



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-03485
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: Kenneth M. Roberts, Esquire

February 27, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on July 19, 2004. On September 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 1, 2007; answered it on November 9, 2007; and requested a hearing before an administrative judge. DOHA received the request on November 14, 2007. Department Counsel was prepared to proceed on December 7, 2007. The case was assigned to me on December 12, 2007. DOHA issued a notice of hearing on January 8, 2008, and an amended notice of

hearing on January 23, 2008, changing the time of the hearing at the request of Applicant's counsel, but not the date or place. I convened the hearing as scheduled on January 28, 2008. Government Exhibits (GX) 1 through 9 were admitted in evidence without objection. Applicant testified on his own behalf, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through Z, which were admitted without objection. I granted Applicant's request to keep the record open until February 8, 2008, to enable him to submit additional evidence. Applicant timely submitted AX AA, BB, and CC, and they were admitted without objection. Applicant's email transmitting the documents is attached to the record as Hearing Exhibit (HX) I. Department Counsel's response to AX AA, BB, and CC is attached to the record as Hearing Exhibit II. DOHA received the transcript of the hearing (Tr.) on February 7, 2008. The record closed on February 8, 2008. Eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

#### **Amendment of SOR**

At the hearing, Department Counsel moved to amend the SOR to conform to the evidence by substituting the date "July 19, 2004" for "June 16, 2004" in the SOR ¶¶ 2.a and 2.b. Applicant did not object to the amendment, and I granted the motion (Tr. 23-24).

#### **Authentication of Report of Investigation**

GX 4 is a personal subject interview extracted from a report of investigation. Applicant, represented by counsel, affirmatively waived the authentication requirement of Directive ¶ E3.1.20 (Tr. 22-23).

### **Findings of Fact**

In his answer to the SOR, Applicant denied all the allegations. However, at the hearing he admitted most of the debts alleged. His admissions at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 45-year-old information security consultant employed by a federal contractor. He has worked for his current employer since March 2004. He served in the U.S. Army from July 1982 to June 1998. He qualified for an early retirement program and retired as a sergeant first class (pay grade E-7). His military specialty was in communications. He received a security clearance in 1994, while in the Army, and in August 1998, as a civilian contractor. He has worked for federal contractors since his Army service. He was married in July 1983 and has four children: a 27-year-old son from a previous relationship (Tr. 79); and three daughters from his current marriage, ages 23, 22, and 13 (Tr. 53).

An Army Reserve lieutenant colonel, who served with Applicant in Saudi Arabia for six months in 1992 and then remained in contact with him until the present, testified on his behalf. She testified they both worked in a classified environment (Tr. 33). She called Applicant “a genius” because of his ability. She trusts him unqualifiedly (Tr. 37-38). In a written letter of support, she described Applicant as “intelligent, motivated, focused, purpose-driven and reliable.” She regards him as “an astute businessman, an experienced engineer, a selfless, courageous soldier, . . . a devoted father, son, and a loyal friend.” (AX C.)

Applicant presented letters from nine additional character witnesses who have known him as supervisors, coworkers and acquaintances. Applicant solicited these letters and sent each character witness a sample letter, resulting in similarities among some of the letters (Tr. 156). The authors of AX D, E, G, H, I, and J had not seen the statement of reasons and were unaware of Applicant’s financial problems. Applicant did not disclose his financial situation to them because it was embarrassing (Tr. 157). Only the authors of AX C, J, and K knew about the allegations of falsifying the SF 86 (Tr. 158). The authors of AX D, E, F, G, K, and L describe him as conscientious about security. The authors of AX D, F, J, K, and L describe him as “trustworthy, dependable, and stable.” All regard him as a person of high character and considerable technical skill.

Applicant’s oldest daughter testified and described Applicant as “a good man” and a caring father who takes care of the family financially. She testified when he finds something wrong, he takes care of it as soon as he is able (Tr. 51-52).

Since 1998 Applicant has maintained two residences. His family lives in the Southeast U.S., and he has maintained a second residence near his workplace in the Northeast U.S. (Tr. 80). He visits his family about every two weeks, sorts through the accumulated mail, and takes care of matters requiring his attention (Tr. 58). As far back as his deployment to Saudi Arabia in the 1990s, his wife has been “sloppy and dilatory” in managing the family finances, and their marriage has been “tumultuous” because of financial disagreements (AX A at 2-3; Tr. 150). He testified he relied on his wife to take care of the finances until 2005 or 2006, when he took over (Tr. 154).

The debt alleged in SOR ¶ 1.a was on a joint credit card account. The statements were sent to his residence in the Southeast (Tr. 82). Applicant believed his wife was making payments on the account, and he did not know the account was delinquent until the security investigator showed him the credit reports (Tr. 82-83). The account has been closed and the debt paid in full (AX M; Tr. 147).

The debt alleged in SOR ¶ 1.b arose because Applicant did not pay state income taxes in his Northeast residence. His Southeast state of residence does not have a state income tax. He testified he was unaware that he was required to pay state income taxes in the Northeast state (Tr. 83-84). The delinquent taxes have been paid (AX N).

About two or three years ago, Applicant gave his middle daughter a car that turned out to be unreliable. The middle daughter asked Applicant to cosign a loan for a new car, and stopped making payments on the old car. She did not tell Applicant the loan on the old car had not been paid off (Tr. 46). A judgment was entered against Applicant, but he was unaware of it until he attempted to rent a car and found out his driver's license was suspended (Tr. 90). This delinquent debt, alleged in SOR ¶ 1.d, has been paid off (AX P).

In 2003, Applicant's oldest daughter was involved in an automobile accident. A lawsuit was filed against Applicant, the daughter, and the mother; and a judgment was entered against all three of them, but the daughter and mother did not inform Applicant. The judgment is alleged in SOR ¶ 1.e. The daughter erroneously believed her mother had taken care of the incident (Tr. 47-49). Applicant was unaware of the debt until he received a copy of his credit report from DOHA (Tr. 92). The judgment has been satisfied (AX Q).

The debts alleged in SOR ¶¶ 1.f and 1.g were incurred when Applicant closed a business but his telephone and broad band provider did not terminate service. He learned that the provider was continuing to charge him when the DOHA provided him with a copy of his credit report (Tr. 101-02). The two accounts have been settled (AX R, S, and AA-CC).

The medical debt alleged in SOR ¶ 2.a(1) arose when Applicant was treated for vertigo in January 2001. He received a bill from his doctor, and was involved in a dispute with his insurance company about it. Eventually, he went to the doctor's office to pay it, but he found the office closed and a notice on the door stating the doctor had died. No contact information was posted (Tr. 138-39). He decided to wait for a bill but never received one from the doctor's office. He told a security investigator he never heard from any collection agencies about the bill (GX 4 at 1). However, at the hearing he admitted he received a bill from a collection agency some time in 2003 (Tr. 139). He learned the debt had been reported as delinquent when he received his credit report from DOHA (Tr. 104-06). The debt has been paid (AX U).

The two delinquent payday loans alleged in SOR ¶¶ 2.a(2) and (4) occurred when Applicant paid the loans with a check that subsequently was dishonored because his wife had drawn down the account without his knowledge (Tr. 121-22; 152-54). Both loans have been repaid (AX U, X).

The medical bill alleged in SOR ¶¶ 2.a(3) was for psychological services after Applicant underwent serious abdominal surgery. While he was recovering, he was engaged in conversation by the psychologist. He later learned he was assigned a psychologist because of the seriousness of his condition. Applicant told the psychologist he would not pay the bill because he had not asked for his services. The psychologist told him he would report the debt to the credit bureau, but Applicant refused to pay it as a matter of principle. He knew the debt would be reported as overdue, but felt it was

unfair and refused to pay it (Tr. 122). He paid the debt in April 2007, after he learned it was a security concern (AX W; Tr. 110).

Applicant has taken steps to minimize recurrence of his financial problems. He closed the delinquent joint credit card account and assumed responsibility for the family finances. His daughters now have their own automobile insurance. He has engaged certified public accountants near each of his residences to handle his taxes. He utilizes on-line banking to monitor his accounts, and he has engaged two credit report monitoring services (Tr. 125-28).

Applicant executed a security clearance application (SF 86) on July 19, 2004. He disclosed some potentially derogatory information, including consulting with a mental health professional and two traffic tickets in 2000 and 2004. In response to question 38, asking if he had been more than 180 days delinquent on any debts during the past seven years, he answered "yes" and disclosed one \$500 debt, but he did not disclose the five debts alleged in SOR ¶¶ 1.a and 2.a(1)-(4). In response to question 39, asking if he was currently more than 90 days delinquent on any debts, he answered "no" and did not disclose the five debts alleged in SOR ¶¶ 1.a and 2.a(1)-(4) (Government Exhibit (GX) 1 at 6).

The debt disclosed on the July 2004 SF 86 was not alleged in the SOR. It arose from a mortgage company's failure to credit Applicant with payments, and it was resolved in his favor (AX T).

On a previous SF 86 executed on May 29, 1999, Applicant answered "no" to question 38, but utilized the "General Remarks" section and explained. "I may have items over 180 days but I am not sure as I cannot verify." He also used the remarks section to disclose two disputed debts and describe the circumstances of the debts and the basis for the dispute. (GX 2 at 11-12).

Applicant testified he did not disclose the delinquent credit card account on his July 2004 SF 86 because he was unaware of it (Tr. 123). He did not disclose the delinquent medical debt alleged in SOR ¶ 2.a(1) on his SF 86 because he intended to pay it, did not know it was reported as delinquent, did not know how many days it was late, and did not know how to answer the question (Tr. 141). He also testified he completed his SF 86 in a rush and did not have time to check his records (Tr. 146).

Applicant testified he did not disclose the delinquent payday loans alleged in SOR ¶¶ 2.a(2) and 2.a(4), because he did not know the checks he uttered to repay them had been dishonored (Tr. 124). Finally, he testified he did not disclose the delinquent medical bill from the psychologist because he was disputing it (Tr. 124). He admitted knowing the debt was outstanding, but thought it was "illegally outstanding." He knew the creditor considered the bill delinquent (Tr. 184). He testified he believed he could have successfully disputed it if he had the funds to hire a lawyer (Tr. 166-67, 184-85).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status	Evidence
1.a	Credit card	\$2,293	Paid in full, 1-22-08	AX M
1.b	State taxes	\$2,312	Paid in full, 11-1-07	AX N
1.c	Medical	\$63	Paid in full, 10-31-07	AX O
1.d	Car loan	\$5,200	Paid in full, 1-7-08	AX P
1.e	Judgment	\$6,538	Resolved, 11-20-07	AX Q
1.f	Telephone	\$95	Paid in full, 11-2-07	AX R
1.g	Telephone	\$343	Paid in full, 11-2-07	AX S; AX AA-CC
2.a(1)	Medical	\$735	Paid in full, 4-27-07	AX U
2.a(2)	Payday Loan	\$698	Paid in full, 4-27-06	AX V
2.a(3)	Medical	\$250	Paid in full, 4-27-07	AX W
2.a(4)	Payday Loan	\$647	Paid in full, 4-27-06	AX X

### Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. 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.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or.

10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline F (Financial Considerations)

The SOR ¶¶ 1.a-1.g alleges seven delinquent debts. Applicant admitted all seven debts at the hearing and presented evidence showing they had been resolved. The security concern relating to Guideline F is set out in AG ¶ 18 as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The disqualifying condition in AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” This condition is not raised for any of the debts alleged in SOR ¶¶ 1.a-1.g, because Applicant’s failure to pay these debts was due to the financial disarray in his household, not an inability or unwillingness to pay them. The debt alleged in SOR ¶ 2.a(3) was the result of Applicant’s unwillingness to pay what he considered an unfair and illegal debt, but this debt was alleged only under Guidelines E and J.

AG ¶ 19(b) is a two-pronged condition that is raised where there is “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.” This condition is not raised because there is no evidence of frivolous or irresponsible spending.

AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations. Applicant’s financial history raises this condition.

AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” This condition is not raised, because Applicant’s spending was not beyond his means.

AG ¶ 19(g) is raised by “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.” Applicant’s failure to file state income tax returns raises this condition.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(c) and (g), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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(a). This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was “so long ago,” or “so infrequent,” or “occurred under such circumstances that it is unlikely to recur.” If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct “does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”

The first prong (“so long ago”) is not established, because most of the debts were not resolved until recently. The second prong (“so infrequent”) is not established because Applicant had numerous delinquent debts. The third prong (“unlikely to recur”) is established, because Applicant has taken corrective measures to resolve his chaotic family finances. The fourth prong (“does not cast doubt . . . .”) is established for the debts alleged in SOR ¶¶ 1.a-1.g. I conclude AG ¶ 20(a) is established for these debts. The impact of the debts alleged under Guidelines E and J on Applicant’s current reliability, trustworthiness, and good judgment is discussed below.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, i.e. conditions beyond the persons’s control and responsible conduct, must be established. Applicant’s wife’s financial neglect was a circumstance beyond his control. However, he knew after his deployment to Saudi Arabia in the 1990s that she could not be trusted with managing the family finances, but he did not take over the finances or institute monitoring measures until around 2005. Because he did not act responsibly for several years after he learned of his wife’s financial neglect, I conclude AG ¶ 20(b) is not established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant was unaware of the delinquent debts alleged in SOR ¶¶ 1.a-1.g until a security investigator showed him his credit report. Although two of the debts (SOR ¶¶ 1.a and 1.d) were resolved only days before the hearing, he began resolving his delinquent debts in April 2006, long before the SOR was issued. He has now resolved all the debts. I conclude AG ¶ 20(d) is established.

### **Guideline E (Personal Conduct)**

The SOR alleges Applicant deliberately failed to list the debts alleged in SOR ¶¶ 1.a and 2.a(1)-(4) on his SF 86 executed in July 2004. The concern under this guideline is set out in AG ¶ 15 as follows:

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 relevant disqualifying condition in this case is “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.” AG ¶ 16(a).

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 an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant testified he was unaware of the two delinquent payday loans alleged in SOR ¶¶ 2.a(2) and (4) until after he executed his SF 86. His testimony regarding these loans was plausible and credible. Accordingly, I conclude he has refuted the allegations in SOR ¶¶ 2.a(2) and 2.a(4).

Applicant was aware, however, of the unpaid medical bill alleged in SOR ¶ 2.a(1). He admitted receiving a letter from a collection agency concerning the debt around 2003. He testified he did not tell many of the individuals who supported him with character letters about his debts because he found it embarrassing. The only debt he disclosed on his SF 86 was one that had been resolved in his favor. He has held a clearance for much of his professional life and is familiar with the security clearance application process. He knew how to handle a situation where he had incomplete information, because he had done so on his previous SF 86 in May 1999. Notwithstanding his claim that he was rushed while completing his July 2004 application, he included considerable detail, including derogatory information, on that Application. I found his explanations for not disclosing this medical bill (that he intended to pay it, did not know it was reported as delinquent, did not know how many days it was late, did not know how to answer the question) implausible and not credible.

Applicant also was aware of the unpaid bill from the psychologist. He had been informed it would be reported as delinquent. He knew the correct way to handle a disputed debt on his SF 86, because he had disclosed and explained two disputed debts in his May 1999 application. I find his explanation for not disclosing the debt in SOR ¶ 2.a(3) implausible and not credible.

Based on his deliberate omissions of the debts in SOR ¶¶ 2.a(1) and 2.a(3) from his SF 86, I conclude the disqualifying condition in AG ¶ 16(a) is raised, shifting the burden to Applicant to explain, extenuate, or mitigate the facts.

Security concerns raised by false or misleading answers on a security clearance application may be mitigated by showing that "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(a). Applicant did not correct the omissions from his SF 86 until questioned by a security investigator. I conclude AG ¶ 17(a) is not established.

Security concerns under this guideline may be mitigated if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on

the individual's reliability, trustworthiness, or good judgment" AG 17(c). This mitigating condition, like AG 20(a) under Guideline F, consists of three disjunctive prongs and one conjunctive prong. The first prong ("so minor") is not established because Applicant's falsification was a felony, as discussed below under Guideline J. The second prong ("so much time has passed") is not established because the falsification involves Applicant's current application for continuation of his clearance. The third prong is not established because the falsification did not happen under "unique circumstances" but during a routine reapplication for a clearance. Finally, the fourth prong is not established because Applicant's lack of candor on his application raises doubt about his reliability, trustworthiness, or good judgment. I conclude AG 17(c) is not established.

Conduct under this guideline may be mitigated by evidence showing "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." AG 17(d). Applicant has resolved all his delinquent debts, thereby eliminating the circumstances that motivated the falsification, but he has not acknowledged his falsification. I conclude AG 17(d) is not established.

Finally, conduct under this guideline may be mitigated if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." AG 17(e). Applicant has resolved his delinquent debts, thereby reducing his vulnerability. I conclude AG 17(e) is established.

### **Guideline J (Criminal Conduct)**

The SOR alleges Applicant committed a felony by intentionally not disclosing the debts alleged in SOR ¶¶ 1.a and 2.a(1)-(4) in his SF 86. The concern raised by criminal conduct is that it "creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." AG ¶ 30. Conditions that could raise a security concern and may be disqualifying include "a single serious crime or multiple lesser offenses." AG 31(a).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the government of the United States. A deliberately false answer on a security clearance application is a serious crime within the meaning of Guideline J. The statute encompasses deliberate concealment of information as well as affirmative misstatements. See *United States v. Beck*, 615 F. 2d 441, 453 (7<sup>th</sup> Cir. 1980). Applicant's intentional omissions on his SF 86 raise the disqualifying condition in AG ¶ 31(a), shifting the burden to Applicant to rebut, explain, extenuate, or mitigate the facts.

Security concerns under this guideline may be mitigated by evidence that “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” AG ¶ 32(a). This mitigating condition is not established, because Applicant’s falsification was recent, did not happen under unusual circumstances, and casts doubt on his reliability and trustworthiness. No other enumerated mitigating conditions under this guideline are established.

### **Whole Person Concept**

Under the whole person concept, an 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. An 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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a mature adult and a retired Army noncommissioned officer who has held a clearance for many years, apparently without incident. He is talented and highly respected by his colleagues and former supervisors. His long-standing financial problems were disclosed in his 1999 security clearance application. His problems were exacerbated by geographical separation from his family and his wife’s financial irresponsibility. Based on his military service and years of service as a federal contractor, he was aware of the security clearance process and the importance of candor. Nevertheless, he was embarrassed by his financial situation and did not disclose it to many of his colleagues and professional acquaintances. Most importantly, he intentionally did not disclose two significant medical debts on his SF 86. Confronted at the hearing with the intentional omissions from his SF 86, he persisted in rationalizing and attempting to justify his action.

After weighing the disqualifying and mitigating conditions under Guidelines F, E, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on financial considerations, but he has not mitigated the security concerns under Guidelines E and J for his intentional

failure to disclose the two medical debts alleged in SOR ¶¶ 2.a(1) and 2.a(3). I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

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

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

Subparagraphs 1.a-1.g: For Applicant

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

Subparagraph 2.a(1): Against Applicant

Subparagraph 2.a(2): For Applicant

Subparagraph 2.a(3): Against Applicant

Subparagraph 2.a(4): For Applicant

Paragraph 3, Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

### **Conclusion**

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

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LeRoy F. Foreman  
Administrative Judge