



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



In the matter of: )  
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----- ) ISCR Case No. 12-02038  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

03/14/2014

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) describes seven delinquent, collection, or charged-off debts, totaling \$43,857. The majority of his SOR debts are resolved; however, he did not express any intention of resolving his \$19,861 judgment, and he did not provide proof of payment of two small debts. He failed to provide sufficient documentation of progress resolving his financial problems. He carelessly omitted information from his September 29, 2011 Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). Although he had 15 traffic infractions from 2004 to 2008, in the last five years he has had only had one minor traffic infraction. Personal conduct concerns are mitigated; however, financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 29, 2011, Applicant submitted an SF 86. (Item 5) On June 19, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations) and E (personal conduct). (Item 1) The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On July 8, 2013, Applicant responded to the SOR allegations and waived his right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated October 16, 2013, was provided to him on November 5, 2013.<sup>1</sup> Applicant did not respond to the FORM. The case was assigned to me on March 10, 2014.

### **Findings of Fact<sup>2</sup>**

In Applicant's July 8, 2013 SOR response, he admitted all of the SOR allegations, and he provided mitigating information.<sup>3</sup> However, he did not provide any documentation from creditors, disputes, or other financial documentation as part of his SOR response. Applicant's admissions are accepted as findings of fact.

Applicant is 33 years old, and he has worked as a network engineer for his current employer, a defense contractor, since April 2009.<sup>4</sup> In 1998, he graduated from high school. He served on active duty in the Navy from 2000 to 2008, and he received a general discharge under honorable conditions because of multiple driving-related infractions. He has never married, and he does not have any children. He does not have a college degree. There is no evidence of unemployment.

### **Financial Considerations**

Applicant's credit reports, responses to DOHA interrogatories, Office of Personnel Management (OPM) personal subject interview (PSI), and SOR response document seven delinquent, collection, or charged-off SOR debts, totaling \$43,857 as

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<sup>1</sup>The DOHA transmittal letter is dated October 25, 2013, and Applicant's receipt is dated November 5, 2013. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Unless stated otherwise, Applicant's September 29, 2011 SF 86 and/or his October 31, 2011 Office of Personnel Management (OPM) personal subject interview (PSI) are the primary sources for the facts in the Statement of Facts. (Items 4, 6)

<sup>3</sup>The source for all of the information in this paragraph is Applicant's July 8, 2013 SOR response. (Item 4)

<sup>4</sup>The facts in this paragraph are from Applicant's September 29, 2011 SF 86. (Item 4)

follows: ¶ 1.a (\$19,861) is a judgment owed to a credit union; ¶ 1.b (\$242) is a medical debt; ¶ 1.c (\$130) is a collection debt; ¶ 1.d (\$46) is a utility debt; ¶ 1.e (\$130) is an education debt; ¶ 1.f (\$23,238) is owed to the same credit union as in SOR ¶ 1.a; and ¶ 1.g (\$210) is a telecommunications debt.

Applicant admitted responsibility for an automobile loan for about \$23,000. He said he cosigned on a loan for a friend's vehicle, never possessed the vehicle, and the vehicle was repossessed. The same creditor is listed in the SOR for both the judgment in ¶ 1.a (\$19,861) and the unpaid debt in ¶ 1.f (\$23,238). Applicant's October 13, 2011 credit report shows "account paid" with a zero balance owed to the creditor in SOR ¶¶ 1.a and 1.f with a high credit of \$24,785 on an auto loan. (GE 7 at 10) Applicant's April 26, 2013 and September 16, 2013 credit reports both show an unpaid judgment owed to the creditor in SOR ¶¶ 1.a and 1.f for \$19,861 and "closed or paid account/zero balance" for the account where \$24,785 was once owed to the creditor in SOR ¶¶ 1.a and 1.f. (GE 8 at 1, 3; GE 9 at 1, 3) Applicant said the debt in SOR ¶ 1.a (\$19,861) was duplicated in SOR ¶ 1.f (\$23,238). (SOR response)

Applicant said he paid the medical debt in SOR ¶ 1.b (\$242). (SOR response) Applicant's April 26, 2013 credit report lists one medical debt with an original amount of \$194, a current amount owed of \$242, and the status is unpaid. (GE 8 at 1) His September 16, 2013 credit report shows one medical debt, with an original amount of \$194, a current amount owed of \$65, and the status is unpaid. (GE 9 at 1)

Applicant acknowledged responsibility for the debt in SOR ¶ 1.c (\$130), conceded it was unpaid, and promised to pay it up as soon as possible. (SOR response) Applicant said the debt in SOR ¶ 1.e (\$130) was a duplication of the debt in SOR ¶ 1.c. (SOR response) There is no evidence of payment.

Applicant accepted responsibility for the utility debt in SOR ¶ 1.d (\$46), thought it might be paid, and promised to pay it. (SOR response) His April 26, 2013 and September 16, 2013 credit reports show this collection account and delinquent amount. (GE 8 at 2; GE 9 at 2) There is no evidence of payment.

Applicant paid the telecommunications debt in SOR ¶ 1.g (\$210). (SOR response) His April 26, 2013 and September 16, 2013 credit reports do not list this creditor or the unpaid amount of \$210 for any creditor. (GE 8; GE 9)

Applicant's May 2013 personal financial statement (PFS) indicates: his monthly gross salary is \$6,083; his monthly net salary is \$3,887; his monthly expenses are \$2,143; his monthly debt payments are \$640; and his monthly net remainder is \$1,104. (Item 6) Applicant's PFS did not list any payments to the creditors in SOR ¶¶ 1.a (\$19,861), 1.c (\$130), and 1.d (\$46).

## **Personal Conduct**

Section 22 **Police Record** of Applicant's September 29, 2011 SF 86 disclosed a driving under the influence (DUI) of alcohol offense in December 2005. (SF 86 at 23,

Item 5; October 31, 2011 OPM PSI at 2) His blood alcohol test for the December 2005 DUI was .18. (OPM PSI at 2, Item 6)<sup>5</sup> He said he pleaded guilty to DUI in February 2006. He was sentenced to a \$470 fine, 10 days in jail, and his driver's license was restricted for one year. (OPM PSI at 2-3, Item 6)

In June 2007, Applicant was arrested for public intoxication. (SOR ¶ 1.e response, Item 5) In December 2007, Applicant was arrested for reckless driving and driving with a suspended driver's license, and he pleaded guilty to reckless driving and paid a \$350 fine. (SOR ¶¶ 2.a and 2.c response, Item 4)

Section 22 **Police Record** of Applicant's September 29, 2011 SF 86 asked, "In the past (7) years have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Do not include citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs)." (Item 1) Applicant responded, "No" and did not disclose the above offense in December 2007. Applicant admitted the SOR allegation and said, "I did not recall the amount of the fine at the time." (SOR ¶ 2.b response, Item 4)

Section 22 **Police Record** of Applicant's September 29, 2011 SF 86 asked, "In the past (7) years have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?" (Item 1) According to Applicant's SOR response Applicant answered "No" and failed to disclose that in December 2007 he was arrested for reckless driving and driving with a suspended license. (SOR ¶ 2.d response, Item 4)

Section 22 **Police Record** of Applicant's September 29, 2011 SF 86 asked, "Have you EVER been charged with any offense(s) related to alcohol or drugs?" (Item 1) Applicant answered "No." He explained "I completely forgot about the public intoxication charge." (SOR ¶ 2.f response, Item 4)

From 2004 to 2013, Applicant has been charged or cited for 16 motor vehicle violations. (SOR ¶ 2.g response, Item 4) Court records indicate the following offense information: (1) in August 2004, he received a \$95 fine and \$56 court costs for driving 84 miles per hour (MPH) in a 55 MPH zone (infraction); (2)-(3) in November 2004, he received a \$10 fine and \$56 court costs for violation of a learner's permit (infraction) and his offense of driving 41 MPH in a 30 MPH zone was dismissed; (4) in November 2005, he received a \$250 fine and court costs of \$76 for reckless driving (misdemeanor); (5) in April 2006, he received a \$30 fine and \$56 court costs for failure to obey highway sign; (6) January 8, 2007 DUI, *see* note 6, *supra*; (7) in October 2007, he received a \$30 fine and \$61 costs for loud music; (8)-(9) in March 2008, he received a \$100 fine and \$66 court costs for operating a vehicle with a suspended license (infraction) and his driver's or vehicle registration offense was dismissed; (10)-(12) in March 2008, he received a \$25 fine for safety belt violation, a \$50 fine and \$5 court costs for driving on a suspended license, and a \$284 fine and \$66 court costs for driving

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<sup>5</sup> Applicant's court records show he was arrested for driving while intoxicated (DWI) on January 8, 2007. He was convicted of DWI on February 5, 2007, and sentenced to a \$250 fine, \$201 court costs, 180 days in jail with 175 days suspended, and a restricted license for one year. (Item 11)

42 MPH in a 30 MPH zone; (13) in April 2008, he received a \$200 fine and \$111 court costs for driving with a suspended license; (14) in May 2008, he received a \$30 fine and \$15 court costs for operating an uninspected vehicle; (15) in May 2008, he received a \$350 fine and \$50 court costs for driving 87 MPH in a 55 MPH zone (misdemeanor); and (16) in January 2013, he received a \$100 fine and \$66 court costs for failure to obey traffic signal. (Item 11)

Applicant's FORM noted the absence of mitigating information and explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." (FORM at 10) He did not respond to the FORM.

### **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." *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 applicant's 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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), § 3.1. 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 about 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 (4<sup>th</sup> 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**

### **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] he 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, OPM PSI, responses to DOHA interrogatories, and SOR response. Applicant’s file documents seven delinquent, collection, or charged-off debts, totaling

\$43,857. Several debts have been delinquent for at least two years. 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;<sup>6</sup> 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th

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<sup>6</sup>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)).

Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant’s conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts. He did not describe any extraordinary circumstances that adversely affected his finances, and he did not act responsibly under the circumstances.

Applicant said he paid the medical debt in SOR ¶ 1.b (\$242). His two most recent credit reports show different amounts for this debt, with the most recent amount being only \$65. The sources and responsibility for medical debts on credit reports are often difficult to locate and assess because their specific origin is not included in the credit report. Moreover, there is often a legitimate dispute with insurance companies or service providers over payment amounts and responsibility. Because of these factors, especially the fact that he has only one medical debt, I conclude the debt in SOR ¶ 1.b is mitigated.

Applicant is credited with mitigating the debt in SOR ¶ 1.e (\$130) because it is a duplication of the debt in SOR ¶ 1.c (\$130). He is also credited with mitigating the debt in SOR ¶ 1.f (\$23,238) because it is a duplication of the judgment in SOR ¶ 1.a (\$19,861). He receives credit for mitigating the telecommunications debt in SOR ¶ 1.g (\$210). He said he paid this debt. His April 26, 2013 and September 16, 2013 credit reports do not list this creditor or the amount of \$210 as an unpaid debt.

Applicant admitted responsibility for the debts in SOR ¶¶ 1.a (\$19,861), 1.c (\$130), and 1.d (\$46); however, he did not provide any proof of debt resolution for these three debts. He did not provide sufficient information about his finances to establish his inability to pay these three creditors. He did not receive financial counseling.

In sum, Applicant did not provide any documentation, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to any of the creditors in SOR ¶¶ 1.a (\$19,861), 1.c (\$130), and 1.d (\$46). There is no financial documentation relating to these three SOR creditors as follows: maintenance of contact with creditors;<sup>7</sup> correspondence to or from these three

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<sup>7</sup>“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



creditors; credible debt disputes; attempts to negotiate payment plans; or other evidence of progress or resolution of these three SOR debts. There is insufficient evidence that his financial problems are being resolved, are under control, and will not occur in the future.

## Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Three personal conduct disqualifying conditions under AG ¶ 16 are potentially applicable. Those three disqualifying conditions provide:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . [to] determine security clearance eligibility or trustworthiness;<sup>8</sup>

(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

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whether he or he maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>8</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

but is not limited to consideration of: . . . (3) a pattern of . . . 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) is not established. Applicant's SOR alleges that he failed to disclose a \$350 fine for reckless driving in December 2007 and an arrest for public intoxication in June 2007 on his September 29, 2011 SF 86. Applicant admitted he did not disclose this information; however, his failure to disclose this information on his SF 86 was based on carelessness and was not a deliberate decision made with intent to conceal derogatory information about his worthiness to receive access to classified information. His carelessness on his SF 86 was based on his failure to understand the necessity or requirements for conscientious, thorough, and careful completion of security-related documentation and was not designed to conceal his reckless driving and public intoxication offenses. He disclosed one DUI offense on the same SF 86. His carelessness was demonstrated in his subsequent OPM PSI when he provided incorrect arrest and court dates and fine amounts for his DUI offense.

Applicant's DUI and public intoxication in 2007 and 15 additional driving infractions from 2004 to 2013 raise security concerns about his pattern of rule violations. AG ¶ 16(d) applies.

AG ¶ 16(e) applies. There is substantial evidence that Applicant engaged in conduct which adversely affects his personal, professional, and community standing. Further analysis concerning applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶ 17 are potentially applicable:

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

(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; and

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

AG ¶ 17(e) mitigates the security concern raised under AG ¶ 16(e). I do not believe Applicant could be coerced or pressured into release of classified information by threats of public disclosure of his history of alcohol and traffic related offenses. Those offenses are matters of public record and are documented in his security file.

AG ¶ 17(c) applies. Although he had 15 traffic infractions from 2004 to 2008, in the last five years, he has only had one minor traffic infraction. In January 2013, he received a \$100 fine and \$66 court costs for failure to obey traffic signal. The single traffic offense in the last five years is minor, not recent, infrequent, and is unlikely to recur. It does not cast doubt on Applicant reliability, trustworthiness, or good judgment. Applicant has changed and matured, and I am confident he will not revert to his dangerous and illegal driving behavior. Personal conduct concerns are 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 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.

The financial evidence against approval of Applicant's clearance is substantial at this time. Although Applicant has a relatively modest amount of unresolved delinquent debt with only three unresolved debts in SOR ¶¶ 1.a (\$19,861), 1.c (\$130), and 1.d (\$46) totaling \$20,037, his lack of progress addressing these three debts causes an unresolved security concern. His debts were discussed in detail with the OPM investigator on October 31, 2011. He was well aware of his financial problems. He did not provide correspondence written to or received from the creditors showing that he attempted to settle or make any payments to resolve any of these three delinquent SOR

debts. His PFS shows that he had a sufficient monthly remainder; nevertheless, he did not prove that he paid any of these three SOR debts, even though two of his SOR debts were less than \$200. He could have made greater progress documenting resolution of these three delinquent, collection, or charged-off debts. His failure to provide documentation establishing his financial responsibility shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented financial progress is necessary to fully mitigate security concerns.

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. Personal conduct concerns are mitigated; however, financial considerations concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information at this time.

### **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, 1.c, and 1.d:	Against Applicant
Subparagraphs 1.b, 1.e to 1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.g:	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.

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Mark Harvey  
Administrative Judge