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

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| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 09-02484 |
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| Applicant for Security Clearance | ) | |

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

February 9, 2011

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the Government's security concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and the whole-person concept. His eligibility for a security clearance is denied.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 28, 2008. On June 10, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J and F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an answer to the SOR, which he signed and notarized on June 25, 2010. He requested that his case be adjudicated on the written record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on November 18, 2010. The FORM contained documents identified as Items 1 through 14.

By letter dated November 19, 2010, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on December 22, 2010. His response was due on January 21, 2011. Applicant timely submitted three documents in response to the FORM. On February 1, 2011, the case was assigned to me for a decision.

In his response to the FORM, Applicant submitted a two-page explanatory letter to the administrative judge. I have marked Applicant's letter as Exhibit (Ex. A). Applicant also provided a three-page document related to his Chapter 13 bankruptcy and showing disbursements and monthly payments to his trustee. I marked this document as Applicant's Ex. B. Applicant provided a third document showing the amount available for hardship withdrawal from the 401k account he held with his employer. I marked this document as Applicant's Ex. C. Department Counsel did not object to Applicant's exhibits in response to the FORM, and I admitted them to the record.

## Findings of Fact

The SOR contains one allegation of criminal activity under AG J, Criminal Conduct (SOR ¶ 1.a.) and 11 allegations that raise security concerns under AG F, Financial Considerations (SOR ¶¶ 2.a. through 2.k.). Applicant admitted all SOR allegations.[1] His admissions are entered as findings of fact. (Item 1; Item 4.)

Applicant is 60 years old and holds a Bachelor of Science degree in Electrical Engineering. He has worked for his present employer, a government contractor, for 23 years. His position title is Engineer/Scientist 5. He was first awarded a security clearance in 1995. (Item 5.)

Applicant has been married three times. He married for the first time in 1973, and he and his first wife were divorced in 1985. Applicant has two grown children from his first marriage. Applicant married for the second time in 1990; he and his second wife divorced in 2000. Applicant and his third wife have been married since 2002. (Item 5.)

Applicant befriended a woman to whom, on several occasions, he lent $200 to $500. She always repaid the loans timely. In 2000, the friend came to Applicant and asked him to lend her money to open a business. On October 9, 2000, Applicant made a cash withdrawal of $30,000 from his account at a federal credit union. On October 13, 2000, Applicant made a second cash withdrawal of $16,000 from his federal credit union account. In interviews with an authorized investigator from the Office of Personnel Management, Applicant gave conflicting reports about the withdrawals. In his November 6, 2008 interview, he stated that he had withdrawn the $30,000 on October 9, 2000 and had given it to his friend so that she could open a business. He stated that he did not know if the business had ever been opened. He stated that she had repaid the $30,000 within a three-month period, and he then used the funds to pay his credit card debt.

[1] Applicant admitted the allegation at SOR ¶ 2.b. but stated that the amount of the debt was $16,448 and not $26,448, as alleged. (Item 4 at 2, 4.)

When Applicant was again interviewed on January 8, 2009, he stated that he had lent the woman $15,000 and not $30,000 as he had previously stated. He acknowledged that he knew when he made the loan that it would be used to finance a massage parlor. He stated that he obtained the money for the loan by taking cash advances from three different credit cards he held. A financial crimes enforcement network report in the record shows the two cash withdrawals in 2000. (Item 7 at 6-7; Item 11.)

In May 2006, Applicant acting on behalf of his friend and another woman who was her business partner, filed papers to incorporate the massage parlor. In July 2006, Applicant applied for and was granted an occupational business license, which listed his friend as the corporate representative responsible for daily operations. In August 2006, Applicant opened a bank account and a merchant credit card account for the business, which represented itself as a massage parlor. Applicant was the registered owner and operator of the business. In exchange for performing these functions, Applicant was to be paid $1,000 a month by his friend and her business partner. He visited the business location, which was in a state he did not reside in, once. For about six months during the initial opening of the business, Applicant and his friend had monthly telephone conversations to discuss advertising the business in local newspapers and flyers. According to public records, the business was providing therapeutic massage services. In fact, the business was a brothel. (Item 6 at 2-4; Item 7 at 8.)

On June 12, 2008, Applicant, his friend, and her business partner were indicted for knowingly, unlawfully, and willfully conspiring to use a facility in interstate commerce, a credit card processing machine, and a merchant account to carry out a business enterprise involving prostitution offenses in violation of state and federal law. (Item 6 at 1-2.)

In December 2008, a United States District Judge approved a plea agreement entered into by Applicant and an Assistant United States Attorney. Under the terms of the plea agreement, Applicant entered a guilty plea to Count One of the indictment, which charged him with a criminal violation of 18 U.S.C. § 371, a felony. Specifically, Appellant was charged with Conspiracy to Use a Facility in Interstate Commerce to Promote Unlawful Activity, in violation of law and the laws of the state where the business was located. In the plea agreement, Applicant admitted the following facts:

> [Applicant] was the registered owner and operator of [name of business], a corporation organized under the laws of [State], being located in [State]. In fact, [Applicant's friend and her business partner] were the de facto owners and operators of [name of business]. According to public records, [name of business] was in the business of providing therapeutic massage services. In fact, however, [the business] was a brothel. [Applicant] had reason to know, amounting to legal knowledge, based in part on his past platonic relationship with [Applicant's friend] and his personal knowledge that prostitution was occurring at massage parlors that [Applicant's friend]

had previously operated in [Applicant's State of residence], that prostitution activity was occurring at [name of business].

(Item 6 at 10.)

On December 29, 2008, Applicant was sentenced to a term of probation of two years. He forfeited his interest in approximately $2,234 in currency seized from the business bank account in his name. He also paid assessments and fines of $2,400 imposed by the court. Additionally, the court imposed three special conditions of supervision to Applicant's probation: Applicant was directed to provide his probation officer with access to any requested financial information; Applicant was prohibited from incurring new credit charges or opening additional lines of credit without the approval of the probation officer "unless he [was] in compliance with the installment payment schedule"; and Applicant was sentenced to perform 60 hours of community service as directed by the probation officer. (Item 6 at 15-19.)

In his answer to the SOR, Applicant explained his criminal activity as follows: "I was the owner in name of a massage parlor. I did not participate and had visited [the] facility only once. At the time I thought that I was helping a friend. I admit that I was wrong. I have paid my fine, done my community service, and will be completing my probation in December [2010]." (Item 3 at 5.)

In his response to the FORM, Applicant characterized his criminal conduct as follows:

> "Concerning the Criminal Conduct, I have completed the entire sentence ordered as of December 28, 2010. Other than this one instance I have not had or done any criminal activities either before or since. I believe that I have learned my lesson and will not jeopardize myself in the next few years that I will be in the work force."

(Ex. A at 1.)

When discussing his financial situation with an OPM investigator, Applicant stated that his financial problems began in July 2000, when he was divorced from his second wife. He stated that the divorce settlement terms required him to pay his ex-wife $900 in alimony each month and to make a $1,200 monthly mortgage payment on her behalf. The 2000 divorce settlement also recited that Applicant's ex-wife would pay him approximately $26,000 for the debt she incurred on his credit card accounts. The ex-wife paid the money to Applicant, and he put it in his account. (Item 4, 8-13; Item 5.)

Applicant also reported that after he remarried in 2002, he helped his stepdaughter, who was having financial problems, by purchasing a house for her to live in. As a condition of residing in the house, the stepdaughter agreed to pay Applicant rent. However, she failed to do so. Applicant experienced financial hardship until the

stepdaughter moved out of the house and he was able to find a paying tenant.[2] (Item 7 at 3-4.)

When he completed his e-QIP on June 28, 2008, Applicant reported 16 separate credit card accounts with delinquencies totaling $125,630. In his answer to the SOR, Applicant stated that many of the credit card companies raised their interest rates in 2007 and increased their monthly minimum payments. In late 2007, Applicant contacted a debt settlement firm and sought assistance in satisfying his credit card debt. (Item 4 at 4; Item 5.)

Despite the assistance of the debt settlement firm, Applicant began to receive notices of legal action from his creditors. Additionally, he sought legal assistance after he was indicted in 2008, and it was necessary to pay the attorney $20,000 in legal fees. In October 2009, Applicant and his wife filed for Chapter 13 bankruptcy.[3] (Item 4 at 4-5; Item 9 at 3.)

On his October 2009 bankruptcy petition, Applicant claimed assets of $331,025 and liabilities of $411,821. He listed his net monthly income at $8,356 and his monthly expenses at $7,522. His net monthly remainder was $834. (Item 9 at 4, 9.)

The Chapter 13 confirmation order specifies that Applicant will pay his trustee the following amounts over a period of 60 months: $834 monthly for 21 months, $1,337 monthly for 23 months, and $1,874 monthly for 16 months. The confirmation order also specifies that a creditor holding a secured claim for $8,672 will be paid $779 a month for 11 months until the claim is paid in full. (Item 9 at 12.)

The SOR alleged that Applicant was responsible for ten financial delinquencies totaling approximately $85,135. Applicant admitted the ten financial delinquencies but stated that the charged-off debt alleged at SOR ¶ 2.b. totaled $16,448 and not $26,448, as alleged on the SOR. Applicant's credit reports of November 2009 and April 2010 show the debt alleged at SOR ¶ 2.b. as totaling $26,448. (Item 1; Item 4; Item 13; Item 14.)

Seven debts listed on the SOR appear on Applicant's Chapter 13 list of claims and disbursements. Those debts are alleged at SOR ¶¶ 1.c., 1.d., 1.e., 1.f., 1.h., 1.i., and 1.k. Applicant provided documentation establishing that between November 2009 and December 2010, he made 13 monthly payments of $834 to his Chapter 13 trustee. (Ex. B at 2-3.)

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[2] In his answer to the SOR, Applicant stated that his stepdaughter "got into trouble with drugs and bad boy friends." To help her, he co-signed her automobile loan, but the stepdaughter and her husband did not make the required payments. Nevertheless, Applicant continued to help the stepdaughter, and she was successfully rehabilitated. It is not clear from the record if this stepdaughter is the same person for whom Applicant purchased the house. (Item 4 at 4.)

[3] The record does not reflect that Applicant's wife has an income. (Item 9 at 9.)

In his response to the SOR, Applicant admitted the debt alleged at SOR ¶ 2.j. In his response to DOHA interrogatories, Applicant also provided documentation establishing that, with the assistance of the debt settlement firm, he had settled the debt alleged at SOR ¶ 2.j. and had made three required payments to the creditor in February, March, and April of 2009. (Item 4; Item 8 at 4, 7, 10, 12.)

The resolution of two debts listed on the SOR remains unclear. Applicant admitted the delinquent credit card debt alleged at SOR ¶ 2.g. His credit report of April 15, 2010, reflected that he was at least 90 days delinquent on a total debt of $5,272 and owed approximately $907. The credit report also reported that the debt had been listed as a part of Applicant's Chapter 13 bankruptcy. Applicant's Chapter 13 claims and disbursements roster lists the creditor but lists a zero claim amount. (Item 4; Item 14 at 4; Ex B at 2.)

In response to DOHA interrogatories, Applicant stated that the debt settlement firm was attempting to settle the debt alleged at SOR ¶ 2.b. The debt is listed on the debt settlement firm's roster of Applicant's creditors and debts. However, the debt settlement firm's record does not show payment or settlement of the debt.[4] (Item 8 at 3, 19.)

The documentation in the record shows that Applicant's current net monthly remainder is used to pay his Chapter 13 creditor. In documentation filed in response to the FORM, Applicant stated that, over the next four years, he intended to make all of his Chapter 13 bankruptcy payments on time. The record establishes that, as of January 2011, Applicant had eight remaining monthly payments of $834; 23 remaining monthly payments of $1,337; and 16 remaining monthly payments of $1,874. Applicant's remaining monthly Chapter 13 payments total $71,577. He provided a report showing that he has $54,266 available in his 401k plan to use for hardship withdrawals. (Item 8 at 2; Item 9 at 12; Ex. A; Ex. C.)

## Burden of Proof

The Government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the Government must establish by substantial evidence a *prima facie* case that it is not clearly consistent with the national interest for an applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

[4] The creditor identified with this debt also appears on Applicant's Chapter 13 list of claims and disbursements, with a claim amount of zero. (Ex. B at 2.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "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 an 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.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion in seeking 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline J, Criminal Conduct

Under the Criminal Conduct guideline "[c]riminal activity creates doubt about a person'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 ¶ 30.

In June 2008, Applicant was charged under 18 U.S.C. § 371 with a felony: Conspiracy to Use a Facility in Interstate Commerce to Promote Unlawful Activity. Applicant pled guilty to the charge. In December 2008, he was sentenced to two years probation, 60 hours of community service, forfeiture of interest and property, and fines. His probation ended in December 2010. In his answer to the SOR, Applicant admitted wrongdoing but attempted to minimize his culpability by asserting that when he undertook the criminal action, he thought he was helping a friend.

As a general rule, an applicant convicted of a criminal offense is precluded from denying his or her guilt in subsequent civil proceedings. DISCR Case No. 94-1213 at 3 (App. Bd. June 7, 1996.) This concept, known as collateral estoppel, is based on the premise that an individual's right to administrative due process does not give him or her the right to litigate again matters properly adjudicated in an earlier proceeding. *Chisholm v. Defense Logistics Agency,* 656 F. 2d 42, 46 ($3^{rd}$ Cir. 1981).

DOHA's Appeal Board has held that the doctrine of collateral estoppel applies in industrial security cases. Moreover, the Appeal Board has ruled repeatedly that an administrative judge may not engage in a *de novo* review of an applicant's guilt or innocence of a criminal charge of which he or she was convicted in a criminal court. ISCR Case No. 99-0116 at 2 (App. Bd. May 1, 2000); ISCR Case No. 96-0525 at 4 (App. Bd. June 17, 1997); ISCR Case No. 94-1213 (App. Bd. June 7, 1996).

Applicant's criminal history, as alleged in SOR ¶ 1.a., raises concerns under AG ¶ 31(a) and AG ¶ 31(c) of the criminal conduct adjudicative guideline. AG ¶ 31(a) reads: "a single serious crime or multiple lesser offenses." AG ¶ 31(c) reads: "allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

In June 2008, Applicant pled guilty to a federal felony crime. His criminal conduct in this matter began in 2006, when he filed papers to establish a business, opened a bank account for the business, and obtained a merchant credit card account for the business. For these services, Applicant agreed to be paid $1,000 a month from the proceeds of the business. Applicant's co-conspirators were two individuals who were the day-to-day operators of the business; Applicant was the owner of record of the business. While the business was identified as a massage parlor, Applicant had reason to know from his previous experiences with one of the day-to-day operators that the business was in fact a brothel. Applicant's involvement in the criminal enterprise was neither impulsive nor short-lived. He was sentenced to two years of probation. His probation ended in December 2010.

Two Criminal Conduct mitigating conditions might apply to Applicant's case. If "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," AG ¶ 32(a) might apply. If "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 involvement," then AG ¶ 32(d) might apply.

The record establishes that Applicant's criminal behavior occurred from 2006 to 2008. Applicant's criminal behavior is therefore recent. However, he served a two-year sentence of probation, which ended in December 2010. While he expressed some remorse for his criminal behavior in his answer to the SOR, he also characterized it as an attempt to help a friend, thereby minimizing its seriousness. The record before me suggests some rehabilitation, but it does not provide assurances that Applicant's criminal behavior is unlikely to recur, particularly if he is invited in the future to take part in criminal behavior by an individual he considers to be a friend.

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Applicant's criminal behavior and his disregard for laws, rules, and regulations occurred when he was an adult in his 50s, thereby raising concerns about his current reliability, trustworthiness, and good judgment. I conclude that AG ¶ 32(a) does not apply in mitigation to the facts of Applicant's case, and I also conclude that AG ¶ 32(d) does not fully apply in mitigation to Applicant's criminal conduct.

**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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt which he did not satisfy. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

The guideline also recites conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if “it 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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “the conditions that resulted in the financial problem were largely beyond the person’s control,” such as “loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence “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” (AG ¶ 20(c) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20 (e)).

The record in this case established that Applicant had satisfied the debt alleged at SOR ¶ 2.j. Accordingly, this allegation is concluded for Applicant.

Applicant also provided documentation establishing that seven of the ten debts alleged on the SOR were included in his Chapter 13 bankruptcy, and he had made 13 monthly payments of $834 to his bankruptcy trustee in conformity with his Chapter 13 confirmation order. The record is less clear about the status of two remaining debts, alleged at SOR ¶¶ 2.b. and 2.g. While the creditors are identified on Applicant’s Chapter 13 claims and disbursements page, no claim amounts are listed for the two accounts. Applicant failed to provide documentation to establish that the two debts had been paid or otherwise satisfied.

Applicant has a history of financial delinquencies that dates to at least 2000. While he attributes his financial problems to his second divorce and helping a stepdaughter in about 2002, these events occurred before Applicant’s financial difficulties in 2007. Applicant has been steadily employed with the same employer for 23

years. During that time, he has earned a predictable salary that allowed him to budget his resources and to live within his means.

While Applicant merits credit for meeting the payment terms of his Chapter 13 bankruptcy, his current financial situation raises concerns. The record reflects that after making his $834 monthly payment to the bankruptcy trustee, Applicant has exhausted his net monthly remainder. In eight months, his monthly payment to the Chapter 13 bankruptcy trustee will increase to $1,337. While Applicant suggests that he can make hardship withdrawals from his 401k plan to meet additional expenses or obligations, this is not an effective strategy for resolving his delinquent debts and establishing financial stability in the future. Moreover, Applicant has not sought consumer credit counseling, which might have provided him with strategies for managing his resources to avoid financial delinquencies. Accordingly, I conclude that while AG ¶ 20(d) applies partially in mitigation to the facts of Applicant's case, AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply in mitigation in his case.

**Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant is a mature adult who in his 50s became involved in criminal behavior. He has been steadily employed for 23 years with his current employer. He merits credit for adhering to his Chapter 13 payment plan for the past 13 months and for settling one of his delinquent debts in 2009. However, ongoing concerns about his unwillingness to fully acknowledge his criminal activity and his current financial overextension raise security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his criminal behavior and his financial delinquencies.

## 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:

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| Paragraph 1, Guideline J: | AGAINST APPLICANT |
| Subparagraph 1.a.: | Against Applicant |
| Paragraph 2, Guideline F: | AGAINST APPLICANT |
| Subparagraph 2.a.: | For Applicant |
| Subparagraph 2.b.: | Against Applicant |
| Subparagraphs 2.c. - 2.f.: | For Applicant |
| Subparagraph 2.g.: | Against Applicant |
| Subparagraphs 2.h. – 2.k.: | 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.

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Joan Caton Anthony
Administrative Judge