DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-00472
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

October 23, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has not satisfied two judgment debts totaling $228,548 following a business failure. In March 2004, he was convicted of two counts of false swearing in court testimony in June 2001. Financial and criminal conduct concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 1, 2005. On January 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F and Guideline J that provided the basis for its preliminary 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) effective within the Department of Defense as of September 1, 2006.

On March 2, 2009, Applicant answered the SOR and requested a hearing. The case was assigned to me on May 15, 2009, to decide whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 2, 2009, I scheduled a hearing for July 1, 2009.

I convened the hearing as scheduled. Six government exhibits (Ex. 1-6) and 15 Applicant exhibits (Ex. A-O) were admitted. Department Counsel objected to the psychological evaluation offered as Exhibit K on the bases of lack of relevance, lack of foundation laid for expert opinion, and inability to examine the psychologist about his assessment. The report was admitted in full with the weight to be afforded the information therein subject to my evaluation of reliability, trustworthiness, and probity, in light of the record as a whole.

Findings of Fact

In the SOR, DOHA alleged under Guideline F, financial considerations, that as of June 11, 2008, Applicant owed two judgment debts of $112,130 (SOR 1.a) and $116,418 (SOR 1.b). Under Guideline J, criminal conduct, Applicant was alleged to have been indicted in October 2001 on three counts of perjury, convicted in March 2004 of two counts of false swearing, for which he was fined $1,000, and sentenced to 12 months imprisonment on each count, sentence suspended for one year (SOR 2.a). Applicant denied the allegations. After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 50-year-old consultant, who has served as the storage area network architect on a military combat information transport system program since October 2004 (Exs. 1, A-E). He is a partner with three others (one active) in a storage area network company that has a contract with a subcontractor on the program (Ex. B, Tr. 42-43, 71). Applicant had worked for the subcontractor until he established his own company and the subcontractor contacted with him to provide consulting services on several military projects (Ex. H). Applicant seeks a security clearance under the sponsorship of the subcontractor.

Applicant is a naturalized United States citizen, who came to the U.S. from Iran in early 1978 on a student visa. After some studies in the English language, he pursued an associate of science degree in computer science and engineering from 1978 to 1980 (Ex. K). From about September 1980 to September 1997, Applicant was employed as a principal engineer/consultant for a computer company. During the first four years of his employment, he attended college part-time. In June 1984, he was awarded his bachelor of science degree in electrical and electronics engineering (Exs. 2, K).

In 1997, Applicant and two partners started their own business serving as a "master distributor" for a data storage manufacturer (Tr. 72). In mid-March 1997, their company executed a secured promissory note with the bank in SOR 1.b in the principal loan amount of $100,000 (Ex. 5). The bank was given a security interest in all of the company's business inventory, chattel paper, accounts, equipment and general intangibles (Ex. 5). Applicant, as company vice president, and one of his business

partners, the company's chief executive officer (CEO), executed commercial guarantees (signed the line of credit), guaranteeing all indebtedness of the company to the bank (Ex. 5, Tr. 73, 102). A second line of credit, also in the amount of $100,000, was obtained from another bank (SOR 1.a), with Applicant and the CEO guaranteeing that loan (Ex. 1, Tr. 102-03). Applicant did not handle the finances of the business, but he believes the lines of credit were being paid while the business was in operation (Tr. 103-04). Applicant invested some of his personal funds in the business, from which he received "a small amount" of income (Tr. 102). Applicant also borrowed $27,000 from his brother ("a personal loan") that he invested in the business (Tr. 135, 137).

After the data storage equipment manufacturer began direct sales, Applicant's and his partners' distribution business failed (Tr. 73). The company offered its inventory as collateral to the banks when it could no longer make its loan payments (Tr. 104). Applicant estimated the value of the inventory to be about $800,000 (Tr. 73), but he provided no evidence showing an accurate valuation of the company's assets.

In 2000, both banks filed lawsuits against the company and the loan guarantors (Applicant and the CEO) for default on the respective promissory notes. In June 2000, Applicant, the CEO, and the company stipulated to a judgment awarding the bank in SOR 1.b $116,418.27, inclusive of interests and costs. Applicant and the CEO were held jointly and severally liable for the judgment. Any amounts received by the bank from the sale of the collateral, the attachments of the defendants' bank accounts or real estate or other source were to be credited against the judgment (Ex. 5, Tr. 74). In June 2001, a successor in interest to the lender in SOR 1.a obtained a judgment against Applicant of $112,130.20 plus costs, reasonable attorneys' fees, and interest from April 2000 (Tr. 72).

Applicant had sold his residence in June 1998 (Ex. 6), giving him about $32,000 after his mortgage was satisfied (Tr. 75-76, 96, 132). The proceeds went to partially satisfy the $116,418.27 judgment debt (SOR 1.b). Applicant's brother, who felt he was entitled to the funds because he had loaned Applicant $27,000, filed a lawsuit against the bank for the money in 2001. Applicant was subpoenaed to testify on behalf of the creditor bank (Tr. 106). On June 13, 2001, Applicant provided false testimony under oath concerning communications he had in 2000 with the attorney who represented him, his former business partner, and the company, in the judgment action brought by the bank. Applicant was indicted on three counts of perjury in October 2001. In March 2004, Applicant pleaded nolo contendere to two counts of an amended charge of false swearing, a class A misdemeanor (SOR 2.a). Applicant signed a form acknowledging that he understood he was admitting to, or not contesting, the truth of the charges against him and that a conviction would be entered against him. A finding of guilty was entered for both counts. He was sentenced on one count to a 12-month jail term, suspended on good behavior and compliance with all terms and conditions, and a $1,000 fine plus statutory penalty assessment to be paid on or before March 26, 2004. Applicant was sentenced on the second count to a consecutive 12-month jail term, suspended, and a fine of $2,000 plus statutory assessment, suspended for two years. The remaining perjury charge, which related to whether he knew his attorney had entered his appearance in January 2000, was nolle prossed (Ex. 4). Applicant was not

willing to acknowledge at his July 2009 hearing that he had knowingly provided false testimony in his brother's case against the bank.[1]

During 2002 and 2003, Applicant worked as an enterprise architect and then director of storage architecture for a commercial company. He has been consistently employed as a contractor, providing his expertise in data network storage for the U.S. military at his work location since October 2004 (Exs. 1, H).

On June 7, 2004, Applicant executed his first application for a security clearance. He disclosed that he pleaded no contest on the advice of his attorney and paid a fine of $2,200 on three counts of an unspecified misdemeanor offense. In response to question 37 concerning unpaid judgments, Applicant listed two $100,000 judgments awarded in 2000 for business loans that he had cosigned. He indicated he was unaware of the exact date or of the final amount of the judgments (Ex. 2). Applicant provided the same debt information on an e-QIP completed on December 1, 2005, but he clarified that he pleaded nolo contendere to two counts of misdemeanor false swearing. He reiterated that he entered nolo pleas on the advice of counsel (Ex. 1). As of December 20, 2005, the credit bureaus were reporting that the original lender in SOR 1.a had filed in court to attach Applicant's assets to recover a $120,000 debt balance (Ex. 6).

In 2006 or 2007, after he applied for a security clearance, Applicant retained legal counsel to represent him in settling the judgment debts in SOR 1.a and 1.b (Tr. 81). As of late May 2008, his attorney was in negotiations with the creditor in SOR 1.a, but there had been no action on resolving the debt in SOR 1.b (Ex. 3). As of June 2009, his attorney had no success in reaching a person with the authority to negotiate on behalf of the bank (Ex. I, Tr. 91). In the event negotiations were unsuccessful, the attorney was prepared to represent Applicant in a bankruptcy proceeding (Ex. 3). As of July 2009, Applicant had offered to settle the judgment debt in SOR 1.a for an amount in the low $20,000s. While his attorney reported on June 12, 2009, that the creditor was evaluating settlement proposals (Ex. M), Applicant testified on July 1, 2009, that his offer was rejected by the creditor (Tr. 87). He had not filed for bankruptcy. Apart from the equity in his house that went to satisfy, in part, the debt in SOR 1.b, Applicant had paid nothing toward the judgment debts as of July 2009 (Tr. 91, 95). He believes that

[1]When asked on cross-examination to confirm whether he had testified falsely in June 2001 concerning his communications with the company's attorney in January 2000, Applicant responded that he didn't believe his statement was false at the time, although he went on that he was not sure "since it's a long time ago." (Tr. 106). He then claimed that he had relied on his memory at the time and had since learned that it is better "to go with what you write, that's why these days I write things down." (Tr. 109). When subsequently asked about whether or not he believed he had committed a crime, Applicant responded:

> Nobody personally feels guilty about, at times but things in life, it's, at this time it's not clear to me, it's something that I haven't dwelled on, thinking about it day in and day out. It's a portion of my life, it was one instance in my life that I was involved with anything like this or in a court, with any law or anything, and I just, it is, maybe it's I just mentally want to forget about it and just move on. I personally have moved on and I, at times, it's like thinking of it I'm guilty, not guilty, I don't think it's going to help my case. What I can do is to set an example from that day on and I think I have. I'm sorry that I don't have a black and white answer for you but that's how it is (Tr. 117).

the bank in SOR 1.b received the proceeds from an auction of the inventory of the failed business (Ex. 3). There is no available information confirming his belief. He understands that his former business partner, who had also guaranteed the loans, had filed for bankruptcy "a few years back." (Tr. 130).

In response to DOHA interrogatories, Applicant submitted a May 2008 credit report showing he had no delinquent credit card debt. Applicant was making payments as agreed on three open credit card accounts with balances of $17,818, $1,585, and $1,064 (Ex. 3). As of June 4, 2009, he had brought down the balance of the $17,818 debt to $14,289, and had paid off the $1,585 owed on another account. But his balance, although current, had increased from $1,064 to $2,655 on the third credit card account, and he had incurred $12,106 in charges on a credit card account that had a reported zero balance as of May 2008. Applicant was making his monthly mortgage payments on time, $1,998 on a primary mortgage of $231,771, and $341 on a second mortgage of $43,793 (Ex. L). As of June 10, 2008, Applicant reported a net monthly remainder of $4,341 on net monthly income of $11,835 (Ex. 3). As of July 2009, he estimated his annual income at about $180,000 (Tr. 71, 79). He had about $20,000 to $30,000 in cash assets available to pay the judgments (Tr. 124). Applicant participated in an internet and telephone credit counseling session on June 22, 2009 (Ex. J).

Applicant underwent a voluntary psychological evaluation on April 20, 2009, by a clinical psychologist to determine whether he exhibited clinical indicators of lying behavior. Applicant informed the psychologist that the perjury stemmed from a business failure, and explained that while testifying as a witness for the bank, he responded "no" to whether he had personally discussed the writ of summons with his attorney before mid-March 2000. The psychologist opined that Applicant was not deceptive:

> His mental status examination was generally unremarkable other then his mild to moderate anxiety throughout the process. He was not, however, seen as deceptive but generally presented a picture of involvement in a legal system in which he was uncomfortable and received questionable advice. The fact that English is not his first language may well have contributed to his confusion with our legal system. His naivety [sic] within this arena was seen as the major reason for his consent to being convicted of two perjury charges.

The psychologist found no significant indication of lying behavior and he did not regard Applicant to be a threat to national security (Ex. K).

Two of Applicant's three current business partners testified for Applicant at the hearing. They endorsed Applicant for a security clearance based on Applicant's demonstrated subject matter knowledge and dedication to the contract (Exs. A, B). Neither of the partners is fully aware of the circumstances surrounding Applicant's previous business failure. The active partner in their consulting company, who has worked closely with Applicant since 2004 (Ex. B, Tr. 36), understands from Applicant that he has made reparations (Tr. 37), and that the judgment debts have been paid (Tr. 41). An inactive partner, who derives his income from the subcontractor rather than from

their consulting company (Tr. 51), became aware the day of the hearing that Applicant has not yet resolved the issue of an unpaid business loan of about $120,000 (Tr. 53). He has found Applicant to be "very honest, straightforward," and of "sterling character." (Ex. A, Tr. 54-55). Applicant is considered a key member of their team and is held in high regard by their military customer as well as their professional colleagues (Exs. A-E, N, Tr. 49-50). The subcontractor on the project recognized Applicant's invaluable contributions with an award given to those individuals who demonstrate superior understanding and integrity in their field and apply it to the customer (Exs. A, B).

A close personal friend and work colleague who has known Applicant for the last seven years also testified on Applicant's behalf (Ex. O, Tr. 59). He does not doubt Applicant's commitment to the job or his honesty (Tr. 62). He became aware of the outstanding financial obligations and the misdemeanor false testimony charge (Tr. 60) the night before the hearing (Tr. 63, 67). The friend believes that the bank has a lien on Applicant's assets because of an unpaid business loan debt of about $120,000, and that Applicant "pleaded out" to a charge of false statement (Tr. 64, 68).

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 to be considered 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 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. 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 in 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 about finances 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 evidence shows that two financial institutions obtained sizable judgments of $112,130 and $116,418 against Applicant and a business partner in 2000/01 after the company that they founded could no longer make its payments on two lines of credit that they had guaranteed.[2] Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Of the mitigating conditions listed in AG ¶ 20, 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," applies to the extent that the debts stem from a business failure more than nine years ago, and do not appear to be characteristic of Applicant's handling of his finances generally. He has a track record of timely payments on his personal financial obligations, including his mortgages and credit cards. While Applicant is a business partner with three others (one active) in the consulting company from which he derives his current income of about $180,000 per year, there is no

[2]Available court records show that Applicant and the CEO were liable on the judgment awarded the bank in SOR 1.b. Applicant testified that he and the CEO were jointly and severally liable as well on the debt in SOR 1.a, although the court document lists only Applicant as the defendant (Ex. 5).

evidence that he owes any debts from his consulting business. The circumstances that led to these judgment debts are not likely to recur.

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," must be considered because the debts stem from a business failure. It is unclear to what extent Applicant was involved in the daily operations of the distribution company. He apparently did not handle the financial matters, and was not in control of the data storage equipment manufacturer's decision to bypass the distribution network and sell directly to potential customers. However, I am unable to fully apply AG ¶ 20(b) because of Applicant's demonstrated irresponsibility in not making resolution of these judgment debts a priority. Applicant testified that the bank in SOR 1.b received $32,000 from the sale of his home in partial satisfaction, and had acquired and auctioned the business inventory. Applicant believed the value of the inventory amply covered the judgments. The lawsuit brought by his brother (a personal creditor) against the bank over the $32,000 tends to substantiate that the equity in Applicant's previous residence was turned over to the bank in SOR 1.b. Applicant's December 2005 credit report (Ex. 6) shows a mortgage loan was closed and paid in June 1998, which would have predated the judgment award. The home that was sold (Ex. 3) was listed as his residence of record from May 1982 until June 1998 (Ex. 2). The bank may well have received the funds sometime after the award of the judgment in 2000 and his brother's lawsuit in June 2001. However, there is no proof that the inventory of the business was auctioned off by the creditor, or if an auction was conducted, whether the proceeds satisfied the judgment. Assuming that the creditor in SOR 1.b has been compensated in part, Applicant has not made any payments on the judgment debt since 2001. Moreover, Applicant made no effort to address the debt in SOR 1.a before he retained legal counsel in 2006 or 2007, after he applied for his security clearance (Tr. 81). Two to three years later, Applicant is still trying to settle that judgment debt, apparently for less than a quarter of the balance.

AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is implicated because of the payment of $32,000, but I am unable to fully apply AG ¶ 20(d) because of his disregard of the judgment debts after 2001 until they became an issue for his security clearance. AG ¶ 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," does not apply. The creditor in SOR 1.a rejected Applicant's latest settlement offer. Applicant's attorney indicated that he had made "several attempts" without success to contact someone who handles commercial transactions for the bank in SOR 1.b, so that debt is also not likely to be resolved in the near future. Furthermore, one session of internet and telephone debt counseling does not alleviate the financial burden of about $200,000 in unpaid judgment debt. While Applicant indicated that he has the means to satisfy the judgments, the available information suggests otherwise. He testified he has $20,000 or $30,000 in combined cash assets (Tr. 123-24) and his latest credit report shows he has outstanding credit card balances totaling about $29,050 (Ex. L). Although he is making monthly payments on his credit card obligations, this is a significant amount of credit

card debt, the repayment of which has been given priority over the outstanding judgments of about $200,000.

Criminal Conduct

The security concern for criminal conduct is set out in Guideline J, ¶ 30 of the adjudicative guidelines:

> Criminal 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.

In October 2001, Applicant was indicted on three counts of felony perjury stemming from testimony he gave under oath in a June 2001 civil lawsuit brought by his brother against the bank in SOR 1.b. The case was disposed of through a nolo contendere plea in March 2004 to two counts of misdemeanor false swearing, and guilty findings were entered against him. His misdemeanor convictions raise criminal conduct concerns implicating AG ¶ 31(a), "a single serious crime or multiple lesser offenses," and AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

The passage of eight years since the offenses is a significant mitigating condition (*see* AG ¶ 32(a), "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"). Also in his favor are his disclosures of the criminal conduct on two security clearance applications (Exs. 1, 2). His character references, some in person and others in writing, amply confirm his invaluable dedication to the military project that has consumed his considerable time and talent since late 2004. The passage of time without recurrence of the criminal activity and his good employment record are evidence of successful rehabilitation under AG ¶ 32(d) ("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"). Concerning restitution, there is no evidence that Applicant failed to comply with his sentences, including payment of a $1,000 fine.

Yet this evidence in reform must be weighed against the seriousness of the offense. Although false swearing is punishable as a misdemeanor and not a felony under the pertinent state's criminal statutes,[3] a knowing false statement made under

[3]Under the pertinent state's criminal code (Title 62), Chapter 641 concerning false swearing in official matters provides as follows:

> A person is guilty of a misdemeanor if:
>
> I. He makes a false statement under oath or affirmation or swears or affirms the truth of such a statement previously made and he does not believe the statement to be true if:
> (a) The falsification occurs in an official proceeding, as defined in RSA 641:1, II, or is made

oath raises very serious concerns about a person's judgment, reliability, and trustworthiness. Applicant does not dispute his convictions, but he testified equivocally at his July 2009 hearing about whether he had knowingly provided false testimony in June 2001. He initially testified that he did not believe he made a false statement at the time, and claimed that he had relied on his memory. Yet, when asked later whether he believed he had committed a crime, Applicant responded that he had moved on and did not have "a black and white answer."

Applicant persuaded the psychologist who evaluated him in April 2009 that naivete led him to plead nolo contendere ("[Applicant] was not, however, seen as deceptive, but generally presented a picture of involvement in a legal system in which he was uncomfortable and received questionable advice." Ex. K). But I am not convinced that either Applicant's lack of familiarity with the legal system or him being a nonnative English speaker, or both, caused the false testimony at issue. The available court records (Ex. 4) indicate that the questions asked of Applicant when he testified in June 2001 were straightforward and about matters that would have been within his knowledge. Although he is a naturalized U.S. citizen, he earned his bachelor's degree in the U.S. and had resided here for some 20 years before he testified in 2001. As a subject matter expert in data storage, Applicant can be expected to have understood the legal implications of pleading nolo contendere, and also of the importance of full candor during the security clearance process.

Concerns persist about his reform, given his inability to provide a consistent, credible account of his conduct on June 2001, and evidence showing that Applicant has not been completely forthright with his active business partner about whether the judgments had been paid. When queried about his knowledge of the government's allegations, the witness responded that, from what Applicant had told him, "reparations had been made." Asked directly whether he believed that the debts had been repaid, the witness responded, "That's correct." (Tr. 41).

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

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with a purpose to mislead a public servant in performing his official function; or
(b) The statement is one which is required to be sworn or affirmed before a notary or other person authorized to administer oaths: or

II. He makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true. In a prosecution under this section, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true.

III. No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

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.

The DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases stating, in part, "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).

The financial issues stem from Applicant guaranteeing two lines of credit for a business venture that failed by 2000. Applicant believes, but has not verified, that the CEO who cosigned the two promissory notes filed for bankruptcy. It is in his favor that he has retained legal counsel to negotiate with his two creditors. But as of July 2009, the judgments have not been satisfied. He is willing and able to pay less than a quarter of the balance owed on the judgment in SOR 1.a. It would be premature to conclude that the financial concerns, which include a risk of having to engage in illegal acts to generate funds, are fully mitigated at this juncture.

Furthermore, Applicant caused considerable doubt about his judgment, reliability, and trustworthiness by lying under oath in a civil case in June 2001, and by being unwilling to acknowledge and express remorse for his criminal behavior. While the persons who have worked closely with him attest to his honesty and reliability, the colleagues who testified at his July 2009 hearing had limited knowledge of the government's security concerns. Applicant's partner in their consulting business had been led to believe from Applicant that he had made full reparations of the judgment debt in SOR 1.a. Applicant has yet to make a single payment to that creditor. Despite the passage of time since his false swearing misconduct, I cannot conclude at this time that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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