



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-09224
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

January 14, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed 21 delinquent debts totaling \$19,859, and two criminal offenses. The two criminal offenses are mitigated. He failed to make sufficient effort to resolve his delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

On March 28, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (Item 4). On June 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guidelines F (financial considerations) and J (criminal conduct) (Item 1). 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 (Item 1).

On July 8, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 2). A complete copy of the file of relevant material (FORM), dated September 16, 2009, was provided to him, and he was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant did not provide a response to the FORM. The case was assigned to me on January 8, 2010.

Findings of Fact²

In Applicant's response to the SOR, he admitted the 13 debts in SOR ¶¶ 1.c to 1.g, 1.i to 1.k, 1.m, and 1.r to 1.u, totaling \$14,670 (Item 2). He denied the remainder of the delinquent debts (Item 2). He admitted the criminal conduct in SOR ¶ 2.a, and denied the criminal conduct in SOR ¶ 2.b (Item 2). His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 37-year-old employee of a defense contractor.³ In 1990, he graduated from high school. From March 2000 to February 2004 and from March 2004 to November 2006, he worked for defense contractors in the area of information technology. He was unemployed from December 2006 to September 2007. In October 2007, he began working for a defense contractor in the area of information technology. In 1994, he married his spouse. His twin daughters were born in 2001, and his stepson was born in 1993. He has never served in the U.S. military.

Applicant did not disclose any unpaid judgments, unpaid liens, garnishments, illegal drug use, or alcohol-related offenses on his March 28, 2008, security clearance application. He disclosed an arrest for theft in November 2007, and a delinquent student loan for \$2,500 that was incurred in approximately July 2004.

Financial Considerations

Applicant's SOR listed 21 delinquent debts totaling \$19,859 as follows: ¶ 1.a (store debt—\$76); ¶ 1.b (store debt—\$84); ¶ 1.c (collection account—\$529); ¶ 1.d

¹The DOHA transmittal letter is dated September 18, 2009; and Applicant's receipt is dated October 14, 2009. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's March 28, 2008, security clearance application (Item 4).

(collection account—\$268); ¶ 1.e (collection account—\$152); ¶ 1.f (medical debt—\$51); ¶ 1.g (collection account—\$196); ¶ 1.h (medical debt—\$20); ¶ 1.i (collection account—\$218); ¶ 1.j (bank account—\$569); ¶ 1.k (collection account—\$2,348); ¶ 1.l (collection account—\$616); ¶ 1.m (collection account—\$8,513); ¶ 1.n (medical debt—\$2,956); ¶ 1.o (collection account—\$1,135); ¶ 1.p (collection account—\$218); ¶ 1.q (collection account—\$84); ¶ 1.r (collection account—\$200); ¶ 1.s (collection account—\$1,156); ¶ 1.t (collection account—\$120); and ¶ 1.u (collection account—\$350) (Item 1). SOR ¶ 1.v also alleges Applicant was arrested in about November 2006 and charged with uttering worthless checks (Item 1).

Applicant said he opened three student loans in the 2002 to 2003 timeframe.⁴ The accounts became delinquent in 2003 for about six months. He continued making payments until 2007, when his student loan account again became delinquent because of his unemployment. He paid off the \$4,900 balance in April 2008 using an income tax refund. He was employed from October 2007 to the present (Item 4). By January 2009, he said he had paid off about \$1,000 in non-student loan debts (Item 5). In January 2009, he said he believed he could pay off all of his debts in the next 24 months (Item 5).

SOR ¶¶ 1.a (\$76) and 1.j (\$569)—UNRESOLVED. DOHA did not ask Applicant to address these two debts in their interrogatories (Item 5). In his SOR response, he admitted the debt in SOR ¶ 1.j and denied the debt in SOR ¶ 1.a (Item 4). He did not provide proof of any payments or other resolution of either of these two debts. The debt in SOR ¶ 1.j is established as a delinquent debt, and the debt in SOR ¶ 1.a is not established.

SOR ¶ 1.b (\$84)—UNRESOLVED. On January 8, 2009, Applicant admitted this debt resulted from a check Applicant's father wrote to him as payee (Item 5). He did not indicate he paid for the bad check, and he denied the debt in his SOR response (Item 4). There is insufficient evidence to establish Applicant's responsibility for this debt.

SOR ¶¶ 1.c (\$529), 1.g (\$196), 1.i (\$218), 1.p (\$218), and 1.q (\$84)—UNRESOLVED. These five debts are owed to the same creditor. On January 8, 2009, Applicant said he had not paid anything on these "four" accounts because he could not afford to make payments (Item 5). In his SOR response he admitted the debts in SOR ¶¶ 1.c, 1.g, and 1.i, and denied the debts in SOR ¶¶ 1.p and 1.q (Item 4). He did not provide any evidence of attempts to resolve these debts. The debts in SOR ¶¶ 1.c (\$529), 1.g (\$196), 1.i (\$218), and 1.q (\$84) are established as Applicant's delinquent debts. The debt in SOR ¶ 1.p (\$218) duplicates the debt in SOR ¶ 1.i.

⁴Applicant's Office of Personnel Management (OPM) interview on May 22, 2008 (Item 6) is the source for the information in this section, unless stated otherwise. However, his March 28, 2008, security clearance application is inconsistent with his OPM interview. His security clearance application indicated he incurred a \$2,500 student loan in approximately July 2004 (Item 4). According to his security clearance application, this was his only delinquent debt meeting the report requirements of being 180-days delinquent in the last seven years, or 90-days currently delinquent (Item 4). The SOR did not allege that Applicant falsified his security clearance application, and I apply no adverse inference against Applicant because of omissions on his security clearance application.

SOR ¶¶ 1.d (\$268), 1.e (\$152), 1.f (\$51), 1.h (\$20), 1.i (\$616/\$708), and 1.n (\$2,956)—UNRESOLVED. On January 8, 2009, Applicant said he did not remember these accounts, and requested a credit report to validate them (Item 5). In his SOR response he admitted the debts in SOR ¶¶ 1.d, 1.e, and 1.f; and he denied the debts in SOR ¶¶ 1.h, 1.i and 1.n (Item 4). He did not provide any evidence of attempts to dispute, pay, or otherwise resolve these debts. The debts in SOR ¶¶ 1.d, 1.e, and 1.f are established as Applicant's delinquent debts. The debts in SOR ¶¶ 1.h, 1.i and 1.n are not established as Applicant's delinquent debts.

SOR ¶ 1.k (\$2,348)—UNRESOLVED. On January 8, 2009, Applicant said he had paid \$50 a month for the last year, and the current balance was \$1,950 (Item 5). He admitted the debt in his SOR response (Item 4). However, he did not provide documentary proof of any payments made in the last two years, such as an account statement from the creditor or his bank account statements. There is insufficient evidence of an established payment plan because of the absence of such readily available supporting documentation.

SOR ¶ 1.m (\$8,513)—UNRESOLVED. On January 8, 2009, Applicant said this debt resulted from a repossessed vehicle, and the current balance was \$7,151 (Item 5). He admitted the debt in his SOR response (Item 4). He did not provide proof of any payments made in the last two years, such as an account statement from the creditor or his bank account statements. However, he did list \$100 monthly payments to his creditor on his personal financial statement (PFS) (Item 5). There is insufficient evidence of an established payment plan because of the absence of such readily available supporting documentation.

SOR ¶ 1.o (\$1,135)—UNRESOLVED. On January 8, 2009, Applicant said this debt resulted from his father's checking account (Item 5). His father died and Applicant was listed as the payee on the account (Item 5). He said he disputed the debt with the credit reporting company (Item 5). He denied the debt in his SOR response (Item 4). He did not provide proof of any payments made, or documents showing the dispute.⁵

SOR ¶¶ 1.r (\$200), 1.s (\$1,156), 1.t (\$120), and 1.u (\$350)—UNRESOLVED. These four debts are owed to the same creditor. On January 8, 2009, Applicant said he had not paid anything on these four accounts because he could not afford to make payments (Item 5). In his SOR response he admitted the debts in SOR ¶¶ 1.r to 1.u. The debts in SOR ¶¶ 1.r to 1.u are established as Applicant's delinquent debts. He did not provide any evidence of attempts to resolve these debts.

Applicant and his spouse's net monthly pay is about \$2,658 (Item 5). His monthly expenses are about \$1,500. His PFS indicates the following monthly payments: \$600 (mortgage), \$200 (vehicle loan), and \$100 (SOR ¶ 1.m), leaving about \$258 a month to address his other debts (Item 5). (Applicant told the OPM investigator on May 28, 2008,

⁵ Presumably, Applicant inherited the account from his father, and the account was overdrawn. There is insufficient evidence of record to establish his responsibility for this debt.

that he was making \$200 a month payments on the SOR ¶ 1.m account, which had a balance of about \$4,500). Applicant did not provide any documents showing his communications with his SOR creditors concerning his efforts to pay, establish payment plans, or otherwise resolve his delinquent SOR debts.⁶

Criminal Conduct⁷

Applicant admitted he was charged with theft of a motor vehicle in November 2006 (SOR ¶ 2.a; Item 1; Item 5, Item 6). Applicant left his used vehicle at a car dealership and took the dealership vehicle to his residence. The dealership called the police. The next day, the police arrested Applicant at his home, and Applicant was held in jail for five days pending payment of his bond. The prosecutor agreed to defer adjudication for one year, and after the year elapsed, the charge was dismissed.

Applicant told an OPM investigator he was charged in 1999 or 2000 with writing a worthless check (SOR ¶ 2.b). He received a fine of about \$150. He denied to the OPM investigator and in his SOR response that he had an arrest for writing worthless checks in November 2006. An FBI records check indicated he was charged in November 2006 with writing worthless checks; however, the FBI record does not include a disposition for either of the criminal offenses (Item 10). The FBI record includes the caveat that deciding officials “should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information” (Item 10). Additionally, the FBI record form warns about relying on an arrest report, when there is no conviction (Item 10).

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 applicant’s 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

⁶The FORM at pages 5-6 provides additional notice to Applicant of the importance of documentation showing Applicant’s efforts to resolve his delinquent SOR debts.

⁷Applicant’s OPM interview on May 22, 2008 (Item 6) is the source for the information in this section, unless stated otherwise.

guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 applicant 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 (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). 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 concerns are under Guidelines F (financial considerations) and J (criminal conduct).

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." "It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply." ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) (internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his OPM interview, his response to DOHA interrogatories, and his SOR response. His debts, including several student loans, have been delinquent for a substantial period of time. In Applicant's response to the SOR, he admitted the 13 debts in SOR ¶¶ 1.c to 1.g, 1.i to 1.k, 1.m, and 1.r to 1.u, totaling \$14,670. In his response to interrogatories, he admitted responsibility for the debt in SOR ¶¶ 1.i (\$218) and 1.p (\$218). I conclude these two debts are duplications of each other.

Although Applicant said he made \$50 monthly payments on the debt in SOR ¶ 1.k, and his PFS indicates he planned to or did make \$100 monthly payments on the debt in SOR ¶ 1.m, he did not provide any supporting documentary evidence of such payments, such as an account statement from the creditor or his bank account statements. There is insufficient evidence of an established payment plan because of the absence of such readily available supporting documentation. Even after he was advised of the necessity of corroborating documentation in the FORM, he did not provide documents showing payments to either of these creditors.

Applicant did not provide any evidence of resolution on the other 11 SOR debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 any mitigating conditions 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)). Applicant does not receive credit under AG ¶ 20(a) because he did not establish that his financial problems "occurred under such circumstances that [they are] unlikely to recur." There is some residual doubt about whether Applicant is fully committed to resolving his delinquent SOR debts and is making adequate steps to do so.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by unemployment from December 2006 to September 2007. However, he has not provided sufficient evidence to establish that he acted responsibly under the circumstances with respect to his unresolved SOR debts. On May 22, 2008, Applicant told an OPM investigator that he used his tax refund to pay off his student loan debt of about \$4,900. In January 2009, he responded to DOHA interrogatories and explained he had paid his student loans and \$1,000 in debt, and predicted that he would pay off the remainder of his delinquent debt in 24 months. According to his PFS, he had sufficient financial resources to make \$100 monthly payments on the debt in SOR ¶ 1.m, with a remainder of \$258 per month. He had sufficient financial resources to begin a payment plan to address some of his smaller debts and loans, and chose not to do so.⁸

⁸"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

AG ¶ 20(c) partially applies. Although Applicant did not receive financial counseling, he probably has otherwise learned about financial issues. He generated a budget as part of his PFS. Applicant cannot receive full credit under AG ¶ 20(c) because he has not paid, started payment plans, disputed, or otherwise resolved at least 11 of his SOR debts. There are some initial, positive “indications that the problem is being resolved or is under control.” He has admitted his responsibility for 13 SOR debts. Although he may have payment plans on two debts (SOR ¶¶ 1.k and 1.m), he did not provide documentation showing any payments to these two creditors. He promised to eventually resolve his delinquent SOR debts. He also established some mitigation under AG ¶ 20(d) because he showed some good faith⁹ in the resolution of his SOR debts by admitting responsibility for 13 of his SOR debts, payment of his delinquent student loans in early 2008, and promising to resolve his delinquent SOR debts.

In January 2009, Applicant questioned his responsibility for multiple SOR debts, and said he would contact credit reporting companies for verification. In his SOR response, he admitted responsibility for 13 of his delinquent SOR debts, and denied responsibility for eight SOR debts. In his response to DOHA interrogatories, he admitted responsibility for one more SOR debt. I conclude the seven SOR debts he consistently denied are not sufficiently established as his responsibility, and find “For Applicant” in the Formal Findings on page 13, *infra*.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He said he has payment plans on the debts in SOR ¶¶ 1.k and 1.m; however, there is insufficient supporting documentation to credit him with mitigating these two substantial debts. In his SOR response, he contested his responsibility for eight debts. In his DOHA interrogatories, he admitted more debts than he did in his SOR response. Two debts apparently duplicate each other (SOR ¶¶ 1.i (\$200) and 1.p (\$200)). He has had steady employment since October 2007, and he has not shown significant progress on his SOR debts since his May 22, 2008, OPM interview. His steps since May 22, 2008, are simply inadequate to fully mitigate financial considerations security concerns.

whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁹The 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) 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)).

Criminal Conduct

AG ¶ 30 expresses the trustworthiness concern pertaining 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.”

AG ¶ 31 describes six conditions that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

AGs ¶¶ 31(a) and 31(c) apply. There is substantial evidence of one felony-level offense. Applicant was charged with theft of a motor vehicle in November 2006 (SOR ¶ 2.a). There is also substantial evidence of one misdemeanor-level offense. In 1999 or 2000, he was charged with writing a worthless check (SOR ¶ 2.b).¹⁰ The theft of the motor vehicle offense was dismissed. He was convicted of the worthless check offense and fined about \$150. He denied the felony-level offense.

AG ¶ 32 provides four conditions that could potentially mitigate trustworthiness concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person’s life;

¹⁰He denied to the OPM investigator and in his SOR response that he had an arrest for writing worthless checks in November 2006.

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) applies to the worthless check offense in 1999 or 2000. It occurred approximately nine years ago. AG ¶ 32(c) applies to the vehicle theft. He took a dealership vehicle home with him overnight, and left his vehicle behind. Taking the vehicle home without being absolutely sure he had permission showed poor judgment; however, the charge was dismissed about a year after he was arrested. Applicant's last offense resulting in a conviction occurred in 1999 or 2000. It was a misdemeanor. He demonstrated his intent not to commit future crimes as encompassed in these two mitigating conditions. He has worked with information technology and has a good employment record. He accepted responsibility and admitted his culpability. He has shown sufficient mitigation to mitigate criminal conduct concerns.

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.

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 F and J in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his clearance. Applicant is 37 years old, and he is sufficiently mature to understand and abide with his security responsibilities. He deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor. There is no evidence that he has ever violated security rules. There is every indication that he is loyal to the United States, the Department of Defense, and his

employer. There is no evidence that he abuses alcohol or uses illegal drugs. He has never been fired from a job or left employment under adverse circumstances. His unemployment from December 2006 to September 2007 contributed to his financial woes. Although he did not provide any proof from creditors or his own account statements, I accept his statement that in 2008, he paid his delinquent student loan of about \$4,900 and about \$1000 towards some other debts. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a history of financial problems. He began to have financial difficulties several years ago during a period of unemployment. On May 22, 2008, in his OPM interview, in January 2009, in his response to DOHA interrogatories, and in July 2009, in his SOR response, he discussed his SOR debts. He had ample notice of his delinquent SOR debts, and sufficient opportunity to contact his creditors. He did not make sufficient progress in the resolution of his SOR debts. He did not pay, start payments, dispute, or otherwise resolve 13 SOR debts. His PFS shows a monthly payment of \$100 towards the debt in SOR ¶ 1.m, and he said in his DOHA interrogatories that he was making \$50 monthly payments towards the debt in SOR ¶ 1.k. I do not accept his statements about making or intending to make payments on the debts in SOR ¶¶ 1.k and 1.m as sufficient to show he has an established payment plan on these two debts. In January 2009, he said he had sufficient income to pay all of his SOR debts in 24 months; however, he did not provide documentary evidence of any payments after January 2009 on any of his SOR debts.

In conclusion, Applicant made insufficient progress to resolve his delinquent SOR debts, even though he had steady employment since October 2007 and ample opportunity to contact his SOR creditors and provide documentation. He was on clear notice from his receipt of DOHA interrogatories, and even more so after he received the SOR, that he needed to show substantial progress in the resolution of his delinquent SOR debts; however, he did not provide documentation showing his efforts to accomplish this security responsibility.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the criminal conduct concerns; however, he has not mitigated the 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 failed to mitigate 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 F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c to 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i to 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n and 1.o:	For Applicant
Subparagraph 1.p:	For Applicant (duplicates 1.i)
Subparagraphs 1.q to 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For 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.

MARK HARVEY
Administrative Judge