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

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| In the matter of: | ) | |
| | ) | |
| [REDACTED] | ) | ISCR Case No. 15-07536 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

07/03/2017

## Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

## Statement of the Case

Applicant submitted a security clearance application, Standard Form 86 (SF86) on December 3, 2014. On October 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted 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 (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 2, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 29, 2016, and the case was assigned to me on January 25, 2017. On February 28, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 30, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 7 were admitted into evidence, without objection. I appended to the record a letter the Government sent to Applicant as Hearing Exhibit (HE) I, and the Government's exhibit list as HE II. At the hearing, Applicant testified and submitted Applicant Exhibit (AE) A, which I admitted into evidence, without objection. At the hearing, three witnesses testified on behalf of Applicant. At Applicant's request, I left the record open to April 13, 2017. Applicant timely provided additional documents that I admitted into evidence as AE B and C, without objection. DOHA received the transcript (Tr.) on April 7, 2017.

On June 8, 2017, the DOD implemented new AG.[1] Accordingly, I have applied the June 2017 AG.[2] However, because the September 2006 AG were in effect on the date of the hearing, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

## Findings of Fact[3]

Applicant, age 49, divorced his second wife of 19 years in August 2014. They had previously separated in 2012. He has two adult children, ages 21 and 19. Since receiving a high school diploma in 1986, he has taken some college courses through a program at work. The same defense contractor has employed Applicant since 1988. Applicant has maintained a security clearance for over 28 years.[4]

Under Guideline F, the SOR alleges five delinquent debts (SOR ¶¶ 1.a through 1.d, and 1.f), totaling approximately $31,302, and a 2015 foreclosure (SOR ¶ 1.e). Under Guideline E, the SOR alleges that Applicant was arrested in 2014 (SOR ¶ 2.a), and that he deliberately failed to disclose it on his SF86 (SOR ¶ 2.b). It also alleges that he deliberately failed to disclose on his SF86: 1) the facts alleged in SOR ¶¶ 1.a through 1.e (SOR ¶ 2.c); and 2) that he was hospitalized for an emotional or mental health condition in 2014, and subsequently treated on an outpatient basis for that condition (SOR ¶ 2.d). In his SOR answer, Applicant admitted the facts alleged in SOR ¶¶ 1.a

[1] On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

[2] ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

[3] Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer, his SCA (GE 1), and the summary of his March 2015 subject interview, which Applicant adopted as accurate (GE 2).

[4] Tr. at 7, 8, 38, 41, 64, 91, and 96; GE 3 at 21 and 34.

through 1.c, 1.e, 1.f, and 2.a. At the hearing, he admitted the facts alleged in SOR ¶ 1.d.[5]

Guideline F

A medical creditor placed Applicant's account in collection status in the amount of $55 in July 2013 (SOR ¶ 1.a.).[6] In his SOR answer, Applicant stated that he was in the process of "organizing his finances [in order] to pay this debt." At the hearing, Applicant claimed no knowledge of the debt and revealed that he had made no effort to investigate or research it.[7] This debt remains unresolved.

In June 2004, Applicant opened a charge account with a credit limit of $6,000 to purchase a computer, television, and other electronics through a computer company. In November 2013, that company charged off the account in the amount of $8,406. In April 2015, that company placed it in collection status in the amount of $7,907 (SOR ¶ 1.b). In his SOR answer, Applicant stated that this debt was "being paid." At the hearing, Applicant stated that, at an unspecified time, he tried to withdraw funds from his 401(k) plan to pay this debt but his request was denied since the debt was not an eligible expense.[8] This debt remains unresolved.

Applicant opened a credit-card account in October 2011 with a credit limit of $5,000. In December 2014, Applicant was 120 days or more past due in the approximate amount of $823, with a total balance of $5,205. By September 2015, the creditor had charged off the account in the amount of $5,295. By September 2016, the balance increased to $5,822 (SOR ¶ 1.c). In his SOR answer, he stated that he would pay this debt "as soon as [the debt alleged in ¶ SOR 1.b was] paid." Sometime after he received the SOR, the creditor garnished Applicant's wages to collect the debt. At the hearing, without providing any corroborating documentation, Applicant claimed that the garnishment was fully satisfied in January 2017. He acknowledged that he made no effort to resolve the debt prior to the garnishment, which was issued against him involuntarily.[9] This debt remains unresolved.

Applicant financed an automobile for his wife in October 2011 with a loan in the amount of $22,177. By September 2015, the lender had charged off the account in the amount of $13,216 (SOR ¶ 1.d). By September 2016, the balance had decreased to $5,559. At the hearing, Applicant was unable to recall any specifics about this debt and acknowledged that he had not made any effort to investigate or research it. He admitted that the decreased balance was not due to any action on his part, given that he never

[5] Tr. at 61.

[6] GE 7 at 1; GE 5 at 6.

[7] Tr. at 48-49.

[8] Tr. at 49-51 and 55; GE 7 at 2; GE 6 at 2; and GE 5 at 3.

[9] Tr. at 55-58; and 119; GE 5 at 4, GE 6 at 2; and GE 7 at 2.

reached out to the creditor to resolve or otherwise address it.[10] This debt remains unresolved.

Applicant purchased a home in December 2003, financing 100% of the $173,000 purchase price through a home-mortgage loan. He refinanced the loan in 2007. Applicant acknowledged that he and his wife fell behind with the loan payments when they separated in 2012. However, Applicant claimed that, when they met with a divorce mediator in mid to late 2013, they were only a month or two behind. However, by December 2014, the loan was 120 days or more past due in the amount of $26,605, with a remaining balance of $199,404. By September 2015, it was $44,820 past due. Between 2007 and September 2015, his monthly payment was between approximately $1,341 and $1,972. By August 2014, the home was in foreclosure status.[11] On a date not specified in the record, the lender foreclosed on the mortgage loan. In September 2016, the lender reported a $0 balance. Applicant was unaware of whether he owed a deficiency balance on the loan and has not contacted the lender to find out. He was "waiting to see what happens."[12] The SOR alleged the fact of the foreclosure, but not any indebtedness on the mortgage-loan account (SOR ¶ 1.e).

Applicant financed an automobile for his wife in 2008 with a $24,132 loan. In July 2010, the lender charged off the account in the amount of $4,202 (SOR ¶ 1.f).[13] At a point not specified in the record, the lender repossessed the automobile. In his SOR answer, Applicant stated that his ex-wife was responsible for paying this debt. At the hearing, Applicant stated that he believed he did not owe the debt because he has not heard anything from his lender. He acknowledged that he had not made any effort to resolve this debt.[14] This debt remains unresolved.

Applicant attributes his financial indebtedness to his wife's mismanagement of their finances, which she handled during their marriage. Applicant claimed that he was unaware of her mismanagement until approximately 2007 when a creditor repossessed his wife's car for nonpayment. Thereafter, he did not take a more active role in managing their finances. While "he knew [they] were struggling" and that "things were [not] always the way they should [have] been with the amount of money [he] was making," he never thought that his finances were "bad, bad." He acknowledges that he overspent at times in an attempt to "keep [his wife and two children] happy [by, financially,] giving them what they want[ed]."[15] Applicant reported having "financial problems" to a medical provider in June 2014.[16]

[10] GE 5 at 4; GE 6 at 2; GE 7 at 2; and Tr. at 58-63.

[11] His ex-wife was evicted from the home in January 2017 (Tr. at 64).

[12] Tr. at 63-67, and 86-97; GE 3 at 49; GE 5 at 4-5, GE 6 at 1-2; and GE 7 at 3-4.

[13] GE 5 at 3; and GE 7 at 3.

[14] Tr. at 67-68; and 73. Although Applicant's hearing testimony was unsure about the status of the repossession, he reported that the vehicle had been repossessed on his SCA.

[15] Tr. at 45-48; and 115-116.

While separated and during their divorce proceedings, marital debts were allocated between Applicant and his wife. Applicant claimed, without providing sufficient corroborating documentation, that the parties agreed to divide equally their marital debts, including the debts alleged in SOR ¶¶ 1.b and 1.d, and that his wife was solely responsible for the debt alleged in SOR ¶ 1.f.[17] However, because these debts were in his name, he acknowledged that he was ultimately responsible for them.[18]

As of March 2017, Applicant earned an annual salary of approximately $109,600 plus overtime pay totaling approximately $200 and a $750 annual bonus. During the marriage, his wife worked part time and earned approximately $300 per week. Between 2012 and 2014, Applicant voluntarily paid his wife $1,200 per month. Since August 2014, he has paid alimony to his ex-wife of $1,800 per month. He does not have any obligation to pay child support as his youngest child has resided with him since January 2014. Applicant described his current finances as "living paycheck to paycheck," and stated that he has nothing extra to pay his delinquent debt. While he has "zero" dollars in his checking account, his 401(k) has a balance of $107,000. He has not incurred any additional delinquent debt beyond that alleged in the SOR. [19]

Applicant has not sought out any financial counseling or assistance. At the hearing, he stated that while he has been advised that bankruptcy is an option to resolve his debt, he wants to pay his bills and considers bankruptcy to be "copping out" or "trying to weasel out of" paying what he owes.[20] Without referencing specific debts, Applicant stated that he intends to pay his delinquent debts once he is financially able. He hopes to end his alimony soon. If not, then he will "have to figure out [his] options." [21]

Guideline E

On June 8, 2014, Applicant intentionally overdosed on prescription medication. He took 20 tablets of 1 mg Xanax pills and drank either one beer or two drinks, which a doctor described as a "sincere suicide attempt." That night, Applicant was involuntarily held at a hospital's emergency room for psychiatric evaluation, where he was diagnosed with major depression, intentional overdose of Xanax, and suicidal ideation. The next day, he was transferred to another hospital for inpatient-psychiatric stabilization. There, he was diagnosed with depressive disorder, not otherwise specified, and then discharged on June 11, 2014. Applicant submitted to an outpatient-psychiatric

[16] GE 3 at 20-21.

[17] Tr. at 50-55 and 92-96; AE C (as to the allocation of debts, these documents reference "financial affidavits" which were not provided).

[18] Tr. at 53-55.

[19] Tr. at 42-46, 68-71, 96, 98, and 99.

[20] Tr. at 99-100, 118-119.

[21] Tr. at 99, 116-117.

evaluation with a psychiatrist on June 12, 2014 and had one follow up visit with that provider on June 26, 2014. She diagnosed him with major depressive affective disorder, single episode mild degree. Applicant received outpatient therapy (involving family, marital, and psychological services) with a licensed mental health professional seven times in 2014 (October 23rd, October 30th, November 7th, November 14th, November 21st, December 5th, and December 19th) and on January 16, 2015.[22]

On September 27, 2014, Applicant's security officer (SO) advised him by email that his periodic reinvestigation was due the following month. The SO attached to that email a worksheet in word format titled "SF86 FINAL w.add'l pages.doc," and advised Applicant that he could either complete the worksheet and return it to the SO for typing or "[complete it] on line." The record does not contain a copy the referenced attachment.[23]

On October 31, 2014, Applicant signed a security form acknowledging receipt of a blank SF86 to be completed jointly by the Applicant and his company's security team (Security). Therein, Applicant also acknowledged 1) that he would be required to complete the SF86 and that Security would type the information into the required government system, 2) that once Security typed the information, Security would contact Applicant to review the paperwork for final submittal, 3) that the SF86 instructions are very explicit and must be followed precisely, and 4) that he was to read the SF86 questions carefully.[24]

On November 5, 2014, Applicant sent a document in PDF format titled "Periodic reinvestigation-Secret clearance.pdf" to the SO by email. The record does not contain a copy of the referenced attachment.[25]

On November 8, 2014, the SO advised Applicant by email that he had typed up his "security clearance periodic reinvestigation" and provided him a list of questions that Applicant needed to answer, none of which were the subject of the falsification allegations in the SOR. The SO also attached to that email a worksheet in PDF format titled "TANNER, ROBERT SECTION 26.pdf." The referenced attachment was a blank two-page form asking questions related to Section 26 (Financial Record) of the SF86.[26]

During an argument that Applicant had with his wife on November 9, 2014, he pushed her. His wife's sister, to whom his wife was talking on the phone during the incident, called the police. When the police arrived, they arrested Applicant, transported

[22] GE 3. The record contains unresolved discrepant information about how much alcohol Applicant consumed: one beer (GE 3 at 20) or two drinks (GE 2 at 31). The discrepancy is not material.

[23] AE B.

[24] AE B.

[25] AE B.

[26] AE B; Tr. at 101-102.

him to the police station, and fingerprinted him. Before he was eventually "let go," the police charged him with unlawful restraint and disorderly conduct (SOR ¶ 2.a), and issued a temporary-restraining order against him, which included a requirement that he have no contact with his wife and that he stay away from the marital home.[27] On a date and for a term not specified in the record, a longer-term restraining order was issued against Applicant, which prohibited him from having any physical contact with his wife or harassing her.[28] After he completed required classes through his local superior court, the charges were dropped. He has not either spoken to or been around his ex-wife since November 2014.[29]

On December 1, 2014, Applicant replied by email to his SO to answer the questions posed in the SO's November 8, 2014 email and to return the completed worksheet in PDF format titled "section 26.pdf." The referenced attachment was the same two-page form provided by the SO, on which Applicant had handwritten details in response to questions about the debt alleged in SOR ¶ 1.f.[30]

On December 3, 2014, Applicant signed his SF86 certifying that the statements he made therein were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." On March 17, 2015, he was interviewed in connection with his security-clearance investigation to discuss, among other things, the contents of his SF86.

In section 17 (Marital Status) of the SF86, Applicant reported that he was "married" and did not report his August 2014 divorce or his earlier two-year separation. During his March 2015 interview, he acknowledged that he was separated from his wife, but claimed that they would "be filing for divorce soon." He referenced his "soon to be ex-wife" in response to a question about his finances in section 26 of the SF86. During the hearing, he claimed that he "definitely was [not] divorced before [he] filled out [the SF86].[31]

In section 22 (Police Record) of the SF86, Applicant answered "No" to the question of whether he had been, in the last seven years, "arrested by any police officer, sheriff, marshal or any other type of law enforcement official?" (SOR ¶ 2.b). He also answered "No" to whether there was then "currently a domestic violence protective

[27] Because this fact was not alleged in the SOR, I will consider it only for the purpose of evaluating mitigation and whole person.

[28] As of November 14, 2014, the restraining order was in effect. (GE 3 at 49). It was also in effect as of March 17, 2015. (GE 2 at 8).

[29] *See also* GE 4; Tr. at 75-80; and 111-114; GE 3 at 20, 31, 49.

[30] AE A and B; Tr. at 102-108.

[31] Tr. at 109. Because this fact was not alleged in the SOR, I will consider it only for the purpose of evaluating mitigation and whole person.

order or restraining order issued against [him]?"[32] During his March 2015 interview, Applicant voluntarily disclosed the 2014 arrest and related temporary-restraining order. When asked about why he failed to disclose them on the SF86, he claimed that the events occurred "after he completed his [SF86.]" When asked at the hearing about why he failed to report his November 2014 arrest, he initially claimed that he "believed [it] happened after [he] filled out the [SF86]." In fact, more than once, he stated that he could have "sworn" it happened after. When further questioned, he claimed alternatively that he "did [not] think it was an issue" since "no charges were filed."[33]

In section 21 (Psychological and Emotional Health) of the SF86, Applicant answered "No" to the question of whether he had, in the last seven years, "consulted with a health care professional regarding an emotional or mental health condition [or had been] hospitalized for such a condition." (SOR ¶ 2.d). During his March 2015 interview, Applicant voluntarily disclosed that he "misused prescription drugs" in November 2014 while in possession of a security clearance. He stated that he had been "taken to the hospital" after "accidentally overdos[ing]" on a prescription drug that he had been previously prescribed after he misread the label. He claimed that he failed to disclose his hospitalization on the SF86 because the events occurred "after he completed his [SF86.]" When asked at the hearing about why he failed to report his June 2014 hospitalization, he claimed that he "believed [it] happened after [he] filled out the [SF86]."[34]

In section 23 (Illegal Use of Drugs or Drug Activity) of the SF86, Applicant answered "No" to the question of whether he had, "intentionally engaged in the misuse of prescription drugs" in the last seven years.[35] Neither during his March 2015 interview or the hearing did Applicant discuss why he failed to answer "Yes" to this question.

In section 26 (Financial Record) of the SF86, Applicant answered "Yes" to whether he had any "possessions or property voluntarily or involuntarily repossessed or foreclosed" in the past seven years. He reported that he had defaulted on an automobile loan in the approximate amount of $24,132 with the creditor alleged in SOR ¶ 1.f, who had repossessed a vehicle because his wife had not made the payments. He further explained that it was his "soon to be ex-wife's responsibility." He did not report any other delinquent debts on his SF86 (SOR ¶ 2.c), nor did he provide a "Yes" response to whether he had, in the past seven years: 1) "defaulted on any type of loan," 2) "bills or debts turned over to a collection agency," 3) "any account or credit card suspended, charged off, or cancelled for failing ot pay as agreed," or 4) been "over 120 days delinquent on any debt not previously entered;" or whether he was then "currently, over

[32] Because this fact was not alleged in the SOR, I will consider it only for the purpose of evaluating mitigation and whole person.

[33] Tr. at 75-80.

[34] Tr. at 80-82.

[35] Because this fact was not alleged in the SOR, I will consider it only for the purpose of evaluating mitigation and whole person.

120 days delinquent on any debt." During his March 2015 interview, he claimed that he did not report the foreclosure because it occurred "after he completed [the SF86]." As to the debts alleged in ¶¶ SOR 1.a and 1.b, he claimed that he had no knowledge of them. However, he did acknowledge, generally, that he had outstanding "medical bills to pay," and had been organizing them in order to have them all satisfied by the end of 2015. He did not discuss the debt alleged in SOR ¶ 1.c. As to the debt alleged in SOR ¶ 1.d, he believed that it had been "on track" because he had been in the process of paying off certain bills. As to the debt alleged in SOR ¶ 1.e, Applicant acknowledged that it had gone unpaid because his wife "was spending money that they did not have."

He also answered "No" to whether he, in the past seven years, 1) had "failed to file or pay Federal, state, or other taxes when required by law or ordinance" within the past seven years;" or 2) had his "wages, benefits, or assets garnished or attached for any reason." He did not otherwise report that that he had failed to timely file his 2013 tax returns, and that his wages had been garnished in 2012 to pay his 2011 taxes.[36] During his March 2015 interview, he claimed that he failed to disclose these facts on his SF86 because he was "unable to provide all the specific details" because he was prohibited by a restraining order from contacting his wife, who "[had] all the paperwork." He attributed this restriction to his failure to timely file his 2013 tax returns. At his hearing, Applicant claimed to be current with his tax-return filings and tax payments to both the state and federal government.[37]

When asked at the hearing why he failed to report the delinquent debts or the foreclosure listed in SOR ¶¶ 1.a through 1.e., he initially claimed that he "believed" that he did not know about them at the time he filled out his SF86. When further questioned, he admitted that he knew that his mortgage-loan payments were delinquent at the time that he filled out his SF86, but did not list them because he thought that he was going to "catch up" on them, and did not think that they were "that far" behind. He claimed that they were only one or two months behind when he filled out his SF86. He did not review his credit report or speak with his ex-wife about the status of their debts before filling out the SF86.[38]

At the hearing, Applicant verified that he signed the SF86 on December 3, 2014,[39] that he completed it at work and without any time constraints, and that he was not rushed in any way nor distracted or otherwise prevented from answering the questions fully and completely.[40] However, he claimed that he signed more than one SF86 and that the original one that he filled out would have occurred before the

[36] Because this fact was not alleged in the SOR, I will consider it only for the purpose of evaluating mitigation and whole person.

[37] Tr. at 70.

[38] Tr. at 72-73.

[39] Tr. at 78, 82.

[40] Tr. at 83.

incidents at issue in SOR ¶¶ 2.a, 2.b, and 2.d.[41] He further claimed that if an event happened before he signed his SF86, then he would have disclosed it and "would [not have] lied about it."[42] He also stated that he filled out an electronic version of the SF86 questionnaire first and then completed some supplemental paperwork about his reported financial issue (SOR ¶ 1.f).[43]

Character References

Applicant's current manager, who has known him for three years and interacts with him daily, commended Applicant's work performance. He also found him to be trustworthy.[44] Applicant's friend of 24 years, who is also a co-worker, currently interacts with him approximately once a week. Between approximately 2013 and 2016, he interacted with Applicant daily because he worked for Applicant. He opined that Applicant was a trustworthy individual who exercises good judgment.[45] Another friend and co-worker, who currently interacts with Applicant two or three times a week, also commended Applicant's work performance and trustworthiness.[46]

## Policies

"[N]o one has a 'right' to a security clearance."[47] 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."[48] The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[49]

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

[41] Tr. at 84.

[42] Tr. at 85.

[43] Tr. at 84-85, 101, 103, 109.

[44] Tr. at 18-27.

[45] Tr. at 121-130.

[46] Tr. at 130-141.

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

[48] *Egan* at 527.

[49] EO 10865 § 2.

administrative judge must consider all available and 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 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[50] Thus, a decision to deny a security clearance 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.[51] "Substantial evidence" is "more than a scintilla but less than a preponderance."[52] The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.[53] Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.[54] An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.[55]

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."[56] "[S]ecurity clearance determinations should err, if they must, on the side of denials."[57]

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[50] EO 10865 § 7.

[51] *See Egan*, 484 U.S. at 531.

[52] *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

[53] *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

[54] Directive ¶ E3.1.15.

[55] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[56] ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

[57] Egan, 484 U.S. at 531; *See also* AG ¶ 2(b).

## Analysis

### Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

> Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *See* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). I do not find facts sufficient in the record to support the application of AG ¶ 19(e) ("consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators"), as the Government argued should apply at the hearing.[58]

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

> 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;
>
> 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the

[58] Tr. at 145

individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant has numerous delinquent debts that remain unresolved.

AG ¶ 20(b) is not established. Applicant's separation and divorce were circumstances beyond his control. However, Applicant has not acted responsibly to resolve his delinquent debts since then.

AG ¶ 20(c) and 20(d) are not established. Applicant has not received financial counseling. Because he has not initiated any action to resolve his delinquent debts, I cannot conclude that Applicant's financial problems are under control at this time.

**Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant's arrest establishes the following disqualifying condition:

> AG ¶ 16(d)(2): 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . any disruptive, violent, or other inappropriate behavior . . . .

His deliberate failures to disclose security-significant derogatory information on his SF 86; including facts about his arrest, his hospitalization and treatment for an emotional or mental health condition in connection with his suicide attempt, and the full extent of his financial problems potentially establishes the following disqualifying condition:

> AG ¶ 16(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.[59] An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.[60]

Applicant's arrest and suicide attempt occurred before the date that he certified his SF86; the arrest less than a month prior, and the suicide attempt less than seven months prior. After his suicide attempt, he was diagnosed with psychological conditions for which he was hospitalized and treated on both an inpatient and outpatient basis. He was hospitalized and treated prior to the date that he certified his SF86. Within two months of certifying his SF86, he had attended five outpatient-therapy sessions. Applicant did not provide sufficient evidence to corroborate his claim that he completed an SF86 prior to his arrest and suicide attempt. However, even if he had, it would not excuse his failure update his SF86 prior to certifying its accuracy on December 3, 2014, especially given his experience with the security-clearance investigations process over 28 years.

[59] *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

[60] ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

I did not find credible his explanations and excuses for failing to report any potentially derogatory information on his SF86. Applicant's disclosure of one delinquent debt, which he claimed was not his responsibility, is neither derogatory nor sufficient to put the Government on notice of the significant financial problems with which he knew he was plagued since at least 2012. Regardless of whether he knew the particulars or had access to documents in his wife's possession, at the very minimum, he should have reviewed a credit report prior to certifying his SF86.

Applicant also failed to report his divorce or separation, his intentional misuse of a prescription drug, his failure to timely file tax returns, and his wage garnishment, all of which were reportable events that occurred prior to the date that he certified his SF86. I find that these additional omissions, collectively, further evince Applicant's intent to exclude derogatory information from his SF86. Given these facts, I find substantial evidence of an intent on the part of the Applicant to omit, conceal, and falsify security-significant facts from and on his SF86. Therefore, AG ¶ 16(a) is established.

While I do not consider any physical assault of a spouse to be a minor offense, I find that Applicant's arrest resulted from isolated circumstances that are unlikely to recur. I considered that Applicant volunteered information about his arrest, hospitalization, prescription drug misuse, wage garnishment, and failure to file tax returns during his March 2015 interview. However, because he minimized the circumstances of his hospitalization during that interview and failed to acknowledge at his hearing any wrongdoing with respect to his deliberate failures to disclose any potentially derogatory information on his SF 86, I have serious doubts about his current reliability, trustworthiness, and good judgment. None of the potentially applicable mitigating conditions under this guideline applies except for AG ¶ 17(c) as to the facts alleged in SOR ¶ 2.a.[61] Accordingly, I find SOR ¶ 2.a in favor of Applicant and ¶¶ 2.b through 2.d against him.

## Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

> (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

[61] AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts); and AG ¶ 17(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).

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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness and his deliberate omission of security-significant derogatory information from his SF86. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.f: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraphs 2.b – 2.d: Against Applicant

## Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge