DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
-------------------------	)	ISCR Case No. 08-00070
SSN: -----------------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel F. Crowley, Esquire, Chief Department Counsel
For Applicant: *Pro se*

February 6, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 18, 2007. On July 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F and Guideline E that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant acknowledged receipt of the SOR on August 5, 2008. He answered the SOR allegations in writing on September 12, 2008, and requested a hearing. The case was assigned to me on November 12, 2008, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security

clearance for Applicant. On November 13, 2008, I scheduled a hearing for December 1, 2008.

The parties appeared as scheduled. Ten government exhibits (Ex. 1-10) and one Applicant exhibit (Ex. A) were admitted. Applicant and the older of his two sons testified, as reflected in a transcript received on December 10, 2008. Based upon a review of the SOR, Answer, transcript, and documentary exhibits, eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that following an October 2004 Chapter 7 bankruptcy discharge, Applicant's case was reopened in May 2005 for failure to disclose an annuity and his discharge was revoked in July 2006 with the case still open as of June 2008 (SOR ¶ 1.a); that Applicant filed a Chapter 13 bankruptcy petition in November 2004, but his case was dismissed in April 2005 (SOR ¶ 1.b); and that Applicant owes several delinquent debts totaling $13,983 (SOR ¶¶ 1.c-1.r). Under Guideline E, Applicant was alleged to have deliberately falsified his May 2007 e-QIP by failing to disclose his Chapter 13 bankruptcy filing and by misrepresenting that his 2004 Chapter 7 bankruptcy case was closed (SOR ¶ 2.a). Applicant admitted the Chapter 7 bankruptcy filing and the revocation of the discharge, but denied the case was still open. He admitted the Chapter 13 filing and its dismissal, as well as the debts alleged with the exception of SOR ¶ 1.m. He explained that he was seeking to consolidate his debts. Applicant denied that he deliberately falsified his e-QIP. After considering the evidence of record, I make the following findings of fact.

Applicant is a 60-year-old electrical tester, who has worked for his current employer, a defense contractor, since May 1972 (Ex. 1, Tr. 61). He seeks to retain the secret-level security clearance that he has held for the past 33 years (Tr. 61, 159). It was last renewed in May 1996 by the Defense Industrial Security Clearance Office (DISCO) (Exs. 1, 7).

Applicant was married to his first wife from September 1972 to about October 1981 (Ex. 1, Tr. 71-72). In August 1988, he married his second wife, from whom he is now divorced (Tr. 79). They had three children together, a son before their marriage in February 1988, a daughter in July 1989, and another son in January 1993 (Ex. 1, Tr. 73). She worked outside the home, initially for a local law firm and then as a secretary/medical records clerk at a medical center (Tr. 75-77). Applicant's spouse handled the family's finances. He turned over all but $50 of his pay to her each week (Tr. 90). They financed their home a couple of times for the funds to cover their financial obligations (Tr. 91).

In late January 1999, Applicant's spouse suffered a traumatic brain injury from a fall down their basement stairs (Tr. 77). Following brain surgery and a lengthy hospitalization of three or four months and then rehabilitation (Tr. 80-81), she was unable to work and the responsibility of providing for her and the children fell on him. In April 1999, Applicant was legally appointed to act on behalf of his spouse and her estate

(Ex. 2, Tr. 61-62). He had medical insurance that covered most of her care, although he incurred a debt obligation of about $1,790 with one health care provider for her care (Ex. 8, Tr. 80). She received social security disability payments of $1,000 per month that Applicant put toward their bills (Tr. 80, 83). He began receiving notices from creditors concerning debts that he could not pay, including some debts that his spouse had incurred before her injury without his knowledge (Tr. 61-62). He earned gross income of $34,331 for 2002 and $33,257 for 2003 (Ex. 8). Applicant's spouse eventually went to live with her mother ("Her mother basically took her away.") (Tr. 83-86),[1] and the probate court removed Applicant as conservator (Tr. 89). Their children remained with him (Tr. 67). He had to do without her disability pay (Tr. 80), but continued to receive $1,000 a month in annuity payments from an insurance settlement from a motorcycle accident in 1985 (Ex. 10).

Facing foreclosure of his $91,200 mortgage on the home he bought for $147,000 in June 2002 (Exs. 4, 8), and with his wages subject to two garnishment orders issued in January 2004 to collect debts of $10,352.57 and $1,129.35 (Ex. 7), Applicant filed an individual petition for Chapter 7 bankruptcy on July 26, 2004, listing $203,138.17 in liabilities ($120,501.80 in secured claims and $82,636.37 in unsecured debt). Applicant listed as assets his residence and $18,025 in personal property ($1,000 in miscellaneous household goods, $5,000 retirement pension, and two 1996 model-year vehicles with market value totaling $12,025). He indicated his intent to retain his home and one of the vehicles, on which he would continue to make regular payments. The property was encumbered by liens filed against him for unpaid property taxes of $4,194, and unpaid judgments of $8,485.46 and $920 from December 2003 (Ex. 8).[2] He did not list his $1,000 monthly annuity payments on his bankruptcy petition (Tr. 97).[3] On September 15, 2004, the trustee filed a no distribution report, and on October 25, 2004, Applicant was granted a Chapter 7 discharge (Ex. 8).

On December 10, 2004, Applicant filed for Chapter 13 bankruptcy listing $155,625 in assets (his home, $1,000 in miscellaneous household goods, and the value of the vehicle he retained in the Chapter 7 bankruptcy), and $111,702.79 in liabilities (secured claims that did not include the judgment liens avoided in the Chapter 7 bankruptcy). He listed no unsecured debt, but included the $1,000 monthly annuity income on the advice of his attorney to show that he had the income to make payments under a plan (Ex. 10, Tr. 64, 99). Current income and expense figures showed discretionary funds of $1,468.15 per month with $0.00 to be paid into the plan each

[1]There is conflicting evidence as to when Applicant's spouse went to live with her mother. Applicant gave a separation date of June 2001 on his e-QIP (Ex. 1), and his son testified that she left them about seven years ago (Tr. 153). However, Applicant testified that his spouse resided with them for about a year in a home that he purchased in 2002 (Tr. 85, *see* also Ex. 8). He told a government investigator in August 2007 that his spouse left in 2002 (Ex. 2).

[2]In October 2004, on Applicant's motion, the bankruptcy court ordered that the judgment liens that could impair his exemption were avoided, but that should his bankruptcy case be dismissed, they would be reinstated (Ex. 8).

[3]The annuity was from an insurance settlement with the payout at $1,000 per month for 20 years (Tr. 71).

week. On January 22, 2005, Applicant filed an amendment to the plan, indicating that he would pay $530.86 monthly to the trustee for 60 months to repay a mortgage arrearage of $21,866.83, $3,268.53 in local real estate taxes, $1,130 on his auto loan, and $411.82 in delinquent water/sewer charges. (Ex. 10). After living through the winter with a broken furnace in his residence (Tr. 94), and with the lender threatening foreclosure, Applicant sold his house in about June 2005, and the mortgage was paid off (Ex. 2, Ex. 5). He and his children moved into a small apartment (Tr. 94).

On April 5, 2005, the trustee for the Chapter 7 bankruptcy moved to reopen the Chapter 7 case on being informed by the Chapter 13 trustee of the $1,000 monthly annuity payments that Applicant had not disclosed (Ex. 8). On April 29, 2005, the Chapter 13 case was dismissed (Ex. 10), and on May 4, 2005, the Chapter 7 case was reopened. On May 17, 2005, Applicant filed an amended Schedule B including the annuity worth $26,285, and seeking to exempt that annuity. On May 26, 2005, the trustee moved to revoke Applicant's Chapter 7 discharge for fraudulent concealment of the annuity on his initial filing and for failure to report it during a meeting of the creditors. On July 14, 2005, $1,782.26 in pre-confirmation payments from the Chapter 13 filing were transferred to the Chapter 7 trustee, and Applicant's monthly annuity began to be paid directly to the trustee as well. On July 26, 2005, Applicant was ordered to turn over $10,217.74 to the trustee (the amount of his annuity payments received after the filing of the bankruptcy) for asset distribution as well as any future annuity payments. Applicant did not comply and he was ordered to appear to show cause why he should not be held in contempt (Ex. 8).[4]

On April 25, 2006, Applicant notified the government of the revocation of his Chapter 7 discharge:

> I did not disclose an annuity I had at this period in time and the bankruptcy for Chapter seven was denied! The trustee in charge, [name omitted] in response to this took claim of my annuity. At a specified time he wanted my annuity payments each month which I did not acknowledge he wanted immediately the monthly payments I was receiving. This amount totaled to $10,000. He is now looking to some way of getting this money through the court system. . . . (Ex. 7).

On May 28, 2006, Applicant offered to settle claims against him by waiving his Chapter 7 discharge and assigning his federal income tax refund to the trustee. On June 26, 2006, the court approved the settlement, and on July 5, 2006, his Chapter 7 discharge was revoked. On March 16, 2007, Applicant turned over his $4,708.05 tax refund to the trustee. After a final receipt of $15,000 in annuity proceeds from the insurer, the trustee submitted a report in December 2007 showing disbursement of $60.10 and a balance of $49,713.48 ($49,490.31 in annuity proceeds) for distribution to

[4]Applicant maintains that he did not realize that the bankruptcy attorney expected him to hand over his monthly annuity on its receipt. He used the annuity funds to pay his monthly expenses (Tr. 155).

five of the seven of Applicant's creditors that had filed claims under the plan.[5] One claim had been disallowed and the other had been withdrawn by the collection agency as a duplicate of an allowed claim. On February 12, 2008, the trustee filed a final distribution report.[6]

For a periodic reinvestigation into his security clearance, Applicant executed an e-QIP on May 18, 2007. In response to question 27.a, "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?," Applicant disclosed that he had filed for Chapter 7 bankruptcy in about October 2004, but it was denied and his case was now closed. He did not list his Chapter 13 bankruptcy filing. He answered "Yes" to questions 27.b concerning any garnishment of his wages in the last 7 years and 27.d concerning any unpaid judgments against him in the last 7 years, and listed a $100 garnishment of his wages by a furniture company. Applicant also responded "Yes" to the financial delinquency inquiries, 28.a. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28.b. "Are you currently over 90 days delinquent on any debt(s)?". He listed the debts in SOR ¶¶ 1.l (but claimed his son was responsible), 1.m, 1.o, 1.p, and 1.q.

A check of Applicant's credit on March 22, 2007, revealed two unpaid medical judgments of $919 (SOR ¶ 1.e) and $1,825 (SOR ¶ 1.f) from 2003, and outstanding delinquent balances on six accounts (SOR ¶¶ 1.c, 1.d, 1.h, 1.g, 1.h, and 1.k). Additional debt had either been transferred or was listed as included in his Chapter 7 bankruptcy, which was reported as discharged in October 2004 (Ex. 3). A check of the three credit bureaus on June 15, 2007, revealed additional past due balances (SOR ¶¶ 1.n, 1.p, and 1.q) placed for collection since November 2006 (Ex. 4).

On July 5, 2007, Applicant was interviewed by a government investigator about the garnishments of his wages and his bankruptcy filings. Applicant indicated the garnishments were lifted when he filed for Chapter 7 bankruptcy. Applicant related a discharge was granted in October or November 2004, but when questioned further he admitted that the Chapter 13 filing had been dismissed and his Chapter 7 case reopened for failure to include his annuity payment in his income. Applicant indicated he was unaware of what he owed or to whom he owed it. He was requested to return with financial information. Ten days later, Applicant presented income information only and was unable or unwilling to provide any detail as to his indebtedness (Ex. 2).

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[5]The five debts are the $919 judgment debt in SOR ¶ 1.e, $2,497.14 to the same creditor owed the debt in ¶ 1.j, credit card debts of $7,491.68 and $2,626.93 (not alleged), and $30,499.83 ($30,126.37 proposed payment) to a creditor not identified in the SOR or in the available credit reports. The creditor in SOR ¶ 1.g filed a personal property claim for $988.59 that was disallowed by the trustee. It appears to have been a charged off balance on the automobile loan for the vehicle Applicant reaffirmed in the bankruptcy. The collection agency named in SOR ¶ 1.c filed a claim for $7,491.68 that it later withdrew because the original creditor filed a claim for the same amount that was allowed. This debt was not shown to be a duplicate debt of SOR ¶ 1.c (Ex. 8).

[6]Only the court docket entry indicating the date of the final distribution report was available for review. The distribution report itself was not included in Exhibit 8.

Applicant was reinterviewed on August 28, 2007. Concerning the $1,825 medical judgment (SOR ¶ 1.f) for which he was reported to be solely liable, Applicant explained that his spouse was responsible for her own medical bills since he no longer had power of attorney. He did not intend to satisfy the debt. He claimed no knowledge of the other medical judgment (SOR ¶ 1.e). He admitted he owed a dental debt of about $90 (SOR ¶ 1.k), an unknown collection balance on the furniture debt listed on his e-QIP (not alleged), about $1,100 on an automobile loan delinquent since 2002 (SOR ¶ 1.g), and about $500 in delinquent debt for residential telephone services (SOR ¶ 1.h). He thought an outstanding gas debt for his home (SOR ¶ 1.j) had been paid by the state's department of children and family services. He expressed a willingness but present inability to repay his debts, as he was still struggling to regain his financial footing (Ex. 2).

A $100 medical debt from July 2007 was placed for collection the following month (SOR ¶ 1.r). In October 2007, Applicant financed the purchase of a vehicle through a loan of $9,898 to be repaid at $236 per month (Ex. 6). Applicant took out a loan against his 401(k) of $2,000 for the down payment. He is repaying the loan at $50 per week (Tr. 124, 131). In response to interrogatories from DOHA, Applicant obtained his credit report on February 24, 2008, which listed the unpaid judgments in SOR ¶¶ 1.e and 1.f, and the unpaid balances in SOR ¶¶ 1.g, 1.i, 1.k, 1.n, and 1.q (Ex. 2). Applicant received an income tax refund of between $5,000 and $6,000 for 2007 that he used to catch up on his bills and for household expenses (Tr. 139-40).

In early fall 2008, the engine burned up in the vehicle Applicant had purchased in October 2007. He owes about $6,800 on the vehicle loan (Tr. 124-25). Although he still had the 1996 model-year vehicle that he had reaffirmed in the Chapter 7 bankruptcy, it needed tires (Tr. 124), so he took some proceeds from the sale of his mother's home on her death and bought a 1997-model year vehicle for $4,000 to $4,200 cash (Tr. 131-34).

As of early December 2008, Applicant had not shown any progress toward resolving the debts in the SOR or other accounts that could potentially be pursued due to the discharge being revoked (Ex. 5, 6), with the exception of the debt in SOR ¶ 1.e.[7] Applicant is still not sure about what he owes (Tr. 102), although he recognized as likely debts those alleged in SOR ¶¶ 1.e, 1.g, 1.h, 1.k, 1.l, 1.n, 1.o, 1.q, and 1.r (Tr. 101-15). He expressed his belief that the debts in SOR ¶ 1.j, 1.m, and 1.p had been paid (Tr. 109-10, 113), although he submitted no proof of the debts' satisfaction. He indicated he would "be more than happy to try to get a hold of a debt solutions facility or something, if need be, and to satisfy the government and what not, and try to start making payments on whatever is owed." (Tr. 103). He had not pursued debt consolidation because he "was hoping to find out exactly where [he] stood with the investigation here, as far as what was owed. . . ." (Tr. 137).

Applicant's monthly income is $2,580 ($2,000 wages and $580 in social security benefits for his younger son) (Tr. 116-18). He had received social security benefits for

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[7]Several of the debts were included on his bankruptcy petition (SOR ¶¶ 1.c, 1.d, 1.e, 1.f, 1.h, and 1.i). Only one of the debts in the SOR (SOR ¶ 1.e) was to be paid by the trustee.

his two older children as well when they were younger, although the aggregate is about what he now receives for his youngest child. His expenses are estimated at between $2,600 and $2,700 per month, and include $100 in monthly cellular phone charges for his sons who live with him (Tr. 119-26, 150). The younger son is a high school sophomore (Tr. 73, 118). His older son is unemployed (Tr. 73-75), and is home most of the day (Tr. 150). Applicant is hoping that his older son will find a job soon so that he can contribute financially to the household (Tr. 139). This son's last job was "a few years back" at a gas station where he was paid "under the table." He worked there about one year. He had previously worked for six or seven months at a cemetery. When he was employed, he gave his father $20 to $25 each week (Tr. 146-47). Applicant's daughter is a college student who moved into her own apartment in late November 2008 (Tr. 74-75). Applicant's supervisor is of the opinion that Applicant can be trusted to continue to handle classified material based on Applicant's long record of appropriately safeguarding classified material (Ex. A).

Policies

When evaluating an applicant's suitability for a security clearance, the 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 as to obtaining 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

that 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 F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 of the adjudicative guidelines:

> 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.

As reflected in his bankruptcy petition filed in July 2004, in his credit reports, and in his admissions to most of the debts in the SOR, Applicant has a long record of financial delinquency that has yet to be resolved. Accounting for duplicate listing of some claims, Applicant owed unsecured debt of about $70,500 as of July 2004, only about $8,154 of which was listed in the SOR (SOR ¶¶ 1.c, 1.d, 1.f, 1.h, and 1.i). He also owed secured debt: property taxes of $4,194, $1,550 on his vehicle (SOR ¶ 1.g), and two judgment liens (including SOR ¶ 1.e) totaling $9,369. This delinquent debt accrued despite his receipt of a $1,000 monthly annuity payment. Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

Moreover, AG ¶ 19(d), "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other financial breaches of trust," also applies because of his failure to disclose the annuity income on his Chapter 7 bankruptcy petition. Applicant maintains he acted in good-faith and on the advice of counsel:

> And, for some reason, I had it in my thoughts and, because I received that and had, every year, every month I was paid a sum of money and I never had to pay any kind of taxes to the IRS for it, so I figured being a supplement of income where it pertained to my financial, not financial, my physical problems that occurred through this accident, that I didn't have to disclose it. In the course of the Chapter 7, I had mentioned that to this first attorney [name omitted]. He said, well, he says I don't feel you have to

disclose it, and I went on to the investigation with [name of bankruptcy trustee omitted] (Tr. 63).

The bankruptcy court reopened Applicant's Chapter 7 bankruptcy and dismissed the Chapter 13 on concerns of the trustee that Applicant had fraudulently concealed the annuity payments. Had Applicant acted in good faith, it stands to reason that he would have disclosed the annuity during the meeting of creditors or at some other time to the trustee before the discharge and he did not. Instead, during the meeting of creditors on August 18, 2004, he apparently asserted as to his assets and income that his schedules were true and accurate in all respects. The Chapter 7 trustee came to learn of the asset only from the Chapter 13 trustee. Applicant could have filed an amendment to his Chapter 7 petition but instead waited until his unsecured creditors were legally barred from pursuing collection and then filed for Chapter 13 bankruptcy. Applicant presented no corroboration for his claim that he had been advised by legal counsel to not list the annuity on his Chapter 7 petition. Applicant's need for the annuity to cover part of his household expenses does not extenuate or justify his failure to timely disclose this known asset to the bankruptcy court.

Concerning potential mitigation, AG ¶ 20(a), "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," does not apply. A review of Applicant's Schedule F of his Chapter 7 petition shows that he owed more than $50,000 in credit card debt. Even though several of the accounts were opened before his spouse's injury, they were in his name and it is difficult to believe that Applicant would have been unaware of at least some of the debt, or of the purchases made on credit. Such over-reliance on credit shows an inability to live within one's means (*see* AG ¶ 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant cash flow, high debt-to-income ratio, and/or other financial analysis"). Moreover, he has continued to incur new debt. In addition to the $4,171 in recent delinquent debt in SOR ¶¶ 1.m-1.r, he owes $6,800 on a car note that he took out in 2007, and is repaying a $2,000 loan from his 401(k) that he took out for the down payment. While there is no indication that he is delinquent in repaying either the car note or the 401(k) loan, the $400 in additional monthly obligations further stresses an already tenuous financial situation.

In fairness to Applicant, his spouse suffered a serious head injury in a 1999 fall that left her unable to work. With no information available about her previous earnings, it is unclear to what extent his spouse's monthly disability benefit compensated for the loss of employment income. Her accident and their subsequent marital separation are unforeseen circumstances that implicate AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Some early neglect of his financial obligations is understandable given the demands of caring for his spouse, but I am unable to fully apply AG ¶ 20(b) in this case because of his serious financial irresponsibility reflected in his abuse of the bankruptcy process, his inattention to his past due obligations over the years, and his incurring of recent financial delinquency.

Applicant expresses an intent to resolve his indebtedness if given a chance to make payments through debt consolidation, but he has not been proactive in addressing his debts. Applicant was placed on notice as of his initial interview with a government investigator in early July 2005 that his finances were of concern to the Department of Defense. Despite having filed Chapter 7 and Chapter 13 bankruptcy petitions, he claimed to not know what he owed or to whom. Asked to provide debt information, Applicant returned 10 days later again claiming not to know what he owed. Ordered by the bankruptcy court in July 2005 to turn over annuity payments he had received since filing for liquidation of his debt, Applicant had used the funds for household expenses, and he eventually agreed to waive his Chapter 7 discharge and turn over his income tax refund. Apparently, he made little effort at that point to educate himself about the debts he would be legally obligated to repay. From net receipts totaling $49,773.58 (the annuity and income tax refund), the Chapter 7 trustee proposed to make payments to five creditors, including the creditor in SOR ¶ 1.e. Applicant could reasonably expect the trustee to make the promised disbursements. However, several other creditors have legal claims against him that remain unpaid, including a cable television company debt for $455 (SOR ¶ 1.n) and an insurance company debt for $710 (SOR ¶ 1.q).

Applicant obtained a credit report in response to DOHA interrogatories in February 2008. Confronted with adverse credit information that several accounts in addition to SOR ¶ 1.e were being reported as past due (SOR ¶¶ 1.f, 1.g, 1.h, 1.k, 1.i, 1.n, and 1.q), he made no effort to contact those creditors. On receipt of the SOR, he indicated he was looking at debt consolidation to catch up on his expenses. As of the date of his hearing, he had not pursued any debt consolidation or made any repayment arrangements to resolve even those debts of $100 or less, including a medical debt that was placed for collection as recently as August 2007 (SOR ¶ 1.r). While he had unexpected vehicle expenses of late, he also testified that he received an income tax refund of between $5,000 and $6,000 for 2007 that he used to catch up on his bills.

Applicant denied the debt in SOR ¶ 1.m ($1,400 utility services debt listed on his e-QIP) on the basis that it had been paid with the assistance of the department of children and family services (Tr. 111). He also expressed his belief that the debts in SOR ¶¶ 1.j and 1.p had been paid (Tr. 109-110), but did not document the claimed satisfaction. When he was interviewed in August 2007, he expressed his belief that the gas services debt in SOR ¶ 1.j had been paid with public assistance (Ex. 2). The debt in SOR ¶ 1.j was still listed as past due on his January 2008 (Ex. 5) and June 2008 (Ex. 6 credit reports. The debt in SOR ¶ 1.p appeared on his January 2008 credit report as an active collection debt but not on his later credit report. Assuming Applicant had satisfied the debts in SOR ¶¶ 1.m and 1.p, these efforts to repay his debts would more appropriately fall within AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," rather than AG ¶ 20(e), "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." Notwithstanding the revocation of his Chapter 7 discharge, about $43,661.12 in general unsecured claims were going to be paid by the trustee. Yet, given his abuse of the bankruptcy process and his ongoing

financial problems (his monthly expenses exceed his income), neither ¶ 20 (c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," or AG ¶ 20(d) fully mitigate the financial concerns in this case.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in Guideline E, ¶ 15 of the adjudicative guidelines:

> 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.

In response to question 27.a on his e-QIP, "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?," Applicant indicated he had filed for bankruptcy under Chapter 7 in about October 2004 but it was not granted. He added that there was nothing pending and the case was now closed. The government contends that Applicant deliberately did not disclose his Chapter 13 filing, or that his Chapter 7 case had been reopened and was still pending as of his May 18, 2007, e-QIP. Applicant explained he did not report the Chapter 13 filing because "it never got off first base. It never went into effect." As for his assertion that his Chapter 7 bankruptcy was closed, Applicant testified that once he had turned over his annuity and income tax refund to the trustee, he "figured everything was over and done with" (Tr. 101).

Even if mistaken, a belief or assumption held in good faith could negate the willful intent required for a finding of deliberate concealment, omission, or falsification. Available bankruptcy records (Ex. 10) show Applicant filed a voluntary petition under Chapter 13 on December 10, 2004. After a meeting of the creditors, Applicant filed an amended plan on January 24, 2005. By order of the court, the case was dismissed prior to confirmation. Although Applicant made $1,857.26 in pre-confirmation payments to the Chapter 13 trustee, I am not convinced that he understood he had to report the Chapter 13 as a separate filing on his e-QIP. As for allegedly misrepresenting that the Chapter 7 case was closed, the bankruptcy court did not close the Chapter 7 case until July 17, 2008, more than a year after Applicant completed his e-QIP. The trustee filed his final distribution report on February 12, 2008. However, the trustee began receiving Applicant's monthly annuity payment in July 2005, and Applicant had turned over his income tax refund to the trustee on or about March 16, 2007. His explanation for considering the case as closed is accepted under the circumstances. AG ¶ 17 (f), "the information was unsubstantiated or from a source of questionable reliability," applies to mitigate any potential security concerns raised by his failure to report his Chapter 13 filing (*see* AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award

benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities”).

Applicant’s omission of his annuity from his bankruptcy petition is conduct that could have been alleged under personal conduct (*see* AG 16(a)). Similarly, his failure to disclose his annuity when asked about his assets during the meeting of creditors could fall within the concerns underlying AG ¶ 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.” Since his failure to disclose the annuity to the bankruptcy court before his Chapter 13 filing in December 2004 was not alleged under personal conduct, it cannot provide an independent basis for disqualification under Guideline E. However, it certainly is relevant in assessing the risk presented by his financial situation (see Guideline F, *supra*), and his overall judgment, reliability, and trustworthiness under the whole-person concept.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the conduct and all the circumstances in light of 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.

Applicant’s finances were negatively affected by the loss of his spouse’s income and then her social security disability benefit. In July 2004, he sought relief from more than $80,000 in unsecured debt through a Chapter 7 bankruptcy filing. Needing the proceeds of an annuity to cover living expenses and wanting to relieve himself of his legal responsibility to pay debt more than double his annual wage income, he elected to not disclose it on his petition. He paid a high price for his poor judgment in that he lost his annuity and the benefit of a financial fresh start.

Applicant deserves significant credit for raising three children on his own, with no financial help from his former spouse. After he was forced to sell his home in 2005, he and his children moved into a small apartment, thereby reducing his monthly housing costs. At the same time, it is also evident that he continues to indulge his children (*e.g.,*

$100 in monthly cellular phone costs for his sons). He has repeatedly expressed ignorance about what he owes and to whom.

The DOHA Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.'

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). To date, he has yet to establish a plan to resolve his financial problems. His tendency to ignore debts, presumably hoping that they will just go away, is inconsistent with the good judgment that is required of those with access to classified information.

Applicant has stable employment, having worked for his employer since 1972 and having held a security clearance for most of that time. Under the whole-person concept, it must be acknowledged that Applicant has no record of violating his employer's trust. Yet, this is not enough to mitigate the serious mismanagement of his personal finances. In response to financial pressures, he has done what he felt he had to do to continue to provide for his family. By choosing to wait to disclose his annuity until it was most advantageous to him, Applicant raised considerable doubts about whether he can be counted on to fulfill his fiduciary obligations irrespective of the personal cost. Based on the facts before me, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant
Subparagraph 1.b: Against Applicant
Subparagraph 1.c: Against Applicant
Subparagraph 1.d: Against Applicant
Subparagraph 1.e: For 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: Against Applicant

Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge