



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-09396
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: Pro Se

February 23, 2010

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his security clearance questionnaire (SF 86) on March 24, 2008. On January 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for Applicant. 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.

On March 3, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. On July 30, 2009, Department Counsel amended the SOR detailing additional concerns under Guideline E, Personal Conduct, and Guideline J, Criminal Conduct. Applicant answered the Amendment to the SOR on August 14, 2009. Department Counsel was ready to proceed on October 9, 2009. The case was assigned to me on October 16, 2008. On November 20, 2009, a Notice of Hearing was issued, scheduling the hearing for December 8, 2009. The case was heard on that date. The

Government offered six exhibits which were admitted without objection as Government Exhibits (Gov) 1 – 6. The Applicant testified, called one witness, and offered two exhibits which were admitted without objection as Applicant Exhibits (AE) A - B. The record was held open until January 19, 2010, to allow Applicant to submit additional documents. He timely submitted four additional documents that were admitted as AE C – AE F. The transcript was received on December 14, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

Department Counsel noted that there is no SOR ¶¶ 1.r, 1.s, and 1.t. (Tr at 13)

In the Amendment to the SOR dated August 4, 2009, SOR ¶¶ 2.b - 2.d were added under Guideline E, Personal Conduct. A new paragraph three was added raising security concerns under Criminal Conduct. SOR ¶¶ 3.a – 3.i were added.

During the hearing, Department Counsel motioned to amend the SOR on several occasions pursuant to paragraph E.3.1.17 of the Directive in order to conform with the evidence. Applicant had no objection to the motions. The amendments include:

SOR ¶ 1.rr was added which reads:

You are indebted to AFNI Bloom-Verizon in the amount of \$481. As of November 4, 2008, this debt had not been paid. (Tr at 36-37)

SOR ¶ 1.rr replaced SOR ¶ 1.w. SOR ¶ 1.w is found for Applicant. (Tr at 38)

SOR ¶ 2.b was amended by changing paragraphs 1.h, 1.e, and 1.f to paragraphs 3.h, 3.e, and 3.f. (Tr at 77-78)

SOR ¶ 2.c was amended by changing paragraphs 1.h, 1.d, 1.e, and 1.f to paragraphs 3.h, 3.d, 3.e, and 3.f. (Tr at 71-72)

SOR ¶ 2.d was amended by changing paragraphs 1.a, 1.b, and 1.c to paragraphs 3.a, 3.b, and 3.c. (Tr at 80-81)

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the allegations in SOR ¶¶ 2.a and 3.b. He admits all of the other SOR allegations.

Applicant is a 45-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as a maintenance person with his company since January 2008. In 2007, he was laid off for one year, but he has worked for the same company for approximately seven years. He requires a security clearance

in order to perform maintenance work in three rooms that are considered secure facilities. This is his first time applying for a security clearance. His highest level of education is the 10<sup>th</sup> grade. He states that he is able to read and understand the SOR allegations. He is single and has no children. (Tr at 4-7, 30-31; Gov 1.)

### **Financial Considerations**

Applicant's security clearance background investigation revealed that he had a significant amount of delinquent medical debts. The SOR alleges 37 delinquent medical accounts, an approximate total of \$54,633. Of that amount, five of his medical creditors have obtained judgments against him. (SOR ¶¶ 1.b – 1.q, 1.u – 1.mm, 1.oo – 1.qq; Gov 2; Gov 3; Gov 4) Applicant also has a \$856 telephone account that was placed for collection in August 2004 (SOR ¶ 1.a; Gov 2 at 5; Gov 3 at 5; Gov 4 at 19); a \$772 judgment entered against him in October 2002 by the County Board of Supervisors for an unpaid fine (SOR ¶ 1.nn; Gov 2 at 14; Gov 4 at 3) ; and a \$481 telephone account placed for collection in December 2007. (SOR ¶ 1.rr; Gov 2 at 9; Gov 3 at 5; Gov 4 at 5) The total amount of the consumer debt is \$2,109. The total amount of delinquent accounts alleged in the SOR is \$56,742.

Applicant has had significant health problems over the past few years. He has asthma and kidney stones. He has been hospitalized approximately 6 times related to complications from his asthma. He has had eight kidney operations within the past five years related to his kidney stones. In 2009, he was hospitalized when he had pneumonia. In 2006, he had appendicitis. In 2007, he suffered from herniated disks. His medical debts became delinquent because he did not have health insurance and does not earn enough income to pay the medical bills. Applicant estimates that he owes approximately \$60,000 in medical bills. He has not been able to pay any of the medical bills. (Tr at 25-26, 35, 45, 49-51,91)

With regard to the \$856 telephone debt alleged in SOR ¶ 1.a, Applicant claims that a friend of his niece's opened a cell phone account in his name without his permission. He discovered the account about a year and a half ago. He has not formally disputed the account. The account has not been resolved. (Tr at 32-34)

The \$481 telephone debt alleged in SOR ¶ 1.rr is a telephone account that he opened for his sister. The account has not been resolved. (Tr at 36-37, AE C; AE D)

Applicant believes the county garnished his paycheck in order to collect the \$772 judgment entered against him which is alleged in SOR ¶ 1.nn. He believes it is for an unpaid fine related to one of his criminal convictions. (Tr at 58) His paycheck is also being garnished by a hospital. (Tr at 58-60; AE F)

Applicant lives with his sister, her ex-husband, and her 27-year-old son. His sister owns a home and Applicant pays one half of the mortgage. His sister is on disability because of congestive heart failure and kidney failure. She is on kidney dialysis. She is behind on the mortgage. She has not been able to pay the mortgage

since March 2009. She recently was awarded \$2,300 a month in disability payments. She hopes to refinance the mortgage but is concerned that she will lose the house. She testified during the hearing that Applicant gives her most of his money in order to pay the bills. They struggle to pay the bills. Her son does not work because he has mental health issues. Her ex-husband lives with them but only works sporadically. She trusts her brother. She believes he is dedicated and honest. (Tr at 30, 51, 106, 112-127)

Applicant's net monthly income is approximately \$1,530. He used to pay his sister \$800 for rent. He now pays her \$1,200 because of her illness. Other expenses include groceries, \$200; utilities, \$250; medical, \$60; miscellaneous/transportation costs, \$50. His monthly expenses total \$1,760. He sporadically pays \$20 a month towards a dental bill which has a \$180 balance. He has a negative monthly balance of \$230 a month. (Tr at 97-102)

Applicant has not attended financial counseling. He applied for a loan to pay his bills but it was denied. He looked into filing for bankruptcy but cannot afford the attorney fees. (Tr at 96-97, 105; Gov 2) He did not file federal income taxes in 2007 because he did not earn any income. His employer laid him off in 2007 because of his absenteeism and tardiness which was related to his health issues. His employer called him back to work a year later. (Tr at 93 – 97, 105; Gov 2)

At hearing, Applicant indicated that he still owed the \$5,500 debt resulting from an automobile repossession in 2000. This debt was not alleged in the SOR. (Tr at 95; Gov 4 at 7) Applicant does not have a driver's license because he cannot afford to get his license back. He rides a bike to work. (Tr at 57)

### **Criminal Conduct**

Applicant has been arrested eight times since October 1985. The arrests beginning with the most recent include:

On August 12, 2006, Applicant was arrested and charged with Grand Larceny, a felony. He pleaded to Petit Larceny, a misdemeanor. He received a 30-day suspended jail sentence and was fined \$522. Applicant states that he was accused of stealing \$800 worth of hardwood flooring from Home Depot. His brother-in-law told him to start loading up the equipment and he would pay for it. Applicant started to walk out of the store with the material. His brother-in-law ran away and had not paid for the materials. Applicant's sister claims that it was a misunderstanding. She was in the store with her ex-husband when Applicant was arrested. (Tr at 63 – 65, 113; Gov 5)

On September 5, 2004, it is alleged Applicant was arrested in Richmond, Virginia and charged with Contempt of Court. Applicant denies this arrest. He does not remember it. He does not believe that he was ever arrested in Richmond, Virginia. The government's evidence consists of an FBI Identification Record. It states that the FBI received from the Criminal Record Exchange in Richmond a charge of Contempt of Court for a person whose name is similar to Applicant's but the first and middle name

are different. There is insufficient record evidence to conclude Applicant was arrested for Contempt of Court on September 5, 2004, The allegation in SOR ¶ 3.b is found for Applicant. (Tr at 61-63)

On June 10, 2001, Applicant was arrested and charged with Hit and Run and Driving on a Suspended License. He received a 90-day sentence (suspended) and a \$500 fine for the Hit and Run charge. He received a 10-day sentence for the Driving on a Suspended License charge. While the government presented no evidence pertaining to this arrest, Applicant admits the offense. He backed into another car in a parking lot. He was driving on a suspended license and was afraid what might happen so he left the scene of the accident. His jail sentences were suspended. He made some payments towards the fine but is not sure whether he paid the fines off. (Tr at 55-57)

On January 13, 1993, Applicant was arrested and charged with Possession of Marijuana. Applicant pleaded guilty. He does not recall the sentence because it has been so long. The record evidence does not provide the sentence. (Tr at 48; Gov 6)

On October 15, 1992, Applicant was arrested and charged with Possession of Cocaine, a felony. On July 1, 1993, he was found guilty and sentenced to eight years in prison, suspended, with five years probation. He was also ordered to attend drug treatment. (Gov 5; Gov 6) Applicant states that he has not used illegal drugs for 17 years. His court-ordered drug treatment helped him to become sober. The drug allegations occurred when he was in his 20s. (Tr at 46-48, 53)

On February 28, 1991, Applicant was arrested and charged with Narcotic Cocaine with intent to sell; possession of narcotic equipment-processing. He was found guilty and sentenced to six years in jail, suspended, and two years supervised probation. (Tr at 47; Gov 5)

On October 23, 1985, Applicant was arrested and charged with Concealment of Merchandise. The charge was dismissed. Applicant was caught shoplifting a walkman. (Tr at 54; Gov 5)

Applicant disclosed on his security clearance application in response to question 23 that he was arrested in 1985 for possession of drugs and received three years probation. (Gov 1, question 23) This arrest is alleged in SOR ¶ 3.h. I find for Applicant with regard to SOR ¶ 3.h because the government presented no record evidence of the arrest. More than likely it is the same offense as the offense alleged in SOR ¶¶ 3.e or 3.f. It is reasonable to conclude that Applicant confused the dates of his arrest. SOR ¶ 3.h is found for Applicant.

Applicant has not been arrested since 2006. He is not sure whether all of the fines have been paid for his court sentences. He believes his wages have been garnished for unpaid fines owed to the court. (Tr at 55-58, 67)

## Personal Conduct

When Applicant completed his security clearance application on March 24, 2008, he answered, "No" to question 27(d) which asks: "In the last 7 years, have you had any judgments against you that have not been paid?" He did not list the judgments alleged in SOR ¶¶ 1.ll – 1.qq. Applicant answered, "Yes" in response to question 28a, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He also answered "Yes" in response to question 28(b) "Are you currently over 90 days delinquent on any debt(s)?" He listed a \$5,500 debt owed as a result of an automobile repossession in March 2000 and indicated it was satisfied in July 2003. He also listed a \$15,000 medical debt incurred in December 1990 (Gov 1.)

On the same security clearance application, dated March 24, 2008, Applicant answered, "Yes" in response to question 23(a), "Have you ever been charged with or convicted of any felony offense (Include those under the Uniform Code of Military Justice)?" In the remarks section of section 23, Applicant listed an arrest in October 2006 which he lists as a misdemeanor but did not list the offense, and an October 1985 felony arrest for possession of drugs. He was sentenced to three years probation. (Gov 1) The SOR alleges he intentionally omitted the felony arrests alleged in SOR ¶¶ 3.e and 3.f.

On the March 24, 2008, security clearance application, he answered, "Yes" to question 23(d) which asks, "Have you ever been charged or convicted of any offense(s) related to alcohol or drugs?" The SOR alleges he intentionally omitted the drug offenses alleged in SOR ¶¶ 3.d, 3.e, and 3.f. In response to question 23(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 answered, "yes" and listed his 2006 conviction for Petit Larceny which is alleged in SOR ¶ 3.a. The SOR alleges he intentionally omitted the arrests alleged in SOR ¶¶ 3.b and 3.c.

At hearing, Applicant testified that he did not intend to falsify his security clearance application. He does not know how to use a computer. His sister helped him complete the security clearance application. He did not list some of his arrests because he did not know that he had to list detailed information. He did not understand the question. He did not intend to withhold information about his arrests and judgments on his security clearance application. In the future, if he files a security clearance application he will contact someone who is knowledgeable about completing security clearance applications. (Tr at 24, 67-83)

Applicant's sister testified that she helped Applicant complete his security clearance application because he cannot read and write very well. She described him as being illiterate. She may have misunderstood some of the questions when completing the application. She has a tenth-grade education. (Tr at 117, 128-129)

## References

The Director of Operations of Applicant's employer wrote a letter stating that Applicant is an excellent employee who is well-liked by his co-workers and peers. Applicant "would give anyone the shirt off his back" and has a good attitude towards his job and company. Applicant has a good attendance record. He is always willing to help even when it is not his responsibility. Based on his past performance, he does not believe Applicant is a security risk. (AE E)

Applicant's co-worker states that she has worked with him for five years. He has always been professional. She enjoys working with Applicant because he has a positive attitude and is very kind-hearted. (AE A)

## 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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.

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).

## **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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶ 19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has encountered financial difficulty since 2000. The SOR alleged 40 delinquent accounts, an approximate total balance of \$56,742.

The government’s substantial evidence and applicant’s own admissions raise security concerns under Guideline F. The burden shifted to applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) is not applicable.



Applicant's financial problems continue. His income is not sufficient to allow him to resolve his delinquent accounts.

FC MC ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances) applies. Most of Applicant's delinquent accounts are medical accounts. Applicant has numerous health problems. He incurred most of the delinquent debt because he had no health insurance. He does have three delinquent accounts that consist of two telephone accounts and a judgment for fines owed to a local jurisdiction. Although not alleged in the SOR, Applicant indicated that he still owes \$4,500 for an automobile repossession in 2000. He does not have an extensive amount of delinquent consumer debt considering his limited income.

FC MC ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) does not apply. Applicant has not attended financial counseling. His financial problems are unlikely to be resolved in the future. He is not only responsible for supporting himself but also his sister who is unable to work because of health problems. Her ex-husband and 27-year-old son also live with them. Neither of them work which adds an additional financial burden.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant acknowledged his debts, he is unable to repay his delinquent accounts. Without even considering the delinquent debts, Applicant's monthly expenses are greater than his monthly income. He looked into filing for bankruptcy but is unable to afford the attorney fees.

FC MC ¶ 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) potentially applies with respect SOR ¶¶ 1.a. Applicant claims that his niece's friend opened up a telephone account in his name without his permission. He has not taken steps to dispute the debt. For this reason, I find FC MC ¶ 20(e) does not apply.

Applicant's income is insufficient to resolve his delinquent accounts and his financial responsibilities. The concerns under Guideline F are not mitigated.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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.

Personal Conduct concerns are raised because Applicant failed to list judgments in response to question 27(d) and all of his criminal arrests in response to questions 23(a), 23(d), and 23(f) on his security clearance application, dated March 24, 2008.

Personal Conduct Disqualifying Condition (PC DC) ¶ 16(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) potentially applies in Applicant's case. For PC DC ¶ 16(a) to apply, Applicant's omission of his judgments and delinquent accounts must be done with a deliberate intent to deceive. I find Applicant did not deliberately intend to falsify his security clearance application. Applicant asked his sister to help him fill out the security application because he did not know how to operate a computer. His sister testified that Applicant cannot read and write very well. The highest level of education Applicant and his sister have achieved is the 10<sup>th</sup> grade.

Applicant did not understand that he had to list each arrest in detail. He answered "yes" to all of the questions that he allegedly falsified under section 23. He did not list all of the arrests. While he answered, "no" to question 27(d) regarding whether he had judgments, in response to questions 28(a) and 28(b), he listed that he had \$15,000 in medical debts and owed \$5,500 from an automobile repossession. He put the government on notice that he had financial problems and a criminal history. Considering his level of education, I find his explanation that he did not understand the questions on the security clearance application credible. I also believe his sister may not have completely understood the questions. I find for Applicant under the personal conduct concern.

### **Guideline J, Criminal Conduct**

The security concern raised under the criminal conduct guideline is set forth in ¶ 30 of the Revised Adjudicative Guidelines:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

There are several Criminal Conduct Disqualifying Conditions (CC DC) which apply to Applicant's case: CC DC ¶ 31(a) (a single serious crime or multiple lesser offenses) and CC DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). From 1985 to 1993, Applicant was arrested on four occasions. Three of the arrests were drug-related charges. Two of the arrests were felony arrests for cocaine-related offenses. In 2001,

Applicant was arrested for Hit and Run and Driving on a Suspended License. In August 2006, he was arrested for Grand Larceny, a felony. He pleaded to misdemeanor Petit Larceny.

The following Criminal Conduct Mitigating Conditions (CC MC) are relevant to Applicant's case:

CC MC ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) applies. More than three and a half years have passed since Applicant's last arrest. While Applicant was not certain that he had paid all of his court fines, his paycheck has been garnished in order to recover the fines. His inability to pay his fines is the result of his current financial situation as opposed to additional criminal conduct.

CC MC ¶ 33(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) applies. Applicant has turned his life around since his drug-related offenses in the early 1990s. He was ordered by the court to attend inpatient drug treatment and appears to have remained drug free after completing treatment. He has had no drug-related arrests for over 17 years. He has had no additional criminal arrests since 2006. He is highly thought of by his employer. For this reason, the criminal conduct concern is mitigated.

### **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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's favorable employment record and the favorable comments of his co-worker. I considered his extensive delinquent debt and that most of the delinquent accounts are medical accounts caused by Applicant's health problems and a lack of health insurance. I also considered that Applicant's expenses are more each month than his income. While he does not live extravagantly, he provides support for his sister who is unable to work and is on disability as well her ex-husband and adult son who do not work full-time. He is unable to resolve his delinquent accounts and is likely to incur additional delinquent debt in the future. While Applicant's wages were garnished in order for the court to retrieve Applicant's court-ordered fines, his inability to pay his fines is more an issue under financial considerations as opposed to additional criminal conduct. It has been over three and a half years since Applicant's last arrest. Concerns under criminal conduct are mitigated. Personal conduct concerns are found for Applicant because I find that he did not intentionally falsify his security clearance application. Doubts remain under the financial considerations concern because of Applicant's extensive debt and his limited income. Mindful of my responsibility to rule in favor of national security in cases where there is doubt, I conclude that concerns under financial considerations remain.

### **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 - 1.q:	Against Applicant
Subparagraphs 1.r - 1.t:	No allegations
Subparagraphs 1.u - 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraphs 1.x - 1.rr:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.d	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraphs 3.a – 3.i:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge