



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-14683
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

February 17, 2010

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct), J (Criminal Conduct), and F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on December 6, 2006. On July 30, 2009, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines E and J. 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) promulgated by the President on December 29, 2005.

Applicant received the SOR on August 3, 2009; answered it on August 17, 2009; and requested a hearing before an administrative judge. DOHA received the request on August 24, 2009. On September 10, 2009, DOHA sent Applicant a supplemental statement of reasons (captioned as an amendment), citing security concerns under Guideline F. Applicant responded by facsimile transmission on September 29, 2009.

Department Counsel was ready to proceed on October 16, 2009, and the case was assigned to me on October 20, 2009. DOHA issued a notice of hearing on October 27, 2009, scheduling the hearing for November 17, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until December 4, 2009, to permit Applicant to submit additional documentary evidence. He timely submitted AX C, D, and E, which were admitted without objection. Department Counsel's response to AX C, D, and E is attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on November 25, 2009.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, 1.g, and 3.b. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 29-year-old drawing clerk employed by a defense contractor since July 2006. He is responsible for handling ship drawings. He graduated from high school in June 1998, and then attended college from August 1998 until December 2004 on a football scholarship. He did not receive a degree. After four years his scholarship ended, and he could not afford to complete his degree requirements (Tr. 45). He recently was accepted at a local university, where he intends to earn the 18 credit hours he needs to obtain a degree (Tr. 42-43). He underwent a background check as a condition of employment in an airport mailroom in June 2000, but he has never held a security clearance.

Applicant was married in July 2009, and he has a son who was born in August 2009 (Tr. 40-41). His spouse is an industrial engineer working at a naval base (Tr. 41).

In July 2002, while in college, Applicant was arrested and charged with maintaining a dwelling place for the sale of marijuana, possession of marijuana, and selling or delivering marijuana, all felonies (GX 8 at 4). Applicant told a security investigator that his arrest occurred as a result of sharing an apartment with two roommates, one of whom was selling marijuana. The apartment lease was in Applicant's name, but his roommates contributed to the rent (Tr. 89-91). His arrest occurred after his two roommates moved out of the apartment and was based on information from an undercover police officer who had purchased marijuana from Applicant's roommate. Applicant admitted to a security investigator that he was present in the apartment when his roommate sold the marijuana to the undercover police officer

(GX 4 at 4). At the hearing, he testified that he witnessed two or three other marijuana sales (Tr. 86). He has had no contact with his marijuana-selling former roommate since 2002 (Tr. 94).

Applicant pleaded guilty to one misdemeanor count of selling marijuana, on the advice of his attorney, and in accordance with a plea agreement. The other charges were dismissed. He was placed on unsupervised probation for six months, fined about \$300, required to perform 75 hours of community service, and required to attend alcohol and drug awareness classes. He paid the fine, served his community service, attended the classes, and completed his probation (GX 2 at 5).

At the hearing, Applicant insisted that he was not guilty of selling marijuana. He testified he trusted his lawyer, who assured him that if he pleaded guilty to a misdemeanor the conviction would be stricken from his record after he completed his community service (Tr. 95-96).

In June 2004, Applicant was arrested and charged with carrying a concealed weapon and possession of marijuana. He told a security investigator he was driving his roommate's car when he was stopped by police while leaving a known drug-trafficking area. When he was stopped, he removed his pistol from the glove box and placed it in plain view. The police found a small quantity of marijuana in the trunk. Applicant told the investigator that all charges were dismissed and his pistol was returned to him (GX 2 at 6). The court records reflect that Applicant appeared in court *pro se*, pleaded not guilty to the marijuana charge and was acquitted. The court records also reflect that he pleaded guilty to the weapon offense. Two "findings" boxes are checked, one indicating he was convicted of the weapon offense and one indicating he was acquitted. His pistol, which was properly registered, was returned to him (GX 7).

Although the court records reflect that Applicant pleaded guilty to the weapon offense in 2004, he testified at the hearing that he did not plead guilty. He testified he did not understand why his weapon would have been returned to him if he had pleaded guilty and had been convicted (Tr. 102, 104, 109).

When Applicant submitted his security clearance application in December 2006, he disclosed an arrest for carrying a concealed weapon in August 2000, but he did not disclose his arrest for carrying a concealed weapon in June 2004. At the hearing, he testified he had only one weapon-related arrest and that it occurred in 2004. He testified that the date of his arrest reflected on his security clearance application was incorrect, as a result of his negligence (Tr. 97, 101).

On the same security clearance application, Applicant answered "no" to question 23d, asking if he had ever been charged with or convicted of any offense related to alcohol or drugs. He did not disclose the marijuana-related charges in 2002 and 2004. He testified he did not disclose the charges and conviction in 2002 because his lawyer informed him that they would not be on his record (Tr. 97-98), but he offered no

explanation for not disclosing that he was charged with possession of marijuana in 2004.

Applicant also answered “no” to question 24a, asking if he had ever illegally used any controlled substance since the age of 16 or in the last seven years. On October 30, 2008, he executed a sworn affidavit containing the substance of an interview with a security investigator (GX 4 at 6-8). The affidavit was handwritten by the investigator (Tr. 114). Applicant initialed each page, and he signed and swore to its contents on the last page. The affidavit includes the following description of his previous marijuana use:

Since I was 15 or 16 years old I smoked marijuana on the weekends or at parties socially. I would spend about \$40.00/month for my marijuana social usage. I have never sold, transported or distributed marijuana or any other illegal drug. Since the visit & finger printing at the [redacted] Police States in 2002 I have not used marijuana, bought marijuana or any other illegal substance. I had stopped smoking marijuana even before going to court in 2002 and pleading guilty. I have not and will not smoke marijuana or any other drug in the present or future.

Since 2002 I realized my immaturity with smoking marijuana and the type of friends, roommates and company I kept. I have since grown up, went on the play football, professionally and surrounded myself with better people and friends. There is no drug usage or selling in my current or future life.

Applicant’s affidavit was the basis for the allegation in SOR ¶ 2.c that he falsified his security clearance application by deliberately failing to disclose marijuana use within the last seven years of submitting the application. At the hearing, he testified the affidavit summarized the results of several interviews. He denied telling the investigators that he used marijuana until 2002. He testified that he stopped using marijuana while he was in middle school. He stated that he did not use it in high school and college, because it was inconsistent with being a good athlete and he was subject to random drug tests (Tr. 125-28).

Applicant also disputed the implication in the affidavit that he used marijuana regularly. He testified he meant to say only that he used marijuana more than once (Tr. 124-25).

In response to questions on his security clearance application about financial delinquencies, Applicant disclosed a \$600 student loan that had been more than 180 days delinquent, but he stated on his application that the loan was satisfied. His credit report dated September 10, 2009, reflected an unpaid medical bill for \$143, with last activity in July 2006, and numerous student loans referred for collection and totaling about \$40,134 (GX 10). He admitted he owed the medical bill. In response to DOHA interrogatories in May 2008, he responded that he had called the doctor’s office and set a date to pay the bill in full. He testified that the bill is from his regular doctor, but as of

the date of the hearing the bill remained unpaid, because he had not had an occasion to visit his doctor (Tr. 57).

Applicant testified the student loans were obtained by his parents on his behalf. Initially, he did not make any payments on the loans because he thought it was unfair for his parents to expect him to make payments on a loan they obtained for him (Tr. 33). He testified he eventually made a \$50 payment because his mother was “on [his] back.” After the hearing, he presented documentary evidence of a \$40.19 payment in May 2008, followed by regular payments from December 2008 through August 2009. As of October 31, 2009, his balance was \$36,095 (Tr. 64; AX D at 2). He testified his monthly payments on the student loans are deducted automatically from his checking account (Tr. 62). His student loan payments are now current. He testified he has requested that payments be deferred for two months, and he will then continue making payments of \$175 per month (Tr. 34). His employer will reimburse him for his college expenses when he returns to school (Tr. 71-72).

In February 2007, Applicant was working aboard an aircraft carrier and had an interim confidential clearance. His supervisor instructed him to retrieve ship’s drawings from a classified vault, not realizing that he was not cleared to enter that vault. Applicant retrieved the drawings as ordered. A subsequent investigation determined that no classified material was lost or unaccounted for, but the possibility of compromise could not be ruled out. Applicant was required to undergo additional security training, but he was not otherwise disciplined. The record does not reflect what action, if any, was taken against his supervisor (GX 9).

Applicant and his spouse recently bought a house for about \$205,000, on which the monthly payments are about \$1,500 (Tr. 42). According to a budget he submitted after the hearing, he and his spouse have a total net monthly income of about \$4,400 and expenses of \$3,628, leaving a net remainder of about \$872 (AX E). The budget does not specifically reflect any payments on the student loans.

## **Policies**

“[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An

administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline E, Personal Conduct**

The SOR alleges Applicant's two arrests in July 2002 and June 2004 (SOR ¶¶ 1.a and 1.b). It also alleges he falsified his security clearance application by deliberately failing to disclose a firearms offense, drug-related charges in July 2002 and June 2004, marijuana use, and a conviction of selling marijuana in 2002 (SOR ¶¶ 1.c-1.f). Finally, it

alleges that he entered a restricted area in February 2007 without the requisite security clearance (SOR ¶ 1.g).

The concern under this guideline is set out in AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The disqualifying condition relevant to the allegations of falsification is AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire). When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant was a mature, well-educated adult when he submitted his security clearance application, but he had no previous experience with the security clearance process. He admitted that he was negligent in completing the form, but negligence does not constitute deliberate falsification. I am satisfied that his response to question 23b, asking about firearms offenses, was the product of negligence. The court records reflect only one firearms offense, and it occurred in 2004, not 2000 as reported by Applicant. AG ¶ 16(a) is not applicable to his answer to question 23b.

Applicant answered "no" to question 23d, asking about drug-related charges, and he did not disclose his arrests in July 2002 and June 2004. His explanation for not disclosing the arrest and conviction in 2002 was that he relied on his attorney's assurance that they would be stricken from his record. He did not explain why he did not disclose that he had been charged with possession of marijuana in 2004. He did not explain why he did not follow the guidance on the application to report charges as well as convictions and to "report information regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record." I conclude AG ¶ 16(a) is raised by his answer to question 23d.

Applicant answered "no" to question 24, asking if he had illegally used any controlled substance during the seven years preceding his application. He disputed the accuracy of an affidavit suggesting that he continued to use marijuana until 2002, even though he initialed, signed, and swore to the accuracy of the affidavit. After considering all the evidence and observing Applicant's demeanor at the hearing, I am satisfied that he did not intend to admit regularly using marijuana until 2002. I am also satisfied that he refrained from using it while playing college football and thereafter. His failure to challenge the accuracy of the affidavit when he swore to it is consistent with his

negligent execution of his security clearance application, as demonstrated by his incorrect response to question 23b and inaccurate reporting of his student loans. I conclude AG ¶ 16(a) is not applicable to his answer to question 24.

The disqualifying conditions relevant to Applicant's arrests and convictions in July 2002 and June 2004 and his security violation in February 2007 are as follows:

AG 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

AG 16(d): 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 . . . a pattern of dishonesty or rule violations;

AG 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing; and

AG 16(g): association with persons involved in criminal activity.

The evidence reflects that Applicant used marijuana in high school, that he tolerated his college roommate's drug dealing in his house, that he pleaded guilty to selling marijuana in July 2002, that he was convicted of a concealed weapon offense in June 2004, and that he was involved in a security violation in February 2007. I am satisfied that the security violation was inadvertent and the product of Applicant's compliant personality and his supervisor's negligence. However, the remaining conduct is sufficient to raise all the above disqualifying conditions.

Applicant's association with persons involved in criminal activity, i.e., his drug-dealing roommate, was not specifically alleged in the SOR. I have considered this conduct for the limited purpose of deciding which adjudicative guidelines are applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether Applicant has demonstrated successful rehabilitation; and as part of my whole-



person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 16(a), (c), (d), (e), and (g), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns raised by falsification of a security clearance questionnaire may be mitigated if “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” AG ¶ 17(a). Applicant submitted the questionnaire in December 2006. He did not disclose his July 2002 arrest and conviction or correct the date of his concealed weapon offense until he was interviewed by a security investigator and confronted with the evidence in August 2007. This mitigating condition is not established.

Security concerns based on personal conduct may be mitigated 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.” AG ¶ 17(c). Several of Applicant's offenses were serious. He was arrested for felonies in 2002 and 2004, and his falsification of his security questionnaire was a felony, as discussed below under Guideline J. His misconduct was not infrequent, and it did not occur under unique circumstances.

The second prong of AG ¶ 17(c) (“so much time has passed”) focuses on whether the conduct was recent. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's last arrest was in June 2004. The security violation in February 2007 was inadvertent and largely the fault of his supervisor. Since his arrest for carrying a concealed weapon, he has married, become a father, and bought a home. He is financially secure. On the other hand, he has allowed his student loans to become delinquent, falsified his security clearance questionnaire, and ignored a financial obligation to his doctor. After considering all the evidence, I am not satisfied that he has demonstrated reform or rehabilitation. Accordingly, I conclude AG ¶ 17(c) is not established.

Security concerns based on personal conduct also may be mitigated 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(d). This mitigating condition is established for Applicant’s drug-related conduct, but not the weapon offense or his falsifications. He completed the court-ordered counseling, no longer associates with drug dealers, and does not use illegal drugs.

Security concerns may be mitigated if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e). The record does not reflect the extent to which Applicant has disclosed his criminal record to supervisors, coworkers, and family. His failure to fully disclose it on his security clearance application suggests less than full disclosure. I conclude this mitigating condition is not established.

Finally, security concerns may be mitigated if “association with persons involved in criminal activity has ceased.” AG ¶ 17(g). This mitigating condition is established because Applicant has no contact with his former roommate who sold drugs.

## **Guideline J, Criminal Conduct**

Paragraph 2.a of the SOR cross-alleges the conduct in SOR ¶¶ 1.a and 1.b as criminal conduct. Paragraph 2.b cross-alleges the falsifications alleged in SOR ¶ 1.c-1.f as felonies in violation of 18 U.S.C. § 1001.

The concern raised by criminal conduct is that it “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. Conditions that could raise a security concern and may be disqualifying include “a single serious crime or multiple lesser offenses” and “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.” AG ¶¶ 31(a) and (c).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the government of the United States. A deliberately false answer on a security clearance application is a serious crime within the meaning of Guideline J. Applicant’s arrests and convictions in July 2002 and June 2004, and his false answer to question 23d on his security questionnaire are sufficient to raise the disqualifying conditions in AG ¶ 31(a) and (c), shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns under this guideline may be mitigated 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). Security concerns also may be mitigated 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 community involvement.” AG ¶ 32(d). For the reasons set out above in my discussion of Guideline E, I conclude that neither of these mitigating conditions is established. None of the other enumerated mitigating conditions under this guideline are applicable.

## **Guideline F, Financial Considerations**

The SOR alleges unresolved student loans totaling about \$40,134 (SOR ¶ 3.a) and a delinquent medical bill for \$143 (SOR ¶ 3.b). The concern under this guideline is set out in AG ¶ 18 as follows:

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 evidence shows that Applicant allowed his student loans to become delinquent because he disagreed with his family about his obligation to pay them. It also shows that he owes his doctor \$143 and has repeatedly promised to pay the debt, but he had not done so by the time the record closed.

Applicant apparently is financially secure. He was unwilling to repay his student loans until he was cajoled into paying them by his mother in May 2008. He has simply neglected to pay his doctor bill. His conduct raises two disqualifying conditions under this guideline: AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

Security concerns based on financial problems can be mitigated by showing that “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” AG ¶ 20(a). Applicant’s debts are recent and one remains unresolved. Only two debts are involved. They did not arise under circumstances making them unlikely to recur. The student loans apparently are current, thereby reducing Applicant’s vulnerability to pressure or the temptation to engage in illegal acts to generate funds. The small amount involved in the medical bill (\$143) is not likely to make him vulnerable to pressure or to engage in illegal acts, but

Applicant's disregard of his obligation to pay it casts doubt on his reliability and trustworthiness. I conclude AG ¶ 20(a) is not established.

Security concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(b). This mitigating condition is not applicable because there is no evidence that the debts arose because of conditions beyond Applicant's control.

Security concerns under this guideline also can be mitigated by showing that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." AG ¶ 20(c). This mitigating condition is not applicable because there is no evidence of financial counseling and the medical debt is not resolved.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). This mitigating condition is established for Applicant's student loans but not for the medical debt.

Security concerns under this guideline also can be mitigated by showing "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." AG ¶ 20(e). This mitigating condition is not applicable because Applicant has admitted the debts.

### **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 the applicant's conduct and all the relevant circumstances. An 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 have incorporated my comments under Guidelines E, J, and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is a mature, well-educated adult. He made some bad decisions in college and early adulthood. He pleaded guilty in July 2002 because he was concerned about his criminal record, and his concern carried over to his falsification of his security clearance application. He demonstrated a lack of a sense of obligation regarding his student loans and the medical bill. He may have turned the corner with his recent marriage and fatherhood, but it is too soon to determine whether he has left his irresponsible lifestyle behind.

After weighing the disqualifying and mitigating conditions under Guidelines E, J, and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on personal conduct, criminal conduct, and financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant

## **Conclusion**

In light of all of the circumstances, 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.

LeRoy F. Foreman  
Administrative Judge