



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



In the matter of:)
)
) ISCR Case No. 10-01239
)
Applicant for Security Clearance)

Appearances

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

October 17, 2011

Decision

Duffy, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline J (Criminal Conduct), but failed to mitigate security concerns arising under Guidelines F (Financial Considerations) and E (Personal Conduct). Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 31, 2009. On August 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F, J, and E. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

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 Applicant's security clearance. On August 24, 2010, Applicant answered the SOR. The case was assigned to me on August 3, 2011. DOHA issued the Notice of Hearing on August 12, 2011. The hearing was held as scheduled on August 31, 2011. Department Counsel offered exhibits (GE) 1 through 10 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as hearing exhibit (HE) 1. Applicant testified and offered exhibits (AE) A through F that were admitted into evidence without objection. DOHA received the transcript (Tr.) of the hearing on September 12, 2011.

Findings of Fact

Applicant is 41 years old. A defense contractor has sponsored him for a security clearance since July 2009, but he has not yet begun working for that contractor. He graduated from high school in 1987. He served on active duty in the Navy from June 1987 to July 2007. He retired from the Navy in the grade of petty officer first class (E-6). He is divorced and has five children who are 2, 4, 4, 13, and 24 years old.¹

Financial Considerations

The SOR alleged that Applicant had 18 delinquent debts totaling \$18,433. In his Answer to the SOR, Applicant admitted 13 allegations (SOR ¶¶ 1.a through 1.j and 1.m through 1.o) and denied the five other allegations. His admissions are incorporated herein as findings of fact. Credit reports dated August 7, 2009, and May 21, 2010, established prima facie evidence of the delinquent debts.²

Following his retirement from the Navy, Applicant was unemployed from July 2007 to April 2008. In November 2007, he was divorced and took responsibility for all accounts in his name. He attributes many of his debts to his ex-wife. While unemployed, he lived off of his retirement pay that was about \$1,200 per month. From April 2008 to April 2009, he was employed at a large corporation. His annual salary in that job was about \$51,000. When he was laid off in April 2009, he received \$325 per week in unemployment compensation for about one year. During this later period of unemployment, he moved in with his parents to cut back on expenses. In October 2010, he started part-time employment in a security position with a Federal Government agency. He became a fulltime employee at that agency in January 2011. His current annual salary at that job is \$29,000.³

¹ Tr. 6-7, 27, 30-33, 39-47, 74; GE 1.

² Applicant's Answer to the SOR, GE 4, 5, 6. In the Answer dated August 2010, he indicated that he had entered into payment arrangements with some of the creditors and certain of the delinquent debts would be resolved in 2010, but he provided no proof of those payment arrangements or of specific payments on those debts.

³ Tr. 27-47, 74-75, 79-80; GE 2.

About five months before the hearing, Applicant developed a written plan for paying his delinquent debts. In establishing this plan, he called each of the creditors to confirm the amount owed. He claimed some creditors indicated the amounts owed on their debts were less than that reflected on his credit reports, but he obtained no documentation from the creditors confirming those lower amounts. He stated that he will be paying about \$200 per month on the delinquent debts. Payments are automatically withdrawn from his bank account once they are programmed. He indicated that he programmed the payments to be made on the debts in SOR ¶¶ 1.b, 1.k, and 1.m for the remainder of 2011, but has not yet programmed payments to be made in 2012. At the time of the hearing, he only made payments under this plan on the debts in SOR ¶¶ 1.b and 1.i. He provided no proof of those payments. No settlement agreements are part of the plan.⁴

Each of the delinquent debts is addressed below.

SOR/DEBT	AMOUNT	STATUS	EVIDENCE
1.a – collection account	\$2,040	Date of last activity on this debt was April 2008. Applicant claimed the amount owed was \$1,830. Under his plan, he indicated he will make monthly payments of \$150 from June 2012 to May 2013	Tr. 27-29, 47-48; GE 5; AE B.
1.b – collection account	\$364	Applicant claimed he already made payments on this debt. Under his plan, he indicated he will make monthly payments of \$102 in October and November 2011 to resolve this debt.	Tr. 50-55, 60-61; AE B.
1.c – collection account	\$65	This debt was paid on June 2, 2010. This debt is resolved.	Tr. 55-56; AE C.
1.d – collection account	\$79	The debts in SOR ¶¶ 1.d and 1.f are owed to the same creditor. Applicant claimed the creditor combined both accounts together. He testified he paid them in full for \$700. The final payment of \$300 was made on April 30, 2010. This debt is resolved. ⁵	Tr. 56-57; AE D.

⁴ Tr. 47-53, 60, 120-122; AE B. Applicant also claimed he is making payments on the debt in SOR 1.o, but that debt is not listed in his plan. He also provided no proof of payments on that debt.

⁵ The account number listed in AE D does not match the account numbers in the credit reports for the debts in SOR ¶¶ 1.d and 1.f. However, those debts (SOR ¶¶ 1.d and 1.f) do not appear on Applicant's latest credit report (GE 6), which corroborates his claim that these debts have been resolved.

1.e – collection account	\$579	Under his plan, Applicant indicated he will make biweekly payments of \$63 from January 2012 to May 2012.	Tr. at 57-59; AE B.
1.f – collection account	\$1,030	This debt is resolved. See comments for SOR ¶ 1.d, above.	Tr.56-57; AE D.
1.g – collection account	\$1,261	Date of last activity on this debt was December 2008. Under his plan, Applicant indicated he will make monthly payments of \$105 from April 2012 to March 2013.	Tr. 59-61; GE 4; AE B.
1.h – charged-off account	\$3,077	Applicant claimed the amount owed was \$3,000. Under his plan, he indicated he will make biweekly payments of \$50 starting in January 2012 until the debt is paid.	Tr. 61-62; AE B.
1.i – 120-days past-due account	\$690	Applicant indicated that his military retirement pay was withheld for this debt. He also claimed he made a \$50 payment in August 2011 and stated the balance was about \$80. No proof of payments was provided.	Tr. 62-64; AE E.
1.j – collection account	\$944	Date of last activity on this debt was August 2006. Under his plan, Applicant indicated he will make monthly payments of \$105 from January 2012 to September 2012.	Tr. 64-66; GE 4, 5; AE B.
1.k – collection account	\$430	Date of last activity on this debt was May 2008. Under his plan, Applicant indicated he will make biweekly payments of \$53 from October 3, 2011, to December 1, 2011, and a final payment of \$102 on December 12, 2011.	Tr. 51-52, 66-67; GE 5; AE B.
1.l – charged-off account	\$448	Under his plan, Applicant indicated he will make biweekly payments of \$67 from September 5, 2011, to November 1, 2011.	Tr. 51-52, 64-66; AE B.

1.m – charged-off account	\$3,449	Date of last activity on this debt was August 2007. Applicant claimed the debts in SOR ¶¶ 1.m and 1.n are being collected by the same company and the total amount owed for both was \$2,200. Under his plan, he indicated he will make 22 biweekly payments of \$100 starting October 2012 for both debts.	Tr. 67-68; GE 4,5; AE B.
1.n – charged-off account	\$3,288	Date of last activity on this debt was September 2007. See comments for SOR ¶ 1.m, above.	Tr. 67-68; GE 4,5; AE B.
1.o – charged-off account	\$355	Date of last activity on this debt was May 2005. This debt is not listed on Applicant’s plan. He claims that he has been making monthly payments of \$30 for the past seven months. No proof of payments was provided.	Tr. 68-70; GE 4; AE B.
1.p – collection account (# 00201)	\$118	Date of last activity on this debt was February 2003. Under his plan, Applicant indicated he will make payments of \$118 for SOR ¶¶ 1.p, 1.q, and 1.r from January 2012 to March 2012.	Tr. 66-67; AE B.
1.q – collection account (# 45301)	\$118	Date of last activity on this debt was February 2003. See comments for SOR ¶ 1.p, above.	Tr. 66-67; AE B.
1.r – collection account (# 45401)	\$118	Date of last activity on this debt was February 2003. See comments for SOR ¶ 1.p, above.	Tr. 66-67; AE B.

In April 2010, Applicant submitted a Personal Financial Statement (PFS) that reflected his net monthly income was \$2,847, his monthly total expenses were \$1,060, and his monthly debt payments were \$270, leaving a net monthly remainder of \$1,517. Since he submitted the PFS, adjustments have been made to his expenses. He indicated that his monthly child support payments are \$1,482 (instead of \$350 as listed on the PFS) and that his monthly rent is now \$300 (instead of \$500 as listed on the PFS). With these adjustments, his net monthly remainder is about \$585.⁶

⁶ Tr. 36-37, 47, 69-71, 104-106; GE 3.

At the hearing, Applicant indicated that he had not received any financial counseling. In his interview with an Office of Personnel Management (OPM) investigator, however, he stated that he received financial counseling in 2004. His most recent credit report listed four delinquent debts totaling \$300 that were not listed in the SOR. These four debts were placed for collection between July 2010 and January 2011. At the hearing, he submitted a document claiming it reflected that three of those debts were paid in April 2010. However, the account number on that document did not match any of the account numbers for those debts on the credit report.⁷

Criminal Conduct

On June 26, 2005, a sheriff arrested Applicant for battery. During this incident, Applicant and his wife had a heated discussion. She stated that he threatened her, shoved her into a corner, pressed his fist into her eye, placed her in a stranglehold, gouged at her eyes with his fingers, and blocked the doorway so she could not leave the room. At some point, she was able to depart and called for help. Applicant then departed the scene. When he returned, the sheriff was present and questioned him. Applicant told the sheriff that he tried to speak to his wife about their marital problems, but she did not want to talk to him. When he insisted, he indicated she became combative. He claimed he restrained her and they “wrestled.” He said she bit him and struck at him. He stated he left the residence to “cool off.” The sheriff noted that Applicant’s wife had a bruise forming around her eye. The sheriff’s report indicated, “The subject [Applicant] appeared to be the primary aggressor and was placed under arrest.” He was transported to jail where he spent the night and was charged with battery. He testified he was taken before an official (whom he referred to as a mediator) the next day, was fined \$500, placed on probation for one year, and released. The sheriff’s report indicates that adjudication was withheld. As part of his probation, he attended anger management classes.⁸

While serving in the Navy in 2006, Applicant was involved in an altercation on a softball field. On that occasion, a male friend of his wife approached him on the field with his hand in his pocket. Applicant did not know if the man had anything in his pocket and felt threatened. He threw a softball at this man with the intent of hitting him. He missed the man and hit his stepdaughter in the forearm, which caused a bruise. Base police arrived at the scene and took him back to his command where he was released. Later, he appeared before a board composed of chief petty officers and the charge against him was dropped. He never appeared at a nonjudicial punishment hearing for

⁷ Tr. 114-120; GE 2, 3. The four delinquent debts not listed in the SOR will not be considered in applying the disqualifying and mitigating conditions under Guideline F, but may be considered in assessing Applicant’s overall financial situation and the whole-person concept.

⁸ Tr. 92-95, 107-110, 112-113; GE 7, 8. GE 8 indicated court costs of \$592 were imposed instead of a fine.

that offense. Contrary to the allegation in the SOR, he was not awarded nonjudicial punishment for this incident.⁹

In August 2008, Applicant was issued a citation for operating a vehicle with no insurance and permitting the operation of a vehicle with no insurance. During this incident, a woman had driven his vehicle after he told her it was not insured. At the hearing, he indicated the district attorney did not understand why he was cited for this offense because he was not the driver of the vehicle and dismissed the charges.¹⁰

On May 4, 2009, Applicant's ex-wife reported to the police that he assaulted her, stole her cell phone, and stabbed a tire on her car. On the night of these alleged offenses, she reportedly invited him to her residence to babysit their child. When she returned, he was present. She claimed she went to bed and awoke with him sitting over her with his hands on her throat. He did not squeeze her throat, but reportedly said, "If you weren't my babies (sic) mother I should have killed you." She deflected his attempt to put a pillow over her face. He followed her out of the apartment. When she told him that she was going to call the police, he reportedly responded that he had taken her phone. She stated that he went to the rear area of her car and let the air out of a tire. He departed the scene before the police arrived. The police report reflected that the officer checked the area, but did not find him. The police officer reported that a tire on a vehicle had appeared to be stabbed. At the hearing, he denied that he committed the alleged offenses. He testified that, on that occasion, he pushed her aside to go through a door and she fell to the floor. He testified that he was never arrested for the alleged offenses, that he did not have to appear in court for this incident, and that the charges against him were dismissed. However, he did appear in court to defend against a child protective order she filed against him. In his interview with an OPM investigator in September 2009, his story was somewhat different. During that interview, he reportedly stated that he read an email addressed to her from another man. After reading that email, he became angry and confronted her. During that confrontation, he stated that he picked her up by the throat and put her back down. At the hearing, he testified that she dropped the charges against him. He also indicated that he now has limited contact with his ex-wife. When they talk, their conversations are only about the children. They meet at an agreed upon spot for him to obtain the children.¹¹

Personal Conduct

Applicant submitted an e-QIP on July 31, 2009. He had previously filled out security clearance applications. He filled them out in the Navy and helped others fill them out when he was a Navy recruiter. He testified that there was nothing in the e-QIP that confused him. He also indicated that he submitted an e-QIP in January 2009 to

⁹ Tr. 98-104, 113-114.

¹⁰ Tr. 97-98; GE 10.

¹¹ Tr. 95-97, 110-113; GE 2, 9, 10; Applicant's Answer to the SOR.

obtain his job at the federal agency. He knew that submitting false answers in an e-QIP could result in criminal penalties.¹²

In the e-QIP dated July 31, 2009, Applicant was asked the following questions:

Section 26: Financial Record For the following, answer for the last 7 years, unless otherwise specified in the question. Disclose all financial obligations, including those for which you are a cosigner or guarantor.

- f. Have you defaulted on any type of loan?;
- g. Have you had bills or debts turned over to a collection agency?;
- h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?;
- m. Have you been over 180 days delinquent on any debt(s)?; and
- n. Are you currently over 90 days delinquent on any debt(s)?¹³

He responded “No” to each of those questions. When asked about those responses, he stated,

I can't explain to you why I answered no and why I wasn't being truthful. I lied on there. It's -- again, I was looking for a job, trying to get a job, and a better job than what I -- I didn't have anything going at the time, and I was just really trying to get a job right then, you know.¹⁴

He also acknowledged that, when he submitted the e-QIP, he knew some of his bills had been turned over to collection agencies, but did not know the identity of those agencies. He knew that, if he answered “yes” to certain questions, he would have to identify the collection agencies, which would have set him back two or three days.¹⁵

In that e-QIP, he was also asked the following question:

Section 22: Police Record For this item, report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed. You need not

¹² Tr. 83-90; GE 1.

¹³ GE 1.

¹⁴ Tr. 90-92; GE 1.

¹⁵ Tr. 91, 122.

report convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. Be sure to include all incidents whether occurring in the U.S or abroad. For questions a and b, respond for the timeframe of the last 7 years (if an SSBI go back 10 years). Exclude any fines of less than \$300 for traffic offenses that do not involve alcohol or drugs.

b. Have you been arrested by any police officer, sheriff, or any other type of law enforcement officer?¹⁶

He responded “No” to that question. When asked about the June 2005 domestic violence charge, he testified that he was handcuffed during that incident, transported to the jail, fingerprinted, photographed, and spent the night in jail. At the hearing, he initially testified that he thought he was not arrested on that occasion because he was not read his Miranda rights. The sheriff’s report, however, indicated he was advised of his Miranda rights. He later testified that he had listed his 2005 domestic violence incident on the e-QIP he submitted in January 2009 to the federal agency. When he updated the information in the computer system for the e-QIP submitted on July 31, 2009, he thought the information about his 2005 arrest was still listed. However, he did not check to confirm that information was still there. In his response to interrogatories in April 2010, he also indicated that he did list his 2005 domestic violence arrest on his e-QIP. He did not provide a copy of the January 2009 e-QIP to corroborate his claim. I did not find his testimony to be credible.¹⁷

SOR ¶ 3.a also indicated that Applicant falsified his answer to Section 22b by not listing an arrest in May 2009 for assault and injury to property. As noted above, he was not arrested for those alleged offenses.¹⁸

Character Evidence

Applicant’s supervisor at the federal agency submitted a reference letter. The supervisor indicated that Applicant has been an integral part of the agency’s local operations. He noted Applicant had shown professionalism and a sincere desire to carry out the agency’s mission. Applicant adhered to the agency’s policies and protocols. The supervisor believes that he will excel in whatever endeavor he takes on in serving our nation.¹⁹

¹⁶ GE 1.

¹⁷ Tr. 92-95, 122-125; GE 2, 3. Applicant admitted that he lied on his January 2009 e-QIP when he did not disclose his financial delinquencies. See Tr. 125.

¹⁸ Tr. 95-104.

¹⁹ AE A.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 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 or her] 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

Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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

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

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

Applicant accumulated numerous delinquent debts totaling over \$18,000 that he has been unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying 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 debts are ongoing and significant. Insufficient evidence has been presented to conclude they will not recur. His financial problems cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant was unemployed from July 2007 to April 2008 and again from April 2009 to October 2010. He was also divorced in November 2007. During those periods of unemployment, he received military retirement pay. Under AG ¶ 20(b), Applicant receives partial credit because his periods of unemployment or underemployment as well as his divorce were conditions largely beyond his control. However, to receive full credit under this mitigating condition, Applicant has to demonstrate that he acted responsibly under the circumstances. The delinquent debts in SOR ¶¶ 1.a, 1.g, 1.j, 1.k, 1.m, 1.n, 1.o, 1.p, 1.q, and 1.r. were incurred either before or during his period of employment from April 2008 to April 2009. No evidence was presented to show what action he took during that period of employment to resolve those delinquent debts. Moreover, some of his delinquent debts predate both periods of unemployment. Based on the evidence presented, I cannot conclude that he acted responsibly under the circumstances.

Applicant received financial counseling in 2004. He has resolved the debts in SOR ¶¶ 1.c, 1.d, and 1.f. He was making payments to resolve the debt in SOR ¶ 1.i, but those payments were primarily involuntary withdrawals from his retirement pay. He has developed a written plan for resolving most of his remaining debts. He claimed that he made a few payments under that plan, but provided no proof of those payments. In the absence of a meaningful track record of payments on these debts, his plan is essentially a promise to pay in the future and does not constitute evidence of reform or rehabilitation. Insufficient evidence has been presented to conclude that his delinquent debts are being resolved or are under control. AG ¶ 20(b) is partially applicable, but AG 20 ¶ (c) is not applicable.

Applicant did not specifically dispute any of the delinquent debts. AG ¶ 20(e) does not apply.

Guideline J, Criminal Conduct

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal 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.

Two disqualifying conditions under Criminal Conduct AG ¶ 31 are potentially applicable in this case:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was arrested for assaulting his wife in 2005. He was placed on probation for one year for that offense. While serving in the Navy in 2006, he was suspected of throwing a softball at an individual, but that matter was later dropped. In 2008, he was cited for operating a vehicle without insurance and permitting another to operate a vehicle without insurance. Those traffic offenses were later dropped. Finally, he was charged with assaulting his ex-wife and injuring her property in 2009, and those charges were later dropped. Insufficient evidence has been presented to establish that Applicant was involved in criminal conduct during the softball-throwing incident in 2006 or traffic incident in 2008.

On the other hand, the evidence is sufficient to establish the alleged offenses involving his ex-wife in 2005 and 2009. When questioned by a sheriff in 2005, Applicant indicated that he restrained his wife and wrestled with her. At the time of the 2005 incident, she had a bruise forming around her eye. Regarding the 2009 incident, he told an OPM investigator that he read an email addressed to his ex-wife and confronted her about that email. During that confrontation, he indicated that he picked her up by the throat and put her back down. AG ¶¶ 31(a) and 31(c) applies to the alleged offenses involving his ex-wife.

I have considered all of the mitigating conditions for Criminal Conduct under AG ¶ 32. The potentially mitigating conditions are:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; and

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

The criminal conduct in question occurred two years ago and six years ago. Even though he was not married at the time of the most recent incident, these were domestic violence incidents, which are often highly emotional events. None of the injuries incurred by his ex-wife during these incidents were serious. The property damage caused during the most recent incident was minor. His ex-wife dropped the charges arising from the later incident. He testified that he now has limited contact with his ex-wife. Currently when they talk, their conversations are limited to their children. They meet at a mutually agreed spot to exchange custody of the children. The stressors that resulted in these confrontations are gone. These assaults are unlikely to recur. I find that 32(a), 32(b) and 32(d) mitigate the criminal conduct security concerns in this case.

Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

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

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

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Applicant admitted that he lied when he failed to disclose his financial problems in response to the questions in Section 26 of the e-QIP. As for the alleged falsification involving Section 22b, he made inconsistent statements about his response to that question. First, he claimed that he thought he was not arrested on that occasion. After being confronted with specifics surrounding that arrest, he later claimed that he did disclose the 2005 arrest on an earlier e-QIP and thought that information was still there when he updated information for submission the e-QIP in question. His explanations were not believable. I find that he knew that he was arrested during that incident in 2005 and deliberately failed to disclose that information in responding to Section 22b. AG ¶¶ 16(a) is applicable to both falsification allegations.

Six personal conduct mitigation conditions under AG ¶ 17 are potentially applicable:

- (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; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Here, Applicant knew of his financial problems and chose not to disclose them. Likewise, he knew of his 2005 arrest and deliberately withheld that information. Such falsifications seriously undermine the security clearance adjudication process. I find that none of the mitigating conditions fully apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of

rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's service in the Navy as well as his subsequent employment record. I considered that he currently works in a security position for a federal agency. He has developed a plan for resolving his debts. Nevertheless, he has not demonstrated a meaningful track record of making payments under that plan. His delinquent debts are ongoing with no resolution in sight. His current financial problems and deliberate falsifications raise significant doubts about his judgment, reliability, and trustworthiness.

Overall, the record of evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated the security concerns under the Criminal Conduct guideline, but has not mitigated the security concerns arising under the Financial Considerations and Personal Conduct guidelines.

Formal Findings

Formal findings 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 – 1.b:	Against Applicant
Subparagraphs 1.c – 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.r:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a – 3.b:	Against Applicant

Decision

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 eligibility for a security clearance for Applicant. Clearance is denied.

James F. Duffy
Administrative Judge