



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



In the matter of:)
)
-----) ISCR Case No. 09-01497
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

August 25, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's debts were discharged under Chapter 7 of the Bankruptcy Code in December 1999. His statement of reasons (SOR) listed 18 debts totaling \$20,025. He disputed three debts, and 15 debts totaling \$18,293 are not resolved. Applicant stole telephone services, made a false sworn statement to a criminal investigator, forged a lieutenant colonel's signature, falsified a security clearance application, lied to a Defense Security Service (DSS) special agent, and used cocaine while holding a security clearance. Financial considerations and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 11, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (Item 5). On February 5, 2010, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations) and E (personal conduct) (Item 1). 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 (Item 1).

On March 11, 2010, Applicant responded to the SOR allegations, and requested a decision on the record (Item 4). A complete copy of the file of relevant material (FORM), dated April 27, 2010, was provided to him on May 6, 2010, and he was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant did not respond to the FORM. (file) The case was assigned to me on July 20, 2010.

Findings of Fact²

In Applicant's response to the SOR, he admitted SOR ¶¶ 1.a-1.d, 1.g, 1.j, 1.q, 2.a, 2.c, 2.e, 2.f, 2.g, and 2.i (Item 4) For SOR ¶ 2.h, he admitted using cocaine while holding a security clearance on December 31, 2005, rather than in January 2006, as alleged in the SOR. (Item 4) His admissions are accepted as factual findings.

Applicant is a 46-year-old employee of a defense contractor, working as a program administrator. (Item 5 at 6, 13) He attended college from 1983 to 1996 and 2003 to 2004. (Item at 5 at 11-12) When he completed his October 11, 2007, SF 86, he estimated he would receive a bachelor's degree in July 2008. (Item 5 at 12)

Applicant served on active duty in the Army from 1990 to August 2005. (Item 5 at 16-17, 34) From August 2005 to May 2006, Applicant served in the National Guard. (Item 5 at 15, 33) He married in 1990 and divorced in 1994. (Item 5 at 21-22) He remarried in 1994. (Item 5 at 20) His children were born in 1987 and 1989. (Item 5 at 25-26). His stepchild was born in 1982. (Item 5 at 26)

Financial Considerations

Applicant's unsecured, non-priority debts, totaling \$48,438, were discharged under Chapter 7 of the Bankruptcy Code in December 1999. (Item 1, Item 7 at 3) His SOR lists 18 unpaid SOR debts, totaling \$20,025, which are as follows: 1.b (\$485); 1.c (\$247); 1.d (\$259); 1.e (\$171); 1.f (\$522); 1.g (\$347); 1.h (\$5,883); 1.i (\$785); 1.j (\$199);

¹The DOHA transmittal letter is dated April 28, 2010, and Applicant's receipt is dated May 6, 2010 (file). The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information (file).

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

1.k (\$673); 1.l (\$4,260); 1.m (\$204); 1.n (\$362); 1.o (\$55); 1.p (\$137); 1.q (\$3,897); 1.r (\$500); and 1.s (\$1,039).

Applicant disputes eight SOR debts because he believes they were discharged in his December 1999 bankruptcy: 1.f (\$522), 1.h (\$5,883), 1.k (\$673), 1.l (\$4,260), 1.m (\$204), 1.n (\$362), 1.p (\$137), and 1.s (\$1,039). (Item 4) Applicant's October 24, 2007 credit report shows the accounts for the following debts were opened on the following dates: 1.l (\$4,260—March 2005); 1.m (\$204—July 2006); 1.n (\$362—May 2007); and 1.p (\$137—February 2005). (Item 8 at 2, 10, 11, 12, 16, and 17) Applicant's February 22, 2009 credit report indicates the accounts for the following debts were opened on the following dates: 1.f (\$522—December 2006); 1.k (\$673—June 2004); and 1.h (\$5,883—March 2005). (Item 9 at 2) The debt in SOR ¶ 1.s (\$1,039) is based on a judgment filed on June 29, 1994. (Item 14 at 2) The debt in SOR ¶ 1.s (\$1,039) was automatically included in his bankruptcy even though it was not listed on a bankruptcy schedule. See Financial Considerations Analysis, *infra*.

Applicant's credit reports reflect disputes of the SOR debts in ¶¶ 1.b (\$485), 1.e (\$171), 1.f (\$522), and 1.j (\$199); however, he admitted responsibility for the debts in SOR ¶¶ 1.b and 1.j in his SOR response. (Item 4; Item 9 at 2; Item 10 at 1, 2; Item 11 at 1; Item 12 at 6, 8) The debts in SOR ¶¶ 1.e and 1.f are accepted as currently in dispute.

On November 20, 2007, an Office of Personnel Management (OPM) investigator questioned Applicant about his debts. Applicant said he had some difficulty obtaining full-time employment in 2005 after leaving active duty, and he had some funeral expenses from the deaths of his grandparents in 2005. (Item 12 at 5) He received financial counseling in connection with his bankruptcy in 1999; however, he did not receive any recent financial counseling. (Item 12 at 10) For most of the debts listed on his credit report, Applicant said he would contact the creditor, inquire about the account, and if it is determined to be his debt, he would pay it. (Item 12 at 6-9) Applicant did not provide documentation or correspondence written to the creditors to inquire about the status of any accounts. He did not provide correspondence received from the SOR creditors such as responses to inquiries, or offers to settle debts. He did not provide proof that he made any payments to any of the SOR creditors.

Personal Conduct

Theft of Telephone Services and False Swearing in 1991

In 1991, Applicant used a calling card number that he took without permission to make telephone calls costing more than \$100. (Item 16 at 2) On January 3, 1992, he made a sworn statement to a law enforcement investigator claiming another service member had authorized him to use the telephone card, and claiming he did not know anyone else who had used the calling card number. *Id.* at 3, 7, 8.

On January 9, 1992, Applicant made a sworn statement to a law enforcement investigator where he said he found the telephone calling card on his own desk at his workplace mixed in with some paperwork. *Id.* at 11. He admitted that he falsely accused

another soldier of providing the calling card to Applicant because he was angry about an argument. *Id.* He falsely understated the degree of his misuse of the telephone calling card in his prior sworn statement. *Id.* at 3, 11, 17. Applicant also admitted that he gave the telephone calling number information to another soldier (his roommate), who made calls using the stolen card number. *Id.* at 15-16.

In April 1992, Applicant received non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for obtaining services under false pretenses and false swearing. His commander imposed: (1) forfeiture of \$455 pay per month for two months (suspended); (2) reduction from E-4 to E-2; (3) restriction for 45 days; and (4) extra duty for 45 days. (SOR ¶¶ 2.a to 2.c; Item 1; Item 4)

Falsification of SF 86 in 1998

On December 15, 1998, Applicant completed a Questionnaire for National Security Positions (SF 86). Section 23e of his SF 86 asks, "In the last 7 years, have you been subject to court martial or other disciplinary proceedings under the UCMJ? (Include non-judicial, Captain's mast, etc.)." Applicant falsely answered, "No" deliberately failing to disclose the NJP described in the previous section. (SOR ¶ 2.e; Item 1; Item 4)

False Statement to a DSS Special Agent in 2001

On April 26, 2001, Applicant told a DSS special agent that a soldier gave him the calling card in 1991 and told him he could use it to make free calls. (Item 18 at 3) Applicant claimed he believed he was authorized to make the free calls for morale purposes. *Id.* He said he was charged with false swearing for admitting he copied the card from the victim's desk. *Id.* He also said he thought the false swearing charge was dropped. *Id.* The record of the NJP itself is not part of the record evidence. SOR ¶ 1.d alleges that Applicant lied to the DSS special agent when he denied having any knowledge that the phone calling card number had been stolen, whereas in truth, he had found the number himself.

Forgery in 2004

In August 2004, Applicant received NJP for forging the signature of an authorizing official (a lieutenant colonel) on his Request for Waiver of Tuition Assistance Reimbursement, in violation of Article 123, UCMJ. His commander imposed: (1) 14 days extra duty (suspended); (2) forfeiture of seven days pay (\$626); and a letter of reprimand. (SOR ¶ 2.f; Item 1; Item 4; Item 19 at 18) The letter of reprimand was filed in Applicant's Official Military Personnel File. (Item 19 at 18) When he completed his October 11, 2007, SF 86, he disclosed the forgery and NJP resolution of this offense. (Item 5 at 37-38)

As a result of the misconduct described in the previous paragraph, Applicant's security clearance and access to sensitive compartmented information (SCI) was

suspended. In January 2005, his security clearance and SCI access was reinstated with a warning. (SOR ¶ 2.g; Item 1; Item 4)

Cocaine Use on December 31, 2005

On December 31, 2005, Applicant used cocaine. He said it was because of stress due to underemployment, expenses for his grandparent's funerals, and back pain. (Item 12 at 5) At that time, he was in possession of a Department of Defense security clearance. (SOR ¶ 1.h; Item 1; Item 4) Applicant tested positive on a urinalysis test for the presence of the cocaine metabolite in January 2006 at his National Guard unit. In July 2006, the National Guard discharged him because of his use of cocaine, and he received an honorable discharge. (SOR ¶ 2.i; Item 1; Item 4) When he completed his October 11, 2007, SF 86, he disclosed the single cocaine use detected through the January 2006 urinalysis test. (Item 5 at 38) He did not receive any drug abuse treatment or counseling. (Item 12 at 6)

Awards from Military Service

Applicant has received one Meritorious Service Medal, four Army Commendation Medals, three Army Achievement Medals; four Army Good Conduct Medals; two National Defense Service Medals; one Korea Service Medal; two Overseas Ribbons; one Army Service Ribbon; two Professional Development Ribbons; one Global War on Terrorism Service Medal; one unit award, and several other awards or commendations. (Item 20) By order dated July 16, 2006, he left the National Guard as a staff sergeant and the character of his service was described as Honorable. (Item 20) The reason for his discharge was "ALCOHOL OR OTHER DRUG ABUSE REHABILITATION FAILURE." (Item 20) He had 16 years service towards military retirement. (Item 20)

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 applicant's 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 adjudicative guidelines. 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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

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

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security 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 Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his OPM interview, and his SOR response.

In December 1999, Applicant's unsecured, non-priority debts were discharged under Chapter 7 of the Bankruptcy Code. His SOR lists 18 debts totaling \$20,025. Some of his debts have been delinquent since 2005. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations 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 any mitigating conditions 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)). Applicant does not receive credit under AG ¶ 20(a) because he did not establish that his financial problems "occurred under such circumstances that [they are] unlikely to recur." There is some residual doubt about whether Applicant is fully committed to resolving his delinquent SOR debts and is taking adequate steps to do so.

Applicant's underemployment in 2005 and expenses relating to the death of his grandparents prior to December 2005 were unexpected events that damaged his finances. He may have also had some unexpected medical expenses because of his back problems. He did not establish that he acted responsibly under the circumstances over the last three years. There is insufficient evidence that he maintained contact with his creditors,³ and there is a paucity of evidence concerning his overall financial circumstances. There is no documentary evidence that he has attempted to pay or settle any of his SOR debts or attempted to establish payment plans with his creditors. His documented actions were insufficient to establish he acted responsibly under the circumstances.

AG ¶ 20(c) does not fully apply. Although he received financial counseling in 1999 as part of his bankruptcy, he now has additional delinquent debt. Applicant did not provide a credible plan to resolve his delinquent debts. Applicant cannot receive full credit under AG ¶ 20(c) because he has not paid, established payment plans (by making payments) or otherwise resolved any of his SOR debts. There are some initial, positive "indications that the problem is being resolved or is under control." He has admitted responsibility for and promised to pay several SOR debts, showing some good faith mitigation under AG ¶ 20(d).⁴

³Even 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 he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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

AG ¶ 20(e) is applicable to three debts. Two debts were documented as disputed in his credit reports (1.e (\$171) and 1.f (\$522)), and he did not subsequently admit responsibility for those two debts in his SOR response. Applicant said the debt in SOR ¶ 1.s (\$1,039) was part of his bankruptcy. Civil court records establish the judgment in SOR ¶ 1.s predated his bankruptcy. Absent fraud, in a no-asset bankruptcy all unsecured, non-priority debts are discharged when the bankruptcy court grants a discharge under Chapter 7 of the Bankruptcy Code even when they are not listed on a bankruptcy schedule. See *Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr. S.D. FL 2010).

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. After deducting three disputed debts (SOR ¶¶ 1.e, 1.f, and 1.s), 15 unresolved SOR debts remain and total \$18,293. He did not provide proof of any payments to his SOR creditors, or otherwise show sufficient progress on his SOR debts. His documented efforts are simply inadequate to fully mitigate financial considerations security concerns.

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.

With respect to the personal conduct concerns involving the allegations in the SOR, there are five pertinent disqualifying conditions. AG ¶¶ 16(a) to 16(e) provide:

(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

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) 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)).

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

In his SOR response Applicant admitted the following misconduct: (1) On January 3, 1992, he made a false sworn statement when he denied knowledge of anyone else who used the stolen calling card whereas Applicant provided the calling card number to his roommate (SOR ¶ 2.c); (2) He committed a theft of telephone services of over \$100 (SOR ¶ 2.a); (3) On December 15, 1998, he deliberately failed to disclose the NJP he received for theft of telephone services in 1991 on his SF 86 (SOR

¶ 1.e); (4) In 2004, he forged the signature of a lieutenant colonel on his Request for Waiver of Tuition Assistance (SOR ¶ 1.f); (5) On December 31, 2005, Applicant used cocaine while holding a security clearance (SOR ¶ 1.h). AG ¶¶ 16(a) through 16(c) apply.

In his SOR response Applicant denied ¶ 2.d, which alleged on April 26, 2001, Applicant made a false statement to a DSS special agent. Applicant told the DSS special agent that a soldier gave Applicant the calling card in 1991 and told him he could use it to make free calls. Applicant claimed he believed he was authorized to make the free calls for morale purposes. Despite Applicant's denial of responsibility in his SOR response for SOR ¶ 2.d, I find he knowingly and deliberately attempted to deceive the DSS special agent into believing that Applicant thought he was authorized to use the calling card to make long distance calls.

AG ¶ 16(d)(3) does not apply because Applicant's theft of telephone services, forgery, false swearing, as well as his cocaine possession and use are covered under the criminal conduct guideline, as all rules involved, when violated, are criminal offenses under the UCMJ.

Certainly, such crimes violate important civil and criminal rules in our society, and these offenses are conduct a person might wish to conceal, as it adversely affects a person's professional and community standing. Thus, AG ¶ 16(e)(1) applies. Further inquiry concerning the applicability of mitigating conditions is required.

AG ¶ 17 provides for seven conditions that could mitigate security concerns:

(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.

The mitigating condition outlined in AG ¶ 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress” applies to mitigate AG ¶ 16(e)(1). Security officials are well aware of Applicant’s offenses, and his conduct is well-documented in law enforcement, security, and personnel records. The federal government’s knowledge of these allegations eliminates any vulnerability to exploitation, manipulation or duress. I do not believe Applicant would compromise national security to avoid public disclosure of these offenses. Any personal conduct security concerns (pertaining to disclosure of his criminal conduct as alleged in the SOR) are mitigated.

The sole allegation in SOR ¶ 2.g is that Applicant’s security clearance and SCI access were suspended. The sole allegation in SOR ¶ 2.i is that Applicant was discharged from the Army National Guard after he tested positive for the cocaine metabolite in his urine. The conduct described in SOR ¶¶ 2.g and 2.i were actions by security or command officials (which resulted from Applicant’s conduct, alleged in other SOR paragraphs). I find for Applicant because Applicant himself did not engage in any personal conduct raising a security concern, and essentially these two SOR allegations are indirect duplications describing measures taken against Applicant for his conduct.

None of the mitigating conditions fully apply to mitigate the disqualifying conditions detailed in AG ¶¶ 16(a) through 16(c). Applicant’s criminal conduct must be considered as a whole. There is a pattern of dishonesty from 1991 to 2004 followed by his cocaine use while holding a security clearance. There is insufficient mitigating evidence to convince me that this pattern of behavior will not continue in the future.

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 E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance, there are several factors tending to support approval of his clearance. Applicant is 46 years old. He should have received his bachelor's degree in July 2008. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government, as an employee of a contractor and during his 15-year-career in the Army. He earned one Meritorious Service Medal, four Army Commendation Medals, three Army Achievement Medals, four Army Good Conduct Medals, as well as additional awards and commendations during his Army service. He was promoted to the grade of staff sergeant, and in 2006 his unit characterized his service as he Honorable. There is every indication that he is loyal to the United States and his employer. There is no evidence that he abuses alcohol. His underemployment and expenses relating to the death of his grandparents were unexpected events that damaged his finances. I give Applicant credit for admitting responsibility for several SOR debts. He is also credited with promising to pay the debts that were established. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a history of financial problems for more than 10 years. His unsecured, non-priority delinquent debts were discharged in December 1999 under Chapter 7 of the Bankruptcy Code. His post-bankruptcy delinquent debt dates back to 2005. After deducting three disputed debts, 15 unresolved SOR debts remain and total \$18,293. He did not provide proof of any payments on any of his SOR debts. In 2007, he promised an OPM investigator that he would investigate and resolve his delinquent debts. The concern about his financial responsibility was further emphasized when he received the SOR. Yet he did not provide documentary proof of any payments to any of his SOR creditors. He had ample notice of his delinquent SOR debts, and sufficient opportunity to make greater progress in the resolution of his SOR debts. His promises to pay his delinquent debts at some date in the future are insufficient to mitigate his SOR debts. There is an absence of documentary evidence fully explaining why he has not done more to address his SOR debts after becoming aware that they raised a security concern.

In 1991, Applicant took a telephone calling card and used it to make long distance calls costing more than \$100. This conduct constituted theft of telephone

services. On January 3, 1992, he made a false sworn statement when he denied knowledge of anyone else who used the stolen calling card whereas Applicant provided the calling card number to his roommate. On December 15, 1998, he deliberately failed to disclose the NJP he received in 1992 for theft of telephone services on his SF 86. On April 26, 2001, Applicant made a false statement to a DSS special agent, understating his culpability for the theft of telephone services in 1991. In 2004, he forged the signature of a lieutenant colonel on his Request for Waiver of Tuition Assistance. On December 31, 2005, Applicant used cocaine while holding a security clearance. This series of criminal acts raises serious personal conduct security concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations and personal conduct concerns are not fully mitigated, and he is not eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraphs 1.g to 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a to 2.f:	Against Applicant
Subparagraphs 2.g:	For Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	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