



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-11560  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 5, 2009

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed 18 delinquent debts, totaling \$47,979. He is making payments to address one SOR debt through garnishment of his pay. He has not made any payments to any of his other SOR creditors. He intentionally falsified his 2007 security clearance application. Financial considerations and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 20, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF-86) (Government Exhibit (GE) 1). On May 26, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR (GE 8) 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 alleged 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 June 10 and 12, 2009, Applicant responded to the SOR (GE 9). On August 20, 2009, DOHA assigned Applicant's case to me. On August 21, 2009, DOHA issued a hearing notice (GE 7). On August 27, 2009, Applicant's hearing was held.<sup>1</sup> At the hearing, Department Counsel offered six exhibits (GE 1-6) (Transcript (Tr.) 20-21), and Applicant offered two exhibits (Tr. 82-83; AE A-B). There were no objections, and I admitted GE 1-6 (Tr. 20-21), and AE A-B (Tr. 83). Additionally, I admitted the Notice of Hearing, SOR, and response to the SOR (GE 7-9). On September 3, 2009, I received the transcript.

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, Applicant admitted he owed the debts in SOR ¶¶ 1.a to 1.r (GE 9). He admitted he lied when he completed his December 20, 2007, SF-86 (GE 9). He explained that he compromised his integrity because he needed to earn a living and pay his financial obligations (GE 9). He said he was slowly eliminating his overdue financial obligations and would continue to make them his priority (GE 9). His admissions are accepted as findings of fact.

Applicant is 63 years old, and he is seeking employment with a defense contractor (Tr. 6). He entered the United States from a South American country in 1969 (Tr. 41). He joined the U.S. Army and served in Korea as a medic (Tr. 41). From 1971 to 1974, he was on active duty (Tr. 41-42, 46). He received an honorable discharge from the Army (GE 1). In 1973, he became a U.S. citizen (Tr. 46). He completed one year of college (Tr. 6). From 1974 to 1996, he worked for the subway as a laborer and foreman (Tr. 42, 47). He recently held an interim Secret security clearance (Tr. 7).

From 1996 to 2003, Applicant lived in a South American country (Tr. 42, 48). There were riots and rampant crime in the South American country, and Applicant decided to return to the United States (Tr. 42, 72-73). From June 2003 to April 2004, he returned to working on the subway (Tr. 49). From April 2004 to the present, he worked for a series of government contractors (Tr. 50, 75). On May 25, 2009, he lost his

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<sup>1</sup>At his hearing, Applicant waived his right to 15-days' notice of the date, time, and location of his hearing (Tr. 15-16).

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

employment because of his security clearance problem (Tr. 74-75). For the last two years before he became unemployed, he earned about \$30,000 to \$32,000 per year (Tr. 75).

In 2004, Applicant married a woman living in the South American country where he was born (Tr. 50). He was anxious to get his wife out of the South American country because of the criminal activity where she lived and the exceptional danger to her person (Tr. 45). In 2006, he was able to bring his spouse to the United States (Tr. 50). Applicant has three children and three stepchildren (Tr. 51). His children do not live with him; however, one of his stepchildren lives in his household (Tr. 51). His sick brother also stays with Applicant (Tr. 57, 59). Two of his stepchildren are still living in the South American country (Tr. 51). In total, Applicant provides support in his household for his spouse, one stepchild, and his sick brother.

A court order required Applicant to pay for child support; however, he insisted he was not the child's father (Tr. 52; SOR response). He asked the judge to order a DNA test to establish paternity; however, he did not have the funds to pay for the DNA test because he was unemployed at that time (Tr. 52). Now that he has sufficient funds for the DNA test, he is unable to locate the child (Tr. 71). From February 2007 to February 2008, the court garnished \$100 a month from Applicant's pay (Tr. 56). The judge declined to order the DNA test (Tr. 52). He currently owes about \$10,000 in child support arrearage, and he pays \$35 a month (Tr. 53, 55).

### **Financial considerations**

The SOR listed 18 delinquent debts, totaling \$47,979 as follows: 1.a (\$161); 1.b (\$12,130); 1.c (\$12,643); 1.d (\$860); 1.e (\$611); 1.f (\$1,122); 1.g (\$463); 1.h (\$688); 1.i (\$1,325); 1.j (\$738); 1.k (\$12,924); 1.l (\$705); 1.m (\$860); 1.n (\$946); 1.o (\$518); 1.p (\$266); 1.q (\$620); and 1.r (\$399).

In June of 2006, Applicant went to the South American country where he was born to bring his spouse to the United States (Tr. 63, 65). In July 2006, she moved to the United States (Tr. 66, 81). The trip cost about \$5,000 (Tr. 80). Applicant's spouse moved into his apartment, and he needed a larger apartment (Tr. 61). His monthly rent went from about \$750 to about \$1,200 (Tr. 62). His utilities also increased (Tr. 62). She was underemployed until recently when she received a permanent green card (Tr. 64).

In December 2006, the payroll checks from Applicant's employer had a problem and Applicant's bank account was overdrawn (Tr. 66). His checks bounced and he had to pay about ten returned-check fees (Tr. 66). A month later his check from his employer arrived; however, his employer did not reimburse him for his returned-check fees (Tr. 67). The total cost for the returned checks was \$350 (Tr. 80).

On February 25, 2008, an Office of Personnel Management (OPM) investigator interviewed Applicant (GE 2). The OPM interview thoroughly discussed Applicant's delinquent debts (GE 2). He promised to pay several of his SOR debts by December 2008 (GE 2).

On April 5, 2009, he made one \$260 payment to a debt consolidation company (Tr. 76; GE 2). He learned he could settle the debt in SOR ¶ 1.b for about \$5,000 and the debt in SOR ¶ 1.p for \$56 (Tr. 77). He did not make any payments to any SOR creditors, except for the monthly \$35 payments on his child support arrearage (SOR ¶ 1.k). He did not receive financial counseling (Tr. 77).

### **Falsification of security clearance application (SF-86)**

On December 20, 2007, Applicant completed his SF-86 (Tr. 68; GE 1). The SOR alleges that in regard to his relevant financial history, his SF-86 asked two questions. Applicant responded “No” to subsections 27b and 27d (GE 1). Subsections 27b and 27d 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?

d. In the last seven years, have you had any judgments against you that have not been paid?

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). Immediately below this admonition appears his signature (Tr. 68; GE 1). Applicant admitted that he signed and certified this SF-86 (Tr. 68).

The SOR alleges that Applicant falsified his SF-86, when he failed to disclose the judgment for overdue child support and the follow-on garnishment of his pay for the child support arrearage (SOR ¶¶ 2.a and 2.b; GE 1, 6).<sup>3</sup> On February 25, 2008, Applicant admitted to an OPM investigator that he had \$12,924 in delinquent child support and that his pay was being garnished as recently as October 2007 (GE 2). At

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<sup>3</sup> A 1995 judgment for child support in the amount of \$5,289 was included in the record (GE 6). It is unclear when the court ordered subsequent judgments. It is clear that Applicant’s pay was being garnished at the time he filled out his 2007 SF-86 for a child-support collection that totaled at that time for about \$12,000 (SOR ¶ 1.k). In the findings, I will merge the judgment falsification allegation into the garnishment allegation and find For Applicant in SOR ¶ 2.b. See page 12, *infra*.

his hearing, Applicant admitted \$100 per month of his pay was being garnished for the child support arrearage when he signed his SF-86 (Tr. 68). He explained that he did not answer his SF-86 truthfully because he thought he might not be hired if he was behind on paying child support (Tr. 69).

### **Character evidence**

Applicant's current supervisor was in charge of the department's investigatory file system and a retired federal criminal investigator (Tr. 23-24, 31). He has known Applicant since December 2008, and he has daily contact with Applicant throughout the duty day (Tr. 25-26, 29). The investigatory files contain information at Secret and sensitive classification or protection levels (Tr. 26). Applicant was initially a temporary worker and later became permanently assigned by specific request because of his solid work performance (Tr. 25). Applicant is a very hard working, trustworthy, and reliable employee (Tr. 27, 32). He has a positive attitude, shows initiative, and is willing to arrive early and work late to complete tasks (Tr. 27-28). He is conscientious about security and safeguards sensitive information (Tr. 28).

Applicant's supervisor from April 2006 to April 2007 said Applicant was a laborer who set up conference rooms for meetings, moved furniture, and made repairs (Tr. 35-36). She supervised his work on a daily basis (Tr. 37). She described him as very dependable, trustworthy, hard working, and responsible (Tr. 37-39). Applicant was often requested to take care of tasks because of his work ethic and positive attitude (Tr. 38).

### **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 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> 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.” The Appeal Board has noted, “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.” ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). Applicant’s history of delinquent debt is also documented in his OPM interview, his responses to DOHA interrogatories, 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)). He has made insufficient progress paying or resolving 17 of his 18 SOR debts, which now total about \$45,000. None of the SOR debts are paid or disputed. His delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant receives partial credit under AG ¶ 20(b) because his financial problems initially resulted from underemployment, a dispute over child support, his employer's late payment of one month's pay, the necessity for Applicant to travel to South America to assist his spouse in moving to the United States, his costs to resettle her in the United States, and the expenses of moving into and maintaining a larger residence in the United States.<sup>4</sup> He does not receive full mitigating credit because he did not establish that he acted with sufficient initiative and resolve to address his delinquent debts. He did not provide sufficient documentation about his income and expenditures over the last two years to receive full credit under AG ¶ 20(b).

AG ¶ 20(c) does not fully apply. Applicant did not receive financial counseling. Although he provided a personal financial statement and started a debt consolidation and repayment plan, he did not demonstrate a sufficiently firm grasp of budgeting, payment plans, and expense reduction. He did not show any reduction in his expenses even though he learned about the security significance of his delinquent debts during his OPM interview on February 25, 2008. He has not demonstrated the financial self-discipline necessary to reduce and resolve his debts. There are not "clear indications that the problem is being resolved or is under control." He does not receive full mitigation under AG ¶ 20(d) because he did not establish good faith<sup>5</sup> in the resolution of his SOR debts.

AG ¶ 20(e) does not apply because of the lack of documentation supporting Applicant's dispute of any debts. However, under all the circumstances, I did mitigate his child support debt (SOR ¶ 1.k) because he is making payments and attempted to dispute this debt by requesting a DNA test.

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<sup>4</sup>"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.

<sup>5</sup>The 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)).



In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. His debts initially resulted from underemployment, a dispute over child support, his employer's late payment of one month's pay, the necessity for Applicant to travel to South America to assist his spouse in moving to the United States, and the costs to set up a family household in the United States. His SOR listed 18 debts and about \$45,000 is owed to his creditors. I am not confident he will keep his promise to pay his delinquent debts because of his insufficient track record of financial progress shown over the last two years.

## **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 December 20, 2007, Applicant completed his SF-86, which asked, "[i]n the last 7 years, have you had your wages garnished . . . for any reason?" Applicant falsely responded "No" to this question. AG ¶¶ 16(a) and 16(b) both apply because he provided a false answer about his pay being garnished. 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 intentionally falsified his SF-86 with the intent to deceive the government about the garnishment of his pay for child support.<sup>6</sup> Applicant thought he would not be hired if he accurately disclosed this information. He receives partial credit for admitting on February 25, 2008, to an OPM investigator that he had \$12,924 in delinquent child support, and his pay was being garnished as recently as October 2007. He also admitted in his SOR response and at his hearing that he

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<sup>6</sup>The 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.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). "When an applicant claims that a false answer to a [SF-86] question is not deliberate, the Judge should address explicitly any contrary evidence in the record." ISCR Case No. 08-07998 at 2 (App. Bd. Aug. 12, 2009) (citing ISCR Case No. 07-03307 at 5 (App. Bd. Sep. 26, 2008)).

deliberately provided false information on his SF-86 to deceive the government about his financial situation. He was candid and forthright at his hearing about his financial problems. I conclude, however, that his honesty to the OPM investigator and thereafter about falsifying his SF-86 is not sufficient to mitigate the falsification of his SF-86 itself.

### **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 whole person factors supporting reinstatement of Applicant's clearance are significant; however, they are insufficient to warrant approval of Applicant's security clearance at this time. Applicant's supervisors noted Applicant's excellent work performance. He is a diligent, hard working, and dedicated employee. He was candid and forthright about falsifying his SF-86 to obtain employment. I do not believe he would falsify a future SF-86. His financial problems initially resulted because of underemployment, a dispute over child support, his employer's late payment of one month's pay, the necessity for Applicant to travel to South America to assist his spouse in moving to the United States, and costs to resettle her in the United States. Now that the government is well-aware of his financial problems and falsification of his SF-86, his motive to conceal these particular acts of misconduct and vulnerability to exploitation, manipulation, and duress have been eliminated. Applicant is a capable, reliable, and dedicated employee.

The evidence against approval of Applicant's clearance is more substantial. Applicant submitted a false SF-86 in December 2007. He has 17 delinquent SOR debts totaling about \$45,000. He did not take action to use a debt consolidation plan until March of 2009, and he made his first and only \$260 payment into the plan in April of 2009. The only payment actually made to his creditors resulted from garnishment of his pay for a child support arrearage. His efforts to address his delinquent debts for the last

two years have been inadequate, and financial considerations concerns are not mitigated at this time. His misconduct concerning falsification of his SF-86 cannot be mitigated because the falsification was knowledgeable, voluntary, and intentional. He was sufficiently mature to be fully responsible for his conduct. Falsification of a security clearance application shows a lack of trustworthiness and poor judgment. Such conduct goes to the heart of the clearance process, and a security clearance is not warranted at this time.

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,”<sup>7</sup> 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 currently eligible for access to classified information.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

PARAGRAPH 1, GUIDELINE F:      AGAINST APPLICANT

    Subparagraphs 1.a to 1.j:      Against Applicant

    Subparagraph 1.k:              For Applicant

    Subparagraphs 1.l to 1.r:      Against Applicant

PARAGRAPH 2, GUIDELINE E:      AGAINST APPLICANT

    Subparagraph 2.a:              Against Applicant

    Subparagraph 2.b:              For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance. Eligibility for a security clearance is denied.

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MARK HARVEY  
Administrative Judge

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<sup>7</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).