DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-03539
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

June 10, 2009

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SF 86) on March 31, 2007. On November 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines F and E. 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 January 17, 2009; answered it on January 24, 2009; and requested a hearing before an administrative judge. DOHA received the request on January 26, 2009. Department Counsel was ready to proceed on March 17, 2009, and the case was assigned to me on March 19, 2009. DOHA issued a notice of hearing on March 30, 2009, scheduling the hearing for April 21, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I kept the record open until May 6, 2009, to allow Applicant to submit additional documentary evidence. He timely submitted AX I through O, which were admitted without objection (Hearing Exhibit I). DOHA received the transcript (Tr.) on April 29, 2009. The record closed on May 6, 2009.

Findings of Fact

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

Applicant is a 38-year-old systems engineer employed by a federal contractor. He has worked for his current employer since May 2005. He has been married since February 1993, and has three daughters, ages 16, 11, and 5 (Tr. 41). He served in the U.S. Navy from September 1988 to August 1995, and he received a security clearance in January 1992. After being released from active duty, he received a clearance from a federal agency in December 1995, but he does not hold a current security clearance.

Applicant worked for several companies before his current employer and moved several times at his own expense. He testified he was unemployed in 2001, but the record does not reflect the duration of his unemployment (Tr. 56).

When Applicant submitted his SF 86, he disclosed two delinquent debts, a telephone bill and a delinquent personal loan. His CBR dated May 30, 2007, reflected 10 delinquent debts that he did not disclose on his SF 86 (GX 5 at 3-10). In his response to the SOR, Applicant denied intentionally omitting the 10 delinquent debts from his SF 86, stating he answered the questions on his SF 86 to the best of his knowledge and was unaware of the undisclosed debts.

In response to DOHA interrogatories on June 17, 2008, Applicant provided a report from a debt management agency, transmitted on June 20, 2008, indicating that the debt alleged in SOR ¶ 1.f no longer had a balance due; the debts alleged in SOR ¶¶ 1.e, 1.h, 1.l, and 1.n were being disputed; the debt alleged in SOR ¶ 1.d was being settled; and the debts alleged in SOR ¶¶ 1.g, 1.i, and 1.o were no longer listed on his CBR (GX 6 at 2).

At the hearing, Applicant submitted a CBR dated April 21, 2009, reflecting he had filed a fraud alert (AX A). He also submitted draft copies of dispute letters to the creditors alleged in SOR ¶¶ 1.a, 1.c, 1.f, 1.h, 1.l, and 1.m (AX B through H). All the

letters except AX D and E contained the same text, addressed to the creditor or collection agency and stating that the debt was disputed but not reciting the basis for the dispute. AX D and E were addressed to the credit reporting agencies, recited that the accounts had been disputed and closed, and asked that they be deleted from Applicant's CBR. AX A through H had not been mailed, because Applicant wanted to have them notarized before mailing (Tr. 66). On May 4, 2009, about two weeks after the hearing, he mailed the notarized dispute letters (AX J through O).

Applicant testified the $294 debt in SOR ¶ 1.a was a claim for damage to a rented apartment. He had never received a bill from the landlord, and his first notice of the debt was from a collection agency (Tr. 64-65). He testified he disputed the debt because no one would tell him the basis for the claim (Tr. 65).

Applicant testified the medical debt in SOR ¶ 1.b was paid by a "phone debit," but he had no documentation for the payment (Tr. 69). He admitted he owed something on the telephone service debt in SOR ¶ 1.c, but he disputed the amount (Tr. 72-74). The same debt is alleged in SOR ¶ 1.g (Tr. 85).

Applicant disputed the amount of the credit union debt in SOR ¶ 1.d. He received a response and a settlement offer, but he has not resolved the debt (Tr. 75-76). This debt arose when Applicant took out a line of credit to pay off other debts (Tr. 86).

The debts in SOR ¶ 1.e arose from voluntary auto repossessions in 1998 and 2001. The latter occurred while Applicant was unemployed. He disputed the amounts claimed through his debt management agency. The debts were not resolved, but they were deleted from his credit report, apparently because they were more than seven years old (Tr. 80).[1]

The debt alleged in SOR ¶ 1.h was a payday loan (Tr. 88). The delinquent auto loan alleged in SOR ¶ 1.i and 1.j arose when Applicant co-signed on the loan for his sister-in-law, she defaulted, and the auto was repossessed. The same debt is alleged in both paragraphs, with the face amount of the loan alleged in ¶ 1.j and the amount due after the repossession alleged in ¶ 1.i (Tr. 90). He testified he believes his sister-in-law made payment arrangements with the creditor, but he has not discussed the matter with her for three or four years, and he provided no documentary evidence of a payment plan (Tr. 89-90).

The debt alleged in SOR ¶ 1.k was an early termination fee on a satellite television service. Applicant testified he believes he made a $50 payment at some time in the past, but he provided no documentation of a payment, and the account is not settled (Tr. 92-93).

[1] The Fair Credit Report Act, 15 U.S.C. § 1681c, prohibits consumer reporting agencies from reporting any accounts placed for collection or charged to profit or less that antedate the report by more than seven years, with certain exceptions not applicable to this case.

Applicant testified he believes the delinquent utility bill alleged in SOR ¶ 1.l was for a security deposit. He acknowledged that he received utility service, but he decided to dispute debt to verify the amount due (Tr. 95).

The debts alleged in SOR ¶¶ 1.m and 1.n are medical copayments incurred when Applicant's daughter was born. He testified he made one $50 payment but was advised by his debt management agency to stop making payments because he had no leverage to negotiate a settlement as long as he made payments (Tr. 98-100). He provided no documentation of any payments.

The debt alleged in SOR ¶ 1.o was for an unpaid insurance premium. When Applicant failed to pay the premium, the insurance lapsed and the auto was repossessed, giving rise to the debt alleged in SOR ¶ 1.e (Tr. 101).

The table below summarizes the evidence concerning the debts alleged in the SOR.

SOR	Debt	Amount	Status	Evidence
1.a	Apartment damage	$294	Disputed; unresolved	GX 3 at 1; AX J; Tr. 64-65
1.b	Medical	$98	No documentation of payment	GX 3 at 1
1.c	Telephone	$485	Amount disputed; unresolved	GX 3 at 2; AX H; Tr. 72-74
1.d	Line of credit	$343	Amount disputed; settlement offered; unresolved	GX 5 at 5; Tr. 75-76
1.e	Car repossession	$8,698	Amount disputed; unresolved	GX 5 at 3; GX 6 at 2; Tr. 79-80
1.f	Car repossession	$15,464	Disputed; unresolved	GX 5 at 3; AX M; Tr. 85
1.g	Telephone	$535	Same debt as 1.c	Tr. 85
1.h	Payday loan	$374	Amount disputed; unresolved	GX 5 at 3; AX K; Tr. 88
1.i	Car repossession	$3,256	Unpaid	GX 5 at 8; Tr. 89-90
1.j	Car repossession	$10,551	Same debt as 1.i	GX 5 at 8; Tr. 90
1.k	Satellite TV	$189	Unpaid	GX 5 at 6; Tr. 92-93
1.l	Utilities	$673	Amount disputed; unresolved	GX 5 at 8; AX N; Tr. 95
1.m	Medical	$833	Amount disputed; unresolved	GX 5 at 8; AX O; Tr. 98-100
1.n	Medical	$145	Amount disputed; unresolved	GX 5 at 9; Tr. 98
1.o	Car insurance	$137	Unpaid	GX 5 at 9-10; Tr. 101

In response to DOHA interrogatories on June 17, 2008, Applicant provided a personal financial statement (PFS), reflecting net monthly income of about $6,200, expenses of $5,265, debt payments of $338, and a remainder of $210 (GX 6 at 6). He does not contribute to a retirement account, and his PFS reflects savings of only about $750. He testified at the hearing that his PFS was still accurate as of the date of the hearing (Tr. 112). Applicant testified he thought making more money would solve his problems, but it did not because the more he makes the more he spends (Tr. 42).

Applicant engaged several debt management companies but terminated his relationships with them because he did not think the expense was producing sufficient results. He testified he spent about $2,000 in fees but reduced his debt by only about $300 (Tr. 110).

Applicant admitted he was aware of the two auto repossessions when he executed his SF 86 and should have disclosed them. He did not provide any explanation for the omissions (Tr. 102-03).

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 over-arching adjudicative goal is a fair, impartial and common sense 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 F, Financial Considerations

The SOR alleges 15 delinquent debts totaling about $42,075. 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 disqualifying condition in AG ¶ 19(a) is raised by an "inability or unwillingness to satisfy debts." AG ¶ 19(b) is a two-pronged condition is raised by "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt." AG ¶ 19(c) is raised by "a history of not meeting financial obligations." AG ¶ 19(e) is raised by "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis." Applicant's financial history raises AG ¶¶ 19(a), (b), (c),

and (e), shifting the burden to him 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).

The evidence reflects that the debt alleged in SOR ¶ 1.g duplicates the debt alleged in SOR ¶ 1.c, and the debt alleged in SOR ¶ 1.j includes the debt alleged in SOR ¶ 1.i. Where the same conduct is alleged twice under the same guideline, one of the duplicative allegations should be resolved in the applicant's favor. Therefore, I have resolved the debts alleged in SOR ¶¶ 1.g and 1.j in Applicant's favor.

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 financial problems are numerous, ongoing, and did not arise from unusual circumstances that are unlikely to recur. His failure to timely address his delinquent debts casts doubt on his reliability, trustworthiness, and good judgment. 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). Both prongs, i.e., conditions beyond the persons's control and responsible conduct, must be established.

Applicant's unemployment in 2001 contributed to the car repossession alleged in SOR ¶ 1.f and was beyond his control, but his failure to timely address the debt after he became gainfully employed with a good income was not responsible conduct. I conclude AG ¶ 20(b) is not established.

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). Applicant has worked with several debt management companies, but the objective of these companies has been to negotiate settlements or cause old debts to be purged from a client's CBRs. He presented no evidence of financial counseling designed to prevent further indebtedness, and he has not shown "clear indications" that his financial problems are being resolved. I conclude AG ¶ 20(c) is not established.

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 requires reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant testified he made a few sporadic $50 payments on

his delinquent debts, but he provided no documentation of any payments, and he has otherwise done little to resolve them. I conclude AG ¶ 20(d) is not established.

Security concerns under this guideline also can be mitigating 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). Applicant has disputed every debt alleged in the SOR, but his testimony made it clear that, except for the debt alleged in the SOR ¶ 1.a, he has used the dispute process as a negotiating tool rather than a means to challenge erroneous CBR entries. He did not send his dispute letters until after the hearing. His testimony establishes, however, that he has disputed the debt in SOR ¶ 1.a because he does not believe it is a legitimate debt. I conclude that AG ¶ 20(e) is established for the debt alleged in SOR ¶ 1.a, but not for the remaining debts.

Guideline E, Personal Conduct

The SOR alleges Applicant falsified his security clearance application by intentionally failing to disclose numerous delinquent debts in response to questions about financial delinquencies. 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 relevant disqualifying condition in this case is "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." AG ¶ 16(a). 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 an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning 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 admitted that he was aware of at least two undisclosed debts arising from car repossessions and that he should have disclosed them. He gave no plausible or credible explanation for not disclosing them. I conclude AG ¶ 16(a) is raised.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). Applicant's efforts to correct his omission and misleading answers were neither prompt nor entirely in good faith. There is no evidence Applicant attempted to correct his omissions before he was confronted with them. I conclude AG ¶ 17(a) is not established.

Security concerns under this guideline 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). Applicant's falsification of his application was not "minor." It was recent and did not occur under circumstances unlikely to recur. He receives some credit under this guideline because the record reflects no other instances of falsification and thus was "infrequent," but his lack of candor on his current application casts doubt on his reliability, trustworthiness, and good judgment. I conclude AG ¶ 17(c) is not fully established.

Finally, security concerns under this guideline 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 reflects no action by Applicant to fully disclose the extent of his financial problems until he was confronted by the evidence. I conclude this mitigating condition is not established.

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 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines F and E 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 adult. He served honorably in the Navy for seven years and held a clearance during his Navy service, apparently without incident. His Navy service should have made him familiar with the security clearance process and the need for absolute candor during the process. His inability to manage his personal finances and his lack of candor on his security clearance application raise doubt about his reliability, trustworthiness, and good judgment.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations and personal conduct. 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 set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.o:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.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