



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-07252  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 23, 2009

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists five debts totaling about \$18,000. He paid two debts and one debt is in an established payment plan. Applicant provided insufficient evidence to mitigate financial considerations security concerns. Personal conduct concerns are not mitigated because he provided false information to a family court about the existence of a child of his marriage. The "Whole Person Concept," *infra* at pages 16-18, weighs against eligibility for access to classified information. His security clearance is denied.

**Statement of the Case**

On July 1, 2006, Applicant submitted an Electronic Questionnaire for National Security Positions (e-QIP) or Security Clearance Application (SF-86) (Government Exhibit (GE) 1). On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant (GE 10), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated

by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On March 26, 2009, Applicant responded to the SOR (GE 11). Department Counsel was prepared to proceed on May 19, 2009. On May 27, 2009, the case was assigned to me. On June 4, 2009, DOHA issued a hearing notice (GE 9). The hearing was held on June 22, 2009. Department Counsel offered nine exhibits (GE 1-8, 12) (Transcript (Tr.) 19, 132-134), and Applicant offered two exhibits (Tr. 126-128; AE A-B). Applicant did not object to consideration of the government exhibits. I admitted GE 1-7 and 12 (Tr. 19-20, 132-134). Department Counsel did not object to my consideration of AE A-B, and I admitted AE A-B (Tr. 128). Additionally, I admitted the Notice of Hearing, Amended Hearing Notice, SOR, and response to the SOR (GE 8-11). I received the transcript on June 29, 2009. I held the record open until July 6, 2009 (Tr. 108). I admitted an email, dated July 10, 2009, from Department Counsel stating no additional evidence beyond AE C and D, had been received from Applicant (AE E).

On July 2, 2009, I received two post-hearing exhibits, which were admitted without objection as AE C and D. Department Counsel urged me to give very little weight to AE C because the witness making this statement was not subjected to cross-examination. AE C corroborates Applicant's statements about who submitted his resume with an erroneous SSBI date, and Applicant's lack of involvement in adding the erroneous SSBI date. I conclude the statement is not sufficiently important to re-open Applicant's hearing. I find that Applicant was not responsible for furnishing an incorrect SSBI date as part of his resume.

### **Findings of Fact<sup>1</sup>**

In his SOR response, Applicant admitted SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, 1.h and 2.a (GE 11). He provided some explanations concerning the allegations in SOR ¶¶ 1.a., 1.h and 2.a. He also explained why he denied some of the other SOR allegations (GE 11). Applicant's admissions are accepted as findings of fact.

Applicant is a 47-year-old employee of a defense contractor (Tr. 6). He received a Graduate Equivalency Diploma in 1987 (Tr. 6). He attended college and majored in international business and security administration; however, he did not complete all requirements for a degree (Tr. 7). He has held a Top Secret security clearance since 1987 (Tr. 7). He served in the U.S. Marine Corps for five and a half years (Tr. 8). He

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<sup>1</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

received a Good Conduct Medal and an Honorable Discharge from the Marine Corps (Tr. 8; DD Form 214; GE 4 at 27). His current employer hired him on June 21, 2008 (Tr. 153).

## **Personal Conduct**

The SOR alleges eight personal conduct allegations. Seven SOR allegations involve employment issues involving hiring or termination. Over an eight-year period, Applicant left employment with four defense contractors without providing two-weeks' notice (SOR ¶¶ 1.a, 1.e, 1.f, and 1.g). He was terminated from employment with a federal investigative agency due to unsatisfactory performance (SOR ¶ 1.b). Another federal agency did not hire him because of discrepancies in his job application and interview (SOR ¶ 1.c). He quit another job with a defense contractor about four years ago because of personal problems and his work environment (SOR ¶ 1.d). One personal conduct allegation was unrelated to employment. He informed a family court adjudicating his divorce that there was no child born of his marriage (SOR ¶ 1.h). These eight personal conduct concerns receive full elaboration in the remainder of this section.

## **Employment problems**

**SOR ¶ 1.a.** In about September 2001, Applicant left employment with S without providing two-weeks' notice (GE 11). S hired him to be the company's security representative (Tr. 21). He worked for S about ten months (Tr. 23, 25). He quit because of a lack of concern at S about lax enforcement of security rules (Tr. 21). He said, "[he] was doing a fabulous job. Unfortunately [he] realized they didn't really want security" (Tr. 32). S had a "party atmosphere" (Tr. 27). For example, doors to emergency exits were left unsecured (Tr. 21). Applicant was the only employee at S assigned to physical security (Tr. 27). He gave a briefing to S' employees about security, and they treated security like it was a joke (Tr. 26). He did not have any documentation that indicated he told S' management about his security concerns (Tr. 27). He complained about lax security to no avail to S' owners and to the government employee responsible for verifying security at S (Tr. 22, 29). He was unhappy about S' lack of management support for his concerns (Tr. 30). His complaint to the government employee was oral and not written or via email (Tr. 29). He realized the appropriate response was to put his concerns in writing and provide them to the government so that corrective action would be taken (Tr. 30). He was aware of the requirement for two-weeks' notice (Tr. 23). He did not want to be held responsible if something bad happened at S due to lack of security (Tr. 32). He told another government agency that the reason he quit the job at S was because he was not given any work to do or he was given insufficient work (Tr. 112, 113). He did not tell the other agency about the real problem at S because he did not want to convey negative information about a former employer (Tr. 113).

**SOR ¶ 1.b.** On November 25, 2003, Applicant was terminated as an investigator from a federal investigative agency (D) for unacceptable performance (Tr. 32-33, 46; GE 11). He was a one-year term, probationary employee, and D dismissed him two days before his one-year term was completed (Tr. 33, 39). When he started at D, he arrived as a lateral transfer in the grade of GS-11 (Tr. 35). He had a higher grade than

other rookie agents, who were generally graded at GS-7 to GS-9 (Tr. 35). Because Applicant had a higher grade, much more was expected of him as an investigator than from the other lower-grade rookie agents (Tr. 35). As a rookie agent, he was hampered by a lack of guidance and stable leadership (Tr. 33). His supervisors changed three or four times, and the transitions to new leadership resulted in instability (Tr. 34). He had insufficient support to meet the investigative standards for his grade, GS 11 (Tr. 42). Applicant was not happy as an agent because he did not enjoy “grilling people about their personal information” (Tr. 34). He was not good at investigating, and preferred personal security and physical security situations (Tr. 38). An additional factor which may have led to his termination was that D was changing missions and needed to reduce personnel (Tr. 38).

**SOR ¶ 1.c.** In about April 2004, Applicant was not hired for a position at another agency (Z) because of concerns about false statements in his employment application and interview. Applicant denied that he provided false information to Z (Tr. 39-40, 66; GE 11). Z listed six reasons for not hiring him (GE 4 at 11):

(1) Z alleged he had to be asked three to five times to explain why he left the position with D in November 2003 before he revealed he was terminated (Tr. 41). Applicant said he told Z the same reasons expressed in the previous paragraph. He did not reveal that he was terminated because of his performance until directly asked about termination (Tr. 42-43);

(2) Z alleged Applicant listed on his resume that his job with D ended in December 2003 (Tr. 46). Applicant agrees his resume contains this information; however, he indicates his resume was incorrect by only about six days and was not intended to mislead (Tr. 46-47);

(3) Z alleged that Applicant listed as his supervisor for reference purposes at D a manager not involved in his termination (Tr. 48). Applicant listed Mr. J, a more senior manager, than Ms. M, the person at D who actually terminated him (Tr. 48). Applicant regarded Ms. M as unprofessional and preferred that the reference be from a person who would explain the termination was because of “lack of production” (Tr. 49).<sup>2</sup>

(4) Z alleged that D’s separation letter supported Z’s decision not to hire Applicant because the positions at Z and D were comparable. Applicant disagreed, arguing his position at D was as an investigator, and the proposed position at D was as a personal security specialist (Tr. 50).

(5) Z alleged that Applicant’s resume had an incorrect and more recent SSBI date on the first page (in 2004) than was accurate (Tr. 50). His actual SSBI was in 2001 (Tr. 51). He called someone on the telephone with access to his email account, and he

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<sup>2</sup> A memorandum from Ms. M describes the extensive efforts she made to train Applicant to be a professional investigator. She intensely managed his time management and actions during the work day. She indicated the quality and quantity of his work did not improve, despite her individual mentoring (GE 4 at 13).

asked her (Ms. E) to add some information about his work for D to his resume and then to send the resume to Z (Tr. 55-57; AE C). Applicant said Ms. E signed and submitted the cover letter with his resume with an incorrect SSBI date (Tr. 51-59, 67-68; GE 4 at 15-17; AE C). Ms. E, Applicant's close friend, made the change to his resume concerning his SSBI date without Applicant seeing the change (Tr. 54, 68). Ms. E "spruced up his resume a bit" without his advising Ms. E to do so (Tr. 69-70). He thought Ms. E guessed that his SSBI had been updated (Tr. 69). The last page of his resume indicates, "Current Top Secret Security Background Investigation 3/8/01" (GE 4 at 18). The original resume Applicant submitted has his correct SSBI date (Tr. 53). Ms. E provided a post-hearing affidavit corroborating Applicant's account about Ms. E having his permission to sign his name and that Ms. E guessed the date of his SSBI and filed his resume (AE C). Department Counsel did not have an opportunity to cross-examine Ms. E.

(6) Z alleged that Applicant's resume had an incorrect description of his status at D (Tr. 62). His resume said he had "term employment" with D, and in reality it was a Veterans Administration (VA) Readjustment Appointment type of employment (Tr. 62). His resume said on page one, "Eligible for Federal Government employment under 10-point, 30% Disabled Veteran's Preference" (GE 4 at 16). Applicant was unsure whether he actually received the 10-point VA preference when D hired him (Tr. 64). He did not remember whether he filed documentation with his application for hiring with D establishing his 10-point VA preference (Tr. 64-65).

**SOR ¶ 1.d.** In about August 2005, Applicant left employment with C after providing two weeks notice due to personal problems and a hostile work environment (Tr. 71-72; GE 11). He had lost his previous position because he married a foreign national (his marriage was incompatible with maintenance of his continued access to sensitive compartmented information (SCI)) (Tr. 72). His supervisor had a medical problem, was frequently angry, and said she was thinking about quitting (Tr. 72-74). Also, Applicant was having marital difficulty (Tr. 72-73). His supervisor quit, and Applicant's responsibilities were increased (Tr. 73-74). He believed he was doing a great job (Tr. 75). However, he could not handle the stress of performing his own duties and some of the duties of his supervisor (Tr. 74-75). He gave two-weeks' notice and quit (Tr. 75).

**SOR ¶ 1.e.** In about January 2006 after several months of employment with (E), Applicant quit (Tr. 76-77; GE 11). He did not provide two-weeks' notice to his employer (Tr. 76). He cited personal issues involving his wife's departure from his residence, and his belief another employee was treated unfairly as his reasons for quitting (Tr. 76). He was angry about replacing another employee who was being fired because he believed the employee he would be replacing was doing an excellent job (Tr. 76-79). He did not believe the other employee deserved to be replaced (Tr. 76-79). He told management that he would quit, unless they promised not to fire the other employee (Tr. 77-78). Still, management advised Applicant that the other employee was going to be fired. Applicant quit, and the other employee was subsequently fired (Tr. 77-80).

**SOR ¶ 1.f.** In about January 2006, Applicant left employment with R without providing two-weeks' notice (Tr. 81; GE 11). R hired Applicant after he quit his employment with E (Tr. 82). He found out R was hiring him to replace another employee, and he decided to quit (Tr. 82). He explained why he believed it was his duty to quit without providing two-weeks' notice (Tr. 83-91). He said, "I have a certain moral integrity that's not going to allow me to sit there and take someone's job if they're doing a good job" (Tr. 82). R did not deserve two-weeks' notice (Tr. 83). He did not want to be used, "as a henchman to sit next to them while they bring me up to speed and train me for the job they want me to do and they're going to fire this person? I refuse to accept that" (Tr. 83). The employee being fired was not aware of her employer's plan to fire her (Tr. 84). He considered both E and R to be disloyal to their employees (Tr. 88). He did not respect E and R (Tr. 88). Loyalty to employees is a two-way street (Tr. 88). He would be loyal to an employer, who was loyal to their employees (Tr. 88). Additionally, he was not aware of a rule that required two weeks' notice (Tr. 83). He believed it was more of a standard courtesy (Tr. 83). If it happens again in the future, he would leave without giving two-weeks' notice (Tr. 89). He rationalized that "sometimes rules are meant to be broken, and this is one rule that has to be broken because they were not doing things correct[ly]" (Tr. 91). He expressed some fear of returning hostile employees who might put him in the line of fire if he seemed to be part of the scheme to fire and replace the employee (Tr. 91).

**SOR ¶ 1.g.** In about September 2006 after having a personality conflict with the company owner, Applicant left employment with D without providing two-weeks' notice (Tr. 91). He was a consultant and believed he was not required to provide any notice before quitting (Tr. 92). He thought the owner was "totally unprofessional" and did not deserve notice before he quit (Tr. 92-93).

### **Paternity information provided to family court**

In 2008 during his divorce proceedings, Applicant did not disclose that a child was born of his marriage (SOR ¶ 1.h; Tr. 93). He married in June 2005 in the United States (GE 2 at 16). His divorce was final in June 2008 (GE 2 at 16-17). The final divorce decree states, "no children were born or adopted of this marriage" (GE 2 at 16). Applicant said he did not disclose to the court that he had a child of his marriage because he was unsure of paternity (Tr. 94). Applicant's spouse left his home in August 2005 because he was having financial problems due to unemployment (Tr. 94-96). She informed him that she was pregnant in November or December 2005 (Tr. 94-96). She left the United States in January 2006 (Tr. 94). Her child was born in March, 2006 in the Philippines (Tr. 95). Applicant went to the Philippines and was present at her birth (Tr. 98-99). He wanted to take care of the child, even if she was not his daughter, because he loved his wife (Tr. 97). He told the Office of Personnel Management (OPM) investigator that she was his daughter (Tr. 98). However, he told the family court in a document that no children were born or adopted of this marriage (Tr. 98; GE 2 at 17).

Applicant was reluctant to inform the family court that he was the father of the child born of his spouse. He was suspicious that his wife might have become pregnant from an ex-boyfriend who lived near her when she left Applicant in August 2005 (Tr. 99).

He did not want to tell a court that she was his daughter without proof of paternity (Tr. 99). He did not know the rules and laws and did not have paperwork proving paternity and did not know that he should have asked the court to resolve the paternity issue (Tr. 100). Applicant's ex-wife is now in China (Tr. 100). The baby lives with her maternal grandmother (Tr. 101). He asserted that claiming her as his child would raise issues with the IRS about claiming a dependent and head of household status (Tr. 103-104).

Applicant said he was paying support to the baby's maternal grandmother (Tr. 101). He made the following payments: August 24, 2006 (\$200); September 2006 (\$100); October 2006 (\$100); December 2006 (\$300); March 16, 2007 (\$140); April 13, 2007 (\$100); May 9, 2007 (\$155); June 9, 2007 (\$200); January 10, 2008 (\$300); April 9, 2008 (\$100); May 9, 2008 (\$200); May 15, 2008 (\$350); May 2009 (\$300) (Tr. 102, 105-107). He said he sends money continuously on a regular basis (Tr. 102). He said there were payments every month in 2009 (Tr. 108). I held the record open until July 6, 2009, for the rest of the payment records (Tr. 108). However, no records showing additional child support payments were presented after his hearing.

Applicant said he made the payments out of a sense of duty and to ease his conscience about being responsible for his former spouse's daughter (Tr. 108). He invited his former spouse to return to the United States and promised to sponsor her and support her financially; however, she has chosen to remain in China (Tr. 111).

## **Financial Considerations**

Applicant's SOR lists a Chapter 7 bankruptcy and five delinquent debts, totaling \$19,239. He petitioned for Chapter 7 bankruptcy in about December 2001. The bankruptcy court discharged his unsecured debts in about April 2002 (SOR ¶ 2.a; Tr. 114). About \$37,000 in debt was discharged in this bankruptcy (Tr. 115-116; GE 5 at 11). He attributed his financial problems to changing or quitting jobs (Tr. 116).

**Two paid SOR debts.** Applicant paid his judgment relating to a debt of \$1,473 (SOR ¶ 2.b) on October 11, 2008, Applicant paid \$421, resolving the debt in SOR ¶ 1.b (Tr. 117-120, 135; GE 11 at 2). Applicant paid his debt of \$850 on a collection account (SOR ¶ 2.d) on January 17, 2009 (Tr. 117; GE 11 at 1).

**One SOR debt in payment plan.** Applicant owes \$1,142 on a collection account for the purchase of exercise equipment (SOR ¶ 2.c; Tr. 121; GE 6; GE 7 at 1). He is making periodic payments of \$50 (Tr. 121-125, 129-134). I requested that he provide documentation after his hearing showing payments to this creditor (Tr. 131). Applicant provided documentation showing \$50 monthly payments for at least six months, reducing the debt to \$1,212 as of May 27, 2009 (AE D).

**Two insufficiently resolved SOR debts.** Applicant owes about \$6,000 on a collection account (SOR ¶ 2.e; Tr. 137; GE 6 at 2). In his SOR response, Applicant said, "I deny: the [SOR ¶ 2.e] account is being paid as arranged by creditor" (GE 11). At his hearing, he asserted, that he is resolving this debt with a payment plan (Tr. 135-137, 143; AE A at 3). As part of his SOR response, he provided a letter, dated February 16,

2009, from the creditor indicating the amount owed was \$6,892 (GE 11 at 3). He crossed off the amount owed and wrote \$4,763 (GE 11 at 3). The following exchange occurred between Department Counsel and Applicant concerning the balance owed, and payments made:

Department Counsel: The balance on this account is not listed on [AE A at 3]. Do you know what the balance is?

Applicant: It's hard to answer that question because when I asked this collection company the balance it seems like they change it and it doesn't make sense what's occurring with the account.

Department Counsel: Okay.

Applicant: But I just cooperate so they don't continue saying I'm not making payments. And it seems like the minimum is never going down is what I'm trying to express there, but I just make the payments so it doesn't further reflect that I'm trying not to cooperate with them.

Department Counsel: What type of payments do you make or have you been making?

Applicant: I give them \$200 every month, \$200 a month.

Department Counsel: Since when?

Applicant: It's been going on for quite some time now. This debt has been going on for a year or so, a year or two years, maybe longer than that.

(emphasis added)(Tr. 136-137). Later at Applicant's hearing, Department Counsel returned to the issue of when he made his payment plan with the creditor in SOR ¶ 2.e (Tr. 153). Applicant said that he could not recall when he reached the payment arrangement with this creditor (Tr. 153). He said he was making the payments since last year or the year before (Tr. 155). He concluded, "They're all getting their money every month" (Tr. 155).

Applicant owes about \$8,500 on a collection account for a repossessed vehicle (SOR ¶ 2.f; Tr. 138-143; AE A at 5; GE 2 at 2). He was making payments in 2008, and then stopped when he learned the account was transferred (Tr. 139-140). The agreement is to make monthly payments of \$300 (Tr. 140). On May 11, 2009, he made a \$300 payment (Tr. 139; AE A at 5). He said he is cooperating and giving them money (Tr. 155). He intends to continue to make payments (Tr. 142).

Applicant received financial counseling and learned that he was not living beyond his means (Tr. 156). He prepared a budget (Tr. 157). The financial counselor advised him to make more than the minimum payments on his debts and to reduce his interest



payments (Tr. 156, 158). His goal was to pay off his creditors and reduce his interest payments on his outstanding debts (Tr. 156).

Applicant's take home monthly pay is \$3,914 (Tr. 146). He also receives \$453 from the Veteran's Administration (VA) because of a service-connected disability (Tr. 146). Applicant is making payments on two credit cards as agreed (Tr. 144; AE A at 10-11). His balance on one card is \$475, and his balance on the other card is \$650 (AE A at 10-11). His monthly rent is \$1,514 (Tr. 146). His rent is current and has never been delinquent over the last seven years (Tr. 145). He does not own or lease a vehicle (Tr. 146). He pays all of his bills on time (Tr. 148).

I requested that Applicant provide proof that he had made the payments on his SOR debts for the first six months of 2009 (Tr. 148-149). Applicant said he understood the requirement (Tr. 148-149). The record was kept open until July 6, 2009 (Tr. 161, 166). I did not receive the documentation I requested showing payments to the debts in SOR ¶¶ 2.e and 2.f for the period January through June 2009.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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). 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus,

nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. 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 (4<sup>th</sup> 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). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guidelines E (Personal Conduct) and F (Financial Considerations).

#### **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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 describes several conditions that could raise a security concern and may be disqualifying in this case in regard to providing the SOR allegations:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single

guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group; and

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

The SOR alleges eight personal conduct allegations. Seven SOR allegations involve employment issues involving hiring or termination. Over an eight-year period, Applicant left employment with four defense contractors without providing two-weeks' notice (SOR ¶¶ 1.a, 1.e, 1.f, and 1.g).<sup>3</sup> He was terminated from employment with a

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<sup>3</sup> One of the four jobs he left without providing two-weeks' notice was his employment as a consultant. There is no reason to believe two-weeks notice is required even as a courtesy for a consultant. As such, only three of the four times he quit his jobs is cited in the "Whole Person Concept," *infra*.

federal investigative agency due to unsatisfactory performance (SOR ¶ 1.b). Another federal agency did not hire him because of discrepancies in his job application and interview (SOR ¶ 1.c). He quit another job with a defense contractor about four years ago because of personal problems and his work environment (SOR ¶ 1.d). One personal conduct allegation was unrelated to employment. He informed a family court adjudicating his divorce that there was no child born of his marriage (SOR ¶ 1.h).

AG ¶¶ 16(c) and 16(d)(1) both apply because the record contains substantial evidence that Applicant engaged in a variety of decisions and actions showing questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations.

AG ¶¶ 16(d)(3), 16(e) and 16(f) do not apply. AG ¶ 16(d)(3) does not apply because it is unclear whether there is a rule precluding leaving employment without two weeks' notice. Applicant was forthcoming at his hearing about his reasons for quitting his jobs. He is proud of his decisions to quit jobs based on his ideals and principles. The government is well-aware of his former wife's daughter, who is living in the Philippines. He is not subject to exploitation or pressure because of the conduct alleged in the SOR. There is no evidence that Applicant has violated a written or recorded commitment to the employer as a condition of employment. If there is a written commitment to provide two weeks' notice, that documentation is not part of the record evidence in this case.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) 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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶¶ 17(c) and 17(f) apply to the federal agency's decision not to hire Applicant because of discrepancies in his job application and interview (SOR ¶ 1.c). Applicant filed a resume which made it very clear he had a veteran's 10-point preference. It is a common practice to list a supervisor on a resume who will provide positive comments about performance, and not to list any supervisors, who might make negative comments about performance. The other disputed information, such as when his SSBI was completed, is controverted and/or too minor to raise a security concern.

Applicant left one job after providing two-weeks' notice (SOR ¶ 1.d). He quit another job as a consultant without providing two-weeks' notice (SOR ¶ 1.g). There is no reason to believe a consultant should have to provide two-weeks' notice.

Over an eight-year period, Applicant left employment with three defense contractors without providing two-weeks' notice (SOR ¶¶ 1.a, 1.e and 1.f). He was terminated from employment with a federal investigative agency due to unsatisfactory performance (SOR ¶ 1.b). Under AG 16(d)(1) this conduct is somewhat "untrustworthy or unreliable behavior." When he left employment without providing notice, he caused problems for his employers. His work in security is essential to his employer's safety and effectiveness. Employees should not negligently or intentionally cause gaps where no security expertise is available to protect national security. His oral statement makes it clear that he did not care whether his abrupt, voluntary departure from employment had an adverse impact on his employer.

However, there is insufficient evidence in the record of a requirement to provide two weeks' notice. The letter from Ms. M describes his dereliction of duty in general terms. Ms. M does not describe particular days when Applicant failed to perform his investigative responsibilities and his response, if any to her counseling and mentoring sessions. See n. 2, *supra* and GE 4 at 13. I conclude that SOR ¶¶ 1.a, 1.b, 1.e, and 1.f are mitigated applying SOR ¶ 17(f). Nevertheless, these four SOR factual allegations are relevant for further consideration in the Whole Person Concept, at pages 16-18, *infra*.

One personal conduct allegation was unrelated to employment. Applicant informed a family court adjudicating his divorce that there was no child born of his marriage (SOR ¶ 1.h). This was not true. He said she was his daughter (GE 2 at 4). Now, he says he is unsure of paternity (Tr. 99-100). He was present in the Philippines when his spouse's daughter was born (Tr. 98). I do not find his explanation about tax concerns to be credible. He provided evidence of four payments to support his spouse's

daughter in 2006, four payments in 2007, four payments in 2008, and one payment in 2009. In the last 12 months (June 2008 to June 2009), he has only provided proof of payment of \$300 in child support. I am confident the family court would have ordered substantially more child support, unless he provided proof that he was not the child's father, which Applicant does not have. The false information he provided the family court resulted in his avoidance of a substantial potential legal requirement to pay child support until the child reaches the age of 18 and perhaps even longer. As such, his false court filing is a material, deliberate and intentional breach of integrity and honesty that has significant, adverse long-term implications for his former spouse and her child.

## **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and, "(c) a history of not meeting financial obligations." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern." Applicant's history of delinquent debt is documented in his bankruptcy schedules, his credit reports, his SOR response and his oral statement at his hearing. He failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five financial considerations mitigating conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit because his delinquent debts "occurred under such circumstances that [they are] unlikely to recur," assuming he will not have the same unemployment problems he has experienced in the last eight years. However, the problem of about \$14,000 in unresolved debt continues to "cast doubt on [his] current reliability, trustworthiness, or good judgment."

Applicant receives partial credit under AG ¶ 20(b) because his financial problems initially resulted from his periods of unemployment or underemployment. He does not receive full mitigating credit because he did not establish that he acted responsibly under the circumstances.

AG ¶ 20(c) partially applies. Applicant received financial counseling as part of his bankruptcy. However, there are not "clear indications that the problem is being resolved or is under control" because two debts totaling over \$14,000 are insufficiently resolved. He has also established some, but not full mitigation under AG ¶ 20(d), because he showed some good faith<sup>4</sup> in the resolution of his SOR debts. He paid the two debts in SOR ¶¶ 2.b and 2.d. He established a solid track record of making payments on the

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<sup>4</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

debt in SOR ¶ 2.c. He does not receive full credit under AG ¶ 20(c) because he did not establish that he is making meaningful progress resolving the debts in SOR ¶¶ 2.e and 2.f.

AG ¶ 20(e) does not apply. Applicant did not provide documentation contesting the validity of any debts.<sup>5</sup>

I will briefly provide an additional explanation of my reasons for not mitigating the allegations in SOR ¶¶ 2.e and 2.f in the Formal Findings section of this decision. Applicant owes about \$14,000 on these two debts. He said he has been making payments for many months on these accounts. He was especially clear that he has been making \$200 monthly payments for a lengthy period of time on the debt in SOR ¶ 2.e. However, he provided proof of only one payment on the debt in SOR ¶ 2.e. He was specifically asked for supporting documentation to corroborate his claim that he was making monthly payments on the debt in SOR ¶ 1.e, and he did not provide the requested documentation. I conclude that he was not accurate in his claim of such payments.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. Applicant said he was making payments on two large debts, and he was told of the necessity for supporting documentation. He did not provide the requested proof to establish his track record of debt payments. I am not confident he will pay these two debts because of his lack of meaningful progress on the resolution of these two debts.

### **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 relevant 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.

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<sup>5</sup>“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.



The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines E and F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The mitigating evidence under the whole person concept is important to consider; however, it is insufficient to warrant reinstatement of Applicant's security clearance. There is no evidence of any security violation(s). He is generally a law-abiding citizen (the only potential criminal offense is his false filing with the family court concerning his spouse's daughter's birth during their marriage). His current financial problems were partially caused by some factors partially or fully beyond his control: (1) insufficient income, (2) unemployment, and (3) underemployment. He paid two debts and sufficiently resolved another SOR debt through an established payment plan. His bankruptcy is not recent. He has paid some child support. He promised to pay his debts.

Applicant has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He completed high school and earned some college credits. Some of his employment history and contributions to defense contractors speak well for his character. He understands how to budget and what he needs to do to establish his financial responsibility. Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service in the U.S. Marine Corps. These factors, especially his past government service, show substantial responsibility.

The evidence against mitigating Applicant's conduct is more substantial. He has a history of financial problems as indicated by his 2001 bankruptcy and his subsequent delinquent debts. He failed to establish that he made sufficient effort to address two large delinquent debts. Ultimately, he did not establish that he acted with sufficient effort and self-discipline to resolve his delinquent debts and/or to better document his remedial efforts.

Over an eight-year period, Applicant left employment with three defense contractors without providing two-weeks' notice. When he left employment without providing notice, he caused problems for his employers. His oral statement at his hearing makes it clear that he did not care whether his abrupt terminations had an adverse impact on his employers. He was terminated from employment with a federal investigative agency due to unsatisfactory performance. His failure to adequately perform his investigative missions was at least in part due to his reluctance to ask searching questions of persons he was interviewing. Part of being a security clearance holder is to sometimes make tough personnel decisions to protect national security. Applicant seems to be unwilling to make difficult decisions that adversely affect people. His negative job performance was generally documented by his supervisor, Ms. M. His performance at the investigative agency raises some reliability and trustworthiness concerns.

Applicant filed a false document with a family court, raising serious integrity and trustworthiness concerns. He informed a family court adjudicating his divorce that there was no child born of his marriage. This was not true. I do not find his explanation about tax concerns to be credible. He provided evidence of four payments to support his daughter in 2006, four payments in 2007, four payments in 2008, and one payment in 2009. Absent proof that the child born of his marriage was not his child, the court would have ordered monthly payments (or deferred to a Philippine Court to resolve the divorce). Most likely, Applicant would have had to pay more to support his wife's daughter than he has paid to support her. He avoided a substantial risk of greater child support payments by telling the court that no child was born of their marriage. At this time there is no legal reason why Applicant could not stop making any payments whatsoever to support this child, who is presumptively his daughter (under most state laws). He has almost stopped making payments, as he has only paid \$300 in the last 12 months (June 2008 to June 2009).

All the factors considered together show too much financial irresponsibility and lack of judgment. His history of delinquent debt raises unmitigated security concerns.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not sufficiently mitigated personal conduct and financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not fully mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

### **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 E:	AGAINST APPLICANT
Subparagraphs 1.a to 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
PARAGRAPH 2, GUIDELINE F:	AGAINST APPLICANT
Subparagraphs 2.a to 2.d:	For Applicant
Subparagraphs 2.e and 2.f:	Against Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

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MARK HARVEY  
Administrative Judge