



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



In the matter of:)	
)	
---)	ISCR Case No. 18-01209
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

12/20/2018

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

Statement of the Case

On April 11, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On January 30, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to those interrogatories on April 2, 2018. On May 4, 2018, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4) *National Security Adjudicative Guidelines* (AG) (December 10, 2016), for all covered individuals who require initial or continued

eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on May 16, 2018. In two separate sworn statements, dated May 23, 2018, and June 27, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 31, 2018. The case was assigned to me on August 24, 2018. A Notice of Hearing was issued on August 29, 2018. I convened the hearing as scheduled on September 26, 2018.

During the hearing, Government exhibits (GE) 1 through GE 5, and Applicant exhibits (AE) A through AE I, were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on October 4, 2018. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents, which were marked and admitted as AE J through AE P, without objection. The record closed on November 8, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments two of the three factual allegations pertaining to financial considerations of the SOR (SOR ¶¶ 1.a. and 1.b.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a defense contractor. He has been serving as a director of field applications with his employer since September 2016. He was previously an owner of a construction corporation from August 2012 until December 2015. A 1997 high school graduate, Applicant received a bachelor's degree in 2001 and a master's degree in 2009. He has never served with the U.S. military. He never held a security clearance. He was married in 2004. He has two sons, born in 2007 and 2012.

Financial Considerations¹

There was nothing unusual about Applicant's finances until 2014. Applicant's company merged with another company in late 2012, and he became the co-owner and operator of a small real estate development firm organized as an S corporation. Together with two partners, they shared equally in the income, liabilities, and management of the corporation. The company was doing rather well financially, and in early 2014, it had eight residential and commercial properties in various stages of construction. There were approximately \$1,000,000 in outstanding gross billings and approximately \$175,000 in outstanding short-term liabilities associated primarily with labor and materials for those jobs.² In January 2014, Applicant's two partners unexpectedly decided to abandon the business, leaving him with the liabilities. They were removed from the corporation.³ He later determined that they had improperly and secretly bid against the corporation under a company name they had created, and had charged personal expenses and expenses for their secret company to the corporate account, and had already delivered \$25,000 to \$35,000 in upgrades to customers without Applicant's knowledge.

Applicant focused on attempting to complete the construction jobs that were unfinished. Two of the families, with about 75 percent of the work on their respective houses completed, and final inspections performed, stopped making payments. The unpaid balances totaled approximately \$150,000. Applicant filed liens. He sued one family in arbitration for \$93,000, but only received \$13,000 after arbitration in August 2015.⁴ Those funds went back to the corporation to pay off debts. He sued another homeowner, and in December 2017, he received a judgment for \$43,000, plus court costs.⁵ He did not actually receive the funds until nearly a year later. Applicant worked three jobs: building homes and as an information technology consultant, in order to generate the funds necessary to resolve the debts that resulted from his ex-partners' actions and the refusal of his customers to timely pay their bills. However, it was the actions of his bank in 2015 that resulted in the most lasting damage to his financial situation.

Applicant and one of his customers happened to use the same bank. His customer wrote him a check for approximately \$54,500 one Friday afternoon in August 2015, and Applicant deposited it into his account. That evening, Applicant's account details reflected

¹ General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 1 (e-QIP, dated April 11, 2017); GE 2 (Personal Subject Interview, dated July 19, 2017); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 5, 2017); GE 4 (Equifax Credit Report, dated January 25, 2018); GE 5 (Applicant's Answers to Interrogatories, dated April 2, 2018, along with associated papers, various dates); Applicant's Answer to the SOR, dated May 23, 2018; Applicant's Amended Answer to the SOR, dated June 27, 2018; AE I (Letter, dated September 17, 2018).

² AE B (Checking Account Transactions, dated May 23, 2014); AE I, *supra* note 1.

³ AE A (Corporate Record, dated January 14, 2014).

⁴ AE C (Arbitration Correspondence, various dates).

⁵ AE C-1 (Final Judgment, dated December 27, 2017).

that the funds were available. The following Tuesday, the funds were removed from the account by the bank without Applicant's knowledge or authorization, eventually causing several of his checks to bounce. Applicant's efforts to have the funds restored were successful, and the funds were put back into his account on Friday. Applicant's personal banker at the bank and the branch manager even acknowledged that the re-deposit was made with no holds on the deposit, and they explained that the issue developed because of internal bank processing difficulties. Unfortunately, during the week of the missing funds, Applicant's laborers refused to show up for work because payments could not be guaranteed. For the third time, the bank again removed the funds from Applicant's account without his knowledge or authorization, and once again Applicant had several more checks bounce. The experience and the delays cost Applicant roughly four weeks of production on a commercial project, and his cash-flow was negatively impacted. In October 2015, Applicant requested a \$20,000 credit line from that same bank so he could have sufficient funds to complete two construction projects and have approximately \$155,000 in receivables released to him, but the bank rejected his request.⁶ Although Applicant estimated that the bank measures cost him \$200,000, and the bank denied any liability for its actions, the bank settled Applicant's claims, and it agreed to pay him \$55,000 in September 2016.⁷

Applicant debated whether or not to sue his former partners for fraud, but based on estimated legal costs of up to \$30,000, he decided not to do so.⁸ Because of the impact on his finances, Applicant was not in a position to make more timely payments to his two creditors, but he did contact them in an effort to establish repayment plans or settlements. On January 17, 2017, the first such repayment plan was agreed to, and Applicant started making monthly \$500 payments. Payments were made as agreed, and in August 2018, the account was satisfied. In May 2018, based on settlement offers, Applicant presented repayment plans to his remaining creditor, the holder of two of his delinquent accounts.⁹

The SOR identified three purportedly delinquent accounts that had been placed for collection or charged-off, as generally reflected by Applicant's July 2017 or January 2018 credit reports. Those debts total approximately \$56,139. The current status of those accounts is as follows:

(SOR ¶ 1.a.): This is a bank loan with a high credit of \$30,000 and an unpaid and past-due balance of \$23,920, of which \$22,638 was charged off in March 2016.¹⁰ Applicant reached out to the creditor and agreed to a settlement in the amount of \$9,560. He offered to start making monthly payments of \$300 or more, but the bank wanted

⁶ AE E (Letter, undated).

⁷ AE E (Bank Litigation File, various dates).

⁸ Tr. at 41.

⁹ Applicant's Amended Answer to the SOR, *supra* note 1; AE F (Settlement Offer, undated); AE G (Settlement Offer, undated); AE I, *supra* note 1; AE H (Consent Judgment, dated January 17, 2017); AE H (Satisfaction of Judgment, dated August 21, 2018).

¹⁰ GE 3, *supra* note 1, at 6; GE 4, *supra* note 1, at 2.

something like \$800.¹¹ In October 2018, Applicant sold some real estate for \$195,000, with an estimated net receipt of \$177,975.¹² He contacted the creditor the day before the sale, and expects to use funds from the sale to resolve the debt.¹³ There is no documentary evidence of any payments on the account since the sale. The account has not been resolved.

(SOR ¶ 1.b.): This is a bank-issued credit card with a high credit of \$22,638 and an unpaid and past-due balance of \$20,219 that was charged off in June 2016.¹⁴ Applicant reached out to the creditor and agreed to a settlement in the amount of \$8,088. He offered to start making monthly payments of \$250 or more, but the bank wanted something like \$800.¹⁵ In October 2018, Applicant sold some real estate for \$195,000, with an estimated net receipt of \$177,975.¹⁶ He contacted the creditor the day before the sale, and expects to use funds from the sale to resolve the debt.¹⁷ There is no documentary evidence of any payments on the account since the sale. The account has not been resolved.

(SOR ¶ 1.c.): This is an unspecified type of account with a past-due and unpaid balance of \$12,000 that was placed for collection.¹⁸ Applicant set up a payment plan with the creditor calling for monthly \$500 payments. Payments were made as agreed, and in August 2018, the account was satisfied.¹⁹ To date, there should be two completed preauthorized payments. The account has been resolved.

In addition to the accounts alleged in the SOR, Applicant addressed various other accounts that were not alleged in the SOR. For example, he had to resolve all of the disputes, debts, and litigation caused by the actions of his two former partners and his bank's unusual dysfunctional activities.²⁰ Other than the accounts alleged in the SOR, Applicant is not aware of any other delinquent accounts, and his most recent credit report does not reflect any additional delinquencies. In March 2018, Applicant prepared a

¹¹ AE F, *supra* note 9; Tr. at 43-44.

¹² AE L (Sales Contract, dated October 24, 2018).

¹³ AE K (Letter, dated October 23, 2018); AE J (E-mail, dated October 31, 2018).

¹⁴ GE 3, *supra* note 1, at 6; GE 4, *supra* note 1, at 2.

¹⁵ AE F, *supra* note 9; Tr. at 43-44.

¹⁶ AE L, *supra* note 12.

¹⁷ AE K, *supra* note 13; AE J, *supra* note 13.

¹⁸ GE 3, *supra* note 1, at 6; GE 4, *supra* note 1, at 2.

¹⁹ AE H, *supra* note 9.

²⁰ Tr. at 44. Applicant was sued for roughly \$3,500 because of his former partners' actions, and he had to resolve that debt.

Personal Financial Statement to reflect his assets (\$11,756 in cash); real estate (\$470,000); retirement pensions and accounts (\$20,678); and liabilities (\$423,068), including the two debts described above.²¹ During the hearing, Applicant noted that his current annual income is \$110,000.²² The unanticipated expenses associated with the earlier described problems have disappeared, and Applicant has made significant progress in stabilizing his finances and avoiding other financial delinquencies.

Character References

A lieutenant in the county sheriff's office has known Applicant over a number of years, and they have worked together professionally on several high value projects. Applicant has proven himself to be an invaluable asset to the team in leading every project to a successful conclusion. Applicant has a reputation among colleagues for being trustworthy and punctual. Their professional relationship morphed into a personal relationship, and Applicant is someone the lieutenant can confide in and trust with zero doubts as to his word and his follow through.²³

The owner/operator of a landscape company has known Applicant since childhood, and they have worked together since 2009. Applicant renovated his first corporate office, and later engaged the landscaping company on numerous occasions to handle work for Applicant's customers. When Applicant's partners departed, Applicant took the high road and chose to bear the burden of paying off all of their vendors. Instead of filing for bankruptcy, Applicant made payoffs rather than leaving his vendors high and dry. He respects Applicant on how he has handled himself in becoming financially stable again, and he considers Applicant to be trustworthy, honest, and loyal.²⁴

A certified public accountant has known Applicant since 2004, as both a friend and a client. When Applicant's two partners left the company, they left Applicant with the unfinished projects. Although several professionals recommended that Applicant file for bankruptcy as a result of the business losses, he refused to do so. Instead, although it meant placing a financial burden on himself and his family, he personally paid off the outstanding business debts. He considers Applicant to be a person of integrity with a strong desire to always do the right thing.²⁵

²¹ AE M (Personal Financial Statement).

²² Tr. at 58.

²³ AE P (Character Reference, dated October 25, 2018).

²⁴ AE O (Character Reference, dated October 10, 2018).

²⁵ AE N (Character Reference, dated November 6, 2018).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”²⁶ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁷

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”²⁸ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.²⁹

²⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²⁸ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

²⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."³⁰

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."³¹ Thus, 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. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

At the outset, I note I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his explanations regarding his financial issues are consistent and have the solid resonance of truth.

Upon consideration of all the facts in evidence, including Applicant's testimony, as well as an assessment of Applicant's demeanor and credibility, and after application of all appropriate legal precepts and factors, I conclude the following with respect to the allegations set forth in the SOR:

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to

³⁰ *Egan*, 484 U.S. at 531.

³¹ See Exec. Or. 10865 § 7.

protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant had three delinquent accounts totaling approximately \$56,139 that had been placed for collection or charged off. There is no evidence that he was unwilling to satisfy his debts or that he had the ability to do so, and there is no evidence of frivolous or irresponsible spending, or consistent spending beyond his means. AG ¶¶ 19(a) and 19(c) have been established. AG ¶¶ 19(b) and 19(e) have not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;³²
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

³² A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

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

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.³³

I have concluded that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) all partially or fully apply. Applicant was the owner/operator of a rather successful company. In early 2014, it had residential and commercial properties in various stages of construction, with approximately \$1,000,000 in outstanding gross billings and approximately \$175,000 in outstanding short-term liabilities associated primarily with labor and materials for those jobs. When Applicant's two crooked partners unexpectedly abandoned the business, they left him with the liabilities, including some that they had improperly and secretly generated without Applicant's knowledge. Applicant focused on attempting to complete the construction jobs that were unfinished, but two customers stopped making payments. He successfully sued them and eventually realized some of the funds owed his company. Applicant did not ignore his debts. Instead he worked three jobs in order to generate the funds necessary to resolve the debts that resulted from his ex-partners' actions and the refusal of his customers to timely pay their bills.

However, as noted above, it was the internal bank processing difficulties of his largely dysfunctional bank in 2015 that resulted in the most lasting damage to his financial situation. One of Applicant's customers wrote him a check for approximately \$54,500. There was nothing wrong with the check, but there was something wrong with the bank. On three occasions, the bank removed the funds from Applicant's account without his knowledge or authorization, leading him to bounce checks to vendors and workmen. The experience and the delays cost Applicant roughly four weeks of production on a commercial project, and his cash-flow was negatively impacted. In October 2015, Applicant requested a \$20,000 credit line from that same bank to complete two construction projects and have approximately \$155,000 in receivables released to him, but the bank rejected his request. Although Applicant estimated that the bank measures

³³ 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 [or statute of limitations]) 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)).

cost him \$200,000, and the bank denied any liability for its actions, the bank settled Applicant's claims, and it agreed to pay him \$55,000 in September 2016.

Applicant did not ignore his creditors. He incurred expenses arising from his ex-partners' actions, and eventually resolved them. He has resolved one of the debts alleged in the SOR, and he is in the process of resolving the other two debts. His current annual income is \$110,000. The unanticipated expenses associated with the earlier described problems have disappeared, and Applicant has made significant progress in stabilizing his finances and avoiding other financial delinquencies. Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.³⁴

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

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 SEAD 4, App. A, ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have

³⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³⁵

There is some evidence against mitigating Applicant's conduct. Applicant's S corporation encountered some financial difficulties and delays in completing various construction and renovation projects. Accounts became delinquent, and two were charged off. On its face, without further explanations, those factors would be viewed in a negative light. However, Applicant was a victim of fraud by two former partners; at least two of his customers refused or delayed payments to him for work completed; and he was the victim of highly unusual practices of his bank.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 39-year-old employee of a defense contractor. He has been serving as a director of field applications with his employer since September 2016. He was previously the owner of a highly successful construction corporation from August 2012 until December 2015. Applicant's friends and colleagues describe him as a person of integrity who is trustworthy, honest, and loyal. Faced with unanticipated business expenses caused by his two crooked partners, Applicant ignored bankruptcy and instead addressed his creditors. He generated funds by working on three jobs. He completed construction and renovation projects; paid off non-SOR creditors he was initially unaware of; satisfied one SOR account; negotiated settlements with the two accounts he has with the dysfunctional bank; and sold a property that should resolve those two remaining SOR accounts. With a current annual income of \$110,000, cash in the bank, and no other delinquencies, Applicant's efforts to restore fiscal stability have been remarkable. His financial situation is now under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³⁶

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a

³⁵ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

³⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

