement," then AG ¶ 32(d) might apply.

The record demonstrates that Applicant's criminal behavior between 1996 and 2001 was consequential. Even though some of the worthless checks were written by Applicant's second wife, Applicant acknowledged that he also wrote worthless checks during a time of domestic turmoil. Additionally, he demonstrated poor judgment by violating a protective order requested by a former girlfriend.

In 2002, Applicant completed court-ordered probation and provided restitution for some of the worthless checks he wrote. Additionally, in 2003, he also completed a court-ordered rehabilitative program that focused on preventing domestic violence. He has not been arrested or charged with any criminal behavior since his release from these two probations.

Applicant's criminal behavior occurred between 1986 and 2001, approximately nine to 14 years ago. During these years, Applicant was in volatile and stressful domestic relationships. His actions during those years demonstrated that he was unreliable, untrustworthy, and exercised poor judgment. Applicant participated in and completed two court-ordered probations. He made restitution for some of the worthless checks he wrote. He has not been involved in criminal conduct since 2001. I conclude that AG ¶¶ 32(a) and 32(d) apply in mitigation to the criminal conduct alleged in this case.

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. Additionally, AG ¶ 19(d) raises the following security concern: "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust." Although Applicant did not owe large amounts of consumer debt, he allowed old debt to accumulate and remain unsatisfied. He failed to provide documentation establishing that he had paid or settled his delinquent debts. His monthly financial shortfall prevented him from making full payment on his monthly mortgage obligation. Between 1996 and 2001, he wrote worthless checks, and he failed to provide documentation showing that he had satisfied eight judgments in restitution that were levied against him in 2001. This evidence is sufficient to raise the disqualifying conditions identified at AG ¶¶ 19(a), 19(c), and 19(d).

Guideline F also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d))

Applicant has a history of financial delinquency that dates to at least 1996. From 1996 to 2001, he was involved in two stressful domestic relationships. He provided

money and legal authority to his second wife to pay his debts when he was deployed in military service. She, however, was not trustworthy, failed to pay his debts, and wrote worthless checks. Applicant also wrote worthless checks. He served a court-directed probation and satisfied by restitution some debts he incurred by writing fraudulent checks. However, he failed to provide documentation establishing that he had satisfied four outstanding debts and eight judgments of restitution alleged in the SOR. He also failed to provide documentation about the status of his mortgage, which fell into arrears when he paid other debts in lieu of his mortgage.

Applicant testified that he had been paying the debt alleged at SOR ¶ 2.f. He provided some corroboration for his testimony that he had a payment plan in place with the creditor and had authorized a monthly allotment of \$50 from his military retirement pay to satisfy the debt. Accordingly, the allegation at SOR ¶ 2.f. is concluded for Applicant.

Applicant's domestic relationships between 1996 and 2001 were stressful and difficult. However, he did not respond reasonably to these circumstances when he wrote worthless checks and failed to satisfy his just debts. Although he now appears to be in a stable domestic situation, he was unable to provide documentation establishing that he had paid or satisfied most of his long-standing financial delinquencies. Moreover, his monthly budget suggests that he may be financially overextended. He has less than \$200 in his savings account and his net monthly remainder is about \$34. He did not appear to be attentive to his financial obligations or to have a clear plan for resolving them. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply in mitigation to the facts of Applicant's case. AG ¶ 20(e) does not apply to the facts of this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

From 1998 to 2001, Applicant failed to pay his rent, thereby causing his landlords to sue to evict him. Judgments were entered for the landlords four times, and Applicant was evicted.

When Applicant completed and certified his SF-86 in 2006, he failed to report, in response to Section 23, that he had been arrested for, or charged with, or convicted of criminal conduct as alleged in SOR ¶¶ 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l. He also failed to report, in response to Section 27, the unsatisfied judgments against him as alleged in SOR ¶¶ 2.a., and 2.f. through 2.n. Additionally, in response to Section 29 on the SF-86,

Applicant failed to disclose that he had been a party to public civil record court actions alleged in SOR ¶¶ 2.a., 2.f. through 2.n. and 3.a. through 3.d.

Applicant denied that his falsifications in his responses to Sections 23, 27 and 29 were deliberate. He said that he failed to report his criminal conduct in 2000 and 2001 because he thought the individual criminal acts had occurred more than seven years before he completed and certified his SF-86 in June 2006 and he was, therefore, not required to report them. He explained that he failed to report that he was party to public record civil cases because “I didn’t know that it was there.” He explained his failure to report any judgments levied against him as follows: “I did not know I had the judgments even in - - I didn’t - - I did not know I had the judgments at that time. I just - - I thought that was part of what happened. I thought I - - I just didn’t know I had those on me. It was so long ago. That’s why I answered no.”

The Guideline E allegations in the SOR raise a security concern under AG ¶¶ 16(a) and 16(d)(3). AG ¶ 16(a) reads: “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.” AG ¶ 16(d)(3) reads:

credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes, but is not limited to consideration of . . . (3) a pattern of dishonesty or rule violations.

Several Guideline mitigating conditions might apply to the facts of this case. Applicant’s disqualifying personal conduct might be mitigated under AG ¶ 17(a) if “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” If “the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security process” and “[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely,” then AG ¶ 17(b) might apply. If “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” then AG ¶ 17(c) might apply.

AG ¶ 17(d) might apply if “the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other

inappropriate behavior, and such behavior is unlikely to recur.” AG ¶ 17(e) might apply if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

Applicant’s failure to pay his rent at various times between 1998 and 2001 resulted in final judgments granting his landlords’ requests to evict him. Applicant’s failure to pay his rent is not recent, but it is a serious matter. Applicant is now a homeowner who has failed to pay, in full, his monthly mortgage payments. It is not clear at this time that Applicant’s failure to pay his housing obligations occurred under such unique circumstances that it is unlikely to recur. I conclude that AG ¶ 17(c) does not apply to the facts of this case.

The Appeal Board has cogently explained the process for analyzing falsification cases:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant is a mature adult who has, in the course of his employment in the military and as a government contractor, completed an SF-86 several times. He denied that he deliberately falsified his answers to Sections 23, 27, and 29. However, he failed to give coherent credible reasons for providing “No” answers to the questions in the three sections.

Applicant falsified material facts on the SF-86 that he executed and certified as true in June 2006. Nothing in the record suggests that he took prompt good faith action to correct the omissions, concealments or falsifications before he was confronted with the facts. (AG ¶ 17(a).) Nothing in the record suggests that his failure to report his criminal behavior was caused or significantly contributed to by improper or inadequate advice specifically about the security clearance process from authorized individuals or legal counsel. (AG ¶ 17(b).) When he executed his security clearance application, Applicant knew he had a record of criminal behavior. As a mature adult, he knew that his criminal behavior was not minor, so remote in time, so infrequent, or had occurred under such unique circumstances that it would not seriously impact his eligibility for a security clearance. (AG 17(c).) Applicant failed to provide documentation that he

obtained counseling or had taken other positive steps that might alleviate the circumstances that caused his unreliable conduct and, as a result, such behavior was unlikely to recur. (AG ¶ 17(d).) Nothing in the record suggests that Applicant took positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress that his behavior caused. (AG ¶ 17(e).) I conclude, therefore, that none of the applicable personal conduct mitigating conditions applies to the facts of Applicant's case.

I observed Applicant carefully at his hearing, and I listened to his explanations of his state of mind at the time the falsifications occurred. I conclude that he failed to carry his burden of persuasion to rebut the Government's prima facie case under Guideline E. I conclude that his falsifications to his answers to Sections 23, 27, and 29 were deliberate.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his or her conduct and all relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult. After two volatile domestic relationships, he now appears to be in a mature and stable marriage. This suggests some successful rehabilitation.

However, the delinquent debts alleged in the SOR remain unresolved. Applicant has had difficulty meeting his monthly mortgage payments, and his net monthly remainder appears to be \$34. When he completed his SF-86 in June 2006, Applicant deliberately falsified material facts when he answered sections 23, 27, and 29. His failure to honestly report his past criminal behavior and his financial record create a situation that could seriously mislead the government about his honesty, reliability, and trustworthiness. His falsifications were not minor: they went to the heart of his capacity

for truthfulness, a critical qualification for one who would hold a security clearance. Applicant's failure to be truthful was deliberate. He made no effort to correct his falsifications before the government confronted him with his lack of candor. His deliberate falsifications are recent.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that while Applicant's criminal conduct was mitigated by the passage of time, he failed to mitigate the security concerns arising from his financial delinquencies and personal conduct.

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 J:	FOR APPLICANT
Subparagraphs 1.a. - 1.l.:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a. - 2.e.:	Against Applicant
Subparagraph 2.f.:	For Applicant
Subparagraphs 2.g. – 2.o.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. - 3.g.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge