



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 12-00800

Appearances

For Government: Christopher Morin, Esquire, Department Counsel

For Applicant: *Pro se*

11/07/2014

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On October 14, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On March 27, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility – Division B (CAF-B) issued him a set of interrogatories. He responded to the interrogatories on April 24, 2013.² On June 9, 2014, the DOD Consolidated Adjudications Facility – Division A (CAF-A) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹ GE 1 ((SF 86), dated October 14, 2011).

² GE 2 (Answers to Interrogatories, dated April 24, 2013).

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 Guidelines E (Personal Conduct) and F (Financial Considerations), and detailed reasons why the DOD adjudicators were 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 received the SOR on June 16, 2014. In an undated sworn statement, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 29, 2014. The case was assigned to me on September 2, 2014. A Notice of Hearing was issued on September 2, 2014, and I convened the hearing, as scheduled, on September 19, 2014.

During the hearing, five Government exhibits (GE 1 through GE 5) and three Applicant exhibits (AE A through AE C) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on September 29, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted six documents which were marked as AE D through AE I and admitted into evidence without objection. The record closed on September 29, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 2.a. through 2.t.). He denied all of the allegations regarding personal conduct (§§ 1.a. through 1.d.). Applicant's answers 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 38-year-old employee of a defense contractor, for which he has worked since June 2008.³ He also works five or six evenings per week at a home improvement store.⁴ Applicant graduated from high school in June 1994.⁵ He attended a university from September 1994 until June 1995. Because of academic probation and a pending one semester suspension, he was confronted with either paying for college by himself or joining the military, so he joined the U.S. Navy.⁶ He served on active duty in an enlisted capacity with the U.S. Navy from November 1995 until November 1999, and

³ GE 1, *supra* note 1, at 8.

⁴ Tr. at 37; GE 2, *supra* note 2, at 12, 40-41.

⁵ GE 2 (Personal Subject Interview, dated November 1, 2011), at 1.

⁶ GE 2 (Personal Subject Interview), *supra* note 5, at 4.

with the U.S. Army National Guard from November 2000 until November 2001.⁷ He received honorable discharges from both services.⁸ Applicant held an interim security clearance for one year, but recently lost it.⁹ Applicant married his first wife in June 1999, and divorced her in January 2005.¹⁰ He married his second wife in March 2010,¹¹ and separated from her in August 2014.¹² He has a son (born in 2000) and a daughter (born in 2004) with his first wife, and a daughter (born in 2008) with his second wife.¹³

Military Service

During his four years of active duty, Applicant was awarded the National Defense Service Medal, the Armed Forces Expeditionary Medal, the Sea Service Deployment Ribbon, a Letter of Commendation, and a Meritorious Unit Commendation.¹⁴

Financial Considerations

Applicant was unemployed from July 2005 until November 2005. During that period he did not receive unemployment compensation, and lived off his savings and with financial assistance provided by his parents.¹⁵ He was also unemployed from January 2008 until June 2008, but during that period he did receive unemployment compensation and did not experience any financial hardship.¹⁶ It is unclear as to when Applicant started having problems with his finances, but there is evidence that following his 2005 divorce, he became delinquent on child support payments,¹⁷ and other accounts became delinquent as early as 2008. He periodically skipped child support payments, at one point falling about \$6,855 in arrears, because he did not have enough money to make those payments, but he is now current with those payments.¹⁸ Applicant generally attributed his medical delinquencies to his youngest daughter's having to spend seven months in a neonatal intensive care unit followed by one year on a

⁷ AE D (Certificate of Release or Discharge from Active Duty (DD Form 214), dated November 26, 1999); GE 1, *supra* note 1, at 15.

⁸ GE 1, *supra* note 1, at 15-16.

⁹ Tr. at 58. *But see* GE 1, *supra* note 1, at 30.

¹⁰ GE 1, *supra* note 1, at 19; Tr. at 24.

¹¹ GE 1, *supra* note 1, at 19.

¹² Tr. at 60, 71.

¹³ GE 1, *supra* note 1, at 21-22.

¹⁴ AE D, *supra* note 7.

¹⁵ GE 2 (Personal Subject Interview), *supra* note 5, at 2.

¹⁶ GE 2 (Personal Subject Interview), *supra* note 5, at 1.

¹⁷ GE 2 (Personal Subject Interview), *supra* note 5, at 3.

¹⁸ GE 2 (Personal Subject Interview), *supra* note 5, at 3; AE H (Earnings Statement, dated March 7, 2014); AE I (Earnings Statement, dated August 22, 2014); GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 20, 2011), at 9.

ventilator, and suggested that some of the medical accounts may have become delinquent because medical claims were not filed with the appropriate insurance carriers.¹⁹

In April 2013, Applicant furnished a Personal Financial Statement that reflected a net family monthly income of \$4,735.82 (including his wife's net salary of \$1,400), estimated total monthly expenses of \$2,817, debt payments of \$265, and \$1,653.82 available for discretionary spending or savings each month.²⁰ During the hearing, Applicant acknowledged that he could no longer include his wife's salary in his monthly income, and that there were some changes in his debt balance with some new expenses (including monthly payments of \$150 to the Internal Revenue Service (IRS) for unpaid 2012 income taxes)²¹ and one expired expense for a paid-off vehicle. Based on the new facts, he estimated only \$.83 available for discretionary spending or savings each month.²² Rather than relying on speculation, Applicant stated he would furnish an updated Personal Financial Statement.²³ He failed to do so.

In November 2011, Applicant contended that, with the exception of various medical accounts, he was current with all of his accounts, and that he was able to meet his financial obligations.²⁴ He also indicated that he had not sought any credit counseling or debt consolidation services.²⁵ In May 2013, because of his perceived poor money management, Applicant engaged a financial counseling service. His goals were to resolve his debts, manage his finances, and save for emergencies. The program was anticipated to assist him to develop a monthly budget, reduce or eliminate certain expenses, determine debt repayment plan options, and establish a debt management plan forecast.²⁶ Applicant's action plan called for him to immediately pay one account (SOR ¶ 2.m.), obtain credit reports and dispute errors in those reports, pay other accounts, and possibly enroll in a debt solver program.²⁷ As of April 2013, Applicant had not taken any action to address the one identified account.²⁸ He indicated that he intended to address all of his delinquent accounts at a "debt consolidation appointment" in May 2013.²⁹ Although Applicant discussed his delinquent accounts with an

¹⁹ GE 2 (Personal Subject Interview), *supra* note 4, at 5.

²⁰ GE 2 (Personal Financial Statement, undated).

²¹ AE G (IRS Account Transcript, dated September 22, 2014).

²² Tr. at 60-63.

²³ Tr. at 62-63.

²⁴ GE 2 (Personal Subject Interview), *supra* note 4, at 6.

²⁵ GE 2 (Personal Subject Interview), *supra* note 4, at 6.

²⁶ AE C (Case Action Plan, undated); GE 2, *supra* note 2, at 45; Tr. at 63.

²⁷ AE C, *supra* note 25, at 2.

²⁸ GE 2, *supra* note 2, at 22.

²⁹ GE 2, *supra* note 2, at 25.

investigator from the U.S. Office of Personnel Management (OPM) in November 2011, he never subsequently asked his wife – the person who purportedly handled the family finances – if she was aware of those delinquent accounts.³⁰ In September 2014, Applicant acknowledged he had not yet followed through on the remainder of the action plan.³¹ He had not identified the creditors, and did not decide whether or not to consolidate the debts or simply pay them off individually.³²

The SOR identified 20 delinquent debts totaling approximately \$7,028 that had been placed for collection, as generally reflected by an October 2011 credit report,³³ a March 2013 credit report,³⁴ and a March 2014 credit report.³⁵ All but one of the accounts listed in the SOR are for medical accounts which do not identify the actual creditor. Although he admitted he owed the debts, Applicant is unsure if any of the alleged debts are duplications.³⁶ Those debts listed in the SOR and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶¶ 2.a. through 2.l., and 2.n. through 2.t.): There are 19 delinquent medical accounts with varying amounts from \$35 to \$4,000 that were placed for collection. While Applicant indicated in April 2013 that he made payment arrangements with the creditors, he acknowledged that no payments had actually been made.³⁷ He submitted no documentation to support his claim that payment arrangements had been made, and based on his subsequent testimony, it appears that no such arrangements were ever actually made. The accounts have not been resolved.

(SOR ¶ 2.m. for \$35): There is a parking ticket issued in 2010 that Applicant had forgotten about that was placed for collection.³⁸ He indicated that it should have been submitted to his employer for payment, but he failed to do so. He later found it in his automobile in November 2011 and promised to pay it the same day as his OPM interview.³⁹ As of April 2013, he had not done so.⁴⁰ During the hearing, he admitted he still had not paid the ticket.⁴¹ The account has not been resolved.

³⁰ Tr. at 80-81.

³¹ Tr. at 69-74.

³² Tr. at 73-74.

³³ GE 5, *supra* note 18.

³⁴ GE 4 (Equifax Credit Report, dated March 7, 2013).

³⁵ GE 3 (Equifax Credit Report, dated March 26, 2014).

³⁶ Tr. at 70.

³⁷ GE 2, *supra* note 2, at 13-25.

³⁸ GE 5, *supra* note 18, at 6.

³⁹ GE 2 (Personal Subject Interview), *supra* note 4, at 6.

Personal Conduct

In December 1994, Applicant shared a dorm room while attending college. His roommate had four to five friends in the room when the campus police showed up and inquired about drugs. Applicant's roommate pulled marijuana from behind a television. Applicant and his roommate were charged with possession of marijuana. Applicant was subsequently given a prayer for judgment and fined \$60. The university imposed community service and placed him on a drug and alcohol probation.⁴²

In December 1997, while on active duty with the U.S. Navy, Applicant was tried by Special Court Martial for methamphetamine use. He confessed to such use during the pre-trial investigation, but when a cooperating witness was unable to corroborate Applicant's confession, the charges against Applicant were dismissed.⁴³ Applicant's memory of the events differs from the NCIS report in that he contends he never confessed to using methamphetamine and claimed he did not know his shipmates were doing so.⁴⁴ In this instance, because of Applicant's poor memory as to certain events, I conclude that the NCIS record of Applicant's confession is more reliable than his subsequent denial of such confession.

On October 14, 2011, when Applicant completed his SF 86, he responded to a question pertaining to his police record. The question in Section 22 – Police Record asked if he had “EVER been charged with an offense involving alcohol or drugs?” Applicant answered “yes” to the question, and reported that in December 1995, his roommate in college was cited for possession of marijuana by the campus police in their dorm room. He added that since the room was for them both, they were both charged. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, both incomplete and false for Applicant had concealed his 1997 charge for methamphetamine use.

In that same SF 86, Applicant responded to certain questions pertaining to his financial record. One question in Section 26 – Financial Record (Delinquency Involving Enforcement) asked if, in the last seven years, he had been delinquent on alimony or child support payments. Applicant answered “no” to the question. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, false for Applicant had, at one point, a child support arrearage of \$6,855 before he established a monthly payroll deduction and purportedly eliminated the arrearage. Applicant subsequently explained he has a

⁴⁰ GE 2, *supra* note 2, at 22.

⁴¹ Tr. at 56.

⁴² GE 2 (Personal Subject Interview), *supra* note 4, at 4.

⁴³ GE 6 (Naval Criminal Investigative Service (NCIS) Report of Investigation, dated February 4, 1998); Tr. at 49.

⁴⁴ Tr. at 42-46.

“horrible memory” and was simply mistaken about the time period. He denied attempting to mislead anyone.⁴⁵

Other questions in Section 26 – Financial Record (Delinquency Involving Routine Accounts) asked if, in the last seven years, he had bills or debts turned over to a collection agency; been over 120 days delinquent on any debt not previously entered, and if he was currently over 120 days delinquent on any debt. Applicant answered “no” to all of those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false for Applicant had concealed approximately seven of his collection accounts that were listed in his October 2011 credit report.

When Applicant was interviewed by the OPM investigator in November 2011, he denied ever using, selling, distributing, or manufacturing any illegal drugs, including marijuana.⁴⁶ Applicant subsequently admitted using marijuana while in college.⁴⁷ He had also confessed to using methamphetamine when he was interviewed during his NCIS pre-trial investigation.

Work Performance and Character References

Applicant’s work performance ratings now reflect someone who consistently exceeds the normal expectations for his position.⁴⁸ That rating is an improvement over his previous one which reflected someone whose performance is between consistently performing all duties of the position in a fully capable manner and one who consistently exceeds the normal expectations for his position.⁴⁹ His employer’s Chief Security Officer has known Applicant since 2008 and she fully supports his application, without reservation, for a security clearance. She characterized him as an extremely hard worker, mission-focused, diligently professional, and unconditionally loyal to co-workers, friends, and family.⁵⁰

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.”⁵¹ As Commander in Chief, the President has the authority to control access to information bearing on national

⁴⁵ Tr. at 53.

⁴⁶ GE 2 (Personal Subject Interview), *supra* note 4, at 4-5.

⁴⁷ Tr. at 51.

⁴⁸ AE F (Performance Review, dated March 21, 2014).

⁴⁹ AE E (Performance Review, dated April 1, 2013).

⁵⁰ AE A (Character Reference, dated September 15, 2014).

⁵¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”⁵²

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.

In the decision-making process, facts must be established by “substantial evidence.”⁵³ 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.⁵⁴

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.

⁵² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵³ “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).

⁵⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁵⁵

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.”⁵⁶ 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:

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 encountered some financial difficulties following his divorce in 2005 when he fell behind in his child support payments. Other significant financial problems arose in 2008, following the birth of his youngest daughter, and those financial problems continue to the present. He was unable to continue making his routine monthly payments, and various accounts became delinquent and were placed for collection. 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

⁵⁵ *Egan*, 484 U.S. at 531.

⁵⁶ See Exec. Or. 10865 § 7.

¶ 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*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.⁵⁷

AG ¶¶ 20(b) and 20(c) minimally apply. AG ¶¶ 20(a) and 20(d) do not apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties initially since about 2005, with additional financial difficulties appearing in 2008, make it difficult to conclude that it occurred "so long ago" or "was so infrequent." While there is evidence that some of his initial financial difficulties may have been caused by his unemployment, first divorce, and other unspecified financial hardships, without more detailed explanations, it is difficult to assess to what degree those financial hardships were beyond Applicant's control. The financial difficulties which occurred after the birth of his youngest daughter might possibly have been beyond his control, but there is also evidence that he failed to insure that his medical claims were properly submitted to the appropriate insurance carriers. Other than the generalities of child support claims and medical claims, Applicant has not provided any specifics as to the causes of his financial difficulties.

What he did furnish were comments that he was unable to continue making his monthly payments due to unspecified financial hardships; he forgot about submitting or paying one creditor; he could not identify the medical providers for his daughter; he did not discuss the delinquent accounts with his wife; and he could not decide whether or not to consolidate his delinquent accounts or pay them off individually.

Applicant received guidance and assistance from a financial counseling service to resolve his debts, manage his finances, and save for emergencies. The program was anticipated to assist him to develop a monthly budget, reduce or eliminate certain expenses, determine debt repayment plan options, and establish a debt management plan forecast. Applicant's action plan called for him to immediately pay one account,

⁵⁷ 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 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)).

obtain credit reports and dispute errors in those reports, pay other accounts, and possibly enroll in a debt solver program. As of April 2013, Applicant had not taken any action to address the one identified account, and in September 2014, he acknowledged he had not yet followed through on the remainder of the action plan. During the three years following his OPM interview, Applicant has taken no action to resolve even the smallest (\$35) of his delinquent debts.

Applicant contends that all of his newer accounts are current, and that he intends to resolve the remaining accounts, something he has repeatedly stated in the past. However, in the absence of a current personal financial statement or documentary evidence that he has taken some recent steps to make small payments or negotiate reasonable repayment plans or settlements, an assessment of his intentions and ability to take meaningful action remains difficult. There are clear indications that Applicant's financial problems are not under control. His actions under the circumstances confronting him, and lingering questions regarding his candor, do cast doubt on his current reliability, trustworthiness, or good judgment.⁵⁸

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 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 several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if 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.

Also, deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative, may raise security concerns under AG ¶ 16(b).

As noted above, on October 14, 2011, when Applicant completed his SF 86, he responded to certain questions pertaining to his police and financial records. The

⁵⁸ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

question in Section 22 – Police Record asked if he had “EVER been charged with an offense involving alcohol or drugs?” Applicant answered “yes” to the question, and reported that in December 1995, his roommate in college was cited for possession of marijuana by the campus police in their dorm room. He added that since the room was for them both, they were both charged. His response to that question was, in fact, both incomplete and false for Applicant had concealed his 1997 charge for methamphetamine use.

In that same SF 86, Applicant responded to certain questions pertaining to his financial record. One question in Section 26 – Financial Record (Delinquency Involving Enforcement) asked if, in the last seven years, he had been delinquent on alimony or child support payments. Applicant answered “no” to the question. The response to that question was, in fact, false for Applicant had, at one point, a child support arrearage of \$6,855 before he established a monthly payroll deduction and purportedly eliminated the arrearage. Applicant subsequently explained he has a “horrible memory” and was simply mistaken about the time period. He denied attempting to mislead anyone.

Other questions in Section 26 – Financial Record (Delinquency Involving Routine Accounts) asked if, in the last seven years, he had bills or debts turned over to a collection agency; been over 120 days delinquent on any debt not previously entered; and if he was currently over 120 days delinquent on any debt. Applicant answered “no” to all of those questions. His responses to those questions were, in fact, false for Applicant had concealed approximately seven of his collection accounts that were listed in his October 2011 credit report.

When Applicant was interviewed by the OPM investigator in November 2011, he denied ever using, selling, distributing, or manufacturing any illegal drugs, including marijuana. However, as noted above, Applicant subsequently admitted using marijuana while in college. He did not mention his confession regarding his use of methamphetamine during his Special Court Martial in 1997.

Applicant denied the false responses were deliberate or an attempt to falsify the material facts. I have considered Applicant’s background and professional career in analyzing his actions. Applicant is a talented and experienced individual, but his explanations, to be accepted, require that a substantial degree of unreasonableness be ignored. If Applicant had acknowledged the deliberate nature of his actions and expressed that it was foolish on his part to have falsified his responses and concealed the truth, his actions might have been considered aberrant behavior out of character for him. However, Applicant clings to his explanations. His position is unreasonable. 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. 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. Also, AG ¶ 17(d) may apply if 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. None of the mitigating conditions 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 aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵⁹

There is some evidence in favor of mitigating Applicant's conduct. He served honorably with both the U.S. Navy and the U.S. Army National Guard. He has been with his current employer since June 2008, and is apparently well-respected by his employer. He has a part-time job to generate additional funds. He paid off his child support arrearage.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶⁰

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to

⁵⁹ 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).

⁶⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The disqualifying evidence under the whole-person concept is more substantial. Applicant’s meaningful track record is not one of actual debt reduction through payment of debts. Applicant received guidance and assistance from a financial counseling service to resolve his debts, manage his finances, and save for emergencies. His action plan called for him to immediately pay one account, obtain credit reports and dispute errors in those reports, pay other accounts, and possibly enroll in a debt solver program. As of September 2014, he acknowledged he had not yet followed through on any provision of the action plan. In his answers to the interrogatories, Applicant claimed that he had made payment arrangements with his creditors, but it appears that his claim was untrue. During the three years following his OPM interview, Applicant has taken no action to resolve even the smallest (\$35) of his delinquent debts. Applicant’s actual track record is one of stalling or simply failing to make payments or enter into reasonable settlement arrangements with creditors.

When Applicant completed his SF 86 and was subsequently interviewed by the OPM investigator, he responded to various questions, but the responses to the questions were, in fact, false. He denied the responses were deliberate or an attempt to falsify the material facts. For Applicant’s explanations to be accepted, it would require that a substantial degree of unreasonableness be ignored. Accordingly, I have concluded that he deliberately falsified his responses in an attempt to conceal the truth about his police record and financial problems. Overall, the evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct issues. 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 E:

AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Paragraph 2, Guideline F:	AGAINST APPLICANT
---------------------------	-------------------

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	Against Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	Against Applicant
Subparagraph 2.i:	Against Applicant
Subparagraph 2.j:	Against Applicant
Subparagraph 2.k:	Against Applicant
Subparagraph 2.l:	Against Applicant
Subparagraph 2.m:	Against Applicant
Subparagraph 2.n:	Against Applicant
Subparagraph 2.o:	Against Applicant
Subparagraph 2.p:	Against Applicant
Subparagraph 2.q:	Against Applicant
Subparagraph 2.r:	Against Applicant
Subparagraph 2.s:	Against Applicant
Subparagraph 2.t:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge