



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



In the matter of:)
)
-----) ISCR Case No. 08-10336
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

July 15, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists nine debts totaling about \$70,000. He paid or is adequately resolving three debts; however, six large delinquent debts totaling more than \$60,000 are unresolved. Applicant failed to mitigate financial considerations security concerns. Personal conduct concerns regarding his filing an inaccurate security clearance application with the government are mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 21, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF-86) (Government Exhibit (GE) 1). On February 5, 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 F (Financial Considerations) and E (Personal Conduct). 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 February 20, 2009, Applicant responded to the SOR (GE 11). On March 23, 2009, Department Counsel was prepared to proceed. On March 25, 2009, the case was assigned to me. On April 10, 2009, DOHA issued a hearing notice (Transcript1 (Tr2.) 5). An initial hearing was held on April 28, 2009 (Tr1. 1-9). Applicant requested a delay to determine whether to hire counsel, and I approved a delay until May 26, 2009 (Tr1. 7-8). At the hearing held on May 26, 2009, Department Counsel offered seven exhibits (GE 1-7) (Transcript (Tr2.) 19-20), and Applicant offered seven exhibits (Tr2. 22-24; AE A-G). Applicant objected to consideration of the government exhibits because, "I did my paperwork wrong and I submitted something that was old, not—it was my fault. I shouldn't have [done] that." I will apply Applicant's comments to the weight I give GE 1-7. GE 1-7 were admitted (Tr2. 20). Department Counsel did not object to my consideration of AE A-G, and I admitted them (Tr2. 24). 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 2, 2009. I held the record open until June 5, 2009 for potential submission of additional evidence (Tr2. 61, 76). On June 2, 2009, I received one post-hearing exhibit, which was admitted without objection as AE H.

Findings of Fact¹

In his SOR response, Applicant admitted responsibility for the debts in SOR ¶¶ 1.a to 1.i, and the bankruptcy allegations in SOR ¶¶ 1.j and 1.k (GE 11). Applicant's admissions are accepted as findings of fact.

Applicant is a 32-year-old employee of a defense contractor (Tr2. 6, 26). He is currently a security guard 33 hours per week (Tr2. 27-28). He has previously held an interim security clearance (Tr2. 28). He received his high school diploma in 1996 and has completed two years of college (Tr2. 6-7). He majored in business administration in college (Tr2. 7, 26). He does not have any prior military experience (Tr2. 29). He has never married (Tr2. 31; GE 1). His children are ages 11 and six (Tr2. 31-32; GE 1). He disclosed one alcohol or drug offense, a DUI in 2000, as well as attendance at an Alcohol and Substance Abuse Program (GE 1).

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

Financial Considerations

Applicant was unemployed from April to August 2003, from January to April 2005 and from November 2008 to April 2009 (Tr2. 30-31; GE 1). He earned \$25,000 in 2005, \$46,000 in 2006, \$4,200 in 2007, and \$36,834 in 2008 (Tr2. 55; AE G at 3).

Applicant has the following financial issues listed in his SOR:

SOR ¶ 1.a (\$6,056 owed to a credit union on a credit card account). Applicant set up a payment arrangement to provide \$50 monthly starting June 20, 2009 (Tr2. 39; AE A);

SOR ¶ 1.b (\$6,253 owed on his child support debt). He disclosed the garnishment of his pay to pay child support beginning in August 2001 (GE 1). As of May 2009, he owed \$5,720 (Tr2. 34; AE D). He learned the government would garnish half of his unemployment pay, if he did not begin making his child support payments (Tr2. 34-35). He has been making weekly payments of \$170 for the last two months (Tr2. 34-35);

SOR ¶ 1.c (\$37,564 owed on his mortgage of \$326,000). His mortgage became delinquent in November 2008 (Tr2. 41). He discussed renegotiation or loan modification of his mortgage with assistance from another mortgage company (Tr2. 41-42). Applicant's mother and two uncles live in his residence with Applicant (Tr2. 42). His mother sorts mail at a private company, one uncle waits tables and the other uncle works for a lawn service during the day, and a pizza company at night (Tr2. 42-43). His two uncles and his mother are supposed to pay \$500 each a month and Applicant is supposed to pay the remainder (Tr2. 43). His monthly mortgage payment is currently \$2,500 a month (Tr2. 43). The most recent payment was four or five months ago when Applicant sent in \$1,500 (Tr2. 44). The last time he paid \$2,500 was probably in November 2008 (Tr2. 44). On April 10, 2009, he began working with a new company to modify his mortgage (AE C). He believed the new mortgage payment would be \$1,500 per month (Tr2. 45);

SOR ¶¶ 1.d and 1.e (\$2,557 and \$2,551 owed on his student loans). Applicant's student loans went into default status in November 2008 (Tr2. 46). On May 20, 2009, he set up an arrangement to pay the creditor \$100 per month (Tr2. 46; AE B). His first payment is due June 20, 2009 (Tr2. 46);

SOR ¶ 1.f (\$8,006 owed on Applicant's BMW car loan of \$50,533). In July 2007, he traded in his Mercedes and bought a BMW (Tr2. 47, 53-54; GE 2). He financed \$42,000 and contracted to make \$800 monthly payments (Tr2. 47). He stopped making payments in March 2008 (Tr2. 54; GE 2; GE 3). He called the creditor and told them to pick up his BMW in April 2009 (Tr2. 47-48). He was unaware about the amount of his debt because the creditor needed to sell his car before a balance owed could be determined (Tr2. 49);

SOR ¶ 1.g (\$6,284 owed to a credit union on a credit card account). Applicant set up a payment arrangement to provide \$50 monthly starting June 20, 2009 (Tr2. 39; AE A);

SOR ¶ 1.h (\$533 owed on a lien for unpaid child support). Applicant said this debt is paid (Tr2. 32-37); however, he did not provide any proof of payment. He thought it was taken out of his pay (Tr2. 37);

SOR ¶ 1.i (\$212 judgment owed on a hospital bill). Applicant was working for his employer and was hurt on the job (Tr2. 50-51). He thought his employer should pay his medical bill (Tr2. 51). The hospital obtained a judgment against Applicant (Tr2. 51; GE 6);

SOR ¶ 1.j (Chapter 13 bankruptcy filed on October 25, 2007, and dismissed on April 18, 2008) (AE E). Applicant was unemployed and filed the bankruptcy to stop the foreclosure on his residence (Tr2. 52). He filed for the bankruptcy pro se and some documentation was incorrect (Tr2. 52). This bankruptcy was dismissed because of erroneous documentation (Tr2. 52);

SOR ¶ 1.k (Chapter 13 bankruptcy filed on June 4, 2008, and dismissed on December 17, 2008) (AE E). Applicant filed because he was unemployed and wanted to stop the foreclosure on his residence (Tr2. 52-53). A mortgage renegotiation company advised Applicant to dismiss the bankruptcy and they would help him save his residence (Tr2. 52).

Applicant also owes the Internal Revenue Service (IRS) \$1,699 (Tr2. 69-70). He plans to arrange a payment plan with the IRS (Tr2. 69-70). Applicant's state taxes are current (Tr2. 70).

Applicant paid a judgment on October 3, 2006, which was filed on November 14, 2002 (AE F). He planned to pay off his credit cards, get his mortgage caught up, and then pay for his car and student loans (Tr2. 67-68). His bottom line is that he planned to pay or resolve all of his debts.

Applicant's personal financial statement (PFS) was provided as part of his bankruptcy filing (Schedule J) and is substantially accurate (Tr2. 63; GE 3). However, at the time he completed the Schedule J in 2008 he held two jobs and his income was \$4,433 (Tr2. 64; GE 3). Now he only has one part-time job (Tr2. 64). His PFS indicates \$3,971 in expenses (GE 3). His remainder is \$462 (GE 3). Applicant has about \$100 in checking and does not have a savings account (Tr2. 65). He does not own a car and does not have any credit cards (Tr2. 66). He received credit counseling as part of the bankruptcy process (Tr2. 66). He learned about saving money and budgeting as well as setting and accomplishing goals (Tr2. 66-67).

Falsification of Security Clearance Application

Applicant signed his security clearance application on March 21, 2008. In regard to his financial record, and bankruptcy filings Applicant was asked three questions. Applicant incorrectly responded, “No” to questions 27a, 28a and 28b (GE 1), which asked:

Section 27: Your Financial Record

Answer the following questions.

a. In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?

Section 28: Your Financial Delinquencies

Answer the following questions.

a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?

b. Are you currently over 90 days delinquent on any debt(s)?

Applicant’s security clearance application contains the following admonition:

Certification That My Answers Are True

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code).

(emphasis in original) (GE 1). Immediately below this admonition is Applicant’s signature.

Applicant did not contest that he filed a Chapter 13 Bankruptcy on October 25, 2007, and it was still pending when he submitted this SF-86 (Tr2. 58). He explained at his hearing that he applied for a job before he filed for bankruptcy (Tr2. 57). Later he said that he used the information from his 2003 security clearance application and just copied it for his March 21, 2008 SF-86 (Tr2. 59). He gave his old security clearance application to his employer, and they used it to type up his March 21, 2008, SF-86 (Tr2. 75). He agrees he was negligent because he rushed through his paperwork, and failed to check it thoroughly (Tr2. 71). He was “trying to get a job [and he] wasn’t thinking about that” (Tr2. 60). However, the 2003 and 2008 SF-86s are not identical as his 2008 SF-86 includes updated employment information from 2005, 2006 and 2007 (GE 1).

Applicant's April 3, 2008, credit report (GE 2) (obtained shortly after he signed his SF-86) lists \$11,957 past due on his mortgage, approximately \$5,000 past due on his education loans, approximately \$12,000 past due on his two credit union-issued credit cards, and a 2004 tax lien for \$533.

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 (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 concern is under Guideline F (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 also documented in 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." However, the problem of about \$60,000 in unresolved, delinquent 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 because of the real estate downturn as well as 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 six debts totaling over \$60,000 remain unresolved. He has also established some, but not full mitigation under AG ¶ 20(d) because he showed some, recent good faith² in the resolution of his SOR debts by paying his child support.

²The 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].

Applicant did not provide documentation contesting the validity of any debts. However, I will apply AG ¶ 20(e) to SOR ¶¶ 1.h (\$533 owed on state tax lien for unpaid child support) and 1.i (\$212 judgment owed on a hospital bill). Applicant said the \$533 debt is paid. He thought his employer should pay the \$212 debt because he was injured on the job. He credibly disputes these two debts. Moreover, they constitute less than two percent of his total delinquent debt.³

I will briefly provide an additional explanation about my reasons for mitigating or not mitigating the allegations in SOR ¶¶ 1.b, 1.c, 1.j, and 1.k in the Formal Findings section of this decision at page 13, *infra*:

SOR ¶ 1.b is mitigated because he has a payment plan and is making payments on his child support payments, although he conceded it was under threat of renewed garnishment of his pay, and he owes about \$5,000 in overdue child support.

SOR ¶ 1.c is not mitigated. Applicant owes at least \$37,564 on his mortgage of \$326,000. His mortgage became delinquent in November 2008. Although he used the bankruptcy filings and attempted renegotiation or loan modification of his mortgage, he did not take sufficient action to establish financial responsibility. His most recent payment was four or five months ago when Applicant sent in \$1,500. The last time he paid \$2,500 was probably in November 2008. He did not provide a payment history from his mortgage company or by using bank account statements. He did not adequately connect his periods of unemployment and underemployment with the failure to pay his mortgage.

SOR ¶¶ 1.j and 1.k are mitigated. Applicant filed for bankruptcy to stop foreclosure on his residence. It is a fairly common and legal practice of businesses and individuals to file bankruptcy to obtain some temporary relief from creditors.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. In the last year, his efforts have been insufficient in regard to six delinquent debts, totaling more than \$60,000. Applicant promised to pay the remaining SOR debts; however, I am not confident he will keep that promise because of his lack of meaningful progress on SOR debt resolution demonstrated over the last two years. He did not provide sufficient information to establish that he could not have made partial payments on several of the six debts.

(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)).

³“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.

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 two conditions that could raise a security concern and may be disqualifying in this case in regard to providing false documentation to his employer:

(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; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

On March 21, 2008, Applicant signed his security clearance application, in which he failed to disclose his bankruptcy filing and several delinquent debts. At his hearing, he admitted that he failed to disclose required financial information. AG ¶¶ 16(a) and 16(b) both apply and further review is necessary.

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.

Applicant disclosed a DUI offense and the garnishment of his child support on his SF-86. He said his employer simply copied his 2001 security clearance application, apparently only including updates of his employment and perhaps some other limited information. His disclosure of other derogatory information on his SF-86 is an indication he was not trying to hide adverse information. I conclude Applicant's alleged falsification of his security clearance application is mitigated. Although he provided false information on his security clearance application, AG ¶ 17(f) applies to Applicant's failure to disclose financial information. The falsification allegations are not substantiated. I am satisfied he did not deliberately and intentionally fail to disclose his delinquent debts and bankruptcy filing with intent to deceive.⁴ I find "For Applicant" in the Findings section of this decision with respect to SOR ¶ 2.

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):

⁴The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

(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 Guideline 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 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 (his only criminal offense is a DUI in 2000). His current financial problems were partially caused by some factors partially or fully beyond his control: (1) insufficient income, (2) the real estate downturn, (3) unemployment, and (4) underemployment. He paid or resolved two small SOR debts. He started paying his delinquent child support. He has new payment plans with several creditors. He promised to pay his delinquent debts.

Applicant has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He graduated from high school and has some college. His employment history and contributions to a defense contractor 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 to the Department of Defense as a contractor. These factors, especially his past government service, show substantial responsibility. However, all of these positive attributes are insufficient to mitigate security concerns at this time.

The evidence against mitigating Applicant's financial conduct is more substantial. Applicant's six delinquent debts have been delinquent for a substantial period of time. He has not paid anything to his mortgage in several months. He purchased a BMW and then did not make any payments for more than a year on his car loan. He did not establish that he could not have made greater progress addressing his delinquent debts. He has admitted a total of six delinquent debts, totaling more than \$60,000 in arrearages, and he has not paid anything to these six creditors in the several months prior to his hearing. He showed some effort to increase his income by working two jobs, but he did not make enough effort to reduce his expenses and/or to pay at least partial payments on his SOR debts. Ultimately, he did not establish that he acted with sufficient effort and self-discipline to resolve his delinquent debts and to better document his remedial efforts. 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 he has mitigated personal conduct security concerns; however, he has not sufficiently mitigated 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 F: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c to 1.g:	Against Applicant
Subparagraphs 1.h to 1.k:	For Applicant

PARAGRAPH 2, GUIDELINE E: FOR APPLICANT

Subparagraphs 1.a to 1.c: 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