



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 11-02579
)
Applicant for Security Clearance)

Appearances

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

04/12/2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant's Statement of Reasons (SOR) lists 17 delinquent debts totaling \$44,518. Applicant has not made sufficient progress resolving his delinquent debts since he became employed by a Government contractor in September 2010. He intentionally failed to disclose his delinquent debts on his October 6, 2010 Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86) because he wanted to obtain employment. Financial considerations and personal conduct concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On October 6, 2010, Applicant submitted an SF-86 (Government Exhibit (GE) 1). On September 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him. (Hearing Exhibit) HE 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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), which were promulgated by the President. The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for him,

and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. DOHA set forth the basis for its action in the SOR, citing security concerns under Guidelines F (financial considerations) and E (personal conduct). (HE 2)

On October 10, 2011, Applicant responded to the SOR. (HE 3) On December 21, 2011, Department Counsel was prepared to proceed. On February 8, 2012, the case was assigned to me. On February 14, 2012, DOHA issued a hearing notice setting the hearing for February 29, 2012. (HE 2) The hearing was held as scheduled. Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 6-7) At the hearing, Department Counsel offered four exhibits. (Transcript (Tr.) 19-20; GE 1-4) Applicant offered seven exhibits. (Tr. 20-21; AE A-G) I admitted GE 1-4 and AE A-G. (Tr. 19-21) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) On March 15, 2012, I received the hearing transcript. I held the record open until March 16, 2012. (Tr. 95-96) I received three exhibits after the hearing, which were admitted without objection. (AE H-J)

Findings of Fact¹

Applicant admitted responsibility with explanations for the debts alleged in SOR ¶¶ 1.b, 1.c, 1.e, 1.i, 1.n, and 1.o. (HE 3) He denied the remainder of the SOR allegations with some explanations. (*Id*) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 58-year-old marine diesel mechanic, who has been employed by a defense contractor since September 2010. (Tr. 21; GE 1) He worked for a large corporation from 1985 to 2007 until he was offered and accepted a “buy-out package” wherein he receives a monthly \$1,995 pension from that corporation. (Tr. 30-31, 34, 88) In 1989, he earned a general equivalency diploma (GED). (Tr. 21-22) He has attended three trade schools. (Tr. 22-23) Applicant married in 1985, and his spouse passed away in July 2003. (Tr. 24) He has been living with a woman since 2004 or 2005. (Tr. 25) He has one stepchild from his first marriage. (Tr. 26) He has never served in the military. (GE 1)

Financial Considerations

The SOR alleges 17 delinquent debts totaling \$44,518 as follows: SOR ¶ 1.a is a judgment, alleging a delinquent debt for \$2,696; SOR ¶ 1.b is a federal tax lien, alleging a delinquent debt for \$19,996; SOR ¶ 1.c is a medical collection debt for \$175; SOR ¶ 1.d is a utility debt for \$260; SOR ¶ 1.e is a medical collection debt for \$34; SOR ¶ 1.f is a telecommunications debt for \$346; SOR ¶ 1.g is a telecommunications debt for \$787; SOR ¶ 1.h is a telecommunications debt for \$43; SOR ¶ 1.i is a medical collection debt for \$95; SOR ¶ 1.j is a telecommunications debt for \$378; SOR ¶ 1.k is a charged-off

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family’s privacy. The cited sources contain more specific information.

account owed for a vehicle for \$6,035; SOR ¶ 1.l is a charged-off account owed to a financial company for \$12,349; SOR ¶ 1.m is a telecommunications collection debt for \$230; SOR ¶ 1.n is a collection account for \$99; SOR ¶ 1.o is a medical collection debt for \$34; SOR ¶ 1.p is a telecommunications collection account for \$219; and SOR ¶ 1.q is a collection account for \$742. (HE 2)

It is unclear when Applicant's debt consolidation plan went into effect or was established. (AE A) On January 2, 2012, Applicant was in "prerepresentation" status with the debt consolidation company. (AE A at 7) On January 23, 2012, Applicant signed a release of information form on his debt consolidation plan. (AE A at 1) Applicant planned to pay \$410 monthly into a debt consolidation plan. (Tr. 56; AE A at 7) His first payment was scheduled for January 14, 2012. (AE A at 7) He listed five creditors in this plan, and four of the creditors are listed in the SOR ¶¶: 1.c (\$175); 1.d (\$260); 1.k (\$17,856); and 1.l (\$12,349). (AE A at 7) On February 29, 2012, the debt consolidation company wrote that the new monthly payment is \$453, which will address 11 debts totaling \$33,950, and the first payment will be due on March 14, 2012. (AE J at 1, 2)

The debt in SOR ¶ 1.a for \$2,696 resulted from a dispute Applicant had with his landlord over repairs and the habitability of a house Applicant rented. (Tr. 37-38) Applicant made necessary repairs. (Tr. 39) After Applicant left the rental house in June 2009, the landlord filed a lawsuit for damage to the property, and Applicant went to court. (Tr. 40-44) Applicant thought the debt in SOR ¶ 1.a was included in his debt consolidation plan; however, it was not actually included. (Tr. 45-46; AE A, J) There is no evidence he made any payments to address this debt.

Applicant included the tax lien in SOR ¶ 1.b for \$19,996 in his debt consolidation plan. (Tr. 45) However, it is not one of the five debts listed for payment in his first plan, and it is not one of the 11 debts listed in his second plan. (AE A, J) On January 24, 2012, Applicant's tax counselor wrote that the tax debt may be dramatically reduced or eliminated because it may have been miscalculated by the Internal Revenue Service (IRS). (Tr. 48; AE B) Applicant paid \$5,000 to the IRS, when a \$3,500 tax refund and a \$1,500 refund were intercepted by the IRS. (Tr. 49-50) His counselor hoped to have a payment plan with the IRS where Applicant would pay \$200 per month. (Tr. 50) Applicant has not made any voluntary payments to address his IRS debt. (Tr. 51) Applicant said he has paid his counselor \$200 towards a \$1,400 bill for assistance on his debts. (Tr. 52) As of February 27, 2012, Applicant tax debt stands at \$13,495 for his 2008 1040A. (AE I at 1)

The medical debt in SOR ¶ 1.c is now \$175. (Tr. 53-54; GE 4; SOR response) Applicant declined to accept responsibility for the utility debt in SOR ¶ 1.d for \$260. (Tr. 54-55; SOR response) He included both of these debts in his debt consolidation plan. (Tr. 53-55; AE A at 7) Applicant said he paid the \$34 debt described in SOR ¶ 1.e using a debit card. (Tr. 56-57) Applicant thought the debt in SOR ¶ 1.o for \$34 is the same as the debt in SOR ¶ 1.e for \$34. (Tr. 78-79) Applicant admitted responsibility for the medical debt in SOR ¶ 1.n for \$99. (Tr. 77-78) Although it is not part of his debt consolidation plan, he plans to have it added later. (Tr. 78)

Applicant denied knowledge of and responsibility for the debts in SOR ¶¶ 1.m for \$230, 1.p for \$219, and 1.q for \$742. (Tr. 57-58, 77, 79) For the debts in SOR ¶¶ 1.f for \$346 and 1.g for \$787, Applicant said he had a telecommunications account; however, he remained unsure of his responsibility for this debt. (Tr. 58-60) If these debts are established, he plans to add them to his debt consolidation plan. (Tr. 59-60)

Applicant said the debt in SOR ¶ 1.h for \$43 to install a telecommunications device was paid using a credit card or debit card. (Tr. 60-61) He accepted responsibility for the debt in SOR ¶ 1.i for \$95; however, he did not include it in his debt consolidation plan because he did not provide the SOR to the debt consolidation company. (Tr. 61-62, 73)

On February 29, 2012, one creditor (M) agreed to settle a debt with a balance of \$18,096 for \$8,143 to be paid by making 30 monthly payments of \$278. (Tr. 75-76; AE J; SOR ¶ 1.k) This debt resulted when Applicant cosigned for his live-in girlfriend's vehicle, and it was repossessed. (Tr. 73-74) Applicant voluntarily returned the vehicle to the creditor. (Tr. 73) Applicant said he did not learn about the resulting debt until he reviewed his credit report. (Tr. 75)

Applicant thought the debt in SOR ¶ 1.k for \$6,035 and the debt in SOR ¶ 1.l for \$12,349 might both be combined in the collection action by creditor M. (Tr. 76) However, he conceded that the two debts resulted from the repossession of two vehicles and were listed with two different collection companies on his credit report. (Tr. 76-77) There is insufficient evidence to conclude the two debts are combined in the collection debt by creditor M.

Applicant receives \$370 per month from a survivor insurance policy. (Tr. 34) His monthly salary from the Government contractor is \$2,800, and his gross salary is about \$4,250. (Tr. 34)

Circumstances Beyond Applicant's Control

Over that last nine years, five events beyond Applicant's control adversely affected his finances. Applicant's financial situation was damaged by his spouse's illness and death in July 2003, his head injury and resulting medical bills in 2007, his two years of unemployment ending in September 2010, the bad tax advice he received about receipt of funds from his 401K account being tax free, and his dental bills.

Applicant said he had a large debt of about \$92,000 that he paid off over four years, which resulted from credit cards and his spouse's illness and death in July 2003. (Tr. 33, 80-84) His finances were damaged due to the loss of his spouse's income. (Tr. 34) She was making about \$200,000 per year, and Applicant was making about \$35,000 per year. (Tr. 84) He did not provide evidence of any payments to address his spouse's debts after he became employed by a defense contractor in September 2010.

In 2006 or 2007, Applicant had a head injury, which required surgery. (Tr. 26-27) He was out of work for about six months because of residual dizziness from the head injury. (Tr. 27) In 2008, Applicant took out a \$40,000 loan against his 401K retirement account. (Tr. 28-30) Applicant was incorrectly advised that there would not be any federal income tax penalty for the early withdrawal of funds from his 401K account. (Tr. 29) There was not a penalty; however, Applicant was unaware that the funds themselves were taxable. (Tr. 29) Part of the \$40,000 was withheld for taxes when Applicant received the funds. (Tr. 29-30)

Applicant indicated he was actually unemployed for “over two years,” and this included six months before he attended the trade school. (Tr. 32-33) He attended a marine-related trade school from February 2009 to August 2010 while he was unemployed, and he received a certificate of completion from the trade school. (Tr. 24, 32-33; GE 1) Applicant lived on student loans, the remainder of his 401K funds, and his corporate pension while he was attending the trade school. (Tr. 32) He now owes about \$26,000 in student loans, and he said he made two \$150 payments in August and September 2010. (Tr. 84-87) He said he put his student loan payments on hold. (Tr. 84-87) He said the student loans were deferred; however, he could not explain the basis or terms of the deferral. (Tr. 86-87) He said he could provide the deferral documentation after his hearing; however, he did not do so. (Tr. 87)

Applicant generated substantial debts from his dental bills. (Tr. 35) Most of his teeth were replaced with implants. (Tr. 35) He did not have dental insurance. (Tr. 35-36) He did not provide documentation showing the status of the debts resulting from his dental bills.

Personal Conduct

Applicant’s October 6, 2010 SF-86 asked five relevant questions concerning his finances as follows: (1) section 26d asked, “Have you had a lien placed against your property for failing to pay taxes or other debts?”; (2) section 26f asked, “Have you defaulted on any type of loan?”; (3) section 26m asked, “Have you been over 180 days delinquent on any debt(s)?”; (4) section 26n asked, “Are you currently over 90 days delinquent on any debt(s)?”; and (5) section 26p asked, “Are you currently delinquent on any Federal debt?”. (SOR ¶¶ 2.a to 2.e)²

Applicant defaulted on two vehicle loans, and both vehicles were voluntarily repossessed (Applicant was a cosigner for one vehicle). (Tr. 65-66) Applicant said he thought it was not a default because he voluntarily returned the vehicles, and he was unfamiliar with repossessions. (Tr. 66) He did not believe the tax lien was a true lien because it was not attached to his bank accounts. (Tr. 67) He made two payments to IRS when the IRS intercepted his tax refunds.

²For sections 26c-26m, Applicant’s SF-86 sought financial information in the last seven years. (GE 1) The SOR did not cite Applicant for answering “No” to section 26e which asked, “Have you had a judgment entered against you?” (GE 1) I draw no adverse inference against Applicant for his answer to section 26e.

In regard to his failure to provide information about delinquent debts, Applicant explained, "I tell you[,] I swear I needed a job so bad. I just—I didn't think I was defaulting or I didn't think I was saying anything direct. I was trying to find a job and I was t[r]ying to get a job." Department Counsel asked Applicant, "Were you concerned that if you represented that you had debt you might not get the job?" He responded, "Yes, sir, I was. I was concerned about one thing, that I needed a job." (Tr. 68) He added that he disclosed his financial problems to the investigator from the Office of Personnel Management (OPM). (Tr. 68)

Character Evidence

The contract compliance director for the contractor employing Applicant described him as an excellent employee, who performed well beyond expectations.³ He was the site manager who observed Applicant's work performance from September 22, 2010 to June 11, 2011. He lauded Applicant for being a diligent, responsible, and trustworthy employee. He recommended approval of Applicant's security clearance without reservation.

Applicant was selected as Employee of the Year for 2011 because of his "sustained exceptional performance." (AE D) He exemplified the attributes of being diligent, methodical, positive, dedication, goal oriented, and focused on safety. (AE D-F) He was previously the Employee of the Quarter for first and third quarters of 2011. (AE E, F) He completed training courses in basic fire fighting, first aid, personal survival, and social responsibility on September 22, 2010. (AE G)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

³ The information in this paragraph is from a letter of recommendation written by Applicant's contract compliance director on November 29, 2011. (AE C)

administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (financial considerations) and E (personal conduct).

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

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

(internal citation omitted). Applicant's history of delinquent debt is documented in his SF-86, credit reports, his OPM interview, his SOR response, and his hearing. Applicant's SOR lists 17 delinquent debts totaling \$44,518. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct in resolving his debts warrants limited application of AG ¶¶ 20(b), 20(c), and 20(d).⁴ Applicant's financial situation was damaged by his spouse's illness and death in July 2003, his head injury and resulting medical bills in 2007, his two years of unemployment ending in September 2010, his bad tax advice about receipt of funds from his 401K account, and his dental bills. However, Applicant did not act responsibly under the circumstances. He did not establish sufficient progress resolving his delinquent debts after he obtained employment in September 2010. He is credited with paying the debts in SOR ¶¶ 1.e (\$34) and 1.h (\$43). The debt in SOR ¶ 1.o (\$34) is mitigated because it is a duplication of the debt in SOR ¶ 1.e (\$34). He reduced his federal tax debt from \$19,996 to \$13,495 when the IRS intercepted his tax refunds.

Applicant is credited with some financial counseling through his generation of a budget and receipt of advice from his debt consolidation company. He showed some good faith when he admitted responsibility for some of his SOR debts in his SOR response and at his hearing. He has not provided sufficient information about efforts to start paying his SOR creditors before 2011 to fully establish any mitigating conditions.

Although Applicant said he did not accept responsibility for several debts, he did not provide documentary evidence that he disputed any debts or any entries on his credit report, and AG ¶ 20(e) does not apply. He maintained contact with some of his SOR creditors, and he attempted to negotiate some payment plans;⁵ nevertheless, there are no receipts or account statements from creditors, establishing any payments to the SOR creditors. Even if he had made one or two payments to the debt consolidation company, to creditor M, and to the IRS, this would not be enough to

⁴The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁵Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

establish a sufficient track record of debt payments in this case. There is insufficient evidence that his financial problem is being resolved and is under control. The file lacks evidence that he has acted responsibly on 14 of his 17 SOR debts, and there is insufficient evidence of a track record of voluntary payments to his SOR creditors to support a conclusion that he will resolve his delinquent SOR debts in the near future.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 two conditions that could raise a security concern in this case:

(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;

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

Both disqualifying conditions apply. When Applicant completed his October 6, 2010 SF-86, he falsely denied that he was had been delinquent over 180 days on any debts; and he denied that he was currently delinquent for more than 90 days on any debts. (SOR ¶¶ 2.c and 2.d) He was aware that he had multiple debts that were currently delinquent over 180 days. He deliberately failed to disclose information about his delinquent debts because he was worried that the contractor would not hire him. I have credited Applicant with mitigating SOR ¶¶ 2.a, 2.b, and 2.e because he may not have understood the definitions of terms such as liens, defaults, and repossessions. He made two payments on his IRS tax lien, and he may not have fully understood the status of his IRS debt as delinquent after the IRS intercepted two of his tax refunds.

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

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of

authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions apply to SOR ¶¶ 2.c and 2.d. Applicant's deliberately false statements on his October 6, 2010 SF-86 that he did not have any delinquent debts over 180 days delinquent and over 90 days currently delinquent are not mitigated. No one misled him into thinking this information should not be reported on his SF-86. The questions are clear, he is intelligent and he understood that the negative financial information was reportable. He did not report his delinquent debts because he wanted to obtain employment from a defense contractor. His false statements on his October 6, 2010 SF-86 are serious and relatively recent. Personal conduct concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the 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 have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those two guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. There is no derogatory information concerning Applicant's police records, illegal drug possession or use, or alcohol-related incidents. He is loyal to the United States. Applicant is a 58-year-old employee of a defense contractor, who is sufficiently intelligent and mature to understand and comply with security requirements. He understands what he must do to establish his financial responsibility. Over the last nine years, five events beyond Applicant's control adversely affected his finances: (1) his spouse's illness and death in July 2003; (2) his head injury and resulting medical bills in 2007; (3) his two years of unemployment ending in September 2010; (4) the bad tax advice he received about receipt of funds from his 401K account being tax free; and (5) his dental bills. He received an award for being Employee of the Year in 2011. His character references and evaluations establish that he is a dedicated, reliable, and trustworthy employee. He is knowledgeable, patriotic, and professional, and he made substantial contributions to his employer.

The financial circumstances and personal conduct evidence tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. His SOR lists 17 delinquent debts totaling \$44,518. Applicant currently has 14 delinquent SOR debts. Those 14 debts have been delinquent for more than two years. Applicant's financial circumstances have been relatively stable since he obtained employment with a Government contractor in September 2010. He paid two debts totaling \$77. (SOR ¶¶ 1.e and 1.h) He also paid the IRS \$5,000 towards his tax lien when the IRS intercepted two of his tax refunds. However, he cannot receive full whole-person credit for resolving the debt in SOR ¶ 1.b because his payments were not fully voluntary. It is unclear why he did not more aggressively address some of his smaller SOR debts (SOR ¶¶ 1.c for \$175; 1.d for \$260; 1.i for \$95; 1.n for \$99; and 1.p for \$219) when he had the means to do so. He had an obligation to begin serious negotiations with his creditors and set up and start making payments towards some voluntary payment plans or to save up sufficient funds to make some lump sum payments to creditors. If he reduced his standard of living and expenses, he could increase his net funds available to address his SOR debts. There is no documentary evidence, such as receipts or cancelled checks, that any of the 14 SOR creditors (except for the IRS) have received any payments. Applicant has failed to provide sufficient evidence of progress resolving his 14 delinquent SOR debts to

establish his financial responsibility. Applicant's intentional failure to disclose derogatory financial information on his October 6, 2010 SF-86 is recent, serious, and not mitigated.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully mitigated the financial consideration and personal security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	Against APPLICANT
Subparagraphs 1.a to 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i to 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p and 1.q:	Against Applicant
Paragraph 2, Guideline E:	Against APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Subparagraphs 2.c and 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant

Conclusion

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

Robert J. Tuider
Administrative Judge