DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-11152
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

September 22, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind more than 60 days on his mortgage in 2006, and the lender commenced foreclosure proceedings. He resolved an order to foreclose on his home by paying off the loan through a new mortgage in January 2009. He still owes $6,000 in attorney fees to the lender, about $6,439 in delinquent real estate taxes on an investment property, and $8,268 on a delinquent construction loan. He intends to pay those debts and he has been otherwise responsible in handling his personal financial matters. But personal conduct concerns persist because he did not disclose the ongoing litigation over the mortgage or that he owed a delinquent construction loan when he filed his security clearance application. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 12, 2008. On February 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F and Guideline E that provided the basis for its preliminary decision to deny him a security clearance and refer the matter to an

administrative judge. 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) effective within the Department of Defense as of September 1, 2006.

On March 2, 2009, Applicant answered the SOR and he requested a hearing. The case was assigned to me on April 2, 2009, to decide whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 4, 2009, I scheduled a hearing for June 5, 2009.

I convened the hearing as scheduled. Nine government exhibits (Ex. 1-9) and five Applicant exhibits (A-E) were admitted, all but Exhibit C without any objections. Department Counsel objected, in part to Exhibit C, on the basis it contained legal representations about foreclosure in Applicant's state of residence. The document was admitted in full, but I held the record open for two weeks at the government's request for possible rebuttal of Exhibit C following Department Counsel's research into the state's foreclosure laws. Applicant and two witnesses testified on Applicant's behalf. Just before closing argument, the government moved to amend the SOR to add two new allegations under Guideline F. I granted the motion, in part, over Applicant's objections, *infra*. A transcript (Tr.) of the hearing was received on June 16, 2009.

On June 18, 2009, in rebuttal of Applicant exhibit C, Department Counsel timely submitted a memorandum, seeking the admission of an order and judgment of foreclosure (Ex. 10) and pertinent state statutes. Applicant filed no response, and government exhibits 10 and 11 were admitted.

Procedural and Evidentiary Rulings

Pursuant to ¶ E.3.1.17 of the Directive, the government moved to amend the SOR to add as SOR 1.c and 1.d two new allegations under Guideline F to allege that Applicant is indebted to the state for about $6,000 in unpaid taxes, and to allege that Applicant owes about $12,000 in outstanding attorney fees. Applicant objected on the basis that these debts were not past due. I sustained Applicant's objection as to the attorney fees because there was no evidence that the obligations were delinquent. Based on Applicant's unrebutted testimony, the court ordered in early June that he had 30 days in which to pay the bank's attorney fees. In light of the unpaid tax debt subject to the May 2009 tax lien, I sustained the motion as to the delinquent real estate taxes on the investment property. Accordingly, the SOR was amended as follows:

> 1.c. You are indebted to the state of [state name omitted] for unpaid real estate taxes assessed on June 19, 2008, in the approximate amount of $6,000. As of June 5, 2009, this debt has not been paid.

Findings of Fact

In the amended SOR, DOHA alleged under Guideline F, financial considerations, that as of January 12, 2009, Applicant owed $132,000 to a bank that had initiated foreclosure proceedings against him (SOR 1.a), $8,268 on a charged-off loan (SOR 1.b), and about $6,000 in real estate taxes (SOR 1.c). Under Guideline E, personal conduct, Applicant was alleged to have falsified his June 12, 2008, e-QIP by responding "No" to questions 28.a (delinquent over 180 days on any debt in the last seven years), 28.b (currently over 90 days delinquent on any debts), and 29 (party to any public record civil court actions not otherwise listed on the form).

Applicant denied owing the debt in SOR 1.a on the basis that it had been paid in full. When he answered the SOR, he indicated he was making payments on the debt in SOR 1.b, although he admitted at his hearing that he was not paying on the debt. He denied SOR 1.c on the basis that the debt was not more than 90 days delinquent. Applicant also denied any deliberate falsification of his security clearance application, and asserted that he had responded to the best of his knowledge and understanding of court proceedings as of June 12, 2008. After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 60-year-old retired Navy Captain with 30 years of active and reserve distinguished service (Exs. 1, B, Tr. 112-14). He held a top secret clearance while he was in the military (Ex. 1, Tr. 152-53). Since January 2000, he has been employed as a vice president and naval architect for a defense contractor (Ex. 1), where he is required to maintain a security clearance for his position and his managerial responsibilities on two surface warfare programs (Ex. A, Tr. 47). Applicant is also president of his own marine design and consulting firm (Ex. B) that, until recently, had been inactive for a few years (Tr. 134).

As of January 2000, Applicant and his family were living at his current residence, which is where he was raised (Tr. 43). The property had been in his family since 1945. Applicant was required to travel out of state about one week per month in connection with his duties as vice president for the defense contractor, including to his employer's office (Ex. 10).

In late May 2005, Applicant refinanced the mortgage on his primary residence. He signed a promissory note of $885,000 with a bank, encumbering his primary residence with mortgage loan #1 of $885,000 (SOR ¶ 1.a), which was about $485,000 more than his original mortgage (Tr. 126). He also mortgaged an abutting parcel of unimproved land through mortgage loan #2 (Exs. 2, 3, 4, 9, 10). Mortgage loan #1 was to be repaid at $4,353.67 per month (Ex. 10). He borrowed the funds, in part, to build a house on an adjoining undeveloped parcel (lot #3) that he owned (Tr. 77).[1] His plan was to sell the new home for about $1.2 million (Tr. 44, 88-89). In addition to the equity he

[1]Applicant clarified that three lots were involved. His primary residence and an undeveloped lot separate from the lot on which he was building the investment property, served as collateral for two mortgage loans taken out under a single promissory note (Tr. 124).

cashed out from mortgage loan #1 that he planned to use for the construction, he had a separate construction loan with another financial institution under which he was required to demonstrate progress in the building of the home before the bank would provide him the funds that he needed to reimburse the contractors that he had hired (Tr. 44, 88, 126-27).[2] His mortgage and construction loan payments together took between 40 and 50 percent of his monthly income (Tr. 127). Applicant believed that he could maintain the payments and build equity for his family, because he planned on passing down the family home (Tr. 127-28). The residential market was favorable at the time construction began (Tr. 128).

Applicant made timely, monthly payments on mortgage loan #1 until the payment due April 1, 2006 (Ex. 10). Due to problems with the timing of construction financing on the home, he had to shuffle sums of money to keep the construction project going. At times he used his personal income (about $120,000 annually, Tr. 110) to pay his construction contractors (Tr. 44, 83). Applicant brought his payments on mortgage loan #1 current in June 2006.[3]

Applicant did not make his payment on mortgage loan #1 due August 1, 2006.[4] The mortgage contained an acceleration clause that allowed the bank to pursue foreclosure on breach of a condition of the mortgage. On September 1, 2006, the successor bank mailed a written notice of intent to foreclose to Applicant at his residential address. Applicant was notified that he could cure the default by paying all amounts due without acceleration within 30 days. Applicant did not receive the notice of default and right to cure (Ex. 10).

On October 6, 2006, the bank filed a complaint for foreclosure of the first mortgage and his primary residence (Ex. 9).[5] Applicant did not make his mortgage payments for September and October 2006, although he assumed they could be made up. He repeatedly left voice mail messages with the bank's collection officer over the August to October 2006 time frame explaining his financial situation (Ex. 10). In November, Applicant attempted to resume payment, but it was rejected by the lender

[2]Applicant's credit reports show he had a loan of $93,000 for home improvement that he took out in October 2006 (Exs. 2, 3, 4). He paid off that loan (Tr. 146).

[3]Available credit reports (Exs. 2, 3, 4) all indicate an unsecured loan with a high credit of $6,493 was opened in June 2006.

[4]Applicant testified that his monthly net income was about $9,000 and his construction expenses were "probably $10,000 a month." (Tr. 110).

[5]Pursuant to 14 M.R.S.§ 6321, after breach of a condition in a mortgage of first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest in either the Superior Court or the District Court in the division in which the mortgaged premises or any part of the mortgaged premises is located, regardless of the amount of the mortgage claim (Ex. 11).

and the funds were returned to his account. Applicant was away on business at the time (Ex. 10, Tr. 84, 208).[6]

Applicant was served with the complaint of foreclosure in mid-November 2006. Previously unaware of the bank's intent to foreclose, he contested the bank's actions to accelerate the note and to foreclose the mortgage securing his primary residence. In December 2006, the bank moved for summary judgment (Ex. 8). The district court granted the motion and issued an order of judgment and foreclosure in favor of the bank. Applicant appealed, contending there was a genuine issue of material fact in that he had not been given notice (Ex. 8). The original lender bank was acquired through a merger by another financial institution (Ex. 10), and the successor-in-interest continued to pursue the foreclosure.

On May 20, 2008, the state supreme court vacated the summary judgment entered as to the foreclosure of mortgage loan #1, and remanded the case to the district court for further proceedings (Ex. 8). Following a trial in October 2008 in the district court, the court found it likely that the intent to foreclose and notice of right to cure was lost before it reached Applicant's mailbox. However, the post office certificate of mailing was sufficient under state law to fulfill the bank's statutory requirement of constructive notice to Applicant, absent any defects in the certificate of mailing (e.g., wrong address, notice returned). In late October 2008, the district court ordered a foreclosure of mortgage loan #1. Applicant was given 90 days to redeem the property by paying the amount due on the mortgage plus interest ($960,015.15 as of October 10, 2008) and reasonable attorney fees assessed at $11,721.95 (Ex. 10).[7] In about January 2009, Applicant took out a mortgage loan of approximately $900,000 with another bank, putting up his primary residence as collateral (Tr. 74-75, 129). Applicant's monthly mortgage payment is about $6,000 (Tr. 75, 143). For consideration paid by Applicant from the monies obtained from this new loan, the bank discharged mortgage deed #1 and stipulated to dismissal of its foreclosure action as to his primary residence without prejudice to any related or pending claims of the bank (Ex. C).

While Applicant was contesting the summary judgment ordering foreclosure of mortgage loan #1, in late July 2007 the bank filed to foreclose on the abutting property that had been put up as collateral under the promissory note. The bank alleged that the amount due was the full $885,000 of the promissory note rather than the $250,000 secured by the undeveloped lot. On January 29, 2008, the district court granted a motion by the bank for summary judgment, and entered an order and judgment of foreclosure. Applicant appealed, contending that the bank was barred from bringing a second foreclosure action when mortgage loan #1 under the same promissory note had been litigated to a final judgment (Ex. 9). In mid-October 2008, the state supreme court concluded that the bank was not precluded from pursuing foreclosure of the second

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[6]Applicant testified that the lender withdrew the funds from his account but then returned them (Tr. 84-85).

[7]Applicant testified that he had to pay about $20,000 in legal fees to the bank in the first action (Tr. 149). Court records indicate that the bank claimed $23,443.89 in attorney fees. The court awarded half for the claim of the bank secured by mortgage loan #1 (Ex. 10).

mortgage. However, since the notice of delinquency and right to cure described the property secured by the first and not the second mortgage, the court decided summary judgment was improper and remanded this case to the district court as well (Ex. 9). Applicant testified that the lot securing mortgage loan #2 remained collateral for the legal fees he was required to pay to avoid foreclosure of his primary residence (Tr. 122). In about early June 2009, he was ordered by the court to pay $6,000 in additional legal fees to the bank within 30 days (Tr. 131-32, 141, 149). He intends to sell some property of his personal business to obtain the funds to resolve the matter (Tr. 133).

Applicant continues to believe that the lender with whom he executed the promissory note in May 2005 acted in an unprecedented manner in proceeding against him in foreclosure when he was fewer than 90 days late in his payments. As of June 2009, the home that he had built as an investment property was still on the market with an asking price of $1.5 million (Tr. 89, 103). The property is subject to a $6,439.70 state tax lien that was filed against him in May 2009 for nonpayment of 2008 local real estate taxes (Ex. 6, Tr. 104). Applicant testified the original tax debt was $12,000 and he paid about half (Tr. 105).[8] He has paid his lawyer about $50,000 for representing him in the foreclosure actions (Tr. 150). He still owes his attorney about $6,000 (Tr. 131).

On June 12, 2008, Applicant completed an e-QIP to apply for a security clearance for his position as vice president and manager of two surface warfare programs. He responded "No" to the financial record and financial delinquencies inquiries, including questions 27.c, "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?," 28.a, "In the last 7 years have you been over 180 days delinquent on any debt(s)?," and 28.b, "Are you currently over 90 days delinquent on any debt(s)?." He also responded "No" to question 29, "In the last 7 years, have you been a party to any public record civil court actions not listed elsewhere on this form?." (Ex. 1). Applicant had filled out security clearance applications in the past when he was in the military (Tr. 112). Applicant testified that he did not believe questions 28.a and 28.b were applicable because he believed he would be successful in contesting the lawsuits (Tr. 51), and that he failed to understand that the bank had brought a civil action rather than simply an attempt to recover the loan (Tr. 53).

A check of Applicant's credit on June 20, 2008, revealed that Applicant owed a loan debt of $8,268 in collection (SOR 1.b),[9] and that mortgage foreclosure proceedings had been initiated against him (SOR 1.a). His mortgage was reported by the bank to be 180 days past due as of June 2008 (Ex. 4).

Sometime in July 2008, Applicant was interviewed by a government investigator (Tr. 95). His finances, including the status of his mortgage, were not brought up during

[8]The county registry of deeds is reporting liens filed May 8, 2008, as well as May 9, 2009 (Ex. 5). Applicant apparently satisfied the May 2008 lien in January 2009 (Tr. 216).

[9]Applicant testified that the original balance of the unsecured loan was about $12,000, and that he made the $200 monthly payments on it for a couple of years (Tr. 60, 63, 69), although he presented no evidence of those payments.

the interview and Applicant did not volunteer any information about his dispute with the bank over his mortgage (Tr. 97). Applicant had a subsequent interview with another investigator who raised the issue of the foreclosure proceedings. Applicant expressed his belief that the bank was trying to unload his "nonperforming" loan (i.e., loan not profitable for the bank). He indicated that he could afford to make the monthly payments on his mortgage (Tr. 97-101).

Sometime in 2008, Applicant began receiving collection notices about the debt in SOR 1.b. He disputed the balance because he had made all the payments in his coupon book and did not receive a second book (Tr. 115). He was told that he had paid only half of the debt (Tr. 65) and owed unpaid principal (Tr. 116). Applicant made no payments on the debt balance as of June 2009 because he was still paying legal fees for his representation in the foreclosure matter. He planned on paying the debt in mid-July 2009 "to just resolve the matter." (Ex. A, Tr. 65, 67-68).

Applicant's gross annual income is about $160,000, including his military retirement, which he began receiving in January 2009 (Tr. 114). His monthly take-home income is about $12,000 (Tr. 107-08). Applicant expects about $30,000 a year in income over the next two years from his personal business as a naval architect (Tr. 135). In April 2009, he accepted a contract to design a ship and received $6,000 as a deposit (Tr. 133). He used it to pay bills (Tr. 134). He has about $200,000 in a 401(k) account (Tr. 140) and about $4,000 in checking account deposits and $4,000 in savings (Tr. 139). Applicant does not rely on consumer credit cards for purchases (Exs. 2, 3, 4).

A retired Naval Reserve Commander, who has known Applicant as a professional colleague or personal friend or both since about 1999,[10] is aware that Applicant had some financial issues over the past year with the bank loan taken out to build the investment property (Tr. 195-96). She is aware from Applicant of the government's allegation that he had lied on his e-QIP because he had not disclosed the bank's actions to foreclose on his mortgage. She understood from him that the bank had not foreclosed on his home (Tr. 203). He has given her no reason to doubt his integrity or his ability to protect classified information (Ex. E, Tr. 196, 200).

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). 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

[10]She operates her own consulting business, and is performing contract work on a program Applicant manages for his employer (Ex. E, Tr. 194, 205).

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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 that 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 about finances 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.

DOHA alleged in SOR 1.a that Applicant was past due about $132,000 in his mortgage loan, leading to the initiation of foreclosure proceedings. The evidence shows

that Applicant fell behind in his payments on mortgage loan #1. He missed his payments due in April and May 2006, but he caught up in June. After he failed to make his monthly mortgage payments due the first of August and September 2006, the lender mailed him a notice of its intent to foreclose if he did not cure the default within 30 days. Applicant did not receive the notice, and the bank elected to commence with foreclosure proceedings under state law by filing a civil action. Unaware of the commencement of the foreclosure action, Applicant missed his payment due October 1. An attempt to resume payment was refused by the bank. Since the funds were returned, it did not constitute a waiver of the foreclosure action under state law.[11] Certainly, no payments were made on the mortgage during the protracted litigation, although at that point the bank is not likely to have accepted any efforts to cure the default. But there is also no question that Applicant was behind more than 60 days, or over $8,000 in his payments in the fall of 2006. Applicant also did not make timely payments on the loan in SOR ¶ 1.b. Available credit records show a past due balance of $8,268 as of June 2008 and no subsequent payments on the debt. Applicant claims he paid about half of an original $12,000 balance although there is no evidence confirming those payments. Moreover, Applicant did not pay the 2008 real estate taxes on the investment property by the due date and a lien was filed in the amount of $6,439.70 in May 2009 (SOR 1.c). Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

AG ¶ 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," cannot reasonably be applied in mitigation. The state tax debt and the court order in late May or early June 2009 requiring Applicant to pay the mortgagor's attorneys fees stemming from his breach of the promissory note and mortgages #1 and #2 are too recent. Furthermore, Applicant has not made any recent payments on the delinquent loan in SOR 1.b.

AG ¶ 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 in a very limited sense that materials costs for the construction of the investment property were subject to market forces that Applicant did not control. The financial pressures that Applicant faced in 2006 were essentially of his own making, however. He risked his family's home by doubling the amount of his home mortgage in the refinancing to obtain funds to construct the investment property and in taking out a loan with another institution that was tied to benchmarks in the construction. Mortgage loan #1 had terms favorable to both parties to the contract in that Applicant was given an attractive interest rate. In return, the bank did not have to wait until he was 90 days delinquent to commence

[11]Pursuant to 14 M.R.S. § 6321, the acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee, constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is singed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt.

foreclosure proceedings. Applicant had been allowed to cure one default earlier that year. He was a victim of an unfortunate circumstance, in that he apparently did not receive notice of the bank's intent to foreclose before the bank filed its civil action. Yet, I cannot conclude that the bank's actions were as predatory as he believes. Applicant knew he had not paid his mortgage payments for August and September 2006 on time.

On October 30, 2008, the district court ordered a judgment of foreclosure as to mortgage loan #1. Applicant had 90 days from the entry of the order to pay the principal due on the loan plus interest and assessed attorney fees awarded the bank. Applicant satisfied the mortgage debt in SOR 1.a in January 2009 through a new mortgage loan with a different lender. He also paid some of the attorney fees awarded the bank in connection with the two foreclosure actions. But it is difficult to fully apply AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," when he has done nothing to address the debts in SOR 1.b and 1.c.

Applicant still owes about $12,000 in attorney fees. While they are not delinquent, Applicant has to pay the bank its $6,000 within 30 days, and that debt is likely to take precedence over the $8,268 delinquent loan balance in SOR 1.b and the $6,439.70 delinquent real estate taxes for the investment property. But his outstanding debt is significantly less than the attorney fees he has paid in the past few years, including $50,000 to his own counsel. He reports monthly net income of $12,000 since January 2009 when he began receiving his military retirement. His new mortgage takes half of his income, and the $6,000 advanced to him in April 2009 for shipbuilding work went to pay some bills. His financial situation is likely to improve in the near future through an expected $30,000 in income from that project over the next two years. AG ¶ 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," applies. The record as a whole shows he is likely to resolve his debts.

Personal Conduct

The security concern for personal conduct is set out in Guideline E, ¶ 15 of the adjudicative guidelines:

> 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.

As of Applicant's completion of his June 2008 e-QIP, he was a party to two civil proceedings filed by the bank to foreclose his mortgage loans secured by a single promissory note. He had also defaulted on the loan in SOR 1.b. He did not disclose these financial delinquencies on his e-QIP. Applicant denies the intentional concealment addressed under AG ¶ 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."

Concerning the delinquent loan in SOR 1.b, Applicant maintains that he thought he had paid off the loan because he had used up his coupon book and not received another book ("I didn't get a second book, so there was, there is some confusion as to how that loan had been administered and that's been part of the issue." Tr. 115). He testified that he learned in late 2008 that he had paid only half the debt (Tr. 65), and that interest had accrued on the account. But he also acknowledged that the creditor was claiming unpaid principal on the account (Tr. 116). According to his own testimony, he paid on the loan for a couple of years at about $200 per month (Tr. 63). The available credit information shows a charge-off balance of $6,493. These figures fail to substantiate his claim of a good faith belief that the loan had been paid.

As for his failure to disclose the delinquency in his mortgage, Applicant testified that he was behind more than 60 but fewer than 90 days. He missed his payment for August, September, and October, so he would have been delinquent around 90 days, if not more, when he attempted to resume payment in November 2006. Certainly by June 2008, there was no question that Applicant was more than 180 days delinquent on the mortgage loan. Applicant testified he did not regard questions 28.a and 28.b as applicable because he believed he would be successful in contesting the lawsuits (Tr. 51). Had Applicant acted in good faith, however, he would at a minimum have disclosed the ongoing litigation in response to question 29 concerning any public record civil court actions in the last seven years. Applicant's claim that he did not understand that the bank had brought a civil action rather than simply an attempt to recover the loan (Tr. 53) is untenable. He is a retired Navy captain and vice president of a defense contracting firm, who can reasonably be expected to understand the importance of full disclosure. As of June 2008, Applicant had successfully appealed a summary judgment order of foreclosure of his primary mortgage to his state's highest court. Although Applicant is not a lawyer, It is simply not credible for him to claim that the results of the lawsuit would determine whether it was a civil action or a foreclosure (Tr. 53) for purposes of whether he was required to disclose the ongoing legal proceedings in response to question 29 on the e-QIP. AG ¶ 16(a) applies because of his failure to disclose the delinquent construction loan in response to the financial delinquency questions and the litigation involving the mortgage loans in response to question 29.

Applicant testified that he felt he would have the opportunity to discuss the matters in detail during the investigation (Tr. 55). He had an obligation to provide "true, complete, and correct" responses on his e-QIP, although a subsequent rectification could mitigate earlier falsification or deliberate omission. The evidence shows Applicant disclosed nothing about the litigation or the related financial issues during his first interview with a government investigator in July 2008. Apparently he was not asked about it and he did not volunteer the information. Applicant discussed the matter during an interview of a later date with a different investigator, but it was not until the investigator asked him about the adverse information on his credit record. Applicant's failure to volunteer the information during his first interview undercuts his explanation for

the e-QIP omissions and precludes application of AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

Similarly, a personal belief that the bank was not being fair to him and that he would ultimately prevail on the merits does not excuse or justify his failure to inform the Department of Defense about the current and ongoing litigation over his mortgage loan. Any failure to be fully forthright is serious and casts doubts on an individual's reliability, trustworthiness, and judgment. AG ¶ 17(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," is not pertinent in light of the recency of the falsifications. Applicant has yet to acknowledge that he was not as candid as he should have been about his personal financial issues. AG ¶ 17(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," does not mitigate the personal 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 conduct and all the circumstances in light of 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 DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases stating, in part, "an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.'" ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

The financial issues stem from Applicant's decision to build a house as an investment property that he intended to sell for the equity that he would not realize in his own home. He took on substantial debt that he managed until spring 2006 when he was forced to use his personal income to pay for materials and labor for the construction. After expensive and protracted litigation, the lender prevailed in a foreclosure action that

Applicant resolved legally with the proceeds from a new mortgage loan with a different lender. He remains under some financial pressures in that he has to pay the lender $6,000 in legal fees within 30 days, the investment property is subject to a lien for nonpayment of taxes, and another bank is pursuing collection against Applicant on a delinquent construction loan. However, Applicant is not likely to engage in illegal acts to generate funds to address these debts. He has already paid substantial legal costs associated with the lawsuit without resorting to illegal means, intends to resolve his outstanding debt, and has been otherwise responsible in handling his personal financial matters.

Yet considerable personal conduct concerns persist because of his concealment of the ongoing litigation over the mortgage and the delinquent construction loan when he completed his June 2008 security clearance application. Applicant, who had held high-level security clearances in the past for his military duties, was certainly familiar with the purpose of the security clearance application. He knew, or can reasonably be expected to have known, that he had an obligation to reveal the problems with his mortgage loan and the delinquency on the construction loan, and that it did not depend on whether he ultimately prevailed, whether he felt the lawsuit was not justified, or whether he disputed the balance of the delinquent construction loan. Despite his record of distinguished commissioned service, I am unable to conclude that it is clearly consistent with the national interest to grant him a security clearance at this time.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI

ADMINISTRATIVE JUDGE