



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-03696
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William T. O'Neil, Esquire, Department Counsel  
For Applicant: *Pro se*

March 29, 2011

**Decision**

---

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a July 23, 2010, response, Applicant admitted 13 of the 26 allegations raised under Guideline F and three of the five allegations raised under Guideline E. Applicant requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on September 1, 2010. The parties proposed a hearing date of November 16, 2010. A notice setting that date for the hearing was issued on November 2, 2010. An amended notice was issued on November 5, 2010, indicating a different courtroom for the hearing at the same time and on the same date. I convened the hearing as scheduled.

Applicant gave testimony, presented three witnesses, and offered 32 documents, which were accepted into the record as exhibits (Exs.) A-FF. The Government introduced 17 documents, which were accepted into the record without objection as Exs. 1-17. Applicant was given through November 29, 2010, to submit any additional materials. The transcript (Tr.) of the proceeding was received on November 29, 2010. In addition, nine additional documents were later submitted by the Applicant to Department Counsel, who forwarded them to me on November 29, 2010, without objection. They were accepted into the record as Exs. GG-OO and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to personal conduct. Clearance is denied.

### **Findings of Fact**

Applicant is a 32-year-old senior telecommunications engineer who has worked for his present employer for over two years. He is a high school graduate and has completed multiple certification programs. Applicant served in the U.S. Army from 1996 until 1997. He is married and has four children.

After completing high school in May 1996, Applicant enlisted in the Army in August 1996. In the interim, he learned that his girlfriend had given birth to their child. Separated from his child while serving overseas, he missed the opportunity to interact with the infant. Although he had graduated near the top of his class in basic training, was deemed a top soldier, and had been deployed abroad, Applicant grew to regret his decision to pursue a military career and wanted to see his new baby. Depressed over his situation, Applicant got highly intoxicated in April 1997. He was not otherwise prone to alcohol abuse.<sup>1</sup> While inebriated, he was disruptive, knocked over a moped, and damaged a telephone. Military police detained him and transferred him for overnight observation. While intoxicated, he stated that he wanted to kill himself.<sup>2</sup> The counselor assessed that Applicant was apathetic, immature, inept, and unmotivated to become a productive soldier. He was later released and warned that his underage drinking and misconduct could lead to administrative separation from the service if such poor conduct was repeated. Applicant's SCI access was then suspended.<sup>3</sup>

Applicant repeatedly asked to be allowed to leave the military and join his child. He told his superiors about his desire to leave military service, and his hope to see his child. In May 1997, after reviewing his record, Applicant's command decided to

---

<sup>1</sup> Tr. 126, 172.

<sup>2</sup> Tr. 159.

<sup>3</sup> Ex. 6 (Interrogatories, dated Jan. 11, 2010). In completing his 2010 interrogatories, Applicant stated that he voluntarily separated from the military to be with his child. *But see, e.g.,* Ex. 2 (Discharge file) at 1-23.

discharge Applicant, citing to the April 1997 incidents.<sup>4</sup> He was given an honorable discharge for “other designated physical or mental conditions, not a disability.”<sup>5</sup>

Between May 1999 and February 2000, Applicant worked at a department store as an asset protection officer. He later disclosed to DOHA investigators that, during that period, he stole a comforter and a set of clippers, amounting to what he estimated to be about \$300 to \$400 in value.<sup>6</sup> Also during that time he borrowed about \$300 to \$500 from a co-worker, which he later repaid.<sup>7</sup> The co-worker confirmed Applicant’s statement of these facts.<sup>8</sup> The loan was subsequently mischaracterized as a bribe Applicant had accepted to ignore the unauthorized removal of items from the store.<sup>9</sup>

Between about 2000 and 2005, Applicant’s current wife’s employment was erratic, and Applicant’s income of about \$30,00 to \$40,000 was insufficient to cover both his expenses and child support obligations.<sup>10</sup> He was also unemployed from approximately May 2004 until about September 2004. As a result of these circumstances, delinquent debts were acquired. He was unaware of many of the debts at issue because he did not receive notices about them, a situation he attributes to having relocated several times.<sup>11</sup> Between 2005 and 2007, he worked two jobs in an effort to get his finances under control. He tried to work with those creditors he knew about.<sup>12</sup> In about November 2009, Applicant changed jobs and increased his salary from about \$60,000 to about \$79,000.<sup>13</sup> He currently earns about \$82,000. In light of his rise in pay, he has been trying to address his delinquent accounts and repair his credit.

At issue in the SOR are the following 26 debts:

---

<sup>4</sup> Ex. 2 (Discharge file) at 1-23.

<sup>5</sup> Tr. 124-127, 130-131, 137-141, 153-154, 158, 161-169; Ex. 2 (Certificate of discharge) at 1. Applicant testified “I was only 17 - - just turned 18 years old. They didn’t want to mess me up so I wouldn’t be able to get a job. . . .” Tr. 154. Applicant’s certificate of discharges designates the separation code of JFV (Condition, not a disability) and a reentry code of 3 (individuals who are not qualified for continued service, but the disqualification is waiverable. Ineligible for enlistment unless a waiver is granted).

<sup>6</sup> Tr. 148-150. There is no indication that the store was apprised of the theft.

<sup>7</sup> Tr. 99-100, 150.

<sup>8</sup> Tr. 102-108.

<sup>9</sup> Tr. 99.

<sup>10</sup> Tr. 93-95.

<sup>11</sup> Tr. 115-116.

<sup>12</sup> Tr. 116-117.

<sup>13</sup> Tr. 109-110.

1.a – Cable service-related collection for \$231. *Satisfied*. This balance was owed for failure to timely return cable equipment.<sup>14</sup> The collection account was reduced to a zero balance.<sup>15</sup>

1.b – Medical collection for \$841. *Medical insurance claim pending*. This debt was acquired in late 2008, when Applicant's doctor's office failed to appropriately file with Applicant's health insurer. When Applicant learned a balance was outstanding, he contacted the provider's office. The claim was resubmitted and is pending resolution.<sup>16</sup>

1.c – Medical collection for \$201. *Paid*. Applicant provided evidence that this account has been paid in full.<sup>17</sup>

1.d – Child support collection for \$1,206. *In repayment*. Applicant has been timely paying voluntary child support to the mother of the children who now live with him. An automatic arrearage was created when the mother claimed state benefits on behalf of the children.<sup>18</sup> Applicant informed the state of their financial and custody arrangement, then informed the children's mother that she might be prosecuted for making a false claim.<sup>19</sup> Applicant and the mother agreed that he would repay the balance cited as owed to the state and that she would reimburse him for the debt she created.<sup>20</sup> He has been making regular payments of \$32.50 twice a month on the balance.<sup>21</sup>

1.e – Telecommunications collection for \$267. *Disputed*. Applicant denies knowledge of this account. He stated that he has not had service from this provider and that he disputed this credit report entry, but he failed to provide evidence showing his debt to this provider has been satisfied.<sup>22</sup>

1.f – Telecommunications collection for \$575. *Disputed*. Same provider as above. Applicant denies knowledge of this account entry. He stated that he disputed the entry on-line with the major credit reporting bureaus. In contrast to the preceding account, this dispute is reflected in his June 9, 2010, credit report.<sup>23</sup>

---

<sup>14</sup> Tr. 43-44.

<sup>15</sup> Ex. II (Credit history, undated) showing the past due and balance as zero.

<sup>16</sup> Tr. 34; Ex. K (Narrative).

<sup>17</sup> Tr. 48; Ex. K (Narrative) and Ex. DD (Letter, dated Sep. 7, 2010).

<sup>18</sup> Tr. 37-39.

<sup>19</sup> Tr. 38.

<sup>20</sup> *Id.*

<sup>21</sup> Tr. 39, 41-42; Ex. AA (Child support documents).

<sup>22</sup> Tr. 49-51.

<sup>23</sup> Tr. *Id.*; Ex. 10 (Credit report, dated Jun. 9, 2010) at 2.

1.g – Past-due account for \$230. *Satisfied*. Applicant provided evidence that all his accounts with this creditor are in good standing.<sup>24</sup>

1.h – Medical collection for \$56. *Unaddressed*. Applicant disputed this account and the account noted at 1.j below, stating that he is unaware of their origin. His current credit report reflects that the total amount of \$256 was deemed to be owed, charged-off, and is now handled by a major collection agency.<sup>25</sup> There is no evidence that this account has been further addressed.

1.i – Medical collection for \$55. *Satisfied*. The Government accepted Applicant's evidence that this account was paid.<sup>26</sup>

1.j – Medical collection for \$44. *Unaddressed*. See 1.h, above.

1.k – Returned check collection for \$70. *Satisfied*. After linking a former collection entity to its newer identity, Applicant provided sufficient evidence that this balance has been satisfied.<sup>27</sup>

1.l – Medical collection for \$100. *Unaddressed*. Applicant failed to provide sufficient evidence that this account has been successfully disputed or satisfied.<sup>28</sup>

1.m – Collection account for \$1,510. *Disputed*. Applicant testified that he satisfied this account several years ago. He has disputed its continued inclusion on his credit report and is awaiting resolution of his dispute.<sup>29</sup>

1.n – Charged-off account for \$2,277. *In repayment*. This obligation represents a debt to a state employment commission. Applicant provided evidence that he has entered into an agreement to repay his debt through monthly payments of \$100 and evidence of his last two monthly payments.<sup>30</sup>

1.o – State tax lien for \$1,476. *Satisfied*. Applicant provided evidence that this balance has been satisfied.<sup>31</sup>

---

<sup>24</sup> Tr. 52-55.

<sup>25</sup> Tr. 55-61; Ex. LL (Credit file, dated Feb. 9, 2010).

<sup>26</sup> Tr. 60-61.

<sup>27</sup> Tr. 63-65; Ex. NN (Letter of Nov. 17, 2010, and internet search results).

<sup>28</sup> Tr. 65-69.

<sup>29</sup> Tr. 69-73.

<sup>30</sup> Tr. 73; Ex. EE (Letter, dated Jul. 25, 2010); Ex. MM (Bank statement, dated Sep. and Oct. 2010).

<sup>31</sup> Tr. 75-76; Ex. OO (On-line transcription, dated Nov. 18, 2010).

1.p – Medical judgment for \$70. *Unaddressed*. This judgment is from 2002. Applicant does not recognize the debt, but remembers receiving treatment from this provider in 2000. He noted that his co-pay at the time was \$20 and would have been paid at the time. Applicant testified that the judgment was disputed, but provided no evidence of its current status.<sup>32</sup>

1.q – Utility collection account for \$907. *Unaddressed*. Applicant testified that he successfully disputed this account entry and noted that it has been removed from his credit report, but he failed to provide evidence of his dispute or that successful resolution led to its removal from his credit report.<sup>33</sup>

1.r – Collection account for \$600. *Unaddressed*. Applicant initially disputed this entry. He testified that he later settled this balance for \$390, but did not provide evidence that this debt was satisfied.<sup>34</sup>

1.s – Utility collection account for \$37. *Unaddressed*. Applicant testified that this debt was paid, but failed to provide evidence showing payment was made.<sup>35</sup>

1.t – Apartment rental-related collection for \$2,102. *Disputed*. This debt is related to a dispute concerning a past apartment rental. Applicant is currently disputing this balance through his legal representative.<sup>36</sup>

1.u – Collection account for \$599. *Disputed*. Applicant disputes that this debt is his. This debt is owed to a creditor with a substantially similar name as the creditor noted at 1.w, below. Applicant denied ever having an account with this creditor or those creditors noted in 1.w, 1.x, and 1.z, below. He credibly testified, however, that he is often confused with his father, who has the same name and resides at an address once shared with Applicant.<sup>37</sup> Applicant's mother confirmed that Applicant and his father are often confused. She testified that she and Applicant's father maintained accounts with this creditor "years ago," and that they currently maintain accounts with the creditor noted at 1.x and 1.z.<sup>38</sup> Legally, Applicant's surname is followed by "junior." There is no evidence to contradict the assertion that these accounts are the result of identity confusion due to the similarity in names and addresses.

---

<sup>32</sup> Tr. 76-79.

<sup>33</sup> Tr. 79-83.

<sup>34</sup> Tr. 83-85. See also Ex. KK (Credit bureau report excerpt, dated Feb. 5, 2010), at 2, 4.

<sup>35</sup> Tr. 85.

<sup>36</sup> Tr. 86-88; Ex. Z (Letter, dated Jul. 20, 2010).

<sup>37</sup> Tr. 172-174. See also Ex. 1 (Security clearance application, dated Apr. 18, 2007) at 1-2, 6.

<sup>38</sup> Tr. 88, 171.

1.v – Telecommunications collection account for \$560. *Satisfied*. This debt was incurred in 2002. Applicant provided evidence that the provider received payment for his then-current balance in May 2004.<sup>39</sup>

1.w – Insurance-related collection account for \$493. *Disputed*. See 1,u, above.

1.x – Insurance-related collection account for \$418. *Disputed*. See 1,u, above

1.y – Parking ticket collection for \$275. *Satisfied*. Applicant testified that he paid all outstanding parking tickets before assuming his current position. The debt has not reappeared as a judgment, as would be customary in the designated jurisdiction. The Government agreed that the evidence strongly suggests that this debt was resolved.<sup>40</sup>

1.z – Insurance-related collection for \$103. *Disputed*. See 1,u, above

In sum, the 26 delinquent debts noted in the SOR amount to approximately \$15,302. Of that total, eight debts have been satisfied or paid (\$3,097), two are in timely repayment (\$3,483), eight are disputed or in dispute and awaiting resolution (\$6,067), one medical claim is being reprocessed (\$841), and seven have yet to be sufficiently addressed or lack evidence of having been addressed (\$1,814). Four of the disputed accounts are for accounts that appear to belong to Applicant's father (1.u, 1.w, 1.x, 1.z). Applicant claims that most of the debts noted as having insufficient evidence were previously addressed; most of those debts are also comparatively older debts.

In 2009, Applicant sought financial counseling.<sup>41</sup> By July 2010, he had also enrolled in a credit restoration program. He first disputed debts he did not recognize, implemented repayment plans on larger debts, and then proceeded to address the remaining debts. He is working to rebuild his credit in order to buy a home. Applicant currently rents an affordable apartment for about \$1,170 a month, representing a significant reduction from his prior rental obligation of approximately \$2,000 a month.<sup>42</sup> He owns a 1991 sedan and makes regular payments on a 2003 truck. Applicant is currently living within his means and making timely child support payments. He volunteers at his church and helps his mother with the upkeep of her home. Applicant is active in sports and coaches a local youth league. He is considered a hard worker and good father.<sup>43</sup> He is valued at work and receives superior appraisal ratings.

---

<sup>39</sup> Tr. 90-91; Ex. GG (Letter, dated May 24, 2004).

<sup>40</sup> Tr. 91-93.

<sup>41</sup> Tr. 15.

<sup>42</sup> Tr. 115.

<sup>43</sup> Tr. 171.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>44</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>45</sup>

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 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>46</sup> Any reasonable doubt about whether an applicant should be allowed access

---

<sup>44</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>45</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>46</sup> *Id.*



to sensitive information must be resolved in favor of protecting such sensitive information.<sup>47</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, “failure or an 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.”<sup>48</sup> The Regulation sets out several potential disqualifying conditions. Here, Applicant acquired multiple delinquent debts since about 2000. The 26 delinquent debts at issue amount to approximately \$15,302. Several of those debts remain unaddressed or evidence regarding their current status is deficient. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. It is left to Applicant to mitigate related security concerns.

The majority of the debts at issue were acquired several years ago, when Applicant’s income did not meet his expenses. While he has addressed the majority of the 26 debts noted in the SOR, he failed to provide sufficient evidence regarding seven of the older delinquent accounts. Today, however, Applicant’s income is over twice of what it was when he was acquiring his debt. He now lives within his means. There is evidence that he honorably started addressing his delinquent debts, received credit counseling, and entered into a credit restoration program before the July 2010 SOR was issued. About half of the debt at issue has been paid, satisfied, put into repayment, or has been resubmitted for payment by his health insurer. Approximately \$6,000 is in legitimate dispute, including some debts which appear to belong to his father, who has the same name and with whom he used to share the same address. Only about \$1,814 remains unaddressed or lacks evidence of previous payment. Such progress is notable and reflects an organized plan for satisfying his debts, despite his failure to keep sufficient documentary evidence that some of the older debts were previously addressed. Financial Considerations Mitigating Conditions AG ¶ 20(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), AG ¶ 20(c) (the person has received or is receiving

---

<sup>47</sup> *Id.*

<sup>48</sup> AG ¶ 18.

counseling for the problem and/or there are clear indications that the problem is being resolved or is under control), and AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). apply.

Appellant testified that he was unemployed from about May 2004 until September 2004. To the limited extent this period of unemployment contributed to the debt debts acquired at that time, AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies in part.

With specific regard to four of the eight disputed account entries appear to belong to Applicant's father, Applicant provided compelling evidence that the debts are not his. Both Applicant and his mother confirmed information included in Applicant's security clearance application and elsewhere in the official case file that Applicant is a junior, bearing the same name as his father. In addition, the two shared the same address at various times in the past. Such identity confusion is not uncommon. Such evidence is sufficient to give rise to AG ¶ 20(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 failed to provide sufficient evidence to show that seven of the debts at issue, amounting to about \$1,814, have been addressed. There is, however, sufficient evidence to conclude that 19 of the 26 debts have been properly addressed, either through satisfaction, repayment plans, or legitimate dispute. While more progress is needed, Applicant demonstrated that he has a reasonable plan in place to address his delinquent debt, that he has the financial resources to satisfy any remaining debts, and that he has successfully implemented his plan to address his debts. Based on his efforts, I find that financial considerations security concerns are mitigated.

### **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because “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.”<sup>49</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>50</sup>

About 13 years ago, Applicant had his SCI access suspended due to a bout of immature behavior and underage drinking that included a suicide threat. He then continued to express his desire to be let go from the military. A month later, the military

---

<sup>49</sup> AG ¶ 15.

<sup>50</sup> *Id.*

discharged Applicant under honorable terms for “other designated physical or mental conditions, not a disability.” In addition, Applicant admitted that, two years later, he stole merchandise from his retail employer while working in asset protection. He explained that a loan he took from a co-worker was later characterized as a payoff for not reporting internal theft by others. In January 2010, he stated in interrogatories that he voluntarily separated from the military in order to be with his child. Such facts, if true, are sufficient to raise Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16 (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 AG ¶ 16 (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: . . . 2) disruptive, violent, or other inappropriate behavior at the workplace; 3) a pattern of dishonesty or rules violations; 4) evidence of significant misuse of Government or other employer’s time or resources). Consequently, the burden shifts to Applicant to mitigate security concerns.

Applicant did not disclose his retail theft until after he left the store’s employment. There is no evidence his employer or local authorities were informed of his crime. Moreover, there is no documentary evidence that Applicant immediately tried to correct what he maintains is a mischaracterization about a loan from a co-worker. Furthermore, it is clear that Applicant fails to appreciate the form and consequences of the military discharge he was given. Although Applicant wanted to be released from the military, the ultimate decision to discharge him belonged to the command, not to Applicant. The command chose to discharge him under honorable terms for other designated physical or mental conditions, not a disability, under separation code “JFV” with a reentry code of “3.” His record still reflects the alcohol and behavioral-related incidents that occasioned his discharge. The official record does not confirm Applicant’s assertion that he voluntarily separated from the military to be with his infant child. Personal Conduct Mitigating Condition (PC MC) AG ¶ 17(a) (the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) does not apply.

Applicant, who was not previously known as an excessive drinker of alcohol, got highly inebriated while deployed in 1997. He refused to honor his commitment to the U.S. military by demonstrating apathetic, immature, inept, and unmotivated behavior incompatible with military service. He did so in the hopes of returning to civilian life, well after completing basic training and after being deployed abroad. As noted above, to term his discharge as a voluntary separation sought to be closer to his child is less than candid.

Moreover, while Applicant provided evidence that he did not accept a bribe in 1999-2000 while employed in retail, he admitted he stole from his former retail

employer when he worked there. Although the theft occurred over a decade ago, the incident is particularly worrisome because he was in a position of trust at the time. There is no evidence that he has since informed his former employer of his criminal act or that either restitution or other ameliorative action has been extended to his former employer, compounding concerns regarding his candor and his ability to take responsibility for his behavior. Therefore, neither AG ¶ 17 (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) nor AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) applies. While all these underlying incidents occurred several years ago, Applicant's actions and his continued depiction of them sustain security concerns regarding his candor, willingness to comply with rules and regulations, and trustworthiness. Consequently, personal conduct security concerns remain unmitigated.

### **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 the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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, as well as the "whole-person" factors. Applicant is a 32-year-old high school graduate who has completed multiple certification programs. He is married and has four children. He briefly served in the U.S. military before seeking a discharge. He recently attained a salary level that has enabled him to address delinquent debts he mainly acquired between 2000 and 2005. He is active in his community and valued as an employee.

Although more work is warranted, Applicant demonstrated that he has initiated a reasonable, effective, and successful plan to address his delinquent debts. While the dispute process has delayed his progress, notable strides have been made.

What remains are security concerns regarding Applicant's personal conduct. Desperate to get out of the military, he chose to get inebriated and disruptive while serving abroad. This led to the suspension of his SCI access. He then offered his drunken bout as an excuse for a military discharge. Apparently realizing that Applicant's heart was elsewhere, the military extended a form of discharge that would permit him to return to civilian life. While the discharge may have been partly extended to accommodate Applicant's desire to reunite with his child, it appears to have also been extended to relieve the ranks of a disgruntled individual. It was not a voluntary separation initiated simply to reunite father and child, as Applicant maintains. Whether his misrepresentation of the discharge is intentional or whether it is the result of a failure to understand the nuance of the action is unclear. Given the intervening decade

since that discharge executed, however, the misrepresentation indicates a lack of diligence to understand the nature of his discharge, if not a poor capacity for candor. Similarly worrisome is Applicant's failure to inform or make restitution to his former retail employer of his thefts, which he perpetrated when he was an asset protection officer. This continued failure not only perpetuates his violation of his employer's trust, but sustains concerns about Applicant's ability to follow rules and regulations.

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. Here, personal conduct security concerns remain unmitigated. Clearance is denied.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.z:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge