



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



In the matter of:)
)
) ISCR Case No. 14-05937
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

06/07/2017

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns raised under the guidelines for financial considerations or personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On May 24, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

On August 3, 2016, Applicant answered the SOR (Answer), and requested a hearing. On October 11, 2016, Department Counsel filed an Amendment to the SOR. On January 1, 2017, Applicant answered that Amendment.

On November 2, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On December 20, 2016, DOHA issued a hearing notice, setting the hearing for January 11, 2017. The hearing convened as scheduled. At the hearing, Department Counsel offered Exhibits (GE) 1 through 17. Applicant offered Exhibits (AE) A through O. All exhibits were admitted without objections. The record remained open until January 30, 2017, to give the parties an opportunity to submit additional evidence. On January 23, 2017, DOHA received the hearing transcript (Tr.). On January 24, 2017, Applicant submitted AE P through S. Department Counsel had no objections to those exhibits and they are admitted into the record.

Procedural Ruling

At the commencement of the hearing, Department Counsel moved to correct the second Paragraph 2.j of the Amended SOR to read as Paragraph 2.o. The motion was granted. (Tr. 7.)

Findings of Fact

Applicant admitted that he had owed debts to all creditors alleged in Paragraph 1 of the SOR, but denied that he was still in debt to them. He admitted the allegations in Paragraphs 2.a and 2.f. He denied the allegations in Paragraphs 2.b, 2.h, 2.i, 2.k, 2.l, 2.m, 2.n, and 2.o. He partially admitted and partially denied the allegations in Paragraphs 2.c, 2.d, 2.e, 2.g, and 2.j. His answers to those allegations are construed as denials.

Applicant is 63 years old. He was born in Egypt. He earned a bachelor's degree in accounting from a university there. He immigrated to the United States in 1983, and became a naturalized U.S. citizen in 1989. His wife, three adult children, and grandchildren are U.S. citizens and residents. Since 2003, he has worked as a linguist for defense contractors. He has deployed with U.S. troops overseas. While deployed, he has been exposed to combat fire. (Tr. 14-18, 22, 93; GE 17.)

Financial

Applicant attributed his financial problems to a printing business he owned between January 1990 and April 2003. During that time, he borrowed money and used credit cards for expenses in order to keep the business operating. As a consequence, he accumulated numerous debts that he was unable to pay. After closing the business, he was unemployed for a year before finding employment with a defense contractor in 2003. In 2010, he had a brain tumor removed and did not work for six months, which resulted in additional financial hardships. (Tr. 18-20, 45-48; GE 7, 11; Answer.)

Based on credit bureau reports (CBRs) from April 2014, October 2014, and December 2015, the SOR alleged nine delinquent debts that totaled \$44,742, and became delinquent between 2009 and 2015. (GE 4, 5, 6.) The status of each debt is as follows:

1. (SOR ¶ 1.a) The \$6,013 judgment was filed in 2013. Applicant said he paid it through a garnishment of his bank account the same month it was entered in 2015. He said he would produce proof of its release. However, it appears from his documents that he is making monthly payments on this debt, as reflected in correspondence from the collection lawyer, which lists the court case number that corresponds to the Government's information. Applicant submitted copies of checks dated April 2014, July 2016 and January 2017 for \$100. The balance is \$2,490. (Tr. 23, 38-39; GE 4; AE H, R.) It is being resolved.
2. (SOR ¶ 1.b) The \$12,837 formerly delinquent mortgage balance has been current since 2014. (Tr. 23, 39; AE A, B.) It is resolved.
3. (SOR ¶ 1.c) The \$5,609 charged-off account was settled for \$1,002 in June 2016 and paid in full that month. Applicant had been making monthly payments on it. (Tr. 24, 27, 39; AE C.) It is resolved.
4. (SOR ¶ 1.d) The \$5,371 charged-off account was cancelled in 2015. Applicant said he paid taxes on the forgiven amount. (Tr. 29-30, 40; Answer: Ex. C.) It is resolved.
5. (SOR ¶ 1.e) Applicant said he is making monthly payments of \$100 on the \$4,990 charged-off account owed to a retail store. It has been delinquent since 2011. He said he has made 30 or 40 payments on the account. (Tr. 31, 40; GE 3, GE 4; AE H, R.) He did not provide evidence documenting the balance on this account. It is unresolved.
6. (SOR ¶ 1.f) Applicant paid the \$2,945 collections account on February 19, 2015. (Tr. 31, 41; AE A, Q.) It is resolved.
7. (SOR ¶ 1.g) The \$1,237 collections account from 2012 was settled for \$692 and paid in October and November 2016. (Tr. 31; AE A, I, K.) It is resolved.
8. (SOR ¶ 1.h) Applicant stated that this \$5,590 debt is a duplicate of the debt alleged in SOR ¶ 1.e, on which he is making payments. He said he had only one account with the retail store. He did not submit documentation to confirm his assertions. The evidence lists two separate account numbers, indicating potentially two different credit accounts with the same store. (Tr. 36-38, 41-42; GE 3, 4, 5, 6.) It is unresolved.
9. (SOR ¶ 1.i) The \$150 medical debt was for an emergency medical visit from seven or eight years ago. Applicant said he paid it, but cannot find the paid receipt. (Tr. 37.) It is resolved.

Applicant said he filed all Federal and state income tax returns for the past five years. He owes the state money for unpaid taxes for 2010. He is making monthly payments of \$50. He is uncertain of the balance.¹ (Tr. 43-44.)

Applicant provided a financial statement detailing monthly income and expenses. He and his wife have a net income of \$7,800. Their expenses and payments on debts total \$4,464, leaving \$3,336 remaining. He completed a financial counseling course. (AE D, E.)

Personal Conduct

Relevant Work History:

1. From June 2004 to December 2004, Applicant worked for defense contractor Company 1 overseas.² (GE 8, 12.)

2. From February 2005 to April 2007, Applicant worked for defense contractor Company 2 overseas. (GE 1, 8; Answer.)

3. From April 2007 to January 2010, Applicant worked for defense contractor Company 3 overseas. (GE 1, 8.)

SOR Allegations:

The SOR alleged 15 personal conduct concerns. Seven allegations related to issues arising during Applicant's employment with the above listed defense contractors. Eight allegations referenced Applicant's falsifications of his answers on three security clearance applications (SCA) from July 2008, July 2012, and April 2014.

Employment Security Concerns:

1. (SOR ¶ 2.a) In April 2007, Applicant was terminated by Company 2, by mutual agreement, for viewing pornography on a Government computer. (GE 8, 10, 14.)

Applicant admitted the allegation, but denied that he was terminated because he was offered a lesser position. He said he was unaware that viewing pornography on a work computer was against the company's policy. He said he left the company by mutual agreement after he refused the offer for a demoted position. He said he would not repeat that behavior in the future. (Tr. 50-51, 78, 82-83, 94; Answer.)

¹ The SOR did not allege that Applicant owed unpaid state taxes for 2010. Hence, this fact will not be considered in an analysis of disqualifying conditions. However, it may be considered in an analysis of mitigating conditions, the whole-person concept, and an evaluation of Applicant's credibility.

² According to his security clearance applications, Applicant worked for this contractor from June 2004 to February 2005. (GE 1, 7.) The company reported his employment dates as stated above. (GE 12.)

2. (SOR ¶ 2.b) In May 2009, Applicant received a written and verbal counseling memo regarding his non-compliance with Company 3's policies and procedures, including cell phone protocols. (GE 15.)

Applicant denied that he received any notice in May 2009, but said it was possible. On May 8, 2009, he signed a Memorandum for Record of Written Counseling, referencing compliance with specific policies and procedures. (Tr. 51-52; GE 15.)

3. (SOR ¶ 2.c) In June 2009, Applicant received a written counseling memo from Company 3, regarding compliance with policies and procedures related to following the chain of command, and discussion of workplace issues with the military. (GE 15.)

Applicant admitted he received this counseling, but denied breaching any company policies or failing to follow the chain of command. He said that he had been asked to help in a specific situation, which was referenced in the counseling memo and had not violated the chain of command protocol. (Tr. 55-56; Answer.) Applicant signed the written counseling memo. (GE 15.)

4. (SOR ¶ 2.d) In October 2009, Applicant received written counseling from Company 3, regarding non-compliance with four issues: following the chain of command; absence from the workplace during assigned work hours; conducting personal business during work hours; and proper procedures for lunch breaks. (GE 15.)

Applicant admitted he received this written counseling, but denied that any of the mentioned behaviors happened. He attributed the complaints about him to a personality problem he had with a team leader. (Tr. 55-56; Answer.) Applicant signed the written counseling memo. (GE 15.)

5. (SOR ¶ 2.e) In December 2009, Company 3 issued another written counseling memo to Applicant for violating company policies and procedures. The memo specifically addressed the following problems: personal or private communication with certain people, physical contact with certain people; availability during assigned hours; maintenance of a positive attitude; and scheduling coordination. (GE 15.)

Applicant admitted he received the written counseling memo, but denied that any of the mentioned behaviors occurred. He attributed the complaints to staff members' personality problems. In support of his position, he said that he would not have been able to return to the worksite in the future (which he contracted to do), if he had engaged in the alleged behaviors. (Tr. 55-56; Answer.) Applicant signed the written counseling memo, which included mention of all previous counseling sessions. (GE 15.)

6. (SOR ¶ 2.f) In January 2010, Company 3 terminated Applicant for repeatedly violating company policies and procedures, without eligibility for rehire. (GE 15)

Applicant testified that when he was asked to leave Company 3, he did not know that he had been terminated for the above issues. He thought he was leaving because he made and gave small gifts to some people. He reiterated that all of the complaints

were false. (Tr. 52-54; Answer.) He said he never was informed that he was terminated. Consequently, when he completed security clearance applications in 2012 and 2014 he did not disclose the termination. (Tr. 60.)

7. (SOR ¶ 2.n) In December 2004, Company 1 terminated Applicant for refusing to perform mission assignments. Prior to the termination, he received two warnings about the matter. The company reported that he was ineligible for rehiring. Applicant denied that he was terminated or warned. (Tr. 75-76, 93-94; GE 8, 12.)

Falsification Allegations:

8. (SOR ¶ 2.g) In April 2014, Applicant completed his third SCA. In response to Section 13A: Employment Activities, Applicant answered no to questions inquiring whether, within the past seven years, he had been fired; quit a job after being told he would be fired; left a job by mutual agreement following notice of unsatisfactory performance; received a warning, been reprimanded, suspended or disciplined for misconduct, such as a violation of security policy. (GE 1.)

Applicant failed to disclose in the April 2014 SCA that he worked for Company 2 or that, in April 2007, he was terminated by mutual agreement from Company 2 for viewing pornography. Nor did he disclose that, in January 2010, he was terminated for violating Company 3's policies; and that in 2009, prior to the termination, he had received verbal and written counseling notices on four occasions from Company 3. (GE 1.)

Applicant said the reason he did not disclose the above information about Company 2 was because he was not aware he was terminated in April 2007 by Company 2. Rather, he reiterated that he left by mutual agreement after being offered a demoted position, which he did not accept. Furthermore, he thought it was not necessary to disclose this information about Company 2 in his 2012 and 2014 SCAs, because he disclosed the information in his 2008 SCA.³ (Tr. 82-83, 89; GE 3, 9.) In his Answer, he stated that he made a mistake in not answering yes to the above question, and that it was a result of his misunderstanding. (Answer.) His explanation for not disclosing the information is not credible considering the numerous false denials and omissions in his SCAs.

Applicant testified that he did not disclose the four disciplinary actions he received from Company 3 in 2009, because he did not think he was going to be terminated for those actions. He thought he was sent home for giving small gifts to some people and having personality issues with a manager. He had no idea that the counseling warnings would be in his permanent record. He said his program manager told him that they would not be included before he left for home. He said all of the counseling issues were comprised of false accusations and the company was playing a

³ In Section 22 of his 2008 SCA, Applicant disclosed that in April 2007 he was involuntarily terminated from Company 2, and that he left the position for "other reasons under unfavorable circumstances." He made no mention of viewing pornography. (GE 9.)

game with him. He did not believe he was terminated. (Tr. 87-89, 91-92; GE 3.) His explanation is not credible.

9. (SOR ¶ 2.h) In response to Section 13A: Employment Activities on the April 2014 SCA, Applicant answered that the reason he left his position with Company 3 was "End of Contract." (GE 1.)

Applicant explained that he wrote that answer because he thought he had completed his contract when he left in January 2007. He did not understand that the four prior counseling sessions (or warnings) contributed to the termination. (Tr. 88.) His explanation for non-disclosure is not credible.

10. (SOR ¶ 2.i) In response to Section 13A: Employment Activities on the April 2014 SCA, Applicant failed to disclose that in December 2004, he was counseled and received an unfavorable termination from Company 1. (GE 1.)

Applicant denied that he was terminated from Company 1 for not going on missions. (Tr. 92.) As proof that he was not terminated, he produced a letter of recommendation from a commander with whom he worked at that time, complimenting Applicant's work the same month he was terminated. (AE L.) According to a statement from Company 1's personnel department, Applicant received two counseling statements for not going on assigned missions. Company 1 noted that he should never be hired. (GE 12.) Applicant's explanation that he did not know he was terminated is not credible.

11. (SOR ¶ 2.j) In response to Section 13A: Employment Activities on the April 2014 SCA, Applicant indicated that the reason he left his position with Company 2 was "Waiting for Order." He did not disclose that he had been involuntarily terminated for viewing pornography. (GE 1.)

Applicant denied that he falsely answered this question. He said that after he left Company 2 by mutual agreement, he was waiting for additional orders from the company. (Tr. 67-68; GE 12; Answer.) His explanation is not credible.

12. (SOR ¶ 2.k) In July 2012, Applicant completed a second SCA. In response to Section 13A: Employment Activities, Applicant answered that the reason he left his position with Company 3 was "End of Contract." (GE 7.) Applicant's unpersuasive explanation for this allegation is noted in No. 9 (SOR ¶ 2.h) above.

13. (SOR ¶ 2.l) In response to Section 13A: Employment Activities on his July 2012 SCA, Applicant answered no to questions inquiring whether, within the past seven years, he had been fired; quit a job after being told he would be fired; left a job by mutual agreement following notice of unsatisfactory performance; received a warning, been reprimanded, suspended or disciplined for misconduct, such as a violation of security policy. (GE 7.) Applicant's unpersuasive explanation for this allegation is noted in No. 8 (SOR ¶ 2.g) above.

14. (SOR ¶ 2.m) In June 2008, Applicant completed his first SCA.⁴ In response to Section 22: Your Employment Record, Applicant answered “yes” to a question inquiring whether he had been fired, quit, or left a job for other reasons. Applicant disclosed that, in April 2007, he was involuntarily terminated from Company 2 under unfavorable circumstances. However, he did not disclose the 2004 termination from Company 1 in this 2008 SCA. (GE 9.)

During a background interview in July 2008, subsequent to submitting the 2008 SCA, Applicant discussed his termination from Company 2. He acknowledged that it was because he was viewing pornography on a daily basis, which was a violation of the company’s policies. He believed he would be eligible for rehiring, if he obtained a security clearance. He also told the investigator that he had worked as a linguist for Company 1 from June 2004 to December 2004. He said he left that position to make more money, and thought he was eligible for rehire. He did not tell the investigator that he was terminated from Company 1, after having received warnings about his behavior. (GE 10.)

Applicant reiterated while testifying that he did not believe he was fired from Company 1 for failing to go on assignments. Hence, he said he thought that he was not required to disclose it. (Tr. 76, 93-94.) His explanation is not credible.

15. (SOR ¶ 2.o) In response to Section 13A: Employment Activities on the July 2012 SCA, Applicant stated that the reason he left his position with Company 2 was “Waiting for Order.” He did not disclose that he had been terminated for viewing pornography. Applicant’s unpersuasive explanation for this allegation is noted in No. 11 (SOR ¶ 2.j) above.

Letters of Recommendation

Applicant submitted certificates of achievement and appreciation from 2007, 2011, and 2016. (AE F.) He also presented seven recommendation letters from supervisors and commanders. Several authors complimented Applicant’s outstanding performance, experience, loyalty, and interpretative skills. (Answer; AE G.)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

⁴The record does not contain an earlier security clearance application. It does contain a fourth SCA that Applicant submitted in September 2016, after the issuance of the SOR. (GE 16.)

factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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. The Government reposes a high degree of trust and confidence in 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 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.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁵

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2009 to 2015, Applicant accumulated delinquent debts that he had been unable or unwilling to resolve. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 provides four conditions that could mitigate security concerns in this case:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Two of Applicant's delinquent debts remain ongoing and unresolved. Hence, AG ¶ 20(a) does not apply to those debts, but does apply to the other resolved debts. Applicant established some mitigation under AG ¶ 20(b), as there is evidence that his financial delinquencies developed during and subsequent to owning an unsuccessful business, which may have involved circumstances beyond his control. There is also evidence that he experienced a long period of unemployment after closing that business, and did not work after having surgery for a brain tumor for another period. Those were circumstances beyond his control. There is insufficient evidence demonstrating that he attempted to responsibly manage the delinquent debts during

⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

those periods or subsequent to them, which is necessary to establish full mitigation under this condition.

Applicant participated in financial and credit counseling. He established evidence to support the application of AG ¶ 20(c) to seven of the nine SOR-alleged debts, which are resolved or being resolved, indicating that his finances are coming under control. His actions on those debts also establish good-faith mitigation under AG ¶ 20(d). However, two debts, totaling about \$10,500 remain unresolved. He also continues to make payments on state taxes he owes for 2010. He did not know the balance on that debt or have much information about it.

Guideline E, 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.

Applicant denied that he intentionally omitted information about his unfavorable employment history and record when he completed his 2008, 2012, and 2014 SCAs, as alleged under Paragraph 2 of the SOR and the Amended SOR.

AG ¶ 16 describes two 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; and

(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 dishonesty or rule violations.

SOR ¶¶ 2.a, 2.b, 2.c, 2.d, 2.e, 2.f, and 2.n are supported by credible evidence that Applicant was counseled and terminated by three defense contractors between

2004 and 2010. The terminations were based on Applicant's repeated failure to comply with the companies' policies and procedures. The evidence establishes security concerns under AG ¶ 16(d)(3) as to those seven allegations.

Applicant intentionally falsified or gave misleading and incomplete information in response to numerous questions on his 2008, 2012, and 2014 SCAs, as alleged in SOR ¶¶ 2.g, 2.h, 2.i, 2.j, 2.k, 2.l, 2.m, and 2.o. He did not disclose that he was terminated by three companies after being counseled by them for non-compliance with company policies. His repeated assertions that he did not know he was terminated are not credible. In his June 2008 SCA, Applicant truthfully disclosed that he was involuntarily terminated from Company 2 in 2007, and that he left under unfavorable conditions. However, he did not disclose in that 2008 SCA that he was terminated from Company 1. The evidence established security concerns under AG ¶ 16(a) as to all 15 allegations.

AG ¶ 17 includes three conditions that could mitigate security concerns arising under this guideline:

(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; and

(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.

Applicant did not make a prompt or good-faith effort to correct the misrepresentations he made on his 2012 or 2014 security applications. Hence, AG ¶ 17(a) does not provide mitigation to the SOR allegations referencing his 2012 and 2014 SCAs. AG ¶ 17(a) provides partial mitigation for SOR ¶ 2.m, as he correctly disclosed pertinent information regarding his involuntary termination in his 2008 SCA. However, he failed to disclose his 2004 termination in that 2008 SCA, which precludes full mitigation of the allegation. Failing to truthfully disclose requested information in three security clearance applications is not a minor offense. AG ¶ 17(c) does not provide mitigation for the related SOR allegations. Applicant consistently denied that he failed to disclose requested information pertinent to three periods of employment. He denied that his behaviors involved non-compliance with company policies, including viewing pornography at work, or that they resulted in the three terminations between 2004 and 2010. He has not demonstrated sufficient willingness to take responsibility for his behaviors, which is necessary to establish mitigation under AG ¶ 17(d).

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.

Applicant is an intelligent and educated 63-year-old man. According to letters of recommendation, he has displayed competency while working for some defense contractors. From 1990 to 2003, he owned a business, which was unsuccessful, resulting in its closing. As a consequence of that business failure, a period of unemployment after the closing, and experiencing serious health issues, Applicant accumulated delinquent debts between 2009 and 2015 that he did not begin to resolve until 2014. He has yet to resolve two debts, totaling over \$10,000, which have been delinquent for several years. He also continues to pay his 2010 state taxes. Information about that issue is minimal.

The more serious security concerns raised in this case involve a pattern of past employment problems and falsifications on three consecutive SCAs. Applicant admitted that he should not have watched pornography, a company prohibition, during his employment at Company 2, but denied that he was terminated as a result of that. He strongly asserted that staff members at Company 3 made repeated false accusations against him from June through December 2009. He said that he had no idea that his various infractions of company policies, for which he was counseled four times, lead to his termination in January 2010. To this date, he insists that he was not terminated for breaching his employer's policies and procedures, but as a consequence of personality problems with a staff manager. He denied that he was terminated from Company 1 in 2004, despite verification from the employer.

After listening to him testify and observing his demeanor, I find Applicant is not credible, remorseful, or accountable for his pattern of employment misconduct and SCA falsifications related thereto. He has not provided sufficient evidence of rehabilitation to reinstate his security clearance. Overall, the record evidence leaves me with serious concerns as to Applicant's present eligibility and suitability for a security clearance. He

did not meet his burden to mitigate the security concerns arising from his financial problems and personal conduct.

Formal Findings

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

Paragraph 1, Financial	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Personal Conduct	AGAINST APPLICANT
Subparagraph 2.a through 2.o:	Against 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.

Shari Dam
Administrative Judge