



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-11549

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel

For Applicant: *Pro Se*

July 29, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed 12 debts totaling about \$35,000. He paid seven debts; however, he made insufficient progress resolving five debts totaling about \$31,800. Personal conduct concerns are mitigated; however, financial considerations concerns remain. Eligibility for access to classified information is denied.

Statement of the Case

On January 25, 2008 and July 30, 2008, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance applications (SF-86s) (Government Exhibit (GE) 1; GE 2). On March 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, 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 March 22, 2009, Applicant responded to the SOR (GE 8). On May 6, 2009, Department Counsel was prepared to proceed. On May 7, 2009, DOHA assigned the case to me. On June 5, 2009, DOHA issued a hearing notice. The hearing was held on June 30, 2009. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Transcript (Tr.) 22-23), and Applicant offered three exhibits (Tr. 113-117, 121-122, 124; AE A-C). There were no objections, and I admitted GE 1-5 (Tr. 23), and AE A-C (Tr. 117, 124). Additionally, I admitted the Notice of Hearing, SOR, and response to the SOR (GE 6-8). After the hearing, Applicant provided ten exhibits (AE D-M). Department Counsel did not object and I admitted the ten exhibits (AE D-M). I received the transcript on July 9, 2009. I closed the record on July 15, 2009.

Findings of Fact¹

In his SOR response, Applicant admitted all of the SOR allegations with explanations (GE 8). His admissions are accepted as findings of fact.

Applicant is a 28-year-old employee of a defense contractor (Tr. 7). He graduated from high school in 1999 (Tr. 7). In college, he majored in information science and systems (Tr. 7). He graduated from college in 2005 (Tr. 7). He has held a secret clearance since April 2008 (Tr. 8). He has never been married and does not have any children (Tr. 26). He does not have any prior military service (Tr. 27). He began working for the defense contractor in April 2008 (Tr. 25).

Summary of SOR debts

SOR ¶ 1.a (\$7,312)—Unresolved. Applicant said this was an education loan (Tr. 28). The account became delinquent in 2008, and he said he began making payments in 2009 (Tr. 28-29). He thought the monthly payment was \$150 (Tr. 31). He said he was sure he made at least one payment (Tr. 32). However, he did not provide proof of any payments.

SOR ¶ 1.b (\$1,213)—Paid. A letter, dated July 2, 2009, indicated this credit card debt in the amount of \$905 was paid (Tr. 34-40; GE 4 at 3; AE F; AE L; AE M).

SOR ¶ 1.c (\$5,603)—Unresolved. This is an education loan (Tr. 34, 40). He said the creditor offered to settle the debt for two, \$250 payments and that he made the two

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

payments (Tr. 41-43). I conclude he was confused about this settlement offer. He did not make any payments to this creditor in the last six months.

SOR ¶ 1.d (\$635)—Unresolved. This is a medical debt (Tr. 43). He said he paid this bill in February or March 2009 (Tr. 45). He paid using funds from his checking account (Tr. 46). He said he had documentation to support his claim of payment and would provide it to me (Tr. 46-48). However, he did not provide any post-hearing proof of payments on this particular medical debt.

SOR ¶ 1.f (\$1,045)—Paid. This is a credit card debt (Tr. 49; GE 4 at 4). Applicant's payment plan promised \$240 payments in March, April and May 2009 (Tr. 49-51, 60; GE 8 at 6). His creditor's letter, dated July 2, 2009, confirmed payment of this debt (AE G; AE K; AE L; AE M).

SOR ¶ 1.g (\$18,065)—Unresolved. On January 20, 2009, he paid \$265, and on March 16, 2009, he paid \$265 (AE L; AE M). At the hearing, he said he discussed payment arrangements of \$150 a month; however, he did not make any \$150 payments (Tr. 51-53). He has not made any payments in the 90 days preceding his hearing.

SOR ¶¶ 1.e (\$157), 1.h (\$142), 1.i (\$274), and 1.j (\$153)—Paid. These four medical debts are owed to the same creditor (GE 4 at 9; GE 5 at 8-9). Applicant made a \$116 payment on March 20, 2009 (Tr. 48; GE 8 at 9, 10), and a \$116 payment on May 27, 2009 (AE I). He thought he had paid these four debts because they were to the same creditor (Tr. 53-57, 62-63). He asked the creditor if any more money was due and was advised he did not owe any more money (Tr. 53-54). The creditor wrote Applicant and promised to correct his credit report on two of the debts (GE 8 at 8-10).

SOR ¶ 1.k (\$188)—Unresolved. This is a telecommunications debt (Tr. 58). He was unsure about whether he had paid this debt (Tr. 58). If he had paid it, it was in February 2009 (Tr. 59). He averred that if he paid it, he could provide supporting documentation (Tr. 59). He did not provide any post-hearing documentation on this debt.

SOR ¶ 1.l (\$425)—Paid. Applicant paid \$205 on May 13, 2009, and \$278 on January 6, 2009, bringing his utilities to current status (Tr. 64-67; AE J, AE L; AE M).

Applicant's work history for the previous four years and personal financial statement

Applicant's annual salary from 2005 to 2007 was about \$35,000 to \$37,000 per year (Tr. 81). Starting around 2007, he was unemployed or underemployed for about ten months (Tr. 81). During the summer of his unemployment period, he received \$8 an hour working as a teacher's aid for children ages three to five years old (Tr. 83). He did not receive unemployment benefits (Tr. 81). During his unemployment, he attended school and received financial support from his parents (Tr. 81). In April 2008, he began his current employment (Tr. 25, 81). His current annual salary is \$58,900 (Tr. 78). He has not received a raise since he started his current employment (Tr. 79).

Applicant's net pay after deductions is \$3,160 (Tr. 88). In his savings and checking accounts combined, he has about \$300 (Tr. 89). He does not have any other financial assets (Tr. 89). His monthly expenses are: rent (\$1,110); car payment (\$350) (he purchased a 2003 Ford in February 2009); car insurance (\$165); gasoline (\$50); school loan (\$597);² food (\$130); utilities (\$200); cable (\$180); and cell phone (\$150) (Tr. 92-101). Applicant essentially lives paycheck-to-paycheck, and only has \$200 a month remaining after expenses (Tr. 101). He reduced his federal tax withholding so he would have additional funds to pay his debts (Tr. 102). He also cashed in some of his vacation time and used it for debt payment. His most recent tax refund in 2008 was about \$1,500, which he used to purchase the 2003 Ford (Tr. 103).

Applicant agreed to provide documentation after his hearing showing (1) his current pay; (2) payment status and arrangements for all SOR debts; (3) the relationship between the medical receipts and SOR ¶¶ 1.d, 1.e, 1.h, 1.i and 1.j; (4) any documentation showing SOR debts were paid or settled and paid; and (5) monthly account statements for six months with notations showing applicability to particular SOR debts (Tr. 121-122; AE C). After his hearing, Applicant provided records showing the following payments on his SOR debts:

Date	Amount	SOR ¶	Reference
July 1, 2009	\$597	Student Loan	AE I at 3
May 27, 2009	\$116	Medical Debt	AE J at 2
May 13, 2009	\$205	Utility Debt-¶ 1.i	AE J at 4
April 13, 2009	\$240	¶ 1.f	AE K at 1
March 31, 2009	\$240	¶ 1.f	AE L at 5
March 23, 2009	\$116	Medical Debt	AE L at 4
March 16, 2009	\$265	Vehicle Debt-¶ 1.g	AE L at 3
March 10, 2009	\$132	Utility Debt-¶ 1.i	AE L at 2
March 5, 2009	\$187	¶ 1.b	AE L at 1
March 3, 2009	\$148	¶ 1.b	AE L at 1
March 2, 2009	\$240	¶ 1.f	AE L at 1
February 20, 2009	\$240	¶ 1.f	AE M at 3
February 17, 2009	\$240	¶ 1.f	AE M at 2
February 4, 2009	\$148	¶ 1.b	AE M at 1
January 20, 2009	\$265	Vehicle Debt-¶ 1.g	AE N at 2
January 6, 2009	\$278	Utility Debt-¶ 1.i	AE N at 1
TOTAL	\$3,657		

Applicant explained his delinquent debts resulted from "mismanagement of [his] finances and through various mishaps" (Tr. 104). The cost to repair his car was about \$2,000 (Tr. 104-105). In June 2008, his apartment was vandalized, and his personal property, valued at around \$700, was stolen (Tr. 104-105). Shortly after he purchased his 2003 Ford, it was vandalized (Tr. 107).

² Applicant's February 9, 2008, credit report showed a \$32,375 student loan debt in deferred status (GE 5 at 7). The creditor threatened to garnish his pay unless he resumed monthly payments of \$597 starting July 1, 2009 (Tr. 92-93). He made a \$597 payment on July 1, 2009 (AE I at 3).

In 2003, Applicant's brother was murdered (Tr. 109). He provided some support for his deceased brother's daughter, who is five years old (Tr. 109). For example, he might buy her some clothing or food if he was babysitting (Tr. 110). He wanted to create an educational fund for his niece (Tr. 109, 111). Applicant has not sought financial counseling (Tr. 108). In February 2009, Applicant's employer selected him as employee of the month (Tr. 117). He contributed \$28 to a charity on July 11, 2009 (AE I at 1), May 12, 2009 (AE J at 4), April 11, 2009 (AE K at 1), March 11, 2009 (AE L at 2), February 11, 2009 (AE M at 1), and January 13, 2009 (AE N at 2).

Alleged falsification of security clearance applications (SF-86s)

On January 25, 2008, and on July 30, 2008, Applicant signed his SF-86s (Tr. 69; GE 1, GE 2). In regard to his delinquent debts and repossessed vehicles, his SF-86 asked three questions. Applicant responded "No" to questions 27b, 28a and 28b (GE 1; GE 2), which asked:

Section 27: Your Financial Record

Answer the following questions.

b. In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?

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 SF-86 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; GE 2). Immediately below this admonition appears his signature (GE 1; GE 2). Applicant admitted that he signed and certified these two SF-86s (Tr. 69, 72).

Applicant said he thought his vehicle repossession occurred in August 2008, which is after the dates he completed his two SF-86s (Tr. 75).³ When he completed his first SF-86, he had missed some payments; however, he did not believe that his debts were delinquent at least 90-days (Tr. 74). When he completed his second SF-86, he agreed he had debts that were delinquent over 90 days and explained that he failed to disclose the required information because of an oversight (Tr. 71, 77). He was pressed at work to complete a database and did not thoroughly review his answers on his SF-86 (Tr. 71, 77). He understood that security clearance investigators obtain a credit report (Tr. 78). He repeatedly denied that he intentionally provided false information on his SF-86s (Tr. 123; GE 8).

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

³ Applicant’s August 7, 2008, credit report shows his vehicle payment to be 60 days late, and does not show any vehicle repossession(s) (Tr. 76; GE 4 at 4).

guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

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

Financial Considerations

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

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two 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 mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of 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)). Five substantial SOR debts, totaling about \$31,800 are currently delinquent. He does not have a credible plan to address these five SOR debts. The deferment on his \$32,000 student loan ended, and on July 1, 2009, he made one \$597 payment under threat of garnishment. His delinquent debts occurred under such circumstances that they are likely to recur and continue 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 his unemployment and underemployment. He does not receive full mitigating credit because he has been continuously employed at a salary of \$58,900 since April 2008. In 2009, he had an unexpected car repair expense of about \$2,000. In June 2008, his apartment was vandalized, and his personal property, valued at about \$700, was stolen. Shortly after he purchased the 2003 Ford, it was vandalized. These relatively minor unexpected expenses are insufficient to cause such large delinquent debts, and he did not establish that he acted responsibly under the

circumstances. Applicant did not receive credit counseling and he did not provide payment plans showing how he was resolving five SOR debts. AG ¶ 20(c) does not apply.

Applicant has established some, but not full mitigation under AG ¶ 20(d) because he showed some, recent good faith⁴ in the resolution of his SOR debts. He made some payments on several large SOR debts and resolved seven debts. I have credited Applicant with payment of the medical debts in SOR ¶¶ 1.e (\$157), 1.h (\$142), 1.i (\$274), and 1.j (\$153) even though he only provided proof of two \$116 payments. He credibly stated the creditor for these medical accounts told him that his medical debts were resolved. He also established payment of the SOR debts in ¶¶ 1.b (\$1,213), 1.f (\$1,045), and 1.l (\$425). Applicant did not provide documentation contesting the validity of any debts and AG ¶ 20(e) does not apply.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. He did not establish that he maintained contact with his creditors, or that he made or attempted to make partial payments to several of them.⁵ He said he would provide proof of SOR debt payments over the previous six months after his hearing. He showed payments totaling \$3,657. However, over the April-June 2009 period, he only showed payments of \$1,158 (includes \$597 payment on his student loan, which is not an SOR debt). At his hearing, he incorrectly stated he had payment plans in place and was making payments (SOR ¶¶ 1.a and 1.g), and his \$5,603 debt could be settled for about \$500 and was paid (SOR ¶ 1.c). He was honest and credible about his good intentions, but confused and disorganized. I am convinced financial problems will continue.

⁴The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

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

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

⁵“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 the allegation Applicant provided a false security clearance application:

- (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 January 25, 2008, and on July 30, 2008, Applicant signed SF-86s. In question 27b, his SF-86s asked about whether he had any repossessed property. Applicant correctly replied "No" because his vehicle was repossessed after July 30, 2008.

His SF-86 asked a question about debts 180-days delinquent in the last seven years and a question about debts currently 90-days delinquent. Applicant correctly responded "No" to these two questions on his January 25, 2008 SF-86 because his debts were not delinquent for at least 180 days or 90 days, respectively. However, he incorrectly answered "No" on his July 30, 2008 SF-86 because he did have debts that were 90-days delinquent by July 30, 2008. 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 credibly stated he carelessly rushed through his July 30, 2008 SF-86 and failed to disclose his debts that were currently at least 90-days delinquent. He was working hard trying to meet deadlines for his employer, and did not show the careful, conscientious attention to detail necessary to properly complete his SF-86. I conclude Applicant's alleged falsification of his SF-86 is mitigated. Although he provided false information on his SF-86, AG ¶ 17(f) applies. The falsification allegations are not substantiated. I am satisfied he did not deliberately and intentionally fail to disclose his delinquent debts with intent to deceive.⁶ I find "For Applicant" in the Findings section of this decision with respect to SOR ¶ 2.

⁶The 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.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E 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 summarized in this paragraph; however, it is insufficient to fully mitigate security concerns. There is no evidence of any security violation. He is a law-abiding citizen. His security clearance application did not disclose any problems with alcohol or drug abuse. His financial problems were initially caused by unemployment and underemployment, which are factors somewhat beyond his control. He paid seven SOR debts. He paid his non-SOR debts. He has not received any new credit cards. Applicant has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He obtained employment with his current employer in April 2008, and has been able to maintain and continue that employment. He understands 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. He supports his niece and contributes to charity.

The evidence against mitigating Applicant's financial conduct is more substantial. Several of Applicant's debts became delinquent after his current employer hired him in April 2008, and his pay was increased to \$58,900. At his hearing, he incorrectly stated he had payment plans in place and was making payments (SOR ¶¶ 1.a and 1.g). He also mistakenly indicated his \$5,603 debt could be settled for about \$500 and was paid (SOR ¶ 1.c). He was incorrect about these payment plans and payments. Applicant does not have established payment plans to address the five SOR debts in ¶¶ 1.a (\$7,312), 1.c (\$5,603), 1.d (\$635), 1.g (\$18,065), and 1.k (\$188), totaling about \$31,800. His student loan debt of approximately \$32,000 was in deferment status until July 1, 2009, and now he must continue to make monthly payments of \$597 or his pay will be garnished.

He should have made greater and more systematic progress on the five unresolved SOR debts. He should have acted more aggressively to pay his delinquent debts or to arrange and establish payment plans, and to better document his remedial efforts. These factors show some financial irresponsibility. 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 concerns; however, he has not mitigated the financial considerations security concerns.

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

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
Subparagraph 1.c and 1.d:	Against Applicant
Subparagraph 1.e and 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h to 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	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