



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-05144
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his security clearance application (e-QIP) on October 19, 2006. On July 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Guideline E, and Guideline J for Applicant. 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 August 9, 2007. He answered the SOR in writing on September 21, 2007, and requested a decision based on the record without a hearing. On October 30, 2007, Applicant requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on November 19, 2007. On November 21, 2007, I scheduled a hearing for December 12, 2007.

I convened the hearing on December 12, 2007, as scheduled. Three Government exhibits (Ex. 1-3) and six Applicant exhibits (A-F) were received into evidence without objection and Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on December 21, 2007. I granted Applicant's request to keep the record open until January 2, 2008, to submit additional documents. Applicant forwarded by facsimile proposed exhibit G on December 14, 2007, exhibits H-K on December 18, 2007, and exhibit L on December 20, 2007. In corresponding email messages, Applicant explained his efforts to contact his creditors. A record of his email correspondence with DOHA was marked as exhibit M. On January 3, 2008, I gave the Government until January 11, 2008, to respond. Department Counsel indicated on January 11, 2008, that the Government had no objections, and the exhibits were received in evidence. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, Financial Considerations, that as of May 14, 2007, Applicant owed delinquent debts of \$6,543 (SOR ¶ 1.a), \$4,128 (SOR ¶ 1.b), \$2,807 (SOR ¶ 1.c), \$3,774.75 (SOR ¶ 1.d), and \$161 (SOR ¶ 1.e). Under Guideline E, Personal Conduct, Applicant was alleged to have deliberately falsified his October 2006 e-QIP by denying he had been over 180 days delinquent on any debts within the seven years preceding his clearance application (SOR ¶ 2.a), or that he was currently over 90 days delinquent on any debts (SOR ¶ 2.b). DOHA also alleged under Guideline J, Criminal Conduct, that Applicant committed a felony violation of 18 U.S.C. § 1001 by falsifying his response to the debt inquiries on his e-QIP (SOR ¶ 3.a). In his Answer to the SOR, Applicant denied the allegations with explanations. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 44-year-old production manager who has worked for his current employer, a small defense contractor, since March 2005. He seeks a secret-level security clearance for overseas duties involving power systems for defense applications. He held an interim clearance, which was withdrawn on issuance of the SOR.

Applicant married his first wife in September 1981. During their four-year marriage, they had three children who are now young adults and live on their own. In November 1992, Applicant married his current spouse. They have a 17-year-old son who lives with them.

Applicant served in the United States Air Force from April 1982 to March 1988. He held a secret clearance while he was in the military. In August 1988, he began working as a test engineer and technician in the semiconductor industry with company X. His financial obligations, including his mortgage, were paid on time. He and his spouse took out automobile loans for \$17,364 in November 1995, and for \$32,898 in March 1997. Both were paid off according to terms. (Ex. 3)

In June 1997, he continued in the same line of work but with a new employer. In September 1999, Applicant and his spouse bought a boat for waterskiing, taking out a loan of \$23,367 to be repaid at \$265 monthly for 180 months. As of July 2001, the loan was rated as current. (Ex. 3, Tr. 97)

In August 2000, Applicant returned to work for company X. (Ex. 1) In March 2001, he and his spouse took out a loan for \$75,000 to remodel their home. (Ex. 3, Tr. 95) By 2002 they had problems meeting some of their financial obligations. An individual revolving charge account opened by Applicant in June 2002 was closed in February 2003 with a balance owed of \$4,128 (SOR ¶ 1.b). A MasterCard account Applicant had opened in October 2002 was \$5,392 past due as of May 2003 (SOR ¶ 1.d). As of November 2002, Applicant had a past due balance of \$178 on another credit card (not alleged). The debt was settled in March 2005 for less than the \$445.29 owed at the time. In December 2002, a VISA card account on which Applicant was an authorized user was charged off in the amount of \$6,543 and placed for collection (SOR ¶ 1.a). Applicant had his own MasterCard account with the same lender, which was settled for less than the full \$5,237 balance in July 2003 (not alleged). As of March 2003, he and his spouse were 60 days past due (\$2,552 in arrears) in their mortgage payment. In May 2003, Applicant's account with a wholesale retail club, opened in December 1998, was charged off in the amount of \$2,807 (SOR ¶ 1.c). In December 2003, a \$161 medical debt was referred for collection (SOR ¶ 1.e). (Ex. 2, Ex. 3)

Applicant and his spouse sought the services of a debt resolution firm in 2002. While they were able to take care of only a few of their debts ("we weren't able to keep up with the program at that point, just because of other reasons, other things that happened and that kind of came along." Tr. 65), the phone calls from creditors stopped (Tr. 36).

In 2004, Applicant and his spouse purchased a week in a timeshare, about 2 1/2 hours from their home at the time. Applicant, who traveled there for outdoor activities, stayed in a unit for \$35 per night when one was available. It was less expensive than a hotel in the area. (Tr. 99)

In Fall 2004, Applicant's spouse, who worked for the same company as Applicant, left her job and moved to their present locale. (Tr. 67, 105) Applicant worked a shift that allowed him to spend the weekends with his wife and son. (Tr. 67) He was earning between \$50,000 and \$55,000 annually depending on overtime hours. In December 2004, Applicant got a part-time job as a lift attendant at an alpine ski resort at \$7.50 per hour. They sold their home in their previous locale that same month, satisfied their mortgage, and paid off the loan taken out to remodel the premises. In January 2005, Applicant was laid off from his job in the semiconductor industry. His spouse was still unemployed. Applicant worked full-time as a lift attendant to support the family until late March 2005. (Tr. 65-69)

In late March 2005, Applicant began working as a shop manager for his present employer, a small power systems company of 15 employees. His spouse began

working there as well in June 2005, as an administrative assistant at about \$11 an hour. (Tr. 69, 106)

In January 2006, a retailer placed Applicant's delinquent account with a balance of \$4,128 for collection (SOR ¶ 1.b). In April 2006, Applicant and his spouse leased a four-wheel-drive vehicle for her at a cost of \$585 per month for 36 months.

On October 13, 2006, Applicant submitted his e-QIP seeking a secret-level clearance. Due to a technical problem, Applicant had to re-sign the document on October 19, 2006. (Tr. 62-63) Applicant responded negatively to financial delinquency inquiries: 28 a. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28 b. "Are you currently over 90 days delinquent on any debt(s)?" (Ex. 1)

A check of Applicant's credit on November 8, 2006, revealed a history of late payments on some accounts brought current, such as his boat loan, which had a balance of \$17,661. Several accounts were listed as charged off and/or placed for collection (SOR ¶¶ 1.a as authorized user, 1.b, 1.c, 1.d and 1.e). (Ex. 3)

In about December 2006, Applicant listed the timeshare for sale. As of December 2007, it was still on the market. (Tr. 99-100, Ex. J) Applicant and his spouse continued to pay \$100 per month for the timeshare. (Ex. J)

On January 11, 2007, Applicant was interviewed for his security clearance. He expressed a willingness to resolve his indebtedness. (Ex. 2) In January 2007, Applicant and his spouse looked into buying a home. They were told they would qualify for a loan but at a higher interest rate due their credit problems. They decided not to pursue home ownership at that time due to their employer's economic outlook.¹ (Tr. 86) Applicant obtained his own credit report on January 18, 2007, to confirm his debt (Tr. 37). He and his spouse decided to address their outstanding accounts one at a time. (Tr. 36-37) His spouse continued to handle the family's finances as she had since their marriage, but Applicant took a more active role. (Tr. 85)

On April 20, 2007, the creditor owed the debt in SOR ¶ 1.d agreed to settle the \$5,392.50 balance for \$3,774.72. The debt was to be repaid at \$314.56 per month from May 2007 through April 2008 in return for waiving late fees and finance charges. (Ex. 2) After an initial payment of \$331 in May, he made payments of \$350 in June, \$400 each in July, August, and September, and \$320 in October, reducing the balance to about \$1,573.72. (Ex. D, Ex. I, Ex. L) On or before June 1, 2007, Applicant paid the \$161.10 medical debt in collection (SOR ¶ 1.e). (Ex. E)

In response to interrogatories from DOHA, Applicant indicated on May 14, 2007, that he had reached a settlement agreement with the creditor owed the debt in SOR ¶ 1.d. Once that debt had been satisfied, he would deal with his other consumer credit debts in succession (in order ¶¶ 1.c, 1.b, and 1.a). He maintained he had not known of

¹Applicant testified that the company had reduced in size from fifteen to nine employees. (Tr. 102)

the medical debt in collection (SOR ¶ 1.e) before he saw his credit report, and promised to take care of that debt within 30 days. As for his failure to disclose his debts on his e-QIP, Applicant explained, "I thought that these debts had been released because the companies had them listed as 'charge offs' on my credit report." Applicant also furnished a personal financial statement indicating that he and his spouse had \$1,398.44 remaining each month after payment of expenses and debts, including \$585 for his spouse's car, \$266 for their boat, \$314.56 on the debt in SOR ¶ 1.d, \$100 for the timeshare, and \$15 on his spouse's credit card. He estimated he owed \$17,400 for the boat, \$433 on her credit card, \$3,774.75 on the delinquent debt in ¶ 1.d, and \$3,552.30 for the timeshare. (Ex. 2)

In June 2007, Applicant and his family vacationed in California. He believes they financed the trip with savings, although he isn't sure. (Tr. 89)

After Applicant received the SOR, he consulted with an attorney who advised him to contact his creditors and attempt to arrange repayment terms. (Tr. 37) In or before August 2007, Applicant contacted the assignee collecting the \$4,128 retail charge delinquency (SOR ¶ 1.b). The collection agency agreed to accept in settlement \$2,477.14, payable in three installments (\$400, which was paid by Applicant on August 24, 2007, \$301.26 which was paid by him on October 2, 2007, followed by a balloon payment of \$1,775.88 due October 31, 2007). (Ex. B, Ex. L) Applicant informed the collection agency that he could not afford the balloon payment. (Tr. 49) On November 28, 2007, he paid an additional \$107.26. As of December 2007, he had not called the creditor to negotiate additional payments. (Tr. 50-51)

Applicant contacted the creditors reportedly owed the debts in SOR ¶¶ 1.a and 1.c. On or before September 17, 2007, the creditor removed the reported delinquency on the account in ¶ 1.a from Applicant's credit record. (Ex. A) Applicant understood from talking to the creditor that the reported balance had been paid and was no longer his responsibility. (Tr. 45-46) Applicant was informed by the presumed creditor of the debt in SOR ¶ 1.c that his account had been sold in 2004. Applicant was unsuccessful in setting up a payment plan with the named assignee as the company had no record of the debt. (Ex. C, Tr. 30)

As of December 2007, Applicant's hourly rate was \$17.71, and his spouse's was \$12.08. (Ex. K) Based on average overtime earnings, Applicant estimated a net monthly household remainder of \$874.18, after payment of expenses and debts (including his payments on SOR ¶¶ 1.b and 1.d). (Ex. J) Applicant and his spouse each have one low limit credit card account for emergencies. Applicant's credit card balance was about \$300. (Tr. 73-74) Applicant owes about \$16,500 on his boat loan. (Tr. 88) He listed the boat for sale in Fall 2007. (Tr. 100) After paying \$500 in legal expenses for assistance in drafting his Answer, and \$1,650 in dental expenses for their son, Applicant and his spouse have about \$500 in savings. (Tr. 83-84)

At his hearing, Applicant attributed his failure to report any delinquent debts on his e-QIP to his belief that his old debts were more than seven years in the past. (Tr. 37)

He cited his ability to lease vehicles and no calls from creditors as factors that led him to assume there were no credit issues. (Tr. 37-38, 64)

Applicant has excelled in his position as production manager at his employer's manufacturing facility. Under his direction, the quality of the company's finished product has improved significantly with less delivery lead time required. After his interim clearance was granted, Applicant made several trips overseas to provide support to the U.S. military in theater. Applicant is held in high regard by those whom he supported and by his employer. He and his wife have access to confidential company accounting information and have not violated that trust. (Ex. F)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 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.

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 concern relating to the guideline for Financial Considerations is set out 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 and his spouse did not spend wisely and incurred obligations beyond what they could reasonably afford on their incomes. (Tr. 71, Ex. 3) An awareness of their financial situation led them to seek debt resolution in about 2002, and a delinquent credit card debt of \$5,237 was settled in July 2003 for less than the full balance. However, as of late 2003, Applicant owed delinquent debt of about \$12,500 (SOR ¶¶ 1.b, 1.c, 1.d, 1.e). Rather than address these delinquent debts, he and his spouse purchased a timeshare in 2004. Security concerns are raised by “inability or unwillingness to satisfy debts” (AG ¶ 19(a)), by “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” (AG ¶ 19(b)), and by “a history of not meeting financial obligations” (AG ¶ 19(c)).

An additional credit card delinquency of \$6,543 (SOR ¶ 1.a) was reported on Applicant’s credit record as of November 2006 (Ex. 3), although Applicant was only an authorized user on the VISA account. So while an authorized user can be held legally responsible for its repayment, the evidence is inconclusive about who incurred the charges and/or opened the account. The creditor removed the debt from Applicant’s credit report in September 2007. (Ex. A) The Government did not sufficiently establish that Applicant faces the additional financial pressures of having to repay the \$6,543 alleged in SOR ¶ 1.a.

Applicant's indebtedness predates his job layoff in December 2004 as well as his spouse's unemployment. 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") applies only to his failure to address his debts in the short-term. Concerned about their financial situation back in 2002, Applicant and his spouse consulted with a debt resolution firm. Applicant knew that they had been unable to follow through on their planned repayments, due largely to the job layoff and his spouse's unemployment. Yet, once they were both gainfully employed in June 2005, Applicant took no action to ensure that his delinquent obligations were repaid. It is no excuse that his spouse handled the family's finances.

In mitigation of this demonstrated financial irresponsibility, Applicant has taken recent steps toward resolving his debt that implicate AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"). Prompted by a desire to improve his credit so that he and his spouse might obtain a home mortgage under favorable terms in the future, Applicant started repaying the debt in SOR ¶ 1.d in May 2007. Financial records in evidence confirm Applicant has been making monthly payments in excess of the \$314.56 required under the settlement agreement. While the debt will not be completely satisfied until April 2008, he has demonstrated a track record of timely payments to conclude he is likely to pay off the debt as scheduled. As he promised in May 2007, he paid the \$161 medical debt in collection (SOR ¶ 1.e) within 30 days. He has made three payments totaling \$808.52 on the debt in SOR ¶ 1.b. His failure to make any payments toward his debt in SOR ¶ 1.c is attributed to difficulty determining where any payments should be sent. The original creditor sold the account and the named assignee claims to have no record of the debt.

Assuming the creditor collecting the debt in SOR ¶ 1.b does not cancel the settlement agreement because of Applicant's failure to make the \$1,774 balloon payment, Applicant owes about \$6,000 in delinquent debt. This is not an insurmountable burden since he and his spouse are both employed and have a positive cash flow. However, given Applicant's past discretionary spending for a boat and timeshare, there must be adequate assurance that Applicant will not incur new obligations that will further stress his finances. In April 2006, he entered into a vehicle lease taking on a monthly repayment obligation of \$585 for 36 months. Their need for a reliable four-wheel-drive vehicle is not disputed, and they have been current in their payments. Spending their savings on a vacation to California in June 2007 when they owed several creditors is more difficult to justify. On the other hand, Applicant testified that he and his spouse "are a little bit smarter than what [they] were a few years ago." They have significantly reduced their use of consumer credit. Both he and his spouse have a low-limit credit card for emergencies. (Tr. 73-74) There is no evidence of any new credit card delinquency, or of late rent or utility payments. They have made their timeshare and boat payments on time since they have worked for the defense contractor. Even if they are not successful in selling either of these assets, their financial situation has sufficiently stabilized to allow them to continue to meet their current obligations and to make payments on the old delinquencies. AG ¶ 20(d) and AG ¶ 20(c)

("there are clear indications that the problem is being resolved or is under control") apply.

Guideline E, Personal Conduct

The security concern related to the guideline for Personal Conduct 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 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.

As of October 2006, when Applicant applied for a secret-level clearance, he owed on accounts that had been charged off and/or placed for collection in 2003 (\$4,128 on ¶ 1.b, \$2,807 on ¶ 1.c, \$5,392 on ¶ 1.d, and \$161 on ¶ 1.e). These debts should have been reported in response to the financial delinquency inquiries pertinent to debts over 180 days within the past seven years (section 28.a) and to debts currently over 90 days delinquent (section 28.b). Applicant instead responded "No" to both questions.

Under AG ¶ 16(a) personal conduct concerns are raised by the "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." Applicant does not contest that he answered "No" to the debt inquiries, but submits he did not intentionally falsify his e-QIP. In response to DOHA interrogatories in May 2007, Applicant explained, "I thought that these debts had been released because the companies had them listed as 'charge offs' on my credit report." (Ex. 2) At his hearing, Applicant testified that he thought the debts were more than seven years in the past. His spouse handled the finances, he did not see his credit report until January 2007, he was not receiving any calls from creditors, and he had been able to lease his spouse's vehicle in that time frame (*i.e.*, April 2006):

Like I said, we had been able to lease cars and, from what I was told, your credit has to be decent enough to lease a car, so I did not realize we had any credit issues until we started looking into buying a home in January of this year, and that's when we saw our first credit report for a while and that's when we started working on these debts . . . I've been through a security clearance check before when I was in the Service and I'm not naive enough to think they are not going to go back and check my history, check my credit history, so I didn't knowingly falsify these. . . .

(See Tr. 36-38)

Although Applicant's debts were long delinquent when he completed his security clearance application, the record evidence does not support a good-faith belief that they were more than seven years in the past. First, there is the discrepancy between his explanation of May 2007, where he attributed the omission to the creditors reporting the debts as charge offs on his credit record, and his testimony that he did not see his credit report until January 2007, which would have been after he completed his SF 86. When confronted with the discrepancy, Applicant testified with respect to his May 2007 explanation, "I don't know why I did that, probably, just because I had based it on seeing the credit report instead of, I don't know." (Tr. 60) In the interrogatories, DOHA quoted the language of the e-QIP financial delinquency inquiries. It stands to reason that had Applicant thought his debts were more than seven years in the past, he would have said so.

Moreover, Applicant knew that he had financial problems as recently as 2002, when he and his spouse sought the assistance of a debt resolution firm:

Q You indicated that you and your wife had; consulted a debt reduction--

A Yes.

Q --company? When was that?

A I knew you were going to ask that so I tried to remember it. It was in 2002.

Q So you knew in 2002 that you had delinquent debts?

A Yes, at that time I did, but I did not realize, I didn't remember it was actually 2002, I thought it was further back than 2002 that we had entered into that agreement.

Q So you thought it was prior to 1999?

A Yes.

Q And what were the results of that relationship with that debt reduction company?

A We were able to take care of a few debts, obviously not all of them, and we weren't able to keep up with the program at that point, just because of other reasons, other things that happened and that kind of came along.

Q Well, such as?

A I was laid off from my job in 2004, yeah, 2004 and--

Q And--

A --we just weren't able to keep up with it. We thought we were going to be able to, we made a good attempt at trying to keep up with it at that point but we just couldn't.

Q So you stayed in the program for about two years?

A Yes.

Q Do you remember what month you were laid off in '04?

A I believe it was December '04.

(Tr. 65-66) It is simply not credible for Applicant to claim that he thought they had entered into the debt resolution agreement before 1999, given his admission to staying in the program for two years, and not being able to keep up because of his job loss in December 2004. Applicant admitted knowing they had been unable to repay all of their debts as recently as December 2004, which was well within the seven-year scope of question 28 a. Applicant has not persuaded me that the omission of his debts was due to good faith mistake, to inability to recall, or some other cause that would negate the reasonable inference of knowing and willful concealment. Security concerns are raised under AG ¶ 16(a).

Concerns as to whether Applicant has been fully candid about his e-QIP omissions preclude me from considering AG ¶ 17(a) ("the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts"), even though Applicant is credited with acknowledging the debts when he responded to the interrogatories or at his hearing. None of the other potentially mitigating conditions apply.

Guideline J, Criminal Conduct

The security concern related to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity 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.

When Applicant signed his security clearance application in October 2006, he certified that his statements on the form and any attachments were "true, complete and correct to the best of [his] knowledge and belief and [were] made in good faith," and that he understood that a knowing and willful false statement could be punished by a fine or

imprisonment or both. By deliberately falsifying his responses to questions 28 a. and 28 b., Applicant violated 18 U.S.C. § 1001, which provides in pertinent part:

a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowing and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

Disqualifying condition AG ¶ 31(c) (“allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted”) must be considered in evaluating Applicant’s current security suitability.

Applicant’s false denials of any delinquent debts in October 2006 are too recent to consider AG ¶ 32(a) (“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). Applicant’s disclosures of the details of his financial situation and his contributions to his employer are some evidence of rehabilitation, but not enough to satisfy AG ¶ 32(d) (“there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement”). As noted above, Applicant presented inconsistent explanations for his failure to admit to delinquent debt on his security clearance application. Doubts persist about his rehabilitation, as he has yet to demonstrate that his representations can be relied on.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. At work, Applicant has shown reliability and dedication. Albeit recent, he has taken significant steps to resolve the financial issues of concern to the Government (see AG ¶ 2(a)(6)). The Government must be assured that those persons granted access can be counted on to fulfill their fiduciary obligations irrespective of the personal cost. Fully aware of the importance of the security clearance application because he had held a secret clearance for his duties in the U.S. military, Applicant elected to conceal his history of financial problems from the Government. Even if he lacked knowledge of the financial details because his spouse handled the finances, he knew they had financial debts that they had not repaid. It was incumbent upon him to at a minimum check with his spouse and he did not do so. While he now claims he did not have access to his spouse when he completed the questionnaire, the evidence shows he had to re-sign the form a few days after he first completed it. There is no evidence that he made any effort during that time to determine the status of their long overdue accounts. Concerns that he may place his personal interests ahead of his fiduciary obligations preclude me from finding that it is clearly consistent with the national interest to grant him access.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3, Guideline J:	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.

ELIZABETH M. MATCHINSKI
Administrative Judge