DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 15-03519
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Thomas Albin, Esq.

09/26/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has struggled financially since 2007 due to several unexpected expenses and lost time at work to care for his ill spouse before her death. He lost his home to foreclosure in December 2012. As of his hearing, he was in the process of filing a Chapter 7 bankruptcy petition to discharge $454,460 in debt of which $398,128 was the deficiency balance on his mortgage. He has yet to demonstrate that he can handle his financial affairs responsibly. Personal conduct concerns raised by his failure to disclose old marijuana possession charges on security clearance applications in 2002 and 2013 are also not mitigated. Clearance is denied.

Statement of the Case

On November 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 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 (AG) effective within the DOD on September 1, 2006.

On November 28, 2015, Applicant, then acting *pro se*, answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 28, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. With the agreement of the parties, on February 1, 2016, I scheduled a hearing for February 12, 2016.

I convened the hearing as rescheduled. Six Government exhibits (GEs 1-6) and five Applicant exhibits (AEs A-E) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his closing argument was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. Applicant and his current supervisor testified, as reflected in a transcript (Tr.) received on February 22, 2016.

I held the record open for two weeks after the hearing for Applicant to supplement the record. On February 25, 2016, Applicant's counsel submitted a bankruptcy form (Schedule E/F), which was admitted as AE F. The record closed on March 2, 2016, when the Government indicated it had no objection to the exhibit.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of November 2, 2015, Applicant owed four delinquent medical debts of $65 (SOR ¶ 1.a), $65 (SOR ¶ 1.b), $36 (SOR ¶ 1.g), and $358 (SOR ¶ 1.h) and five past-due credit card debts of $354 (SOR ¶ 1.c), $39 (SOR 1.d), $40 (SOR ¶ 1.e), $59 (SOR ¶ 1.f), and $884 (SOR ¶ 1.i). In addition, Applicant's home was foreclosed in approximately December 2012 (SOR ¶ 1.k) for failure to pay his mortgage, which was $132,138 past due on a $240,496 balance as of November 2015 (SOR ¶ 1.j). Under Guideline E, Applicant allegedly falsified a June 2013 Electronic Questionnaires for Investigations Processing (e-QIP) (SOR ¶ 2.a) and an October 2002 security clearance application (SF 86) (SOR ¶ 2.b) by failing to disclose May 1981 and April 1982 drug possession charges.

Applicant provided a detailed response to the SOR allegations in which he admitted the debts and home foreclosure. He indicated that the debt in SOR ¶ 1.f had been paid off and that he intended to file for bankruptcy to address his mortgage loan and other outstanding delinquencies. Applicant explained that his attention had been focused on his spouse, who was ill from 2011 until her death in 2015, and he wanted a financial fresh start. Concerning the alleged deliberate falsifications, Applicant admitted that he had responded negatively concerning any illegal drug charges. He indicated that he had paid a fine in court for the April 1982 offense. About his June 2013 e-QIP, Applicant explained that he thought the April 1982 charge was a misdemeanor. Applicant did not indicate why he responded "No" in October 2002, but he stated that he had forgotten about the April 1982 charge when he was first interviewed.

Findings of Fact

Applicant's admissions to the delinquent debts and to not disclosing the drug charges on his October 2002 and June 2013 security clearance applications are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 57-year-old high school graduate with two years of technical training in automotive mechanics after high school. (Tr. 22-23.) He has worked for a defense contractor since September 2002. (Tr. 23.) Over the years, his jobs changed as he transferred departments to avoid being laid off. He has been in his current position since August 2011. (Tr. 28, 39-40.)

Applicant was married to his first wife from December 1984 to June 2007 and to his second wife from June 2012 until her death in August 2015. (GEs 1, 6; Tr. 42, 49.) He has one stepson, who is now 47, from his first marriage. (GE 1.) Two of his stepsons from his second marriage live with him. (Tr. 65.)

Personal Conduct

Applicant served on active duty in the U.S. military from November 1980 to November 2000. (GE 1.) He and a fellow service member were arrested in May 1981 for possession of marijuana outside of a bar where they had been drinking. Applicant now recalls that he was "pretty intoxicated." (Tr. 68.) Applicant had used marijuana three to four times a week from the late 1970s to 1982, although he maintains that the drug found in the vehicle in May 1981 belonged to his friend. Applicant was detained in jail overnight. He paid a $100 fine for marijuana possession. (GE 5; Tr. 68, 91.)

Applicant was stationed abroad from 1981 to 1984. In April 1982, Applicant and a friend were charged with possession of marijuana. After drinking at a bar with his friend, Applicant and the friend returned to the friend's house when the police arrived and found marijuana. (Tr. 69.) Applicant recalled in September 2013 that he was under the influence of the drug at the time of his arrest, but he maintained that the marijuana found in the premises did not belong to him. (GE 5.) Applicant does not believe that he was arrested, but he recalls appearing in court and paying a fine to the local authorities. He was also disciplined by the military in that he was placed on restricted duty for 30 or 45 days. (GE 5; Tr. 70, 92.) Applicant had no other problems in the military. (Tr. 70.) He held a security clearance for most of his time in the service. (Tr. 89.)

After retiring from the military with an honorable discharge in November 2000 (Tr. 52), Applicant was unemployed until October 2001, when he began working for a manufacturing company. In March 2002, Applicant became employed as a flooring specialist with a home improvement retailer. (GEs 1, 6.) He began working for his current employer in September 2002. (Tr. 23.)

In October 2002, Applicant completed a security clearance application (SF 86) for his current employment. Applicant responded "No" to a police record inquiry concerning whether he had ever been charged with or convicted of any offense related to alcohol or drugs. (GE 6.) Applicant was granted a secret security clearance in November 2005. (GE 1.)

On June 25, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions incorporated within an e-QIP to renew his security clearance eligibility. Applicant responded negatively to police record inquiries, including to whether he had ever been charged with an offense involving alcohol or drugs. (GE 1.) Shortly after he submitted his e-QIP, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He did not tell the investigator about his April 1982 drug charge. He now claims that he forgot about it, but that he had reported his May 1981 drug charge. (Tr. 101.)

On September 4, 2013, Applicant was interviewed by another OPM investigator about his undisclosed drug-related issues. Applicant indicated that he did not disclose his May 1981 marijuana possession charge on his e-QIP due to oversight. He discussed his drug involvement from the late 1970s to the early 1980s, stating that he had used marijuana three to four times a month. He admitted that he had misrepresented the extent of his drug involvement during his previous background interview because he did not want it to negatively affect his security clearance. Applicant claimed that his drug use had not led to any additional legal action beyond the May 1981 incident. He was then confronted with the April 1982 drug charge overseas. He indicated that he had not reported the incident during his first interview because he did not think that the investigator would search for information outside of the United States, and he feared a negative impact on his clearance if he brought it up or it was discovered by the OPM. As for the details of the incident, Applicant expressed his belief that he had been ticketed and not arrested. He volunteered that there might have been some hashish found, which belonged to his friend. Applicant was then confronted about previous admissions to the foreign police that he had experimented with illegal drugs other than marijuana. He then admitted that he had used marijuana three or four times a week (as opposed to a month) and hashish once or twice a month from the late 1970s to early 1980s. He also tried speed once and non-prescribed Valium two or three times in the late 1970s. He used LSD one weekend in the early 1980s when he was in the military. Applicant admitted that he had not previously divulged the information because he feared he would lose his security clearance. (GE 5.)

When asked at his February 2016 hearing to explain the omission of the drug charges from his June 2013 e-QIP, Applicant responded:

> I don't know what I was thinking. I should've said — yes. I don't know why I was thinking like going to jail. When I see convicted, I was thinking going to jail. I should have put — yes, but I put — yes, but I put — no. I don't know. I was going through a lot with my wife then, too. (Tr. 71.)

Applicant gave the same reason — that he was thinking about whether he had ever been to jail or had to serve time — for his failure to disclose the charges on his 2002 security clearance application. (Tr. 72-73.) However, he later admitted that concerns about the possible impact of the arrests on his security clearance partially led him to deny any drug charges on both security clearance applications (Tr. 73) and to not volunteer the April 1982 marijuana possession charge during his interviews in 2013. (Tr. 102.)

Financial Considerations

Applicant began a cohabitant relationship with his second wife in late 2003 or early 2004. (Tr. 43.) He began to have financial problems in 2007 due to a succession of unanticipated expenses. (Tr. 82-83.) In February 2007, a heating oil company obtained a $2,041 judgment against Applicant. Applicant had his fuel oil tank for his residence replaced, and he did not pay the debt. (GEs 1, 4.) The judgment creditor filed a lien against his home for nonpayment. He paid the debt in full in September 2010 and the lien was removed. (GE 1.) In November 2007, a credit card lender obtained a $949 judgment against Applicant. He paid the judgment in June 2010. (GEs 1, 4.)

Around June 2007, Applicant began to fall behind on his home loan, which he had obtained in August 2004 for $250,000. Monthly payments were around $1,800. (GEs 1, 4; Tr. 80.) He made no payments on the loan after December 2008 (SOR ¶ 1.j), even though he continued to reside in the home. (Tr. 81.) Attempts to obtain a loan modification and then foreclosure mediation were unsuccessful. He had planned to sell property owned by his second wife and pay off his delinquency. (GE 1.) In December 2012, the lender foreclosed on his home. Applicant continued to reside in the home through at least February 12, 2016, without paying the mortgage, although he recently received eviction paperwork. (Tr. 64-65, 74.)

On his June 2013 security clearance application, Applicant reported that he had federal and state tax issues for tax years 2005 through 2008, which had been resolved in 2011 and 2012. He filed his 2005 state income tax return and his federal income tax returns for tax years 2006 and 2008 late. Federal tax debt totaling $2,012 had been paid by wage garnishment. He also disclosed the judgments awarded the home heating oil and credit card companies as well as a $312 judgment satisfied in July 2009 for sewer charges. Applicant responded affirmatively to financial record inquiries concerning routine delinquencies, listing his past-due mortgage and an unsatisfied dental debt of $358 (SOR ¶ 1.h), which he indicated would be paid in full by July 2013. About his delinquent mortgage, Applicant indicated that his mortgage was going into foreclosure but that his wife owned a property they were attempting to sell to address his mortgage arrearage. Under additional comments, Applicant explained that his financial problems stemmed from a need to replace a broken sewer pump in September 2007; $1,500 in repair costs for his truck in December 2007; lost time at work to care for his mother; and replacement of his fuel oil tank, which then had to be relocated after the oil company overfilled the tank and flooded his basement. About his mortgage, Applicant indicated that his lender began working with him about a modification since September 2011 and was going to put him on a repayment plan. Despite court mediation, his home was still in foreclosure. Applicant acknowledged

that he "made a lot of mistakes and made bad judgments," but that he and his spouse were still trying to sell her property to address his mortgage arrearages. (GE 1.) He wanted to file for bankruptcy but his spouse wanted to save their home. (Tr. 116.)

As of June 29, 2013, Applicant's credit record showed the dental debt (SOR ¶ 1.h) and an $884 revolving retail charge debt (SOR ¶ 1.i) were both in collection. Several accounts were being paid on terms acceptable to Applicant's creditors, including the revolving charge accounts in SOR ¶¶ 1.c, 1.e, and 1.f. Applicant was also reportedly making timely payments on a home improvement loan obtained in May 2005 for $30,000. The balance was $9,143 as of June 2013. However, Applicant's mortgage loan was $132,138 past due on a $240,496 balance. (GE 4.)

Applicant's second wife had medical issues that led to significant lost time at work for Applicant in 2013 and 2014. (AE E.) Applicant was on approved leave under the Family Medical Leave Act (FMLA) for 112 hours in May 2013. Her condition continued to deteriorate (Tr. 45), and he lost 18 days at work caring for her from April 2014 to June 2014, before she was hospitalized from June 19, 2014, to July 16, 2014. (AEs D, E.) Applicant was out of work without pay under the FMLA through her death in mid-August 2015. (AE E; Tr. 119.)

Applicant's spouse had at least ten credit card accounts of her own on which they were making payments (Tr. 107-108), but some of his accounts became delinquent. In February 2015, two medical debts of $65 each from October 2014 were placed for collection (SOR ¶¶ 1.a and 1.b). (GE 2.) As of March 2015, the credit card debt in SOR ¶ 1.c was $174 past due on a $319 balance. The revolving charge account in SOR ¶ 1.f was past due $47 on a balance of $59. He owed $36 in collection fees on a medical debt from March 2012 (SOR ¶ 1.g). In March 2015, he took on new debt, obtaining an automobile loan of $17,448, to be repaid at $350 per month. (GE 3.) As of October 2015, Applicant had fallen behind $40 in his payments on the credit card account in SOR ¶ 1.e, which had a balance of $1,287. A charge account opened in March 2013 was past due $39 on a balance of $319 (SOR ¶ 1.d). He had made no progress toward resolving some debts, including those debts in SOR ¶¶ 1.a-1.c. Yet, he was paying other debts on time: his car loan, which had a $16,482 balance; a credit card account, which had a $2,947 balance; and a $774 debt with an electronics retailer. His car payment and car insurance totaling $500 per month were being paid through automatic deduction from his military retirement income. (Tr. 76.) In June 2015, he fell behind 30 days in paying a home improvement loan from 2005, but he brought the account current. (GE 2.)

Applicant obtained a $6,000 loan from a military relief society to cover part of the $11,000 in costs for his spouse's funeral. (Tr. 117.) Loan repayments at $166 per month are being automatically deducted from his military retirement pay. (Tr. 50, 76.) His military retirement income is $1,577 per month. He also receives $836 per month in Veterans Administration disability income. (Tr. 52.) When he can afford to do so, Applicant is making separate payments on the balance of the funeral debt, which has not yet been paid in full. (Tr. 115.)

In September 2015, Applicant was notified that he owes delinquent state taxes of $1,200 from 2011. He made one $120 payment. (Tr. 116-117.) He anticipates a refund of $1,800 for tax year 2015, which will be intercepted and applied to his back taxes. (Tr. 88.)

On November 2, 2015, the DOD CAF issued an SOR to Applicant partially because of his unresolved delinquencies. In response to the SOR and at his hearing (Tr. 62), Applicant indicated that the debt in SOR ¶ 1.f had been paid off around August 2015. His October 2015 credit report showed the account as having a zero balance after being charged off. He indicated that he had made a $200 payment in October or November 2015 on the credit card account in SOR ¶ 1.e. (Answer; Tr. 62.)

On January 28, 2016, Applicant paid $36 to resolve the medical collection debt in SOR ¶ 1.g. (AE C; Tr. 17-18.) Around February 1, 2016, Applicant paid the medical debts in SOR ¶ 1.a and SOR ¶ 1.b. (AEs A, B.; Tr. 16-17, 58-59.)

As of February 12, 2016, Applicant was in the process of filing a Chapter 7 bankruptcy petition, primarily to discharge his liability on his delinquent mortgage. (Tr. 64.) He wants to walk away from the house and rebuild his life. (Tr. 84.) Applicant has completed online credit counseling required for a bankruptcy filing. (Tr. 85.) His bankruptcy lawyer assured him that filing was imminent. (Tr. 56-57.) He had completed his Schedule E/F, listing $454,460 in unsecured claims, of which $398,128 was the deficiency balance on his mortgage (SOR ¶ 1.j). Applicant included the balance of his indebtedness to the creditors in SOR ¶¶ 1.c-1.f and 1.h-1.j. He listed balances on the accounts in SOR ¶¶ 1.d and 1.e of $4051 and $1,387. He also included some $5,082 owed to his power company and sizeable credit card balances on accounts not shown as delinquent on his credit record. (AE F.)

Applicant lives in his foreclosed home with two of his second wife's sons, who are now ages 34 and 42. Neither of his stepsons was employed as of February 2016. The younger stepson was on worker's compensation awaiting an injury settlement. The other stepson, who is disabled, has a 12-year-old daughter, whom he is obligated to support. (Tr. 121.) This stepson also owes federal income taxes. Applicant has been paying his stepson's child support and income tax obligations for the past two to three years. Applicant has been paying these debts at between $400 and $600 a month. (Tr. 103-104.) Applicant was also covering all the household bills, including food, cable television, and $200 a month for a storage unit. (Tr. 103-105.) He promised his spouse he would take care of her sons. (Tr. 66-68, 121.) Applicant realizes that he should have stopped enabling his older stepson. He has been trying to motivate his stepson, who has not held a job in the last two to three years. (Tr. 122.)

[1] Applicant's Schedule E/F includes a $405 debt owed to the original creditor identified in SOR ¶ 1.d, but also a separate unidentified debt of $1,112 owed to the collection agency in SOR ¶ 1.d. Applicant did not explain the discrepancy in his post-hearing submission. He admitted at his hearing that the debts in SOR ¶¶ 1.d and 1.e were more extensive than the $39 and $40 alleged in the SOR. He believed he owed $1,200 to the creditor in SOR ¶ 1.e for a television and other items. (Tr. 61.)

Able to work overtime since the death of his spouse, Applicant testified that he was keeping ahead of all his bills. (Tr. 74.) His base pay at his defense contractor job is $28.86 per hour. (Tr. 76.) He has been working a lot of overtime, usually two weekends per month, earning 1.5 times his base hourly rate on Saturdays and double pay on Sundays. (Tr. 77-78.) He had about $5,000 in savings as of February 2016. (Tr. 86.) Over the past six months, he increased his retirement contributions to his 401(k) to 12% of his income. (Tr. 106.) He has not compiled a budget tracking his expenditures. (Tr. 106.)

Applicant took out two loans, of $5,000 and $12,000, from his 401(k) at work when he was staying with his wife while she was in the hospital. The balances of those loans are around $1,900 and $5,000. He estimated his 401(k) balance at $34,500 as of February 2016. (Tr. 87-88.)

Character reference

Applicant's supervisor since August 2011 has daily contact with him on the job. Applicant has proven to be a good worker. (Tr. 28-30.) The supervisor has no concerns about the quality of Applicant's work, and he does not consider Applicant to be a security risk. (Tr. 33-35.) This supervisor is aware that Applicant was granted leaves of absence under the FMLA to care for his spouse. Applicant's absenteeism has decreased quite a bit since his spouse died. (Tr. 32.) Applicant has not committed any disciplinary infractions during his tenure with the defense contractor apart from a five-day suspension in 2004 for falling asleep when he was tasked with standing watch. (Tr. 40-42.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 factors listed in the adjudicative process. The administrative judge's overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 that 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. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth 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.

Applicant began experiencing financial problems around 2007 when he had unexpected costs to repair his sewer pipe, travel to see his ill mother, repair his truck, and replace his fuel tank. He made no payments on his mortgage after December 2008 (SOR ¶ 1.j), and the lender eventually foreclosed on the property in December 2012 (SOR ¶ 1.k). Despite monthly military retirement income of $1,577 and VA disability income of $836, he allowed two medical debts of $65 each from October 2014 and a $36 medical debt from 2012 to go to collection (SOR ¶¶ 1.a, 1.b, and 1.g). He fell behind on some credit card accounts (SOR ¶¶ 1.d-1.f and 1.i). Applicant claimed that he had paid the $59 debt in SOR ¶ 1.f before the SOR was issued. However, he provided no proof of payment and included the debt in his bankruptcy. His record of delinquency implicates disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

Mitigating condition AG ¶ 20(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," cannot reasonably apply. With respect to the debts in SOR ¶ 1.d and 1.e, available credit reports show only minor delinquency. However, the mortgage has been delinquent for over seven years. The $358 medical debt in SOR ¶ 1.h is from January 2012. He has made no payment on the $354 credit card debt in SOR ¶ 1.c since October 2014 or on the $884 credit card debt in SOR ¶ 1.i since October 2009.

AG ¶ 20(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," has some applicability. Applicant indicates that his financial problems started because of unexpected expenses in 2007. He provided no corroborating documentation of those expenses. His wages were garnished in 2012 to collect federal income tax liabilities incurred partially because he did not file his returns for 2006 and 2008 on time. To some extent, his financial problems were of his own making. He and his spouse gave priority to her credit card debts rather than to the mortgage and some of his consumer credit debts. AG ¶ 20(b) applies primarily in that Applicant was on medical leave without pay at times to care for his ill spouse, or stay with her during her hospitalizations. Leave records show that he was out of work for an extended period from between June 2014 and September 2014. Applicant understandably was focused on his spouse's condition, and his ability to address his debts was compromised when he had no income from his defense contractor employment. At the same time, he was not without some income in that he had his military retirement and VA disability pay.

It is difficult to find that Applicant has acted fully responsibly toward his creditors. Efforts to refinance or modify his home loan predate the foreclosure in December 2012. He has ignored the credit card debt in SOR ¶ 1.i since 2009. Payments of small medical debts in SOR ¶ 1.a, 1.b, and 1.g were made after he received the SOR. He has taken advantage of overtime opportunities at work since his spouse died in August 2015 and yet had made no payments on several other debts as of his hearing in February 2016 in anticipation of a Chapter 7 bankruptcy filing under which his unsecured creditors will receive no satisfaction. For the past two to three years, he has been paying $400 to $600 a month for his stepson's child support and income tax obligations. He also increased his contributions to his 401(k) when some of his creditors were not being paid.

Applicant's satisfaction in early 2016 of the debts in SOR ¶ 1.a, 1.b, and 1.g implicates AG ¶ 20(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 AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," but only as to those debts. Applicant has included his remaining debts on his Schedule E/F, but it would be premature to apply AG ¶ 20(c) without evidence of a bankruptcy filing and assurances of a likely discharge of his legal liability for repayment. Although a legal means to address debts, a Chapter 7 bankruptcy would not satisfy the good-faith required for AG ¶ 20(d).

Assuming that Applicant is granted a discharge of his debts and allowed to walk away from his home without having to pay the deficiency on his mortgage, concerns persist about whether he can be counted on to exercise the sound judgment that must be expected of persons granted security clearance eligibility. Among his unsecured debt is a $5,082 debt owed to his electric company, so he has had trouble paying utility bills. Applicant learned in September 2015 that he owed back state income taxes for 2011. Despite his extensive overtime, he has paid only $120, and still owes $1,200. He borrowed $6,000 from a military relief society to pay a portion of his spouse's funeral expenses. Knowing that he had to pay the $5,000 in remaining funeral expenses from his income, he put his interest ahead of his financial obligations when he chose to increase the amount of his contributions to his 401(k) rather than pay off the funeral expenses or some of the debts in the SOR. While he expressed his intention to stop his support for his stepson, he was still paying his stepson's tax and child support debts as of February 2016. The financial considerations are not fully mitigated.

Guideline E, Personal Conduct

The security concerns about personal conduct are articulated 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 SOR alleges that Applicant falsified material facts on his June 2013 (SOR ¶ 2.a) and October 2002 (SOR ¶ 2.b) security clearance applications by responding negatively to whether he had ever been charged with any alcohol or drug offenses. The evidence shows that Applicant was charged in May 1981 and abroad in April 1982 with marijuana possession offenses, and that he paid fines in each instance. He has given various reasons for omitting the offenses from his security clearance applications, claiming oversight, lack of recall of the April 1982 offense, and that he was thinking about jail time when considering the questions. Yet, the evidence also shows that he did not disclose the April 1982 charge during his first interview in 2013 and that he had to be confronted about the incident during his second OPM interview in September 2013. He acknowledged during his interview and on cross-examination at his hearing that he responded negatively to the relevant police record inquiries because he was concerned about the negative affect on his clearance eligibility. The deliberate nature of his omissions raises significant security concerns under AG ¶ 16(a), which provides:

> (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 for trustworthiness, or award fiduciary responsibilities.

Personal conduct concerns because of the drug involvement were not alleged, likely because of its very dated nature. The issue under personal conduct is not whether Applicant's drug abuse or related criminal charges are likely to recur. It is whether Applicant's representations can be trusted. In that regard, AG ¶ 16(e) is applicable because the concealment of illegal drug charges is conduct that creates a potential vulnerability:

> (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, my affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

None of the potentially mitigating conditions under AG ¶ 17 are fully established. Given Applicant had to be confronted about the April 1982 drug charge during his September 2013 OPM interview, he does not satisfy mitigating condition AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, of falsification before being confronted with the facts." There is no evidence that a security professional or attorney advised him with regard to completing either his October 2002 or June 2013 security clearance applications, which could implicate AG ¶ 17(b), which provides:

> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Despite the passage of time since his October 2002 falsification, AG ¶ 17(c) cannot reasonably apply because of his lack of candor on his June 2013 e-QIP and during his subsequent OPM interviews about his drug charges. AG ¶ 17(c) provides:

> (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.

Applicant falsely certified to the accuracy of his June 2013 e-QIP under the advisement that a knowing and willful false statement could be punished under Title 18, Section 1001

of the United States Code. His lack of candor is a serious offense and its recidivism makes it difficult to conclude that it will not reoccur.

Applicant showed incomplete reform at his hearing. When asked on direct examination to explain the omission of the drug charges from his security clearance applications, Applicant responded, "I was thinking about if you've ever went to jail. I don't know why that was, but I know I was going through a lot with my wife then, too." (Tr. 73.) Applicant then admitted that he had also been concerned about the impact on his security clearance. On cross-examination, Applicant initially claimed that he had forgotten about the April 1982 marijuana charge during his first subject interview. Applicant subsequently admitted that he had told an OPM interviewer in September 2013 that he had not previously disclosed the drug charge because he did not think that his clearance investigation would include foreign inquiries and he thought the drug charge would negatively affect his security clearance. However, he then attempted to downplay those admissions by explaining that he was "really kind of fried mentally." (Tr. 100.) Absent a meaningful acknowledgement of his deliberate false statements, AG ¶ 20(d) is not established:

> (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.

Possible issues of vulnerability are minimized by the fact that the DOD is now aware of the drug charges Applicant concealed when he applied for security clearance eligibility. However, while Applicant's supervisor testified about the good quality of Applicant's work, it is unclear whether he knows about Applicant's lack of candor about his drug-related charges. AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," is not fully established. The personal conduct concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).[2] The analysis under Guidelines F and E are incorporated in

[2] The factors under AG ¶ 2(a) are as follows:

> (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.

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

Applicant has held a DOD security clearance for many years when he was in the U.S. military and since approximately November 2005 for his employment with a defense contractor. There is no evidence to suggest that he has handled his security responsibilities inappropriately. However, Applicant showed an unacceptable tendency to act in personal interest over the years by not filing some income tax returns on time or paying taxes when they were owed; by deliberately concealing illegal drug charges when he applied for security clearance eligibility in October 2002 and June 2013 and when he was interviewed for his clearance; and by taking on new debt, such as a car loan, and increasing his contributions to his 401(k) when his mortgage and some other debts were seriously delinquent.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). Even assuming that Applicant is afforded a financial fresh start from a Chapter 7 bankruptcy discharge, he has not exhibited the sound judgment required of persons with sensitive access. After considering all the facts and circumstances, it is not clearly consistent with the national interest to continue his security clearance eligibility.

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.b:	For Applicant
Subparagraphs 1.c-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant[3]
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

[3] The foreclosure of Applicant's home is a consequence of his failure to pay his mortgage, which is separately alleged under SOR ¶ 1.j, and is therefore not considered a separate financial issue.

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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski
Administrative Judge