



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



In the matter of:)
)
) ISCR Case No. 10-10966
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is on probation following his felony conviction for stealing two network cards from his then employer in January 2009. Applicant owed \$25,026.75 of his \$38,697.75 in court-ordered restitution as of June 2011. He was also behind \$17,000 in his mortgage payments and \$2,561 on other consumer credit accounts as of October 2011. The criminal conduct, personal conduct, and financial considerations security concerns are not mitigated. Clearance denied.

Statement of the Case

On October 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations), on why it was unable to find that it is clearly consistent with the national interest to grant him a security clearance. DOHA took action 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 on September 1, 2006.

Applicant answered the SOR allegations on December 3, 2011, and he requested a decision without a hearing. On December 31, 2011, the Government submitted a File of Relevant Material (FORM) consisting of 15 exhibits (Items 1-15). DOHA forwarded a copy of the FORM to Applicant on January 10, 2012, and instructed him to respond within 30 days of receipt. Applicant received the FORM on January 20, 2012. He elected not to respond by the February 19, 2012 due date, and on April 17, 2012, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Findings of Fact

The SOR alleged under Guideline J that Applicant was arrested in June 2009 for two counts of felony theft by unlawful taking—movable property and one count of receiving stolen property, and that he was sentenced on the felony theft charges to four years of probation and \$38,697.75 in restitution (SOR 1.a). Also, Applicant was allegedly sentenced to two years of probation following his arrest in April 1995 on two counts of felony forgery, theft by unlawful taking or disposition; two counts of theft by receiving stolen property; bad checks; security execution documents by deception; and criminal conspiracy (SOR 1.b). Applicant was allegedly arrested in April 1992 for simple assault, criminal conspiracy, and recklessly endangering another person (SOR 1.c), and around June 1991 for theft by unlawful taking—movable property and for receiving stolen property (SOR 1.d).

In addition to cross-alleging Applicant's arrest record under Guideline E (SOR 2.a), DOHA separately alleged that Applicant was terminated from his employment in January 2009 for his theft of computer network switch cards, which he had intended to sell on the Internet (SOR 2.b). Under Guideline F, Applicant allegedly admitted that he stole the computer network switch cards from his then employer due to financial pressures and credit card debt (SOR 3.a). Also, he allegedly owed \$19,561 in past-due debt (SOR 3.b-3.g).

Applicant admitted the allegations. With respect to SOR 2.b, he indicated that his employment termination in January 2009 for theft of computer network switch cards led to the June 2009 criminal charges in SOR 1.a. As for his delinquent debts, he averred that he was working to resolve the medical debt in SOR 3.b; had satisfied the debt in SOR 3.c; was pursuing a short sale to satisfy the mortgage delinquencies in SOR 3.d and 3.e; was on a payment plan with the creditor in SOR 3.f, and was negotiating a settlement of the debt in 3.g. After considering the Government's FORM, including Applicant's Answer (Item 2), I make the following findings of fact.

Applicant is a 41-year-old director of broadband services for a telecommunications company that contracts with the DOD. He has worked with his employer since January 2009, when he was fired from his previous job for the conduct alleged in SOR 1.a and 2.b. Applicant seeks his first security clearance. (Item 3.)

In September 1989, Applicant began studies for an associate's degree, which was eventually conferred in May 1995. (Item 3.) The available record does not reflect the nature of Applicant's employment, if any, during that time. He was arrested on July 7, 1991, and charged with theft by receiving stolen property and theft by unlawful taking or disposition. (Item 7.) Applicant quit his job as a teller without giving notice on June 24, 1991, and he intentionally tossed out the keys to the bank's cash drawers instead of turning them over to the bank. (Item 4.) His case was transferred from municipal to county court, and on July 23, 1991, a charge of receiving stolen property (business) was added. On September 4, 1991, Applicant was placed on accelerated rehabilitation. (Item 6.)

On April 24, 1992, Applicant was involved in a road rage incident. After he and another motorist exchanged words, they had a fist fight. Applicant left the scene after he knocked the other motorist down. (Item 4.) On June 29, 1992, Applicant was arrested and charged with simple assault, criminal conspiracy, and recklessly endangering another person. He was found not guilty. (Items 4, 5, 8.)

On April 21, 1995, Applicant went to his bank for a \$10,000 cashier's check, reportedly for a closing on a home later that day. The teller, a friend, gave him the check and also an envelope containing \$7,000 cash in stolen customer deposits. Applicant claims he was "so wrapped up" in his house settlement that he didn't think about what his friend was asking of him. Later that day, Applicant turned over the envelope to this friend at a gas station. Applicant asserts that his friend told him then that the money had been stolen. Surveillance cameras at the bank showed Applicant receiving the envelope from his friend. (Item 4.) On July 11, 1995, Applicant was arrested and charged in municipal court with forgery; theft by deception (two counts); theft by unlawful taking or disposition (two counts); securing executive documents by deception; bad checks; theft by receiving stolen property; and criminal conspiracy. On September 19, 1995, his case was transferred to county court. (Item 9.) On October 3, 1995, he was charged with two counts of theft by receiving stolen property and one count of theft by deception. The other charges remained the same. (Items 5, 10.) Applicant indicates that he was placed on probation for two years in an accelerated rehabilitation program, and then the charges were expunged from his record. (Item 4.) Court records indicate the charges were quashed on November 9, 1995. (Item 10.)

Applicant and his spouse married in October 1995. In August 2001, Applicant began working for a cable television provider as its director of quality assurance and testing. In May 2002, he and his spouse bought a new home, taking on a mortgage of \$173,000. Through subsequent refinancing or loan transfers, their mortgage debt increased to \$200,000 in September 2002, \$246,400 in August 2003, and \$280,000 in October 2005. In September 2006, Applicant and his spouse bought a new home for \$495,000. (Item 4.) He initially financed through the builder, taking out a \$396,256 individual mortgage. In October 2006, he and his spouse opened a joint conventional mortgage loan of \$401,600 with a bank (SOR 3.e). In March 2007, they took out a loan of \$30,000, which they paid through a refinancing with a home equity loan of \$59,450 in June 2007. Then, in December 2007,

they paid this second mortgage through a new loan of \$62,142 with the same lender (SOR 3.d). (Items 14, 15.) Their monthly mortgage payments totaled around \$2,388. (Item 14.)

By late 2008, Applicant was feeling the strain of his mortgages, credit card, and auto loan debt. He and his spouse apparently ran up between \$120,000 and \$130,000 in credit card debt on “close to two dozen” accounts. (Item 4.) A credit card account with a \$2,669 balance had been in collection since October 2008 (not alleged). He paid on a \$9,774 loan for an all-terrain vehicle (ATV) only from April 2008 to August 2008, although he later settled the loan for less than its full balance after the ATV had been repossessed and the account placed for collection. In August 2009, the lender in SOR 3.d charged off a \$4,463 balance for a computer Applicant bought in May 2003.¹ (Items 14, 15.)

On January 12, 2009, Applicant stole two computer network switch cards from his employer’s laboratory with the intent of selling them on the Internet for around \$3,000. (Items 4, 11, 12.) Fearful that he would eventually get caught, he informed his manager about the theft, and he was terminated from his employment for cause. In late January 2009, Applicant received an offer of employment from his current employer. Applicant did not inform his new employer about his termination from the cable company, and he began working for the defense contractor in February 2009. (Items 3, 4.)

In late April 2009, Applicant was arrested for the theft of the switch cards. He was charged with two counts of theft by unlawful taking and with one count of receiving stolen property. (Item 11.) In June 2009, his case was transferred to county court. On November 20, 2009, he pled guilty to two counts of theft by unlawful taking. On January 15, 2010, Applicant was sentenced to two consecutive two-year probation terms, and ordered to pay \$38,697.75 in restitution, a \$10 fine, and costs and fees totaling \$1,102.50. The receiving stolen property charge was withdrawn. Applicant was required to meet with his probation officer in person on a monthly basis starting in February 2010. (Items 4, 12.) Applicant made \$250 payments, and in September 2010, he paid \$9,535. However, there were other months (May 2010, October 2010, December 2010, and February 2011) where he paid nothing. (Item 12.) On February 22, 2011, Applicant agreed to pay \$813 per month until his unpaid fines, costs, and restitution of \$28,425.25 were paid in full. (Item 2.) As of June 20, 2011, Applicant owed \$942.50 in costs and fees and \$25,026.75 of the restitution. He was behind \$806 in his payments to the court. (Item 12.)

On June 8, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). In response to the police record inquiries, Applicant listed his felony conviction on two counts of theft by unlawful taking. In response to the employment record inquiries, Applicant disclosed that he had been fired from his last employer for “removing company property without prior authorization.” Applicant answered “Yes” to two of the financial record inquiries: 26.b, concerning any possessions or property voluntarily or involuntarily repossessed or foreclosed in the last seven years, and 26.h, any accounts or

¹Applicant’s credit report shows two lines of credit with the same lender. The first, opened in March 2003 (x2137) with a high credit of \$5,988, had an outstanding charge-off balance of \$4,463 as of February 2010. The second account (x6201), with a high credit of \$4,760, was listed as a “paid charge off” account as of February 2010. (Item 14.)

credit cards suspended, charged off, or cancelled for failing to pay as agreed in the last seven years. Applicant listed a debt of \$4,000 for the ATV, on which he was making payments on the deficiency balance, and the \$5,000 computer debt (SOR 3.c). He indicated he was on a repayment plan for the computer debt. (Item 3.)

As of June 24, 2010, Applicant was reportedly paying his mortgages as agreed. Applicant had brought current five credit card accounts with balances totaling \$15,900, including the debts in SOR 1.f and 1.g. Another account was past due \$188 on a \$9,162 balance (not alleged). Applicant reportedly owed collection balances of \$2,668 on a revolving charge account (not alleged), which he apparently settled, and \$4,165 for the computer, which he claims he was repaying. (Items 4, 15.)

Despite ongoing issues with some credit card accounts, and Applicant having to pay restitution, Applicant and his spouse bought new cars every few years. In March 2009, they traded in a car bought in 2007 for a Nissan Murano financed through a loan of \$31,390, to be repaid at \$504 per month for 72 months. They kept the Murano until January 2011, when they traded it in for a Pathfinder, financed through a loan of \$30,210 with a different lender. As for their second vehicle, Applicant opened a car loan of \$23,641 in November 2009, to be repaid at \$512 per month. One year later, in November 2010, he had a new loan of \$25,666 with monthly payments of \$495. As of March 2011, Applicant and his spouse were paying \$1,119 per month for two cars (\$495 per month on the November 2010 loan and \$624 on the January 2011 loan). (Items 4, 13, 14.)

On May 5, 2011, Applicant was interviewed by an authorized investigator for the DOD. Applicant admitted his arrest record. He had deliberately failed to turn over the keys to the bank when he quit in 1991, had a fist fight with the other driver in 1992, and had accepted the envelope from his bank teller friend in 1995, knowing that it contained cash. However, Applicant denied any knowing conspiracy, claiming he did not think about what his friend was asking him to do. After the incident, he terminated his friendship with the bank teller. Applicant attributed his theft of the computer network switch cards from his former employer in 2009 to the financial pressures of a high mortgage and extensive credit card debt. He admitted that while his spouse and a security manager for his employer were aware of his termination and arrest, neither his parents nor his present supervisor knew about it. Applicant denied it could be a source of blackmail, coercion, or influence. He also denied any intent to steal in the future. Concerning his financial matters, Applicant admitted that he and his spouse were living beyond their means before 2009. He satisfied the deficiency balance on the loan for the ATV through payments between April 2009 and late 2010 with funds from his income tax refund and 401(K) assets. As for the computer (SOR 1.c), Applicant explained that he purchased two computer systems, so had two lines of credit. When he lost his job in January 2009, he asked to be placed on a payment schedule. He denied either of the loans was ever delinquent. He claimed that he and his spouse were now living within their means and no longer spending extravagantly. Most of their credit card accounts were closed out. He indicated he had only two active credit card accounts, and his spouse had two or three retail charge cards. (Item 4.)

While Applicant continued to make the car payments on terms agreed on by the lenders, he had fallen behind \$2,000 in his second mortgage (SOR 3.d) and \$15,000 in his first mortgage (SOR 3.e) by August 2011. The last activity on their accounts occurred in April 2011. As of September 2011, his credit card account in SOR 1.f was \$223 past due on a \$931 balance. (Item 13.) On October 4, 2011, the lender offered to bring his account current on receipt of \$290 by October 25, 2011. The creditor was willing to accept \$67 by that date, but his account would still be considered delinquent. (Item 2.) The debt in SOR 3.g was past due \$398 with a \$2,938.81 balance as of October 2011. On October 11, 2011, the creditor offered to settle his debt on receipt of a lump sum payment of \$1,028.58 within 25 days. Applicant contacted the company in December 2011 and asked for more favorable terms. (Item 2.) There is no evidence that he made any payments. Also, as of October 2011, the account for his first computer had been charged off in the amount of \$1,774.² In August 2011, a medical debt of \$166 from March 2011 was placed for collection (SOR 3.b). A retail clothing store charge account opened in April 2008 was delinquent in the amount of \$62 on a \$768 balance (not alleged). (Item 13.)

On November 22, 2011, Applicant and his spouse agreed to sell their home for \$355,000, which was less than the total principal balances of their first (\$399,447.36) and second (\$60,213.70) mortgages owed to the same lender. The contract to sell was contingent on their lienholder's willingness to accept less than the balances to release the liens. (Item 2.) The available record contains no evidence that the lienholder agreed to the short sale.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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

²Applicant claimed that the debt has been paid in full. While he presented a credit record entry showing a zero balance, the account entry pertains to the account opened in August 2007, which was for the second computer. The first account, which was opened in May 2003, has not been shown to be resolved.

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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. 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

The security concern for criminal conduct is set out in AG ¶ 30: “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.” The security concerns under AG ¶ 31(a), “a single serious crime or multiple lesser offenses,” AG ¶ 31(c), “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” and AG ¶ 31(d), “individual is currently on parole or probation,” apply. Applicant is currently serving a four-year probation sentence for felony theft from his previous employer in January 2009. Available court records show Applicant was not convicted of the 1991, 1992, and 1995 criminal charges. However, AG ¶ 31(c) applies in that he admits that he deliberately tossed the bank’s keys in 1991, and that he punched another motorist in 1992. As for the 1995 charges, Applicant accepted the envelope from his bank teller friend. He asserts that he did not know the source of the funds. Yet, he knew the envelope contained cash, and he apparently agreed to meet his friend at a gas station to turn over the money. It is difficult to accept that he was an unwitting participant in the 1995 crime. Irrespective of whether culpability was established in the 1995 theft of bank customer deposits, his 2009 theft of the computer network switch cards from his previous employer raises such serious criminal conduct concerns to require of him a heavy burden in mitigation.

Applicant submits that his felony theft from his employer was isolated. AG ¶ 32(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," cannot reasonably apply in mitigation of his felonious conduct in light of its relative recency and his present probationary status. Applicant has served about half of his probation term. Moreover, he agreed to make minimum payments of \$813 per month to the probation office until his fines/costs and restitution, totaling \$28,425.25 as of February 22, 2011, were paid in full. Applicant was behind \$806 in his payments as of June 20, 2011.

AG ¶ 32(b), "the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life," is not pertinent because Applicant stole from his employer to alleviate his own financial problems. He was not pressured to toss the bank keys in 1991 or to engage the other motorist in a fist fight in 1992. He was not forced to take envelope from the bank in 1995. AG ¶ 32(c), "evidence that the person did not commit the offense," applies in part in that the evidence falls short of establishing some of the charges filed against Applicant in the 1990s. For example, the record before me for review does not prove Applicant forged any documents or issued bad checks.

Applicant's current probationary status does not preclude a finding of reform under AG ¶ 32(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." That being said, it is a disqualifying condition that makes mitigation more difficult. The state has yet to release him from his sentence. While there is no evidence of recurrence since 2009, Applicant's history of theft-related activity is not mitigated by overdue restitution. Applicant paid only \$250 to the court in January 2011 and nothing in February 2011. Yet, around that time, he traded in a vehicle that he had owned for only two years for another car, raising his monthly payment by \$120. Applicant's candor about his January 2009 theft on his e-QIP and during his interview is some evidence of reform, but it is not enough to overcome the criminal conduct concerns.

Guideline E, Personal Conduct

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

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

Applicant's criminal involvement raises questionable judgment concerns under AG ¶ 15. The Government separately alleged Applicant's employment termination for stealing the computer network cards, which he planned to sell on the Internet (SOR 2.b). Neither is cognizable under Guideline E absent the felony conduct, which is already alleged in SOR 2.a. Applicant's employment termination is a consequence of his felony theft, and

Applicant's motivation proves its intentional nature. Applicant's criminal behavior is more appropriately addressed under Guideline J, and only one of the disqualifying conditions is directly implicated. Applicant's concealment of his felony arrest from his parents and from his employer raises independent security concerns under Guideline E, AG ¶ 16(e):

Personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

For the reasons already discussed under AG ¶ 32(d) *supra*, the personal conduct concerns raised by his criminal behavior are not mitigated under AG ¶ 17(c), "the offense is so minor, or so much times 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." Applicant submits that the financial pressures that led him to steal from his employer have been alleviated in that he and his spouse are no longer spending extravagantly. His latest credit report shows that he has reduced his overall consumer credit debt substantially. Nonetheless, because he is behind on his mortgages and owes around \$25,000 in restitution, it would be premature to apply AG ¶ 17(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.

Applicant denies vulnerability, despite his failure to inform his parents of his arrest and conviction, or his present supervisor of the circumstances that led to him leaving his previous job. As for his spouse, it would be difficult to hide his conviction from her, given the loss of his employment and his restitution payments. When Applicant accepted his present job, he did not inform the company of his theft from his previous employer. Applicant has since told a company security manager something about it, and he reported his involuntary termination from his previous job on his e-QIP. His disclosures of his felony conviction and employment termination on his e-QIP warrant consideration of AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." Yet, to the extent that AG ¶ 17(e) applies, it does not fully mitigate the concerns about Applicant's judgment, reliability, and trustworthiness.

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.

Guideline F notes several conditions that could raise security concerns. Applicant and his spouse incurred over \$120,000 in credit card debt. Their financial overextension led him to violate his fiduciary duty to his then employer in January 2009. He stole two computer network switch cards valued around \$38,697.75, well in excess of the \$3,000 that he planned to ask for them on the Internet. While Applicant settled several debts for less than their full balances, he and his spouse were behind in their mortgages around \$17,000, and on some other consumer credit accounts (SOR 3.b, 3.f, and 3.g) as of October 2011. The following Guideline F concerns are established under AG ¶ 19:

(a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Concerning potentially mitigating conditions, Applicant has substantially reduced the extent of his outstanding credit card balances. While this indicates some effort on his part to get his spending under control, he stopped making his mortgage payments in April 2011. His October 2011 credit report also shows no activity on the consumer credit debts in SOR 3.c and 3.f since May 2011. The medical debt was placed for collection in August 2011. 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," is not pertinent to such recent financial difficulty.

Nor are there any circumstances that would reasonably implicate AG ¶ 20(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." Applicant's financial problems are the result of poor spending decisions and then his own misconduct in an effort to alleviate the financial stress.

In his favor, Applicant settled several accounts that had been past due in the last few years. As of November 2011, he and his spouse were pursuing a short sale to address their delinquent mortgages. He was apparently under a payment plan with the creditor in SOR 1.f. These efforts implicate AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." However, with no evidence that their lender has agreed to a short sale of their home, no recent payments toward the debts in SOR 3.c or 3.g, and a substantial amount of restitution yet to be paid, it would be premature to find the financial concerns to be mitigated. AG ¶ 20(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,” is not established.

Applicant challenged the outstanding delinquency in SOR 3.c by providing evidence that a loan with the creditor had been paid after charge off. Applicant acknowledged to the investigator in May 2011 that he had two lines of credit with the same lender for computers. The debt reportedly past due in the amount of \$1,774 is not on the account shown as paid, and he presented no other evidence that could implicate 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.”

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).³

Applicant has already demonstrated a willingness to engage in illegal acts to generate the funds needed to alleviate personal financial problems. He intends no recurrence, but his theft from an employer raises very serious doubts about whether he can be counted on to fulfill the fiduciary obligations of a security clearance. Concerns of financial irresponsibility also persist, despite his settlement of several past-due accounts before the SOR was issued. In January 2011, when he owed more than \$28,000 in unpaid restitution, Applicant and his spouse traded in a vehicle purchased in March 2009, raising their monthly payment from \$504 to \$624. With \$1,119 in monthly car payments for two vehicles, it is not surprising that they stopped paying their mortgages for a house that they evidently could not afford. Applicant has completed only half of his criminal sentence, and he lacks a sustained track record of timely payments on his financial obligations. It is not clearly consistent with the national interest to grant him access to classified information.

Formal Findings

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

Paragraph 1, Guideline J: **AGAINST APPLICANT**

³ The factors under AG ¶ 2(a) are as follows:

- (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.

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant ⁴
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant
Subparagraph 3.f:	For Applicant
Subparagraph 3.g:	Against 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.

Elizabeth M. Matchinski
Administrative Judge

⁴The allegation is found for Applicant because the conduct of concern is already covered under SOR 2.a.