



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



In the matter of:)
)
-----) ISCR Case No. 11-04268
)
Applicant for Security Clearance)

Appearances

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

10/17/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations or personal conduct. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On October 21, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on January 24, 2012.² DOHA issued a Statement of Reasons (SOR) to him on March 7, 2012, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹ GE 1 ((SF 86), dated October 21, 2010).

² GE 2 (Applicant's Answers to Interrogatories, dated January 24, 2012).

Program (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), and 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 Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on March 15, 2012. In a sworn statement, dated March 21, 2012, Applicant requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on April 25, 2012, and the case was assigned to me on May 2, 2012. As Applicant was working in Afghanistan, a continuance was granted until he was scheduled to briefly return to the United States to obtain his records and documentation. A Notice of Hearing was issued on September 5, 2012, and I convened the hearing by video teleconference, as scheduled, on September 12, 2012.

During the hearing, 14 Government exhibits (GE 1 through 14) and 1 Applicant exhibit (AE A) were admitted into evidence without objection. Applicant and one other witness testified. The transcript (Tr.) was received on September 20, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted a total of 11 documents that were admitted into evidence, without objection, as exhibits (AE B-L).

Findings of Fact

In his Answer to the SOR, Applicant admitted five factual allegations (¶¶ 1.b. through 1.d., 1.g., and 1.h.) pertaining to financial considerations, as well as one factual allegation (¶ 2.b.) pertaining to personal conduct of the SOR. He denied the remaining allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old employee of a defense contractor who, since November 2010, has served as a foreman. He received a performance recognition award in 2011. He was previously employed in a variety of positions including diesel technician from May 1986 until October 2006; heavy-wheeled mechanic from March 2007 until October 2008; maintenance foreman from March 2009 until October 2010; and mechanic from October 2010 until he was promoted to his present position. He spent approximately 1,200 days deployed to Iraq from March 2007 until October 2008, and from March 2009 until October 2010. Applicant was unemployed from October 2006 until March 2007, and again from October 2008 until March 2009.³ He received unemployment compensation while he was unemployed.⁴

³ GE 1, *supra* note 1, at 16-21.

Applicant served on active duty as an enlisted member of the U.S. Marine Corps from August 1980 until August 1984, during which time he was awarded the Sea Service Deployment Ribbon, the Good Conduct Medal, a Certificate of Achievement, and a Letter of Appreciation.⁵ He received an honorable discharge certificate. Although he underwent pre-employment background checks in 2009, it is unclear if he was ever granted a security clearance. He believes he received an “interim” clearance of an unspecified level.

Applicant was married in January 1980, and divorced in 1996. He was married again in December 2006. He has two step-children (his wife’s children from previous relationships). He is a June 1979 high school graduate.

Financial Considerations

It is unclear when Applicant’s finances transitioned from current to delinquent, for other than his periods of unemployment (October 2006 until March 2007, and again from October 2008 until March 2009) and his description of his first wife’s actions related to a home mortgage, he has expressed only general reasons why accounts started to become delinquent in 2003, placed for collection, or charged off. Instead, Applicant simply explained that in 2004 and 2005, “times got tough. . . . I just got behind and once you get behind it’s hard to catch up.”⁶ With the exception of casual references to his wife’s illness (“My wife started getting sick around that time. She has liver disease and I think that might have been part of that too.”), and the loss of her salary, he denied that there were any family medical emergencies or unexpected household bills.⁷ Applicant acknowledged that prior to joining his current employer in March 2009, he was living “paycheck to paycheck,” and “there was just not enough money” to pay his bills.⁸

In November 2010, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). They discussed various accounts that were, according to a November 2010 credit report, described as delinquent, in collection, charged off, or in foreclosure. Among those accounts were six accounts that currently appear in the SOR. Applicant was unaware of some of the accounts, and could only

⁴ GE 2 (Personal Subject Interview, dated November 19, 2010), at 3.

⁵ GE 1, *supra* note 1, at 23-24; AE A (Certificate of Release or Discharge from Active Duty (DD Form 214), dated August 2, 1984); AE I (Certificate of Appreciation, dated September 9, 2012); AE J (Certificate of Appreciation, undated); AE K (Certificate of Appreciation, dated July 15, 2012).

⁶ Tr. at 28-29, 55.

⁷ Tr. at 29, 55. Applicant explained that when his wife underwent medical treatment, the medical bills were mostly covered by insurance, but some of the medications and other unspecified “stuff,” were only partially covered. Tr. at 55. Additionally, although he had no legal obligations regarding her expenses, as they were not yet married, they were residing together in the residence they jointly bought, and her salary was contributing to the household payments. The loss of her income (estimated at \$28,000 to \$30,000 per year) had an impact on his ability to remain current. During her short-term disability, she received about \$600 per month. See, Tr. at 56-57.

⁸ GE 2, *supra* note 4, at 7.

speculate regarding the others. He added that one might be an old account that he was having computer problems reporting.⁹ He explained that his wife handles all finances, and as far as he knew, “their finances are fine and they are current on all household debts.”¹⁰ He stated that in six months when he was scheduled to return from deployment, he and his wife would sit down with a credit report and determine what is owed.

In January 2012, Applicant submitted a personal financial statement which reflected a net monthly income of \$9,002; with monthly expenses, including mortgage, of \$2,136; leaving a net remainder of \$6,866. He also listed \$60,000 in savings.¹¹ Applicant estimated his 2011 salary was \$157,000; in 2010, it was \$96,000; and in 2009, \$80,000 to \$85,000.¹²

The SOR identified eight purportedly continuing delinquencies, totaling approximately \$85,180. Each account is described below, reflecting both the original and present status, as follows:

- **(SOR ¶ 1.a.):** This is a bank credit card account (opened in 2005) with a high credit of \$1,513 that was charged off in that amount.¹³ The unpaid balance was initially increased to \$1,701,¹⁴ and as of April 2012, the unpaid balance was \$1,758.¹⁵ Although Applicant had previously had one credit card from the creditor that became delinquent in 2004 or 2005, he was unaware of this particular account. His wife called the creditor several times, but the creditor purportedly had no record of the account.¹⁶ Applicant offered no documentation to confirm his contentions. As of the hearing, the account had not been resolved. However, subsequent efforts by Applicant after the hearing resulted in the creditor agreeing to settle the account in full for a payment of \$1,500, and a payment of that amount was made on September 19, 2012.¹⁷ The account has been resolved.

⁹ GE 2, *supra* note 4, at 6-7.

¹⁰ GE 2, *supra* note 4, at 6-7.

¹¹ GE 2 (Personal Financial Statement, undated). The figures listed were computed from the information reflected, but Applicant’s computations were erroneous.

¹² Tr. at 22-23.

¹³ GE 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated November 2, 2010), at 6.

¹⁴ GE 6 (Equifax Credit Report, dated October 21, 2011), at 1.

¹⁵ GE 14 (Equifax Credit Report, dated April 23, 2012), at 1.

¹⁶ Tr. at 24-26, 65-68.

¹⁷ AE B (Letter from Creditor, dated September 19, 2012).

- **(SOR ¶ 1.b.):** This is a telephone account with Verizon with a past due balance of \$36 that was placed for collection.¹⁸ Applicant thought it might be an old telephone bill, but because he still maintained service with the same company, he believed it had been paid. Applicant offered no documentation to confirm his belief. He did not personally contact the creditor to determine the status of the account,¹⁹ and it is unclear if his wife ever did so. On April 23, 2012, the account was still listed as delinquent.²⁰ As of the hearing, the account had not been resolved. However, subsequent efforts by Applicant after the hearing resulted in the creditor agreeing to accept \$40.70 to satisfy the account in full, and a payment of that amount was made on September 19, 2012.²¹ The account has been resolved.
- **(SOR ¶ 1.c.):** This is a utility and fuel account with a past due balance of \$181 that was charged off.²² Applicant denied ever having an account with the creditor, and opined it might be an old gas bill. He believed it had been paid.²³ Applicant offered no documentation to confirm his belief. He did not personally contact the creditor to determine the status of the account but believes his wife did so. The creditor purportedly had no record of the account.²⁴ Applicant offered no documentation to confirm his contention. On April 23, 2012, the account was still listed as delinquent.²⁵ As of the hearing, the account had not been resolved. However, subsequent efforts by Applicant after the hearing resulted in the creditor acknowledging that the unpaid balance was \$181.71, but there is no contention or documentation indicating that a payment had been promised or actually made by Applicant.²⁶ The account has not been resolved.
- **(SOR ¶ 1.d.):** This is another bank credit card account (opened in 2002) with the same creditor as that referred to in SOR ¶ 1.a. with a high credit

¹⁸ GE 7, *supra* note 13, at 5.

¹⁹ Tr. at 26-27.

²⁰ GE 14, *supra* note 15, at 2.

²¹ AE C (Statement, dated September 25, 2012); AE C (E-mail from Applicant's Wife, dated September 21, 2012).

²² GE 7, *supra* note 13, at 7.

²³ Tr. at 27-28.

²⁴ Tr. at 27.

²⁵ GE 14, *supra* note 15, at 2.

²⁶ AE D (Account Master File Inquiry, dated September 13, 2012). Interestingly, although not appearing in any other evidence, there is a reference to Applicant filing for bankruptcy under Chapter 7 in May 1995, ten days after the final meter reading. The significance of the bankruptcy comment is unclear as neither the SOR nor the OPM investigation made any reference to such an action.

of \$9,717 that was charged off in that amount.²⁷ Applicant contended this was the only credit card from the creditor, and believed it became delinquent in 2004 or 2005. His wife called the creditor several times just before he “started making some decent money,” but the creditor purportedly had no record of the account.²⁸ Furthermore, the account is no longer listed in Applicant’s 2011 or 2012 credit reports. Applicant offered no documentation to confirm his contention. Subsequent efforts by Applicant after the hearing resulted in the creditor agreeing to accept \$7,882.10 over time to satisfy the account in full. A payment schedule calling for five monthly payments of \$250 plus a final balloon payment of \$6,632.10 was offered on September 20, 2012.²⁹ Applicant agreed to make six payments of \$250 plus the final balloon payment, and the monthly payments are scheduled to be automatically taken from his wife’s bank account.³⁰ Applicant offered no documentation to confirm the agreement or the initial payment. Nevertheless, it appears that the account is in the process of being resolved.

- **(SOR ¶ 1.e.):** This is a bank vehicle loan with a high credit of \$16,250 (opened in 2003) and an unpaid balance of \$9,947 that was charged off and sold to another bank as a collection agent.³¹ Applicant contends his truck was repossessed and subsequently sold, leaving no unpaid balance.³² Applicant’s wife never contacted the creditor.³³ Applicant offered no documentation to confirm his contention. The last time he had any contact with the creditor was in about 2006 or 2007.³⁴ The account with the collection bank is still listed in Applicant’s 2011 and 2012 credit reports, but the balance is listed as “zero.”³⁵ Accordingly, while Applicant

²⁷ GE 7, *supra* note 13, at 5.

²⁸ Tr. at 29-30, 65-68. There is documentary evidence that the same creditor filed a civil action complaint against Applicant in April 2008, seeking \$9,663.38 plus fees, interest, and costs, but that service was returned unexecuted because Applicant was “in the US military serving in Iraq,” and the law prohibits service. The matter was discontinued without prejudice in January 2010. See GE 12 (Civil Action Complaint, dated April 27, 2008); GE 13 (Court Record, dated February 21, 2012). Because the court record does not reflect an account number, it is difficult to determine if the accounts are the same.

²⁹ AE F (Letter from Creditor, dated September 20, 2012).

³⁰ AE G (E-mail from Applicant’s Wife, dated September 21, 2012); AE H (E-mail from Applicant’s Wife, dated September 24, 2012).

³¹ GE 7, *supra* note 13, at 6.

³² Tr. at 30.

³³ Tr. at 68.

³⁴ Tr. at 31. After the hearing, Applicant search for any account records he might have, but was unable to find anything. See AE E (E-mail from Applicant’s Wife, dated September 21, 2012).

³⁵ GE 6, *supra* note 14, at 2; GE 14, *supra* note 15, at 2.

has offered no proof that the account has been paid, the Government exhibits provide evidence that the account has been resolved.

- **(SOR ¶ 1.f.):** This is an educational loan for Applicant's stepdaughter obtained through Sallie Mae with a high credit of \$10,373, a past due balance of \$12,609, and an unpaid balance of \$19,364 that was charged off in September 2010.³⁶ Applicant and his wife started receiving delinquency notices on the account as far back as 2004, but neither of them ever contacted the creditor to resolve the account. Instead, they accepted Applicant's stepdaughter's word that she was "taking care" of the account and that it was "under control."³⁷ The account is no longer listed in Applicant's 2011 and 2012 credit reports. Applicant had offered no proof that the account had been paid or brought into a current status, and as of the hearing, the account had not been resolved. However, subsequent efforts by Applicant after the hearing resulted in the creditor determining that there is a zero balance, but Applicant is unable to furnish documentary confirmation of that fact.³⁸ Nevertheless, I conclude that the account has been resolved.
- **(SOR ¶ 1.g.):** This is default judgment entered against Applicant in July 2011, in the amount of \$1,728.72, as a result of an automobile accident involving Applicant's wife and the plaintiff.³⁹ The insurance did not cover all of the damages. Upon receiving the initial bills, Applicant's wife failed to make any payments. Applicant acknowledged that at some point, he gave her the money to pay the bill, but she failed to pay it all at the time as she was "supposed to."⁴⁰ He contends he paid off the judgment by check,⁴¹ but offered no documentation to confirm his contention. The account has not been resolved.
- **(SOR ¶ 1.h.):** This is a default judgment on a mortgage foreclosure entered against Applicant and his first wife in June 1996, in the amount of \$42,505.46.⁴² He denied ever receiving notification in the mail about the judgment or foreclosure.⁴³ Applicant contends that when he and his first wife separated, she was to remain in the residence and take responsibility

³⁶ GE 7, *supra* note 13, at 7.

³⁷ Tr. at 31-33, 68-69.

³⁸ AE G, *supra* note 30.

³⁹ Tr. at 33-34, 72; GE 8 (Court Record, dated July 20, 2011); GE 9 (Court Record, dated February 21, 2012).

⁴⁰ Tr. at 34-35.

⁴¹ Tr. at 34-35.

⁴² GE 10 (Court Record, dated February 21, 2012); GE 11 (Court Record, dated February 21, 2012).

⁴³ Tr. at 36.

for continuing to make the mortgage payments. Instead, she failed to do so and vacated the residence.⁴⁴ Applicant was aware that there was an unpaid balance on the mortgage,⁴⁵ but Applicant's current wife did not know the judgment existed.⁴⁶ Since receiving the SOR, neither Applicant nor his current wife has made any effort to contact the creditor or to resolve the judgment.⁴⁷

There is no evidence that Applicant ever received financial counseling.

Personal Conduct

In May 2004, Applicant and his then-fiancée were involved in an altercation during which she threw things at him and she thought Applicant would become violent. She called the police, and when they arrived, Applicant was arrested, even though he had not touched her. He spent two days in the county jail before being released.⁴⁸ Applicant was charged with simple assault, terroristic threats with intent to terrorize another, and harassment – subject other to physical contact.⁴⁹ Applicant contended the charges were dropped, and he was ordered to complete anger management classes, which he did.⁵⁰ However, the local police chief indicated Applicant had been convicted in June 2004, on his plea of guilty, to summary harassment.⁵¹ The Federal Bureau of Investigation (FBI) Identification record confirmed Applicant's contention, but it reported those charges were all *nolle prossed* or withdrawn and there was no conviction.⁵²

In August 2006, Applicant was purportedly charged with the same three charges.⁵³ Those charges were supposed to have been withdrawn, and Applicant was allegedly ordered to attend domestic violence classes and drug and alcohol classes.⁵⁴ Applicant contended the two incidents were the same incident, but he did erroneously report it on his SF 86, stating the charges had been dropped. Other than the police

⁴⁴ Tr. at 35-37.

⁴⁵ Tr. at 36.

⁴⁶ Tr. at 73.

⁴⁷ Tr. at 37, 73-74.

⁴⁸ GE 2, *supra* note 4, at 5. The OPM investigator erroneously referred to this incident as having occurred in July 2006.

⁴⁹ GE 5 (Court Report, dated February 21, 2012).

⁵⁰ GE 2, *supra* note 4, at 5.

⁵¹ GE 4 (OPM Investigative Request for Law Enforcement Data, dated November 10, 2010), at 2.

⁵² GE 3 (FBI Identification Record, dated November 2, 2010).

⁵³ GE 4, *supra* note 51, at 2.

⁵⁴ GE 4, *supra* note 51, at 2.

chief's note, and Applicant's SF 86 entry, there is nothing to support two different incidents reflecting identical charges and identical conclusions.

In October 2006, Applicant failed a breathalyzer test that was administered at his workplace.⁵⁵ As a result, Applicant was involuntarily dismissed from his employment.⁵⁶ Applicant subsequently furnished various versions of his departure. He told the OPM investigator that he left under a "mutual agreement" to work for another employer, and denied having been fired.⁵⁷ On his SF 86, he acknowledged leaving a job "for reasons under unfavorable circumstances," but indicated he left to work for another company.⁵⁸ In fact, he was unemployed over the next five months, collecting unemployment compensation, before joining the new employer in March 2007. During the hearing, the version shifted again. He acknowledged getting fired, but because he agreed not to fight the dismissal through the union, the employer "would just let [Applicant] collect while [he] switched jobs. . . . [S]o [Applicant] agreed to leave and not make a big stink about it so apparently they must have put [him] down as being fired."⁵⁹ He acknowledged that it was possible that he was too embarrassed to list his termination as a firing.⁶⁰

On October 21, 2010, Applicant completed and submitted his SF 86. The SOR alleges Applicant falsified material facts when he falsely stated that he had no debts delinquent over 90 days (§ 26n) or delinquent over 180 days (§ 26m). In fact, as noted above, he had a number of such delinquencies. Applicant denied having intentionally falsified his answers and acknowledged he had delinquent debts. He claimed that when he tried to enter the correct responses, the computer system would not accept his answers and explanations, so he gave up and simply said "no."⁶¹ He acknowledged that he did not advise the OPM investigator of his difficulties in making the correct answers.⁶² Under the circumstances, I conclude that Applicant's explanation is unreasonable, and that he intentionally falsified his answers to these two questions.

The SOR also alleges Applicant falsified material facts when he omitted that he had been fired from his job when he acknowledged leaving a job "for reasons under unfavorable circumstances," but indicated he left to work for another company (§ 13C). Because of his shifting explanations, as discussed above, I conclude that Applicant's explanation is unreasonable, and that he intentionally falsified his answer to this question because he was too embarrassed to list his termination as a firing.

⁵⁵ GE 2 (Applicant's Response to Interrogatories, dated January 24, 2012), at 2; Tr. at 44.

⁵⁶ Tr. at 44.

⁵⁷ GE 2, *supra* note 4, at 3.

⁵⁸ GE 1, *supra* note 1, at 22.

⁵⁹ Tr. at 45.

⁶⁰ Tr. at 47.

⁶¹ Tr. at 47-50.

⁶² Tr. at 49-50.

The SOR also alleges Applicant falsified material facts regarding a 2004 conviction for harassment when he omitted from his answer (§ 22a) that he had “been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you; are you on trial or awaiting a trial on criminal charges; or are you currently awaiting sentencing for a criminal offense?” As noted above, Applicant contended the 2004 and 2006 incidents were the same incident, and he did erroneously report the 2006 incident on his SF 86. The Government exhibits regarding the alleged harassment issue(s) are inconsistent, and there is little, if any, substantial evidence to support the existence of two different incidents reflecting identical charges and identical conclusions. Accordingly, while Applicant did report a harassment incident for 2006, and there are questions as to the accuracy of reports of a 2004 incident, I conclude his explanation is reasonable, and that he did not intentionally falsify his answer to this question.

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, “no one has a ‘right’ to a security clearance.”⁶³ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁶⁴

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

⁶³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”⁶⁵ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁶⁶

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁶⁷

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.”⁶⁸ 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 or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

⁶⁵ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁶⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶⁷ *Egan*, 484 U.S. at 531

⁶⁸ See Exec. Or. 10865 § 7.

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Applicant's financial problems commenced in 2003, or as Applicant explained, in 2004 and 2005, "times got tough. . . . I just got behind and once you get behind it's hard to catch up." Accounts became delinquent and were placed for collection or charged off. In addition, there were a repossession and two judgments. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *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*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *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*. Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.⁶⁹

AG ¶ 20(a) does not apply, and AG ¶ 20(b) only partially applies. While the behavior commenced long ago, it has continued to the present time. As noted above, Applicant went through two periods of unemployment (October 2006 until March 2007, and again from October 2008 until March 2009), during which he received unemployment compensation. His wife has had some health issues. However, he joined his current employer March 2009, and has been making a salary sufficient for him to

⁶⁹ The 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 she or she relied on a legally available option (such as bankruptcy [or statute of limitations]) 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)).

address his delinquent accounts. He claimed to be aware of those delinquencies in October 2010 when he completed his SF 86. Any lingering questions he may have had regarding his financial delinquencies were addressed during his OPM interview in November 2010. The interrogatories in January 2012 and the March 2012 SOR clearly identified his delinquent accounts. Yet, despite the wealth of information furnished to him, Applicant's direct and indirect efforts failed to produce evidence of any solid account resolutions. Instead, he offered only verbal comments and explanations, unsupported by any documentary evidence. He claimed not to know some of the accounts, and claimed that several of the identified creditors had no knowledge of him or his accounts. It was not until after the hearing that he finally realized the significance of his delinquencies and he took any meaningful efforts to resolve them. Creditors who previously purportedly had no knowledge of his accounts suddenly acknowledged them and Applicant and his wife started to address them. Applicant's inaction until September 2012 casts doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(d) partially applies. While Applicant may have been confronted with circumstances beyond his control in about 2003 to 2005, when "times got tough," as noted above, he acknowledged he made few recent efforts to contact his creditors. Commencing in March 2009, when he started making a good salary, he displayed little interest in resolving his delinquent accounts, and he submitted no documentation to support his contentions regarding the purported efforts he did make to resolve those delinquent accounts.⁷⁰ Before the hearing, there supposedly were creditors who had no knowledge of his accounts. After the hearing, they suddenly acknowledged the accounts and Applicant and his wife finally initiated a good-faith effort to address them. During the relatively brief period that has passed since the hearing, Applicant has managed to resolve four of the accounts, and start the resolution process for one account. He claimed he had resolved one additional account, but offered no documentation to support his claim. It remains unclear what efforts or decisions have been made with respect to another account. No efforts have been made regarding the mortgage foreclosure. Because of the lengthy period of inaction before addressing his delinquent accounts, Applicant has not acted responsibly under the circumstances.⁷¹

Guideline E, Personal Conduct

The security concern relating to the guideline 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

⁷⁰ "Even 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.

⁷¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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.

The guideline notes conditions that could raise security concerns. Under AG ¶ 16(a), security concerns may be raised when there is 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.

Similarly, “*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative,*” is potentially disqualifying under AG ¶ 16(b). Under AG ¶ 16(c), security concerns may be raised if there is:

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

If there is:

credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer's time or resources,

security concerns may be raised under AG ¶ 16(d). Also, under AG ¶ 16(e), it is potentially disqualifying if there is:

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

In May 2004, Applicant was arrested, and spent two days in the county jail before being released. He was charged with simple assault, terroristic threats with intent to terrorize another, and harassment – subject other to physical contact. Applicant contended the charges were dropped, and he was ordered to complete anger management classes, which he did. The records (Government exhibits) are inconsistent as to what occurred thereafter, for as noted, the local police chief indicated Applicant had been convicted in June 2004, on his plea of guilty, to summary harassment, but the FBI Identification record confirmed Applicant's contention, and reported those charges were all *nolle prossed* or withdrawn and there was no conviction. In August 2006, Applicant was purportedly charged with the same three charges. Other than the police chief's note, and Applicant's SF 86 entry, there is nothing to support two different incidents reflecting identical charges and identical conclusions.

In October 2006, Applicant failed a breathalyzer test that was administered at his workplace. As a result, he was involuntarily dismissed from his employment.

On October 21, 2010, Applicant completed and submitted his SF 86. He falsely stated that he had no debts delinquent over 90 days or over 180 days, when in fact, he had a number of such delinquencies. Applicant denied having intentionally falsified his answers and acknowledged he had delinquent debts, but claimed that when he tried to enter the correct responses, the computer system would not accept his answers and explanations, so he gave up and simply said "no." He did not advise the OPM investigator of his difficulties in making the correct answers.

Applicant also falsified material facts when he omitted that he had been fired from his job when he acknowledged leaving a job "for reasons under unfavorable circumstances." He indicated he left to work for another company. Because of his shifting explanations, as discussed above, I concluded that Applicant's explanation is unreasonable, and that he intentionally falsified his answer to this question because he was too embarrassed to list his termination as a firing.

The SOR also alleges Applicant falsified material facts regarding the 2004 conviction for harassment when he omitted it from his answer regarding any criminal proceedings against him. As noted above, Applicant contended the 2004 and 2006 incidents were the same incident, and he did erroneously report the 2006 incident on his SF 86. The Government exhibits regarding the alleged harassment issue(s) are inconsistent, and there is little, if any, substantial evidence to support the existence of two different incidents reflecting identical charges and identical conclusions. Accordingly, while Applicant did report a harassment incident for 2006, and there are questions as to the accuracy of reports of a 2004 incident, I concluded his explanation is reasonable, and that he did not intentionally falsify his answer to this question.

Accordingly, as to SOR ¶ 2.c., none of the disqualifying conditions apply. However, as to SOR ¶¶ 2.a. and 2.b., AG ¶¶ 16(a) and 16(b) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if “*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.*” Similarly, if “*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,*” AG ¶ 17(c) may apply.

As to Applicant’s financial issues and his employment termination issue, his claims and shifting explanations are simply too unreasonable to accept as the truth. I can accept reasonable explanations, and even take administrative notice, regarding computer system problems, but Applicant’s subsequent actions simply belie those explanations. He did not advise the OPM investigator of his difficulties in making the correct financial answers, and gave various versions of the employment termination before accepting the ultimate conclusion that he was fired.⁷² AG ¶¶ 17(a) and 17(c) do not 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 the 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. Moreover, I have evaluated the various

⁷² An intent to falsify can be shown by circumstantial evidence even in the face of denials of any intent to falsify. ISCR Case No. 05-03554.a1 (App. Bd. Aug. 23, 2007), at 4. See, e.g., DISCR Case No. 90-0770 at 3 (App. Bd. July 16, 1992); Cf. *Foster v. Dalton*, 71 F.3d 52, 56 (1st Cir. 1995) (“Notwithstanding a person’s disclaimers, a contrary state of mind may be inferred from what he does and from a factual mosaic tending to show that he really meant to accomplish what he professes not to have intended.”).

aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁷³

There is some evidence in favor of mitigating Applicant's conduct. He served honorably with the USMC, and with the exception of his 2006 termination from employment, he has generally been a good employee. He finally commenced efforts to resolve his long-standing delinquent debts.

The disqualifying evidence under the whole-person concept is more substantial. Applicant's history includes a lengthy period of disregard for his financial delinquencies, which he only recently started to address; an issue of anger control stemming from his 2004 altercation with his then-fiancée; and several instances of dishonesty in 2010. Over a period of years, he continued to give the impression that he was not fired and that he had no financial delinquencies when, in fact, those impressions were false. Applicant has offered explanations for his actions. However, as I have noted above, Applicant's explanations were simply not credible. Under the evidence presented, I have significant questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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

⁷³ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

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 ROBINSON GALES
Administrative Judge