DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-04843
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2012

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Decision

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DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

Statement of the Case

On April 24, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program,* dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On June 15, 2012, Applicant answered the

SOR and requested a hearing. On July 18, 2012, the case was assigned to me. On August 6, 2012, the Notice of Hearing was issued scheduling the hearing for August 29, 2012. The hearing was held as scheduled. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 10 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) 1. Applicant testified and offered Applicant's Exhibits (AE) A and B. At Applicant's request, the record was left open for him to submit additional matters until September 12, 2012, and later extended to September 19, 2012. Applicant timely submitted AE C through J that were admitted into evidence without objection. Department Counsel's memorandum indicating she had no objection to Applicant's post-hearing submissions was marked as HE 2. The transcript (Tr.) of the hearing was received on September 7, 2012.

Findings of Fact

Applicant is a 36-year-old security guard working for a government contractor. He has been employed in his current job for three and a half years. He graduated from high school in 1994. He has been divorced twice and has two children, a son ten years old and daughter six years old. He currently pays $1,000 in child support monthly, and his child support payments are current.[1]

The SOR alleged that Applicant filed Chapter 13 bankruptcy in December 2009, which was dismissed in March 2010; that he again filed Chapter 13 bankruptcy in May 2010, which was converted to a Chapter 7 bankruptcy that was then still pending; and that he had 7 delinquent debts totaling $21,409. In his Answer to the SOR, Applicant admitted both bankruptcy allegations (SOR ¶¶ 1.a and 1.b) and five of the alleged debts (SOR ¶¶ 1c through 1.g). He denied the remaining two allegations (SOR ¶¶ 1.h and 1.i). His admissions are incorporated as findings as fact.[2]

Applicant partially attributed his financial problems to two divorces. He married his first wife in about 1998, and they divorced in 2000. He married his second wife in 2002. He and his second wife separated in October 2010 and divorced in February 2012. He indicated that he was not aware of some bills that his second wife incurred after they separated.[3]

Applicant also indicated that periods of unemployment or underemployment contributed to his financial problems. As discussed further below, he stated that he lost his job and was out of work for a while doing side jobs. Of note, however, the record

[1] Tr. 6, 28-34, 48-49, 61-62; GE 1, 4; AE C, D.

[2] Applicant's Answer to the SOR; GE 4, 5.

[3] Tr. 28-34, 45-54, 64-65; GE 1, 4; AE D. In Applicant's first OPM interview in January 2010, he attributed a delinquent vehicle loan to his first wife. However, in his second OPM interview in December 2010, he stated that there were no financial obligations from that divorce. *See* GE 4.

contains some inconsistencies about his employment history. A summary of his employment history follows:

a. From about May 2000 to August 2005, Applicant was employed as a juvenile detention officer and earned approximately $28,000 per year. He stated that he left that position for a higher paying job that he did not list on his security clearance application.[4]

b. During an Office of Personnel Management (OPM) interview in January 2010, Applicant reportedly stated that, after leaving the detention officer position, he worked for a tire store from January 2006 to May 2007 and indicated that he accidently left this job off of his security clearance application. The summary of the OPM interview also indicated that he left the tire store job to open his own business. At the hearing, however, he testified that he left the detention officer job to work for the tire store, but indicated that he worked there only about four months before being laid off.[5]

c. In his security clearance application, Applicant listed that he worked part time as a security manager of a night club from June 2005 to August 2009. During the OPM interview, he reportedly stated that he worked at the night club either part time or full time from June 2005 to January 2010. The summary of that interview also indicated that he was "making plenty of extra money" in September 2008 until the night club began cutting his hours due to lack of business and his automobile service business (discussed below) slowed down due to the economy. At the hearing, he stated that he worked at the night club part time, specifically on Friday and Saturday nights, and earned $100 per night.[6]

d. In his security clearance application, Applicant listed that he worked full time as the shop manager of an automobile service shop from May 2008 to March 2010. The summary of the OPM interview indicated that he was co-owner of this shop, although he stated his name did not appear on the business license. The summary also noted that he opened the shop in May 2007, instead of 2008. At the hearing, Applicant testified that this job was essentially a part-time job. He stated that it was an "on-call" job. If he changed a tire or performed an oil change, he would receive a portion of the proceeds. He described this job by stating, "There was no application, no stuff like that – there wasn't no taxes or none of that from it." He estimated that he earned $200 to $250 per week at the automobile service shop. While in this job, he pled guilty to three misdemeanor counts of issuing vehicle emission stickers without a certificate. In December 2009, he was sentenced to 12 months of probation and a $4,000 fine for

[4] Tr. 51-53; GE 1, 4.

[5] Tr. 52-53; GE 1, 4.

[6] Tr. 30-31, 50-52; GE 1, 4. In GE 4, Applicant reportedly stated he worked full time at the night club from "Aug 05 to Jan 01," which is obviously an incorrect time period. In a second OPM interview in November 2011, he stated that he worked at the night club from June 2005 to August 2009 and from September 2010 to the time of that interview. *See* GE 4.

those offenses. During the OPM interview, he claimed the charges arose from a former employee who was caught using his pin number to issue emission stickers to acquaintances for vehicles that would not pass emissions test. He did not know how the former employee obtained his pin number to issue the stickers, but acknowledged that he was responsible for his pin number. Following his employment at the automobile service shop, he began working for his current employer in March 2010.[7]

SOR ¶ 1.a – Chapter 13 bankruptcy. Applicant filed Chapter 13 bankruptcy in December 2009 and that proceeding was dismissed in March 2010. In his OPM interview in January 2010, he reportedly stated that he was current with his Chapter 13 account since it was finalized in December 2009. The Chapter 13 trustee's report recommended dismissal of the bankruptcy proceeding because "Debtor's plan payments remain delinquent" and "The Debtor has failed to provide 2008 tax return." Applicant testified that the bankruptcy was dismissed before the payment arrangement was established. He also indicated that the lawyer who originally represented him for this Chapter 13 bankruptcy left the law firm after filing the petition and apparently no follow-up action was taken on his case before the court dismissed it.[8]

SOR ¶ 1.b – Chapter 7 bankruptcy. Applicant again filed for Chapter 13 bankruptcy in May 2010. This bankruptcy petition indicated that he had $15,305 in assets and $41,748 in liabilities. He indicated that he paid $211 twice a month to the Chapter 13 bankruptcy trustee and those payments were taken directly from his paycheck. In April 2012, this proceeding was converted into a Chapter 7 bankruptcy. He stated that his divorce, which increased his monthly child support payments from $650 to $1,000, was the main reason for converting the bankruptcy to a Chapter 7 proceeding. He did not know whether any of the debts listed in the bankruptcy were paid during the two years the Chapter 13 proceeding was pending. On July 16, 2012,

[7] Tr. 30-31, 48-50, 54; GE 1, 4. In the second OPM interview in November 2011, Applicant again referred to himself as the "shop manager" of this automobile service shop. In GE 4, he provided a number of Form W-2 Wage and Tax Statements from various employers for the period between 2005 and 2010; however, none of those W-2 statements were provided for the automobile service shop. In his bankruptcy petition (GE 8 at 176), Applicant indicated that he was an officer, director, partner, or managing executive of an automobile service shop from "2007 – present"; however, the name or location of that business does not match the information that Applicant provided in his security clearance application or during the OPM interviews.

Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of the whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006). I have considered Applicant's misdemeanor conviction for these limited purposes.

[8] Tr. 28-29, 41-42; GE 2, 3, 4, 6, 7, 10.

the bankruptcy court granted him a Chapter 7 bankruptcy discharge. He stated that he believed that all of the debts alleged in the SOR were discharged in the bankruptcy.[9]

The bankruptcy discharge order (Form 182) states:

> The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If the case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.[10]

Form 182 also states that "Debts for most taxes" and "Some debts which were not properly listed by the debtor" are not discharged in a Chapter 7 bankruptcy. However, absent fraud in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge under Chapter 7 of the Bankruptcy Code, even though debts were not listed on a bankruptcy schedule. Applicant's bankruptcy was a no-asset proceeding.[11]

SOR ¶ 1.c – judgment for $963. This judgment was part of an eviction action filed in 2000. This debt was not listed in his Chapter 7 bankruptcy petition. The state in which Applicant resides has a seven-year statute of limitations on unexecuted judgments, which may explain why this debt was not listed in the bankruptcy. This debt would have been discharged in the bankruptcy, if it continued to be legally enforceable at that time.[12]

SOR ¶ 1.d – judgment for $9,429. This judgment was filed in February 1998. This debt was not listed in his Chapter 7 bankruptcy petition. Like the debt in SOR ¶ 1.c, above, if this debt continued to be legally enforceable, it would have been discharged in the bankruptcy.[13]

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[9] Tr. 28-29, 42-45, 56; GE 3, 4, 8, 10; AE A, B, E, G. Of note, Applicant's Schedule F - Creditors Holding Unsecured Nonpriority Claims in GE 8 does not match exactly the one in AE G. However, both those schedules are supposedly for the same bankruptcy filing.

[10] AE E.

[11] GE 10; AE E. *See Judd v. Wolfe*, 78 F.3d 110, 114 (3rd Cir. 1996); *Beezley v. California Land Title Co*, 994 F.2d 1433, 1439, n. 4 (9th Cir. 1993); *Francis v. Nat'l Revenue Service Inc.* 426 B.R. 398 (Bankr. S.D. FL 2010), *but see First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28 ABIJ 58 (Nov. 2009). Applicant did not receive his bankruptcy discharge from a bankruptcy court in the First Circuit. There is no requirement to re-open the bankruptcy to discharge the debt. Collier on Bankruptcy, Matthew Bender & Company, Inc. 2010, Chapter 4-523, ¶ 523(a)(3)(A).

[12] Tr. 45; GE 8, 9; AE G. *See also* Official Code of Georgia Annotated § 9-12-60.

[13] *Id.*

SOR ¶ 1.e – collection account for $1,124. This debt was for a cable television account that was placed for collection in October 2011. This was the cable service he had when he separated from his ex-wife. After they separated, he did not know whether she continued to pay the bill or disconnected the service. This debt first appeared on his credit report dated February 16, 2012. This debt was not listed in his Chapter 7 bankruptcy petition. Nevertheless, it would have been discharged in that bankruptcy.[14]

SOR ¶ 1.f – tax lien for $1,402. This state tax lien was filed in September 2009. This debt is listed in his Chapter 7 bankruptcy petition. In his OPM interview, Applicant indicated that he filed Chapter 13 bankruptcy to satisfy this debt. As noted above, however, most taxes are not discharged in a bankruptcy. Applicant presented no plan for paying this debt. This debt is unresolved.[15]

SOR ¶ 1.g – charged-off account for $361. This was a utility account that was opened in August 2010 and was reported as charged off in November 2011. It was not listed in his Chapter 7 bankruptcy petition, but would have been discharged in that proceeding.[16]

SOR ¶ 1.h – charged-off automobile account for $7,846. This delinquent account was opened in July 2011 and first appeared on Applicant's credit report dated December 4, 2011. The credit report indicated that the automobile was involuntarily repossessed. The date of first delinquency/date of last activity on this account was October 2011. Applicant stated that he denied this debt because he did not know the alleged creditor or the basis of the debt. At the hearing, however, he indicated that he believed this was his debt and it was included in his bankruptcy. Schedule F of his Chapter 7 bankruptcy indicated that one of his automobiles was repossessed in November 2011. However, the automobile that he mentioned in his testimony does not match the one listed in Schedule F. Nevertheless, this account became delinquent before the Chapter 7 conversion and would have been discharged in that proceeding.[17]

SOR ¶ 1.i – account placed for collection for $284 in June 2007. This debt was an insurance company account. In his Answer, Applicant denied this debt and indicated that he had been with another insurance company for about the past ten years. During an OPM interview in January 2010, he indicated that he had no knowledge of this debt,

[14] Tr. 45-48; GE 3, 4, 5, 8; AE G.

[15] Tr. 41, 45; GE 2, 3, 4, 5, 6, 8; AE E, G. During Applicant's OPM interview of January 2010, he reportedly stated that his tax lien arose because he did not pay enough state taxes in 2009. In his second OPM interview, he stated that he did not owe any past-due state taxes. He provided no proof of payment of this alleged debt. *See* GE 4.

[16] Tr. 45; GE 3. In GE 4, Applicant indicated that this debt had been added to the bankruptcy and he was awaiting a statement.

[17] Tr. 34-37; GE 3, 5, 8; AE E, G.

but indicated it was included in his Chapter 13 bankruptcy. This debt was listed in his Chapter 13 bankruptcy petition filed in December 2009. However, it does not appear in any of his credit reports or in his subsequent Chapter 13/Chapter 7 bankruptcy petition. It apparently fell off of his credit report between the bankruptcy petitions. This debt would have been discharged in the Chapter 7 bankruptcy.[18]

Record evidence indicated that Applicant went on vacation cruises to the Caribbean in 2000 and 2004. He had at least two vehicles repossessed since 2008. A landlord filed eviction actions against him in June, November, and December 2011.[19]

Applicant consulted with a debt management company before filing bankruptcy. He completed financial counseling as a prerequisite to filing his bankruptcy petitions. He testified that he currently has no credit cards and no other debts. He estimated that he had about $9 in one of his checking accounts and $200 in another. In about February 2012, he submitted a Personal Financial Statement (PFS) that reflected his gross monthly salary was $4,106 and that his monthly expenses and debt payments were $3,874. Since submitting that PFS, his reported monthly Chapter 13 bankruptcy payments of $422 have stopped, but his reported monthly child support payments of $650 have increased to $1,000. Those recent changes would have increased his net monthly remainder by about $72. In his post-hearing submission, he provided two pay statements from his current employer that reflected his gross pay for a four-week period (July 20, 2012, to August 16, 2012) was $3,544 and his net pay for that period was $2,641. Applicant's Form W-2 Wage and Tax Statement for 2010 from his current employer reflected that his average monthly wages, tips and other compensation was about $2,518.[20]

In his testimony, Applicant noted that he owed back taxes of about $4,000 and was planning to set up a repayment plan. In his post-hearing submission, he provided an Installment Agreement with the Internal Revenue Service (IRS) dated September 19, 2012. This agreement indicated that he owed $8,181 to the IRS for tax years 2006, 2010, and 2011, and would begin making monthly payments of $75 in November 2012.[21]

[18] Tr. 37-41; GE 1-10; AE G.

[19] GE 1, 3, 4, 9.

[20] Tr. 28-29, 46-48, 54-68; GE 4; AE J. Applicant's latest bankruptcy petition indicated that he had a net monthly remainder of $458. *See* GE 8 (page 193). He also provided two other pay statements (covering the period from December 23, 2011, to January 19, 2012) that reflected his gross pay for those four weeks was about $ $4,081 and his net pay was $1,915. Of note, those pay statements included a deduction designated as "agreement" of $512. This "agreement" payment may have been his monthly payment to the Chapter 13 trustee, which would have ceased. *See* GE 4.

[21] Tr. 54-68; GE 4; AE J.

Applicant submitted letters of reference from federal government employees that reflected that he is a very helpful individual and goes beyond the call of duty to assist others. He is described as dependable and as an exemplary person.[22]

Policies

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

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavourable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531.

[22] AE H, I.

"Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

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

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

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

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Between 1998 and 2011, Applicant accumulated seven delinquent debts totaling over 21,000. In December 2009, Applicant filed Chapter 13 bankruptcy, which was dismissed in March 2010 for failure to make bankruptcy payments and failure to provide a tax return. In May 2010, he filed Chapter 13 bankruptcy again. In April 2012, his Chapter 13 bankruptcy was converted to Chapter 7. In July 2012, the bankruptcy court granted him a discharge. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
>
> (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
>
> (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
>
> (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has a 14-year history of delinquent debts. At the hearing, he attributed the delinquent debts to his divorces and periods of unemployment and underemployment. In 1998, however, he had a judgment entered against him for over $9,000. This judgment occurred before any of the events to which he attributed his financial problems. No evidence was presented that he took any action to try to resolve this judgment before filing bankruptcy over a decade later.

Applicant's divorces and an economic downturn contributed to his financial problems. Based on Applicant's inconsistent statements about his employment record, insufficient evidence was presented to conclude that he was laid off from any job; instead it appears that he voluntarily left jobs for other employment opportunities. Although his divorces and periods of reduced income or underemployment were conditions beyond his control, full credit under AG ¶ 20(b) is not warranted because he has failed to demonstrate that he acted responsibly under the circumstances. While he had delinquent judgments against him, he took vacations to the Caribbean in 2000 and 2004. During an OPM interview, Applicant indicated that he was "making plenty of extra money" in 2008, but provided no evidence that he took any meaningful action to resolve his delinquent debts at that time. Three of the alleged debts (SOR ¶¶ 1.e, 1.g, and 1.h) apparently became delinquent after he filed bankruptcy. Even though most of his debts were discharged in his Chapter 7 bankruptcy, the recency and nature of their resolution

does not mitigate the underlying security concerns arising from them.[23] Most importantly, he failed to provide persuasive evidence that he will be financially responsible in the future. His state tax lien of $1,402 (SOR ¶ 1.f) remains unresolved. He owes over $8,000 to the IRS for tax years 2006, 2010, and 2011, and only after the hearing entered into an agreement to resolve that liability. He provided no track record of payments towards his delinquent tax debts. Insufficient evidence was presented to conclude his financial problems are under control or will be resolved. In short, his financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) do not apply. AG ¶¶ 20(b) and 20(d) partially apply.

In his Answer to the SOR, Applicant denied the debts in SOR ¶¶ 1.h and 1.i. At the hearing, he admitted the debt in SOR ¶ 1.h. He listed the debt in SOR ¶ 1.i in a bankruptcy petition. AG ¶ 20(e) does 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 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my

[23] *See* ISCR Case No. 99-0201 (App. Bd. Oct 12, 1999) ("[T]he 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. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.") (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004)(relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No. 99-9020 (App. Bd. Jun 4, 2001) (relying on the statute of limitations to avoid a debt is not a good-faith effort).

comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. He is committed to his job. Nevertheless, I have unresolved doubts about his financial responsibility. Additionally, his plea of guilty in December 2009 to issuing vehicle emission stickers without a certificate is troubling. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.i:	Against Applicant

Decision

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

_____
James F. Duffy
Administrative Judge