

KEYWORD: Financial

DIGEST: Applicant had four delinquent debts listed on the SOR. He borrowed money to invest in the stock market, and the market declined in 2001 resulting in large financial losses. His wife lost her job. He recently paid all four debts, and completed credit counseling. Financial considerations security concerns are mitigated. Clearance is granted.

CASENO: 06-26661.h1

DATE: 07/20/2007

DATE: July 20, 2007

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In re:

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ISCR Case No. 06-26661  
SSN: -----

Applicant for Security Clearance

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**DECISION OF ADMINISTRATIVE JUDGE  
MARK W. HARVEY**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant had four delinquent debts listed on the SOR. He borrowed money to invest in the stock market, and the market declined in 2001 resulting in large financial losses. His wife lost her job. He recently paid all four debts, and completed credit counseling. Financial considerations security concerns are mitigated. Clearance is granted.

### **STATEMENT OF THE CASE**

On October 13, 2005, Applicant signed a Security Clearance Application (SF 86).<sup>1</sup> On April 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,<sup>2</sup> pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>3</sup> The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer received at DOHA on May 15, 2007, Applicant responded to the SOR allegations, and elected to have his case decided at a hearing.<sup>4</sup> On June 1, 2007, the case was assigned to me. His hearing was held on June 28, 2007. Applicant requested, and I agreed to hold the record open until July 10, 2007 for Applicant to provide evidence of payment and financial counseling (record of proceedings (R.) 35-36). DOHA received the hearing transcript on July 10, 2007. On July 10, 2007, Department Counsel indicated she had no objection to my consideration of Applicant's additional evidence, which I admitted into evidence (Ex. B). I closed the record on July 10, 2007.

### **FINDINGS OF FACT**

As to the factual allegations under Guideline F, Applicant's response to the SOR admitted responsibility for all four delinquent SOR debts listed in the SOR, and stated he would settle his debts.

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<sup>1</sup>Exhibit (Ex.) 1 (Electronic Questionnaires for Investigations Processing (e-QIP) also known as Standard Form (SF) 86, Security Clearance Application). The last page is signed and dated October 13, 2005. There is no allegation of falsification of this SF 86.

<sup>2</sup>Ex. 4 (Statement of Reasons (SOR), dated April 23, 2007).

<sup>3</sup>On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006. Applicant's case is resolved under the revised Adjudicative Guidelines.

<sup>4</sup>Ex. 5 (Applicant's response to the SOR, received at DOHA on May 15, 2007) is the source for the facts in this paragraph and the next paragraph.

Applicant is 47 years old (R. 7).<sup>5</sup> He received a bachelor's degree in electrical engineering from a university in 1982 (R. 7). He married his current spouse in 1994. He has one child, who was born in 1999. A government contractor has employed him for 25 years as a systems engineer (R. 8). He has held a secret clearance for more than 20 years (R. 8).

Applicant used credit cards to borrow money to invest in internet stocks listed on the stock market (R. 21-22). He charged \$50,000 to \$60,000 on credit cards (R. 22). The market declined in 2000-2001, and in 2002 several companies went bankrupt. He lost his investment (R. 23). In 2001, Applicant's spouse lost her job because of the post-September 11, 2001, business slowdown (R. 23). She was unemployed for about 18 months (R. 24). Applicant's father had lung cancer and he provided financial support of about \$500 per month to his father (R. 24). In 2004, he recovered financially and began negotiations with his creditors (R. 17).

The following table lists the amounts of the SOR debts, and their current status.

<b>SOR ¶</b>	<b>SOR Amount</b>	<b>Settlement Amount</b>	<b>Account Type and Current Status</b>
¶ 1.a	\$10,075	\$2,003	Credit Card-Paid
¶ 1.b	\$9,958	\$8,885	Credit Card-Paid
¶ 1.c	\$3,606	\$2,250	Credit Card-Paid
¶ 1.d	\$15,944	\$7,785	Credit Card-Paid
Total	\$39,583	\$20,923	

For the debt in SOR ¶ 1.a (\$10,075), on May 10, 2007, the creditor agreed to settle the account for \$2,003 (Ex. A at 2; R. 27). On May 18, 2007, Applicant paid the creditor, resolving the debt (Ex. B at 4; R. 27).

For the debt in SOR ¶ 1.b (\$9,958), on June 8, 2007, the creditor agreed to settle the debt for \$8,885 (Ex. A at 5; R. 29). On June 11, 2007, Applicant paid the creditor, resolving the debt (Ex. A at 6; Ex. B at 6; R. 30).

For the debt in SOR ¶ 1.c (\$3,606), on May 9, 2007, the creditor agreed to settle the debt for \$2,250 (Ex. A at 3; R. 30). On June 1, 2007, Applicant paid the creditor, resolving the debt (Ex. B at 6; R. 30-31).

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<sup>5</sup>Ex. 1, *supra* n. 1, at questions 1 (date of birth), 5 (education), 6 (employment), 8 (spouse), and 9 (relatives) is the source for the facts in this paragraph, unless otherwise stated.

For the debt in SOR ¶ 1.d (\$15,944), on May 9, 2007, the creditor agreed to settle the debt for \$7,785 (Ex. A at 4; R. 31). On May 25, 2007, Applicant paid the creditor resolving the debt (Ex. B at 4; R. 31).

Applicant received credit counseling and on July 9, 2007, prepared a budget (Ex. B at 8-9). His gross salary is \$82,000 per year (R. 26). His monthly net income is \$4,220. His monthly expenses include his house payment (\$375), groceries (\$600), utilities (\$360), insurance (\$372), gasoline and car expenses (\$225), clothing (\$200), and miscellaneous (\$70) (Ex. B at 9). His monthly expenses total approximately \$2,000. Applicant has credit cards, but he pays them off every month (R. 25). He has \$25,000 in savings (R. 26). He had the ability to pay his debts earlier, but when he dealt with his creditors they were unpleasant (R. 32). More recently, his creditors were cooperative and willing to work with him (R. 33).

## POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG). In addition to brief introductory explanations for each AG, the AGs are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information. These AGs are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these AGs in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." AG ¶ 2(b). 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.

In the decision-making process, the government has the initial burden of establishing controverted facts by substantial evidence, demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition,<sup>6</sup> the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>7</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures during off-duty hours. The government has a special relationship with those who have a security clearance and reposes a high degree of trust and confidence in them. Decisions under this Directive include, by necessity, consideration of the possible risk an 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.

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

AG ¶ 18 articulates the Government's concern concerning financial problems. "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

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<sup>6</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>7</sup> "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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."

Two disqualifying conditions could raise a security concern and may be disqualifying in this case: "inability or unwillingness to satisfy debts," and "a history of not meeting financial obligations." AG ¶¶ 19(a) and (c).

Applicant admitted he was responsible for all four of the SOR debts. The Government produced substantial evidence of these two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.<sup>8</sup>

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant paid the four SOR debts in May and June 2007. The AGs do not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. Based on my evaluation of the record evidence as a whole,<sup>9</sup> I conclude AG ¶ 20(a) partially applies. Because Applicant had multiple delinquent debts, which were

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<sup>8</sup>See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>9</sup>See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis, all debts are considered as a whole.

unpaid when the SOR was issued, the first two prongs of AG ¶ 20(a) are against him. However, he meets the third prong of AG ¶ 20(a) because he has shown sufficient efforts and unusual circumstances for concluding that such financial problems are “unlikely to recur.” The unusual circumstances are the poor choices in 2000 (borrowing money to invest in the stock market), which caused him to make purchases he could not afford. His investments declined in value from 2000 to 2002, as well as his wife’s unemployment in 2001 and 2002 caused his financial circumstances to deteriorate. However, his financial circumstances steadily improved after 2002, and financial counseling will help him with his budget and assist him in avoiding future debts. His recent, aggressive efforts to resolve his delinquent SOR debts remove any doubts concerning his “current reliability, trustworthiness, or good judgment.”

Applicant disclosed some information to support application of AG ¶ 20(b).<sup>10</sup> The initial delinquent debts resulted from the stock market decline and his wife’s unemployment. The record did not disclose any information indicating his actions were in bad faith. However, Applicant’s conduct does not warrant full application of AG ¶ 20(b) because he did not act more aggressively to resolve his delinquent debts.

Applicant receives credit under AG ¶ 20(c) because there is sufficient evidence that he has received financial or credit counseling, and his SOR debts are paid. His financial problems are resolved.

AG ¶ 20(d) does not fully apply because there is insufficient information to establish that Applicant showed “good faith” in the resolution of his debts.<sup>11</sup> He does, however, receive some credit for paying his debts even though the pertinent 4-year state statute of limitations rendered his debts legally uncollectable. *See* Tex. Civ. Prac. & Rem. Code §§ 16.004(c) and 16.051 (statute of limitations for contracts); 16.004(a)(3) (statute of limitations for debts); *Cont’l Casualty Co. v. Dr. Pepper Bottling Co. of Tex.*, 416 F.Supp. 2d 497, 505-507 (W.D. Tex. 2006); *Facility*

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<sup>10</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

<sup>11</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that 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.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

*Ins. Corp. v. Employers Ins. of Wausau*, 357 F.3d 508, 513-514 (5<sup>th</sup> Cir. 2004) (discussing statute of limitations for open or revolving accounts).

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

The elimination of his delinquent debts reduces his potential vulnerability to improper financial inducements. The degree that he is “financially overextended,” is also eliminated. However, it does not negate his past conduct in failing to take more aggressive and timely actions to maintain communications with his creditors and to resolve his financial jeopardy in a more timely fashion.

AG ¶ 20(e) is not applicable. He did not provide “documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue” with respect to any of his delinquent SOR debts.

In sum, he has demonstrated sufficient effort to resolve financial concerns to merit application of mitigating conditions in AG ¶ 20(c), as well as partial application of AG ¶¶ 20(a), (b), and (d). These adjudicative AGs are further addressed in the whole person analysis portion of this decision, *infra*. See ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under adjudicative AGs for debts being resolved through garnishment). His aggressive actions in May and June 2007 to obtain financial counseling, set up a budget and his payment of his delinquent debts are particularly noteworthy.

### **“Whole Person” Analysis**

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative AGs related to the whole person concept under AG ¶ 2(a). As noted above, Applicant’s failure to make greater progress resolving his delinquent debts is a serious, ongoing, long-term problem and is sufficiently serious to raise a security concern. His actions were knowledgeable and voluntary. All of his delinquent debts were paid at the time the record was closed. He is 47 years old, sufficiently mature to be fully responsible for his conduct. The motivation for his failure to pay his debts was insufficient income, and reluctance to work with some of



his creditors. Delinquent debts are inconsistent with prudent and responsible behavior. A person “who is financially overextended is at risk of having to engage in illegal acts to generate funds” and as such the potential for pressure and exploitation is raised.

Applicant presented substantial extenuating and mitigating evidence. His financial problems were aggravated by lack of income, unemployment, the stock market slump, and his father’s lung cancer. He paid his delinquent SOR debts in May and June 2007, even they were collection-barred by the pertinent state’s 4-year statute of limitations. The elimination of his delinquent debts has reduced his potential vulnerability to improper financial inducements. Prior to payment of his creditors, none of his SOR creditors filed a judgment or took other judicial action against him, which is an indication of the lack of financial pressure upon him. He received financial counseling. He has held a clearance for many years without a security violation. The absence of evidence of any prior violation of his employer’s rules or requirements, his forthright and candid statement at his hearing, and his evident sincerity about making future financial progress all weigh in his favor. He pays his credit cards off every month, and he has \$20,000 in his savings account. In sum, the likelihood of recurrence is low because sufficient evidence was presented about improvement in his overall financial situation, the absence of evidence of other delinquent debts, and financial counseling.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. The evidence leaves me without doubts as to Applicant’s security eligibility and suitability.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”<sup>12</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the AGs. Applicant has successfully mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

### **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
Subparagraphs 1.a to 1.d:	For Applicant

### **DECISION**

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<sup>12</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is granted.

Mark W. Harvey  
Administrative Judge