



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



In the matter of:)
)
) ISCR Case No. 09-01166
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: Jason M. Berent, Esq.

August 30, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant rebutted personal conduct security concerns and mitigated criminal conduct concerns, but he has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations), E (personal conduct), and J (criminal conduct). The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 25, 2011, and requested a hearing before an administrative judge. The case was assigned to me on May 16, 2011. DOHA issued

a notice of hearing on June 16, 2011, and the hearing was convened as scheduled on July 12, 2011.

The Government offered Exhibits (GE) 1 through 13. GE 1 through 12 were admitted without objection. The Government did not provide Applicant with prior notice that it was submitting GE 13. Applicant objected to its admission. Applicant was given until July 29, 2011, to submit a request to reconvene to address GE 13. No request to reconvene was made. GE 13 is admitted. Applicant testified and submitted Exhibits (AE) A, A(1) through A(6), and B. AE A, A(2) through A(6), and B were admitted without objection. AE(1) was admitted over the Government's objection. The record was held open until August 5, 2011, for Applicant to submit additional information. No additional material was submitted. DOHA received the hearing transcript (Tr.) on July 20, 2011.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He is on unpaid leave pending his security clearance adjudication. He is a high school graduate. He married in 1977 and divorced in 1987. He married his current wife in 1990. He has five adult children.¹

Applicant and his wife started a company (Corporation X) in about 2000. The company was incorporated as a Subchapter C corporation.² Although personal liability for the corporation's debts, for the most part, does not pass to the shareholders, many creditors would not contract with the corporation unless Applicant, his wife, or both of them, also agreed to be on the account in an individual capacity.³ Responsible officers in the corporation are required to ensure that payroll taxes are paid to the Internal Revenue Service (IRS). If the taxes are not paid, the responsible officers can be held personally liable for the taxes.⁴

¹ Tr. at 69-70, 100-101, 122; GE 1.

² For federal income tax purposes, a C corporation is recognized as a separate taxpaying entity. A corporation conducts business, realizes net income or loss, pays taxes and distributes profits to shareholders. See www.irs.gov/businesses/small/article/0,,id=98240,00.html.

³ Tr. at 32-33, 40-41; GE 7, 8, 11; AE A.

⁴ See IRS Publication 15 (January 2007), Employers Tax Guide at page 23. www.irs.gov/pub/irs-prior/p15--2007.pdf:

Trust fund recovery penalty. If income, social security, and Medicare taxes that a corporation must withhold from employee wages are not withheld or are not deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. The penalty is the full amount of the unpaid trust fund tax. This penalty may apply to you if these unpaid taxes cannot be immediately collected from the business.

The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, and paying these taxes, and who acted willfully in not doing so.

On August 23, 2007, Corporation X entered into an agreement with another corporation (Corporation Y), in which Corporation Y would receive 51% of Corporation X, with Applicant and his wife retaining a 49% interest in Corporation X. In return, Corporation Y agreed to “take responsibility clearing all outstanding debt and assumes all future debts, provide bonding for [Corporation X].”⁵

On October 5, 2007, Corporation X entered into a servicing contract with a third business (Company Z). On April 16, 2008, Corporation X assigned its contract with Company Z to Corporation Y. In return, Corporation Y agreed to assume Corporation X’s IRS debt, as follows:

[Corporation Y] acknowledges prior agreement (to pay said debt) with [Corporation X] for debt due IRS of approximately \$196,372.57, rent of [Corporation X’s] equipment and tools on project, purchase of equipment, list of debt listed on prior agreement, retainage due [Corporation X] on said Contract [with Company Z].⁶

Applicant stated that Corporation Y failed to honor its contractual agreements. He stated Corporation Y did not pay the payroll taxes due to the IRS and did not pay other liabilities.⁷

On May 20, 2008, Applicant’s wife, signing as the president of Corporation X, filed Chapter 11 bankruptcy on behalf of Corporation X. The petition listed a secured claim to a bank (Bank W) for \$272,966. The total of the unsecured claims exceeded \$1.6 million. Included in the unsecured claims were claims to the IRS for \$87,890 and a series of claims to Bank W totaling \$95,810. There was also a \$450,000 claim to Applicant and his wife. Corporation X also filed a suit in bankruptcy court against Corporation Y and its owner. The bankruptcy and the included lawsuit were dismissed in 2009.⁸

In June 2010, Corporation X, Applicant, and his wife filed a lawsuit against Corporation Y, its owners, and other entities, alleging breach of contract. The petition

A **responsible person** can be an officer or employee of a corporation, an accountant, or a volunteer director/trustee. A responsible person also may include one who signs checks for the corporation or otherwise has authority to cause the spending of business funds.

Willfully means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows the required actions are not taking place. (emphasis in original)

⁵ Tr. at 28-36; GE 7, 8; AE A, A(2).

⁶ AE A(3).

⁷ Tr. at 37-39; GE 7, 8; AE A.

⁸ Tr. at 28; GE 2, 5, 7, 8, 11; AE A, A(1).

alleges that Corporation Y failed to pay the IRS \$196,372 and the debts owed to Bank W. The petition also alleges:

Defendants also: (1) interfered with Plaintiffs' contracts and business relations with third parties; (2) stole, misdirected and/or misappropriated money properly owing to Plaintiffs; and (3) stole and/or otherwise obtained unlawful possession of Plaintiffs' tools, equipment, vehicles and other property.⁹

The lawsuit is still pending. The defendants have filed a countersuit against Corporation X, Applicant, and his wife. Applicant submitted a copy of his petition; he did not submit a copy of the answer or the countersuit petition.¹⁰

Bank W filed a lawsuit against Corporation X, Applicant, and his wife. The parties entered into an agreed judgment in November 2010. Corporation X and Applicant's wife, jointly and severally, were ordered to pay \$282,526 to Bank W, with interest accruing at the rate of 5% a year. Corporation X and Applicant's wife, jointly and severally, were also ordered to pay \$4,584 to Bank W, with interest accruing at the rate of 18% a year, plus \$20,000 in attorney's fees. The case against Applicant was dismissed with prejudice. Applicant's attorney stated that in exchange for the agreed judgment, Bank W agreed not to pursue efforts to collect on the judgment until the lawsuit against Corporation Y is resolved.¹¹

The SOR alleges the Chapter 11 bankruptcy, five delinquent debts to Bank W, a department store credit card account, two delinquent medical debts, a telephone company account, \$87,890 owed to the IRS, and a past-due mortgage that is in foreclosure. The debts were listed on Applicant's credit reports. In his response to the SOR, Applicant denied owing all the debts except the tax debt and the mortgage, which he admitted with explanations.

The debts to Bank W were alleged in SOR ¶¶ 1.d (\$1,670), 1.e (\$1,383), 1.f (\$27,021), 1.h (\$6,859), and 1.i (\$991). Applicant stated that some or all of the debts were Corporation X's debts that should have been paid by Corporation Y. He admitted that he was also liable to the bank because he personally guaranteed the accounts. When Corporation X filed Chapter 11 bankruptcy, it listed six unsecured accounts with Bank W totaling \$95,810. The debts alleged in SOR ¶¶ 1.e and 1.f were listed in the petition. Applicant is only listed on his credit report as an authorized user on the SOR ¶ 1.e debt, so he is not personally liable for that debt. The bankruptcy petition does not appear to include the Bank W debts alleged in SOR ¶¶ 1.d, 1.h, and 1.i.¹²

⁹ AE A(4).

¹⁰ Tr. at 39-40, 82-84; GE 11; AE A.

¹¹ Tr. at 44-48; AE A(5), B.

¹² Tr. at 40-48, 64-68; GE 4, 6-12; AE A.

The Bank W debt alleged in SOR ¶ 1.d is listed on Applicant's credit reports as a joint account. The Bank W debt in SOR ¶ 1.i is listed on the credit reports as an individual account. Applicant stated that those two debts were Corporation X accounts, but he submitted no supporting documentation. He stated that the files from Corporation X were turned over to Corporation Y. He stated that his bankruptcy attorney has copies of the files from Corporation X, but the attorney has not turned them over to Applicant or his present attorney.¹³

The \$6,859 Bank W debt alleged in SOR ¶ 1.h was transferred to a collection company. It appears to be an individual debt that was charged off, with a date of last action in February 2007. Applicant stated that he believed this debt was his son's responsibility. The debt was reported by TransUnion on the credit reports obtained in November 2008 and May 2010. It was listed on the January 2011 Equifax credit report under Bank W as a charged-off account that was transferred or sold. It was not separately reported by Equifax under the collection company that received the debt. Applicant did not submit any documentation corroborating his statement that the debt belonged to his son.¹⁴

Applicant denied responsibility for the \$1,694 delinquent department store debt alleged in SOR ¶ 1.g. The debt is listed on the November 2008 credit report as a joint account that was opened in 1984, with a date of last action in November 2004. Applicant stated this was his wife's debt from before they married. It is listed on later reports as charged off and transferred, with a zero balance. There is no indication on Applicant's credit reports of a subsequent collection company handling the debt.¹⁵

Applicant acknowledged responsibility for the medical debts of \$434 and \$28, as alleged in SOR ¶¶ 1.b and 1.c. The credit reports indicate these debts became delinquent in 2008. Applicant was asked about the debts during his background interview in December 2008. He did not recognize the \$28 debt. He stated that his insurance company paid the \$434 debt. He was asked about the debts again in June 2010. He stated that he would pay his medical debts "within the next year or so." He testified that he was unable to pay the debts because of the financial problems resulting from Corporation Y's failure to honor the contract. He obtained a job with a defense contractor in October 2008, but he was placed on unpaid leave in February 2011, when he lost his interim security clearance. The company is still sponsoring him and will rehire him should he obtain a security clearance. Applicant stated that he will pay his medical debts when he is rehired.¹⁶

Applicant denied responsibility for the \$322 delinquent debt to a telephone company, as alleged in SOR ¶ 1.k. Applicant stated that he believed the debt resulted

¹³ Tr. at 40-48, 64-72, 81-82; GE 4, 6-12; AE A.

¹⁴ Tr. at 72-78; GE 4, 6-12; AE A.

¹⁵ Tr. at 48-53, 101-102; Applicant's response to SOR; GE 4, 6-10, 12; AE A.

¹⁶ Tr. at 27, 68-72; GE 1, 4, 6-12.

from damage done by Corporation X to the telephone company's equipment. He stated that Corporation Y should have paid the debt. The debt is listed on the most recent credit report as a charged-off account that was opened in April 2001, with a date of last action in April 2009. Applicant did not submit any business records from Corporation X, or any other documentary evidence, to establish that this was Corporation X's debt.¹⁷

Applicant's mortgage is in foreclosure, as alleged in SOR ¶ 1.j. Applicant's position, as related through the attorney addressing that matter, is that Applicant maintained homeowner's insurance as required, but the mortgage company improperly "force paid" an additional policy, which caused an increase in the monthly mortgage payment. When Applicant continued with his normal payments, he fell behind. The May 2010 credit report lists the mortgage as \$4,221 past due, with a balance of \$194,747. The January 2011 credit report does not show a past-due amount, but it shows the mortgage in foreclosure, with a balance of \$194,000. Applicant acknowledges that he has stopped making the mortgage payments in accordance with his attorney's advice. His attorney filed an affidavit on March 25, 2011, in which he stated that "[i]t is customary, particularly in [his] dealings with [mortgage company's attorney] for the homeowner to not pay their mortgage until the dispute is resolved. This is sometimes the case because it may turn out that the mortgage company may actually owe the homeowner money." The attorney also wrote in that affidavit that he was working with the mortgage company's attorney, and they were "fairly close to having the dispute resolved in a mutually acceptable manner."¹⁸

Applicant admitted that he is liable to the IRS for Corporation X's payroll taxes, as alleged in SOR ¶ 1.i. He stated that they owed the IRS in the area of \$150,000 when the company was sold. He stated that the money was from the previous quarter, and that the taxes "[were] current, but it was coming up to the point that [they] needed to be paid." He stated they would have been due at the end of the quarter. Applicant's statement is inconsistent with the IRS rules that payroll taxes must be paid semiweekly or monthly. The IRS also requires that once \$100,000 is withheld from employees' salaries, the taxes must be paid the next day, notwithstanding the company's normal payment schedule.¹⁹ Applicant later testified that the payroll taxes stopped being paid after the sale to Corporation Y. He stated that he believed the amount currently owed is about \$150,000. Applicant stated that he had documents from the IRS computing specifically how they calculated the tax liability and the current balance. He did not submit any of those documents. The IRS has placed a lien on his house. He stated that IRS will be paid when the lawsuit is won or settled. He stated that he will make payment arrangements with the IRS if his lawsuit is unsuccessful.²⁰

¹⁷ Tr. at 55, 93-96; Applicant's response to SOR; GE 12; AE A.

¹⁸ Tr. at 53-54, 78-80; Applicant's response to SOR; GE 10, 12; AE B.

¹⁹ See IRS Publication 15 (January 2007), Employers Tax Guide at pages 18-23. www.irs.gov/pub/irs-prior/p15--2007.pdf.

²⁰ Tr. at 30-37, 61-62, 102-104; Applicant's response to SOR; GE 11.

Applicant was arrested in February 2007 and charged with driving while intoxicated (DWI) and open alcohol container. In February 2008, he was found guilty and sentenced to 90 days in jail, which was suspended, probation for 18 months, a \$1,500 fine, and court costs. Applicant acknowledged his conduct was wrong and stupid. He has not been arrested or charged with any offense since the DWI arrest.²¹

Applicant submitted a Questionnaire for National Security Positions (SF 86) in October 2008. Under the question asking about alcohol-related charges, he listed his DWI conviction. He answered all the pertinent financial questions in the negative. Applicant credibly testified that he did not intentionally falsify the SF 86. He stated that he did not have to list the bankruptcy because it was a corporate bankruptcy and not his personal bankruptcy. He did not list any delinquent debts because they were corporate debts, they were not delinquent when he submitted the SF 86, or he was unaware of the debts.²² After considering all the evidence, I find that Applicant did not intentionally falsify his SF 86.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

²¹ Tr. at 56-57, 99-100; GE 1, 3; AE A.

²² Tr. at 27-28, 55-57, 97-99; GE 1; AE A, A(6).

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 for financial considerations is set out in AG ¶ 18:

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

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.a alleges that Applicant filed Chapter 11 bankruptcy in 2008, and the bankruptcy was dismissed in 2009. That bankruptcy was filed by Corporation X, not by Applicant in a personal capacity. It raises no independent security concerns beyond those raised in other allegations. SOR ¶ 1.a is concluded for Applicant.

Applicant is only listed as an authorized user on the SOR ¶ 1.e debt, so he is not personally liable for that debt. SOR ¶ 1.e is concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 attributed his financial problems to Corporation Y's breach of contract and failure to pay Corporation X's debts, including payroll taxes owed to the IRS and corporate accounts owed to Bank W. However, the record is replete with concerns and unanswered questions.

Applicant stated the payroll taxes are paid quarterly, and they were not yet due when he and his wife sold 51% of their company to Corporation Y. That is contrary to the IRS requirement that payroll taxes be paid semiweekly or monthly, and that once \$100,000 is withheld from employees' salaries, the taxes must be paid the next day, notwithstanding the company's normal payment schedule. Applicant did not adequately explain why he and his wife did not pay Corporation X's payroll taxes when due, instead of relying on Corporation Y to do so. He stated that he had documents from the IRS computing specifically how they calculated the tax liability and the current balance. Those documents would have been helpful in evaluating this case, but Applicant did not submit any of those documents.

Applicant stated that all or most of his Bank W accounts were corporate accounts. Applicant admitted that creditors would not contract with the corporation unless Applicant, his wife, or both of them, also agreed to be on the account in an

individual capacity. Corporation X's bankruptcy petition listed the debts in SOR ¶¶ 1.e and 1.f, so I accept those debts were tied to the corporation. He did not submit any business records or other documentation establishing that the three other Bank W debts were in any way tied to the corporation.

Bank W sued Corporation X, Applicant, and his wife. The parties entered into an agreed judgment in November 2010. Corporation X and Applicant's wife, jointly and severally, were ordered to pay Bank W \$282,526 and \$4,584, plus \$20,000 in attorney's fees. The case against Applicant was dismissed with prejudice. Applicant did not submit any evidence establishing which Bank W debts were involved in the lawsuit. I note that Corporation X's petition listed a secured claim to Bank W for \$272,966 and unsecured claims to Bank W totaling \$95,810. I will accept that the debt in SOR ¶ 1.f was included in the lawsuit, and Applicant is no longer personally liable for that debt. I am unable to do so for the remaining Bank W debts. I find that the debt in SOR ¶ 1.f has been resolved, and AG ¶ 20(c) is applicable to that debt.

Applicant stated that he believed the \$6,859 Bank W/collection company debt alleged in SOR ¶ 1.h was his son's responsibility. He did not submit any supporting documentation.

Applicant stated that he believed the \$322 delinquent debt to a telephone company, as alleged in SOR ¶ 1.k, resulted from damage done by Corporation X to the telephone company's equipment. He stated that Corporation Y should have paid the debt. He did not submit any business records from Corporation X, or any other documentary evidence, to establish that this debt was Corporation X's responsibility.

Applicant admitted that he has not been paying his mortgage. It is unclear how many payments, if any, he has made in the last year. He may have a legitimate dispute with the mortgage company, and his attorney indicated that it is normal procedure to not pay the mortgage until the dispute is resolved. However, the lawyer also indicated in March 2011 that they were "fairly close to having the dispute resolved in a mutually acceptable manner." In the meantime, Applicant is not making any mortgage payments, and his home apparently is in foreclosure.

Applicant has known about the two medical debts since at least December 2008. He has taken no action to pay or dispute those debts.

Applicant stated that the \$1,694 delinquent department store debt alleged in SOR ¶ 1.g was his wife's debt from before they married. It is listed on the credit reports as a joint account that was opened in 1984, which was six years before Applicant married his wife. The debt is listed on the most recent credit reports as charged off and transferred, with a zero balance. There is no indication on Applicant's credit reports of a subsequent collection company handling the debt. I find that AG ¶ 20(e) is applicable to this debt. It is not applicable to any other debts.

In summary, Applicant has taken no real action to pay any of his debts. He may have a legitimate and winning lawsuit against Corporation Y, or he may not. Applicant

did not submit sufficient information to convince me that his financial issues will be resolved within a reasonable time. I find that Applicant's finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶¶ 20(c) and 20(e) are not applicable, except as discussed above. I find that financial concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

Applicant did not deliberately falsify his SF 86. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a and 2.b are concluded for Applicant.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

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

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's DWI conviction is sufficient to raise the above disqualifying conditions.

SOR ¶ 3.a cross alleges the falsification of the Applicant's SF 86 as a criminal violation of 18 U.S.C. § 1001. Applicant did not intentionally falsify the SF 86, and he did not violate 18 U.S.C. § 1001. SOR ¶ 3.a is concluded for Applicant.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's DWI arrest occurred in February 2007, more than four years ago. He is appropriately remorseful for the conduct, and he has not been arrested or charged for an offense since that date. I find there is evidence of successful rehabilitation, and Applicant's criminal behavior is unlikely to recur. AG ¶¶ 32(a) and (d) are applicable.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, E, and J in my whole-person analysis.

Applicant may win or settle his lawsuit and pay all his delinquent debts. That could be years down the road, or it could never happen. Applicant has left me with unanswered questions and unresolved concerns about his finances. Under AG ¶ 2(b), I am required to resolve my doubt in favor of national security.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant rebutted personal conduct security concerns, and he mitigated criminal conduct concerns, but he has not mitigated financial considerations security concerns.

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:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant

Conclusion

In light of all of the circumstances presented by 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.

Edward W. Loughran
Administrative Judge