



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



In the matter of:)	
)	
)	ISCR Case No. 08-03992
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: William F. Savarino, Esquire

March 9, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant submitted his Security Clearance Application (SF 86), on July 19, 2007. On October 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F, E and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR, answered it writing through counsel on November 11, 2008, and requested a hearing before an administrative judge. DOHA received the

request on November 12, 2008. Department Counsel was prepared to proceed on November 14, 2008, and I received the case assignment on December 2, 2008. DOHA issued a notice of hearing on December 9, 2008, and I convened the hearing as scheduled on January 12, 2009. The government offered ten exhibits (GE) 1 through 10, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted 13 exhibits (AE) A through M, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on January 26, 2009. I granted Applicant's request to keep the record open until January 21, 2009, to submit additional matters. Applicant timely submitted the additional information, which has been marked as AE N, and admitted without objection. The record closed on January 21, 2009.

Findings of Fact

In his Answer to the SOR, dated October 21, 2008, Applicant denied the factual allegations in the SOR, with explanations.¹ He also provided additional information to support his request for eligibility for a security clearance.²

Applicant, who is 26 years old, works for a Department of Defense contractor as a security analyst. He began this position in July 2007. He served in the United States Navy on active duty from September 2002 until September 2006. He received an honorable discharge. During his years of service, the Navy awarded him a Good Conduct medal, an Achievement medal, a Global War on Terrorism Service medal, two Battle "E" Service ribbons, an Armed Forces Expeditionary medal, a National Defense Service medal, and two commendations. His Navy evaluations reflect that he performed a difficult job well.³

As teenagers, Applicant and his brother received monthly Social Security benefits (SSI) through their father. His mother opened a joint checking account in his name and his brother "I"'s name. Applicant and his brother had access to the money in the account. The bank in which this checking account had been opened was in State A, where Applicant and his brother lived. In September 2000, at age 17, Applicant moved to State B, to live with his father and to complete his senior year of high school. He graduated from high school in June 2001.⁴

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 (Feb. 18, 2009), concurring and dissenting, in part, opinion.

²Response to SOR.

³GE 1; GE 3 at 42-48.

⁴AE A; Tr. 35-40.

While living in State A, Applicant routinely cashed checks at a local store. In September 2000, he wrote three checks, which the store cashed. Shortly thereafter, he moved to State B. He did not return to State A until February 2001 to attend his mother's funeral, which was February 11, 2001. When he returned, a relative told him that the store was looking for him. On February 12, 2001, he contacted the store and learned that his three checks had been returned by the bank for insufficient funds, as were three other checks he does not recall writing. He did not know that the checks had been returned by the bank, but realizes that without telling him, his brother wrote checks which depleted the account funds. He next contacted his bank and verified that the checks had been returned for insufficient funds. After verifying the nonpayment, Applicant paid the store \$900 in cash, which repaid the \$400 in check overdrafts plus penalties. He did not contest the amount; he paid it. He then returned to State B. He never appeared in court to answer for criminal charges. He closed the checking account in 2001.⁵

The court docket sheets from State A for six misdemeanor simple worthless check charges indicate that Applicant was served with a summons on February 12, 2001, that each case had a disposition (conclusion) date of February 13, 2001, and that each case had a court filing date of February 14, 2001. Three cases were scheduled for trial on February 23, 2001 and three cases were scheduled for trial on March 21, 2001. The court records show that the debt was paid in each case as of February 13, 2001. The applicable statute in State A sets forth the procedures a complaining party must follow to prepare a case for worthless check case. The statute also allows each district within the State A to establish a program for collection in worthless check cases. If approved by the Administrative Office of the Courts, the program allowed the prosecutor to set up criteria for these cases, and if the check passer participated by making restitution of all fees and charges, the prosecutor would not prosecute the case. State statute §14-107.2.⁶

The time lines on the court docket sheet supports Applicant's testimony that he did not appear in court on these charges. The disposition date is one day before the filing date of the case. In three cases, the disposition date is 10 days before the scheduled hearing date and in three cases, the disposition date was 36 days before the scheduled hearing date. The docket sheet does not show any other court appearance date. Based on Applicant's credible testimony that he did not appear in court and the time lines in the court docket sheet, I find that he did not appear in court. I also find that he paid the debts under the collection program established by the prosecutor in the district in which he lived. While the specifics of the collection program are not of record, the court docket sheet dates clearly show that the checks were paid on February 13, 2001 before the case was filed and a court date set. The only explanation for this is that

⁵GE 5, attachments; GE 9 (court docket sheets); AE A; Tr. 36-42, 44.

⁶GE 5, attachments; GE 9; GE 10 (State statute).

Applicant paid the debt to the store as he testified and the store notified the prosecutor, who created the court record under their collection program.⁷

In July 2007, Applicant met with a security clearance investigator. For the first time, he learned about unpaid debts on his credit report and about a criminal record related to the checks written in 2000. After his meeting with the investigator, Applicant pulled his credit report. The credit report dated July 27, 2007 contains the notation "fraud victim 'initial alert'. Verify identity of consumer before granting credit" on the first page. The credit report shows that this was the initial security alert. Because he could not understand the information contained in his credit report, Applicant hired a credit reporting agency in August 2007. He made at least one payment to this agency as he initially thought he owed the debts. As he began to research the debts listed on his credit report, he realized he did not owe the debts and cancelled his contract with the credit counseling agency in October 2007. Over the next months, Applicant filed challenges to various debts listed on his credit report. In October 2007, he contacted the police about filing an identity theft report, but the police officer to whom he spoke declined to take a report saying that the police did not take reports of this type and recommending that Applicant contact the credit reporting companies.

In July 2008, Applicant again contacted the police about filing an identify theft report. He received different information this time. On July 24, 2008, he personally filed an identity theft incident, not theft, report with the local police where he lived. He listed three accounts in the report: the car loan and two credit cards. On October 24, 2008, he filed a continuation report with the local police, listing four more debts including a telephone debt, a car insurance debt, and two bank card debts.⁸

The SOR identifies five unpaid debts, including a car loan for \$12,884, a credit card debt for \$360, a credit card debt for \$256, a telephone debt for \$120, and an insurance debt for \$358, which are listed on the July 27, 2007 credit report. On September 21, 2007, Applicant filed an on-line challenge to the car insurance debt and two credit card debts, one of which is not listed as an issue in the SOR. The credit report dated July 25, 2008 shows that Applicant challenged one address and nine accounts on his credit report. Both credit reporting companies investigated his challenges to these accounts and after investigation, the companies deleted eleven of the twelve accounts and the incorrect address. The one account not deleted is not at issue in this case. All the debts listed in the SOR are not listed in the more recent credit reports. Four of the five SOR debts were verified as deleted following an investigation by the credit reporting companies. The only deleted debt not verified as incorrect is the insurance debt of \$358. However, in light of Applicant's challenge to this debt and the absence of this debt from the more recent credit reports, I find it is reasonable to infer that the credit reporting companies deleted this debt because of his challenge and

⁷*Id.*; Tr. 45-47, 80-84. My interpretation of the court docket sheet is based on my many years of experience reading court docket sheets in private practice.

⁸AE C; AE N; Tr. 60-61, 90-94.

subsequent to their investigations. The fraud alert continues on his credit reports. Applicant has shown he does not owe the debts listed in the SOR.⁹

Applicant is engaged to be married. He earns \$63,000 a year and his fiancée, a teacher, earns more than \$30,000 a year. He has a mortgage and a car payment. He is current on his bills. With the exception of the check issues in 2000, Applicant has never bounced a check or overdrawn his checking account.¹⁰

On July 19, 2007, Applicant completed his security clearance application. He answered “no” to the following question in his e-QIP:¹¹

Section 23. Your Police Record f. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.)”

Applicant first learned that he had a criminal record when he met with the security investigator after completing his e-QIP. He never appeared in court for the check issues in 2001 and never received a court summons. He had no contact with the court in State A until after meeting with the security investigator.¹²

In March 2007, he started working for a government contractor as a security analyst for public trust forms. He submitted his written resignation on July 23, 2007, effective July 27, 2007. His employer did not evaluate him during these four months. He submitted his resignation to the site supervisor, who died in December 2008, and the Director of Human Resources. He offered his assistance during his transition. He did not have performance issues at this job to his knowledge. His work assignment averaged 500 cases. When he resigned, his supervisor transferred his remaining 300 cases to a federal employee performing the same work as he. In response to an investigative request, this federal employee, who was not his supervisor, stated that Applicant left his job with cases undone and that he did not complete his work in a timely manner. A co-worker submitted an affidavit indicating that the federal employee was not a supervisor, but a co-worker who was unhappy about receiving Applicant’s cases after his departure. I find that the individual completing the investigative form was

⁹SOR; GE 3 (Attachment - Credit report, dated May 13, 2008); GE 6 (Credit report dated July 27, 2007); GE 7 (Credit report, dated June 6, 2008); AE I; AE J; AE K; AE L; AE M (Credit report, dated December 12, 2008); AE N at 3-4; Tr. 64-76.

¹⁰GE 3; GE 6; GE 7; AE M; Tr. 77-78, 84.

¹¹GE 1, at 1, 10-11.

¹²Tr. 80-84.

not Applicant's supervisor and lacked authority to provide information on his work performance. Applicant has never been fired from a job.¹³

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 over-arching 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.¹⁴

¹³GE 8; AE F; Tr. 49-56.

¹⁴After any decision, the losing party has a right to appeal the case to the Defense Office of Hearings and Appeals Appeal Board. The Appeal Board's review authority is limited to determining whether three tests are met:

E3.1.32.1. The Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge:

E# a.32.2. The Administrative Judge adhered to the procedures required by E.O. 10865 (enclosure 1) and this Directive: or

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

E3.1.32.3. The Administrative Judge’s rulings or conclusions are arbitrary, capricious, or contrary to law.

The Appeal Board does not conduct a “*de novo* determination”, recognizing that its members have no opportunity to observe witnesses and make credibility determinations. The Supreme Court in *United States v. Raddatz*, 447 U.S. 667, 690 (1980) succinctly defined the phrase “*de novo* determination”:

[This legal term] has an accepted meaning in the law. It means an independent determination of a controversy that accords no deference to any prior resolution of the same controversy. Thus, in *Renegotiation Board v. Bannerkraft Clothing Co.*, 415 U.S. 1, 23 [(1974)], the Court had occasion to define “*de novo* proceeding” as a review that was “unfettered by any prejudice from the [prior] agency proceeding and free from any claim that the [agency’s] determination is supported by substantial evidence.” In *United States v. First City National Bank*, 386 U.S. 361,368 [(1967)], this Court observed that “review *de novo*” means “that the court should make an independent determination of the issues” and should “not . . . give any special weight to the [prior] determination of the administrative agency.

(Internal footnotes omitted). See ISCR Case No. 07-10396 (App. Bd., Oct. 2, 2008) and ISCR Case No. 07-07144 (App. Bd., Oct. 7, 2008). In ISCR Case No. 05-01820 (App. Bd. Dec 14, 2006), the Appeal Board criticized the administrative judge’s analysis, supporting grant of a clearance for a PRC-related Applicant, and then decided the case itself. Judge White’s dissenting opinion cogently explains why credibility determinations and ultimately the decision whether to grant or deny a clearance should be left to the judge who makes witness credibility determinations. *Id.* at 5-7. See *also* ISCR Case No. 04-06386 at 10-11 (App. Bd. Aug. 25, 2006)(Harvey, J., dissenting) (discussing limitations on Appeal Board’s authority to reverse hearing-level judicial decisions and recommending remand of cases to resolve material, prejudicial error). Compliance with the Agency’s rules and regulations is required. See *United States ex. rel. Acardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Lopez v. FAA*, 318 F.3d 242, 247-248 (D.C. Cir 2003); *Nickelson v. United States*, 284 F. Supp.2d 387, 390 (E.D. Va. 2003)(explaining standard of review).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The credit report submitted by the government constitutes *prima facie* evidence that Applicant accumulated some delinquent debt and was unable to pay some obligations for a period of time.¹⁵ The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's SOR debts occurred because someone opened accounts in his name without his knowledge. Except for the debts created by an unknown party who used Applicant's identity, Applicant has managed his finances appropriately. He acts responsibly about his debts as shown by the credit reports, his challenges to unknown debts and his decision in 2001 to repay debts created by his brother's actions. His conduct in regard to his finances does not cast doubt on his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where "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." As noted above, Applicant's financial problems arose because an unknown individual stole his identity and used his identity to purchase goods on credit. When he learned about his stolen identity, he immediately contacted the credit reporting agencies and requested a fraud alert be placed on his report. He also contacted his creditors, filed challenges with the

¹⁵ISCR Case No. 03-20327 (App. Bd., October 26, 2006).

credit reporting agencies, and contacted the police. His actions were very responsible under the circumstances.

Evidence 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” is potentially mitigating under AG ¶ 20(c). Applicant hired a credit counseling agency to explain to him the information contained in his credit report. Once he understood what was occurring with his credit and realized he could resolve the problem on his own, he declined any further services from the credit counseling service. I conclude this potentially mitigating condition has some applicability. AG ¶ 20(d) does not apply as the evidence does not show “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” listed in the SOR.

Applicant challenged all the debts listed in his credit report which were not his. The credit reporting agencies investigated his challenges and deleted most of the debts as not belonging to him. Thus, 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” applies.¹⁶ AG ¶ 20(f) is not applicable in this case.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct::

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.

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

(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.

For this guideline to apply, Applicant’s omission must be deliberate. The government established that Applicant omitted material facts from his e-QIP when he answered “no” to Question 23f about the worthless checks written in 2000. This information is material to the evaluation of Applicant’s trustworthiness to hold a security

¹⁶Applicant resolved the debts identified as legitimate.

clearance and to his honesty. He denies, however, that he deliberately falsified his answers. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or 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 intent or state of mind at the time the omission occurred.¹⁷ For DC ¶ 16 (a) to apply, the government must establish that Applicant's omission, concealment or falsification in his answers was deliberate and intentional.¹⁸

Applicant did not intentionally falsify his answer to Question 23f because he did not know that he had a criminal record related to the checks written when he was 17 years old. Applicant credibly testified that he never appeared in court to answer for criminal charges for writing worthless checks. His testimony is supported by the court docket sheets which reflect that the checks were paid and the disposition date was one day before the cases were actually filed. Given that State law allows a prosecutor to develop a collection program for worthless checks, Applicant's testimony that he reimbursed the store for the money lost and costs is credible. Applicant's failure to list his criminal record was not deliberate and intentional as he was unaware that he had a record.¹⁹

The SOR identifies information about Applicant's work performance as a security concern. The information comes from a disgruntled co-worker, not his employer. In addition, the information does not raise questions about Applicant's honesty, trustworthiness, or reliability to protect classified information. Applicant denied any problems in this job and the record lacks information about what workplace rules he violated while performing his duties. His employer did not evaluate his performance during the four months he worked. Displeasure from a co-worker is irrelevant to an applicant's security worthiness. Guideline E is found in favor of Applicant.

Guideline J, Criminal Conduct

Paragraph 30 of the new adjudicative guidelines sets out the security concern relating to criminal conduct: "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."

¹⁷See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

¹⁸Intention is defined as "a determination to act in a certain way" and intentional is defined as "done by intention or design". Merriam-Webster's Collegiate Dictionary (11th ed. 2003).

¹⁹Even if I were to find the government had established disqualifying condition AG ¶ 16(a), mitigating condition AG 18(f), *the information was unsubstantiated or from a source of questionable reliability* would apply as the allegation of intentional falsification was unsubstantiated.

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 31(a) provides that “a single serious crime or multiple lesser offenses” may be disqualifying. Although Applicant was unaware of the criminal charges in State A, he admits he wrote three checks that were returned for insufficient funds and that he reimbursed the store for the monies lost. This information combined with the court records is sufficient to raise this potentially disqualifying condition.

The adjudicative guidelines also set out some potentially mitigating conditions. Under AG ¶ 32(a), disqualifying conduct may be mitigated where “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 upon the individual’s reliability, trustworthiness, or good judgment.” Under AG ¶ 32(d), mitigation may be established where “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.” The worthless checking writing incident occurred in September 2000, more than 8 years ago. He and his brother had access to the same checking account. Unbeknownst to him, his brother wrote checks for all the funds in the account, not just his share of the funds. His brother’s failure to inform Applicant of these actions directly caused Applicant’s checks to be returned by the bank. When he learned of the problem, Applicant immediately made restitution to the store and then closed the account. Applicant has demonstrated rehabilitation. He has not been involved with the police for any reason since this incident. He has not been involved with drugs or other illegal activities. He honorably served in the Navy and works regularly. The evidence raises these mitigating conditions.

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 Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both good

and bad. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is shown. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The mitigating evidence under the whole person concept is substantial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's problems first began when he was a young man, still in high school. (See AG ¶ 2(a)(4).) His brother depleted the funds from their joint checking account without telling him, causing Applicant to write worthless checks. When he learned about the problem at his mother's funeral a few months later, Applicant immediately paid the store for its losses after verifying that the checks had been returned for insufficient funds. At the young age of 17, Applicant accepted responsibility for this problem. Since this time, Applicant graduated from high school and served in the Navy with honor. He has acted honestly and with integrity in all that he does.

When he met with the security investigator, Applicant learned that he had credit problems. He immediately contacted the credit reporting agencies to report a possible theft of his identity. He hired a credit counseling agency to help him with reading and interpreting the information on his credit report. When it became clear to him that his identity had been stolen, he notified the credit reporting companies and attempted to file a police report. He challenged the unknown debts on his credit report. After investigation, the credit reporting agencies deleted most of the debts as not his. He resolved the two debts which were determined to be his. He pays his bills timely and lives well within his financial means. He will marry soon. He bought a house recently. He is a responsible young man who has resolved all the debt issues which are of concern to the government. He did not lie when he completed his e-QIP, as he was unaware that when he repaid the store, the local prosecutor would create a criminal record paper trail. Because it has been eight years since the check incident, he cannot be improperly pressured or placed under duress for this conduct. Of course, the issue is whether all his past conduct and finances raise concerns about his fitness to hold a security clearance. After weighing all the evidence of record, I conclude that the conduct raised in the SOR is insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations, personal conduct and criminal conduct.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge