



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-08514

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2013

Decision

Harvey, Mark W., Administrative Judge:

Applicant failed to mitigate 14 delinquent debts listed on his statement of reasons (SOR), totaling about \$17,000. He could have made greater progress resolving his delinquent SOR debts. The only payments to SOR creditors occurred through garnishment of his pay. He intentionally failed to accurately list his delinquent debts, judgments, charged-off debts, and debts in collection on his March 28, 2011 Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86). Criminal conduct concerns are mitigated; however, financial considerations and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 28, 2011, Applicant submitted his SF-86. (GE 1) On September 19, 2012, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations), J (criminal conduct), and E (personal conduct).¹ (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, 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.

On November 2, 2012, DOD received Applicant's undated response to the SOR. (HE 3) On January 17, 2013, Department Counsel indicated he was ready to proceed on Applicant's case. On January 24, 2013, DOHA assigned Applicant's case to me. Applicant's hearing was scheduled for February 14, 2013; however, at Applicant's request the hearing was delayed until February 28, 2013. On February 6, 2013, DOHA issued a hearing notice, setting the hearing for February 28, 2012. (HE 1) Applicant's hearing was held as scheduled using video teleconference.

Department Counsel offered six exhibits, and Applicant did not offer any exhibits. (GE 1-6) (Tr. 22-23) There were no objections, and I admitted GE 1-6. (Tr. 23) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On March 7, 2013, I received the transcript. Applicant said at his hearing that he wanted to submit letters of recommendation, proof of payments on his student loan, and proof that on February 25, 2013, he paid an attorney \$500 to file his bankruptcy under Chapter 7 of the Bankruptcy Code. (Tr. 29-34, 72)² The student loan payments are being involuntarily garnished, and he said he wanted to provide a pay stub showing \$96 payments since November 2012 to address a debt of about \$11,000. (Tr. 29-31) I told Applicant I would hold the record open until March 4, 2013, to permit him to submit documentation. (Tr. 87-88) On March 15, 2013, Department Counsel informed me that Applicant did not provide additional evidence, and I closed the record that same day. (HE 4)

Findings of Fact³

Applicant's SOR response admitted responsibility for the SOR allegations in ¶¶ 1.b, 1.e-1.i, 1.k, 1.m-1.o, 1.q, 1.r, 2.d, 3.a, and 3.b. (HE 3) He either denied the other SOR allegations or did not address them. Applicant's admissions are accepted as findings of fact.

Applicant is a 31-year-old employee of a large defense contractor, who is an assembly mechanic. (Tr. 6; GE 1) He has been working for his employer continuously

¹Applicant did not object to Department Counsel's motion to amend the values in SOR ¶¶ 1.p and 1.q to \$79 and \$183 respectively. (Tr. 23-25) I approved Department Counsel's amendment and changed and initialed the changes in SOR ¶¶ 1.p and 1.q. (Tr. 23-25)

²Applicant has not met with his bankruptcy attorney; however, he planned to pay the remainder of \$700 fee to the bankruptcy attorney the week after his hearing. (Tr. 34-35)

³Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

for 30 months. (Tr. 9) He married in 2007, and he was divorced in September 2012. (Tr. 7, 58) His children are ages eight years, three years, and six months. (Tr. 7) There are three different mothers for the three children. (Tr. 58) He pays \$724 monthly in court-ordered child support for his three-year-old child. (Tr. 59) He pays \$200 monthly in court-ordered child support for his eight-year-old child. (Tr. 59-60) He lives with the mother of his six-month-old child. (Tr. 60)

Applicant graduated from high school in 2000, and he earned an associate's degree in business administration in 2004. (Tr. 8) He has never served in the military. (Tr. 8) He has never held a security clearance. (Tr. 9)

Financial considerations

Applicant's SOR lists 17 delinquent debts, totaling about \$34,057. They include a judgment in SOR ¶ 1.a for \$2,200, which was filed in September 2011 for an apartment lease and a judgment in SOR ¶ 1.l for \$671, which was filed in January 2005, as well as various charged off and collection accounts. The debts range in size from an \$82 medical debt in SOR ¶ 1.b to a state garnishment for \$12,170 in SOR ¶ 1.k.

Applicant denied knowledge of the debt in SOR ¶ 1.c (Tr. 40) He said the debt in SOR ¶ 1.d was a duplication of the debt in SOR ¶ 1.a. (Tr. 41) The debts in SOR ¶¶ 1.a and 1.d pertain to property companies and are of similar magnitude, and his contention that SOR ¶¶ 1.a and 1.d are duplications is accepted.

The garnishment in SOR ¶ 1.k went into effect in August 2011; it is now \$400 per month; the balance owed is about \$8,000; and it resulted from Applicant's receipt of unemployment benefits while working part time in 2008-2009. (Tr. 42-43, 67-68; GE 6 at 17) His student loan is also being garnished. (Tr. 42) Applicant was unemployed for about one year, and his unemployment ended in March 2009. (Tr. 44, 67, 67-68) Applicant successfully completed his probation, and restitution (repayment of the bad check in SOR ¶ 1.r) is normally part of the sentence.

Applicant admitted responsibility for the debts in SOR ¶¶ 1.a and 1.b (Tr. 39-40), and 1.e to 1.q (Tr. 41-46). He did not make any payments to the SOR creditors for "the last few years" because he planned to resolve them utilizing Chapter 7 of the Bankruptcy Code. (Tr. 41-46, 66-67) Applicant will receive financial counseling as part of the bankruptcy process. This should improve his ability to budget and help him avoid future delinquent debt.

Non-SOR Allegations

Department Counsel asked, "Are you current on your state and federal taxes?" Applicant responded, "Yes. I don't owe anything on my income taxes." (Tr. 65) Applicant disclosed that he did not file his state and federal tax returns last year. (Tr. 69-70) He explained his answer about not owing anything on his taxes as follows:

As of this point, I don't owe anything. When I do file, within the next week or two, when I do file my tax, then I may owe something, but due to the dependents that I have whatever I owe that should take care of it. But at this moment, I don't owe anything until I file. That's why I answered I didn't owe anything. (Tr. 74)

Later, he clarified that that he was unsure when he filed his most recent state and federal tax returns because, "My mom files my taxes. I'll have to get all those for the record." (Tr. 75-76) He was unsure if any tax returns had been filed on his behalf in the last five years. (Tr. 76) He admitted that he knew he had not filed his tax returns in the last five years. (Tr. 77)

Applicant admitted that he falsely indicated in response to Question 26c of his March 28, 2011 SF-86 that he had filed his federal and state tax returns when required by law. (Tr. 77; GE 1) Applicant objected to the question because he was unsure about when he last filed a tax return. (Tr. 77) He returned to his explanation that he believed his mother filed his tax returns, or perhaps his tax returns were not filed. (Tr. 78-79) He suggested that he may not have read the question about filing tax returns correctly. (Tr. 79)

The SOR did not allege that Applicant failed to file tax returns for years 2008 to 2011, and that Applicant falsely answered Question 26c of his March 28, 2011 SF-86 when he said he filed his federal and state tax returns as required by law. At the close of the evidence, Department Counsel moved to amend the SOR. (Tr. 80-81) Applicant objected to the amendment and requested 15 days of notice before continuation of the hearing. (Tr. 81-82) I denied Department Counsel's motion.⁴ (Tr. 82)

Criminal Conduct

On November 22, 2004, Applicant was arrested for theft, and on November 23, 2004, he was arrested for third degree domestic assault. (SOR ¶¶ 2.a and 2.b) Applicant was in an argument with his daughter's mother; she called the police; and he was arrested. (Tr. 50) He was not convicted of either offense. (Tr. 48)

⁴In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have not considered the non-SOR misconduct because it is unclear whether his tax returns have been filed during the previous five years. Prior to approval of Applicant's access to classified information, he should be required to prove he filed and paid his income taxes.

In November 2007, Applicant was arrested for passing a bad check for \$500 or more. In 2009, he received a misdemeanor conviction and two years of probation, which ended in April 2011. (SOR ¶¶ 1.r and 2.c; Tr. 50) Applicant denied the allegation in SOR ¶ 2.d, that he was arrested in 2008 for writing a bad check and domestic assault. (Tr. 52-54) In 2008, the police brought him to the police station for the bad-check offense and questioned him about a domestic violence allegation. (Tr. 52-54) Applicant's most recent criminal arrest was for writing a bad check in November 2007. (Tr. 52)

Personal Conduct

SOR ¶ 3.a alleges that Applicant did not fully disclose his arrest record in response to Section 22 of his March 28, 2011 SF-86, which asked whether in the last seven years, he had any arrests and had he ever been charged with a felony offense. Applicant responded, "Yes" to this question, and he disclosed an arrest in April 2009 for passing a bad check for less than \$500. (Tr. 52-53; GE 1) He said the resulting action taken was "charged with a misdemeanor and 2 year probation." (Tr. 52-53; GE 1) Applicant thought his 2004 bad-check offense was more than seven years previously. (Tr. 53)

SOR ¶ 3.b alleges that Applicant did not fully disclose his financial problems in response to Section 26 of his March 28, 2011 SF-86, which asked about financial matters in the last seven years, including judgments, charged-off debts, and collection actions. Section 26 includes two questions: "Are you currently over 90 days delinquent on any debt(s)?" and in the last seven years, "[h]ave you been over 180 days delinquent on any debt(s)?" Applicant responded, "No," to all financial questions, and he did not disclose the delinquent debts discussed in the previous section. He knew he had delinquent debts in the last seven years; however, he said he did not list the debts because he thought that many of them were beyond the seven-year time range. (Tr. 55-57) He was also rushing when he completed his SF-86. (Tr. 55)

SOR ¶ 3.c cross alleges the criminal conduct concerns. It indicates they also raise a personal conduct concern.

Character Evidence

Applicant's group manager and supervisor for the last 12 months stated that Applicant takes pride in his work. (Tr. 70) He is a dedicated father. (Tr. 71) He is pleasant, trustworthy, has good communication skills, and gets along well with his coworkers. (Tr. 71) Applicant said he had another positive character-reference letter; however, he did not provide it. (Tr. 72)

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 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 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

The relevant security concerns are under Guidelines F (financial considerations), J (criminal conduct), and E (personal conduct) with respect to the allegations set forth in the SOR.

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 credit reports, his SOR response, and his hearing record. Applicant's SOR lists 17 delinquent debts, totaling \$34,057. They include two judgments and various charged off and collection accounts. One SOR creditor is garnishing his pay. He did not make any payments to the SOR creditors for "the last few years" because he planned to resolve them utilizing Chapter 7 of the Bankruptcy Code. 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;⁵ 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 does not warrant full application of any mitigating conditions to all SOR debts. The debt is SOR ¶ 1.d is mitigated because it is duplicated in SOR ¶ 1.b (judgment for \$2,200). The state garnishment for \$12,170 in SOR ¶ 1.k is mitigated because it has been garnished down to \$8,000, and he has an established payment plan on this debt.⁶ He paid the victim of the bad check written in 2007. Applicant denied knowledge of the debt in SOR ¶ 1.c for \$866, and I have credited him with contesting the validity of this debt. I conclude SOR ¶¶ 1.c, 1.d, 1.k, and 1.r are mitigated. Applicant will receive financial counseling as part of the bankruptcy process. This should improve his ability to budget and help him avoid future delinquent debt. Applicant was unemployed or underemployed for about one year, and his unemployment ended in March 2009. Divorce adversely affected his finances. Unemployment, underemployment, and divorce are circumstances beyond his control. He showed some good faith when he admitted responsibility for most of his SOR debts at his hearing.

⁵The 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)).

⁶See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011) (citing ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009) (stating, "involuntary payment of debts through garnishment is not necessarily mitigating")).

Applicant has not taken reasonable actions to resolve most of his SOR debts. He has two SOR debts that are less than \$100, and five SOR debts that are less than \$200, and he has not paid any of them. He did not provide documentation proving that he maintained contact with his SOR creditors, and he did not provide any documentation showing his attempts to negotiate payment plans with his SOR creditors.⁷ The only payments to his SOR creditors were through garnishment of his pay. There is insufficient evidence that his financial problem is being resolved and is under control. He did not establish his financial responsibility.

Criminal Conduct

AG ¶ 30 details the concern arising from criminal conduct as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 provides two conditions that could raise a security concern and may be disqualifying in this case, "(a) a single serious crime or multiple lesser offenses;" and "(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

On November 22, 2004, Applicant was arrested for theft, and on November 23, 2004, he was arrested for third degree domestic assault. He was not convicted of either offense. In November 2007, Applicant was arrested for passing a bad check for \$500 or more. In 2009, he received a misdemeanor conviction and two years of probation, which ended in April 2011. Applicant denied the allegation in SOR ¶ 2.d, that he was arrested in 2008 for writing a bad check and domestic assault. He said the notations in his record about a 2008 arrest were part of his November 2007 bad-check case and not a separate offense. In 2008, he was also questioned about a domestic violence allegation; however, he was not arrested. AG ¶¶ 31(a) and 31(c) are established.

AG ¶ 32 includes four conditions which may be applicable in this case:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

⁷"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.

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

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

AG ¶ 32(c) applies to the alleged offenses in 2004 and 2008. He was not convicted of offenses occurring in those years. Applicant was convicted of writing a bad check with a value less than \$500 in 2007. He received a misdemeanor-level conviction and two years of probation. He successfully completed probation, and his 2007 conviction is mitigated under AG ¶ 32(d).

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 three conditions that could raise a security concern and may be disqualifying 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.

(d) 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: . . . (3) a pattern of . . . or rule violations; and

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

AG ¶ 16(a) applies. The Government produced substantial evidence that Applicant intentionally lied when he failed to disclose his financial problems, including his judgments, debts in collection, debts currently delinquent more than 90 days, debts delinquent more than 180 days in the last seven years, and charged-off accounts on Section 26 of his March 28, 2011 SF-86.

The allegation in SOR ¶ 3.a that he failed to list all of his arrests and charges on his March 28, 2011 SF-86 is not supported by substantial evidence. He provided the gist of his criminal offense in 2007, and he gave the date of his conviction in 2009 for his 2007 misdemeanor bad-check offense.

AG ¶¶ 16(d) and 16(e) apply. Applicant violated rules when he intentionally failed to disclose his financial problems and he wrote a bad check in 2007. This conduct adversely affects his personal, professional, and community standing. Further analysis concerning applicability of mitigating conditions is required.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(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 Applicant's intentional failure to disclose his financial problems, including his judgments, debts in collection, debts currently delinquent more than 90 days, debts delinquent more than 180 days in the last seven years, and charged off accounts on Section 26 of his March 28, 2011 SF-86. His intentional failure to provide accurate information in a security context raises a serious concern that is 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 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, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is a 31-year-old assembly mechanic for a large defense contractor. He has been working for his employer continuously for 30 months. Some circumstances beyond his control, such as insufficient income, divorce in September 2012, and unemployment for about a year in 2008-2009 adversely affected his financial circumstances. I am confident that he has the ability to comply with security requirements. He graduated from high school in 2000, and he earned an associate's degree in business administration in 2004. He is an intelligent person who knows what he must do to

establish his financial responsibility. I credited him with mitigating the debts in SOR ¶¶ 1.c, 1.d, 1.k, and 1.r. There is no evidence of security violations, disloyalty, or that he would intentionally violate national security. His supervisor made positive comments about his work performance, trustworthiness, and personality.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant failed to mitigate 14 SOR delinquent debts, totaling about \$17,000. He could have made greater progress resolving and documenting resolution of his SOR debts. The only payments to SOR creditors occurred through garnishment of his pay. He did not provide documentary proof that he made any other payments to any of the SOR creditors. Two SOR debts are less than \$100 each, and five SOR debts are less than \$200 each. He is very early in the bankruptcy process, and some bankruptcies attempted under Chapter 7 of the Bankruptcy Code are not successful in discharging nonpriority, unsecured debts. He intentionally failed to accurately list his delinquent debts, judgments, charged-off debts, and debts in collection on his March 28, 2011 SF-86, which is a serious, unmitigated violation of his security responsibilities. His deliberate failure to fully and accurately disclose negative financial information on his March 28, 2011 SF-86 shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness and ability to protect classified information. See AG ¶ 15.

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. Criminal conduct concerns are mitigated; however, financial considerations and personal conduct concerns are not mitigated. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraphs 1.e to 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l to 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a to 2.d:	For Applicant

Paragraph 3, Guideline E:

AGAINST APPLICANT

Subparagraph 3.a:

For Applicant

Subparagraph 3.b:

Against Applicant

Subparagraph 3.c:

For Applicant

Conclusion

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

Mark Harvey
Administrative Judge