



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



In the matter of:)
)
) ISCR Case No. 18-02917
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: Tod D. Stephens, Esq.

11/21/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code three times from 2001 to 2018. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On December 12, 2016, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On January 11, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). (HE

2) On July 15, 2019, Applicant responded to the SOR, and he subsequently requested a hearing. (Transcript (Tr.) 8; HE 3)

On January 30, 2019, Department Counsel was ready to proceed. On September 11, 2019, the case was assigned to me. On October 4, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice, setting Applicant's hearing for October 21, 2019. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered 11 exhibits; Applicant offered 15 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 10-12; GE 1-11; Applicant Exhibit (AE) A-AE O) On October 30, 2019, DOHA received a transcript of the hearing.

Some details in this case were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.d. (Tr. 16-17; HE 3) He also provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 54-year-old software test engineer and information technology specialist employed by defense contractors since August 2012. (Tr. 15; AE 1) He currently holds a top secret security clearance with access to sensitive compartmented information. (Tr. 27) In 1983, he graduated from high school. (Tr. 17) In 2013, he received a bachelor's degree. (Tr. 18) He majored in information security and information technology. (Tr. 101) In 1988, he married, and in March 1994, he divorced. (Tr. 19-20) His son was born in 1992. (Tr. 19) His son has been independent for at least three years; he is married; and his son has two children. (Tr. 22-23)

In 1999, Applicant married the second time, and he has two daughters from that marriage. (Tr. 21-23) One daughter is attending a university, and the other is 16 years old and living at home with Applicant. (Tr. 23) Applicant's second spouse received a medical discharge from the Air Force. (Tr. 21) She obtained employment after leaving the Air Force; however, her income was less than when she was on active duty. (Tr. 22) According to his SCA in 2014, he separated from his spouse. (GE 1) According to his SOR response, he separated from his spouse in 2017. (HE 3)

In 1984, Applicant joined the Air Force. (Tr. 17) He completed 23 years of Air Force service, and he honorably retired as a master sergeant in 2007. (Tr. 25-26; AE A) His initial Air Force assignment was to security forces. (Tr. 24) From November 1999 to his retirement in April 2017, he served in various Air Force recruiting positions. (Tr. 25; AE A) He received several recruiting awards. (Tr. 25; AE A) His highest Air Force award was a meritorious service medal. (Tr. 102) He completed numerous training courses in the Air Force. (Tr. 17) He held a security clearance during his entire Air Force career. (Tr. 27) He

has not had any security violations. (Tr. 27-28) Additional details about his professional background are in his resume. (Tr. 28-30; AE A)

Financial Considerations

Applicant's SOR in ¶¶ 1.d, 1.c, 1.b, and 1.a alleges he filed bankruptcy in 2001, 2010, 2017, and 2018. Applicant's Office of Personnel Management (OPM) personal subject interview (PSI) took place on January 23, 2018. (GE 3) The bankruptcies will be discussed in chronological order.

SOR ¶ 1.d alleges Applicant filed for Chapter 7 bankruptcy in August 2001. His nonpriority unsecured debts were discharged in November 2001. Applicant said his first spouse was committing adultery, spending excessively, and gambling. (Tr. 20-21, 35) He blamed his first spouse for mishandling the family finances while he was away from home for training. (Tr. 76-77) His debts totaled \$23,600. (GE4 at 8 of 8) Applicant agreed to take responsibility for the family debts in the divorce; Applicant obtained custody of his son; and his spouse agreed to pay \$150 monthly in child support. (Tr. 20, 35, 83) He believed after the divorce and his bankruptcy the creditors did not seek payment from his former spouse of their debts. (Tr. 85) Child care was expensive. (Tr. 34)

SOR ¶ 1.c alleges Applicant filed for Chapter 7 bankruptcy in May 2010, and he claimed \$56,368 in nonpriority unsecured claims. His nonpriority unsecured debts were discharged in October 2010. After Applicant retired from the Air Force in 2007, his income was reduced because he was underemployed. (Tr. 35-38) His Air Force monthly base pay was \$4,142 (E-7 over 22 years). (2009 Military Pay Scale United States Military Service Pay Information website, <https://www.militaryfactory.com/pay-scales/2009-military-pay-scale.asp>) He also received \$1,300 in housing allowance and \$637 for rations and special pay. (Tr. 69-71) His gross pay on active duty was about \$73,000. He said he also had a period of unemployment. (Tr. 37) In 2007 and 2008, he earned about \$52,000 to \$54,000 annually. (Tr. 68) In 2009, his gross income was about \$58,000 (about \$38,000 from his post-retirement employment and about \$20,000 in Air Force retirement pay). (Tr. 67; AE B) Before filing for bankruptcy, he said he attempted to use a debt consolidation and payment plan (DCPP) to resolve his debts. (Tr. 36) He terminated his participation in the DCPP because the DCPP used most of his payments for service charges, and Applicant decided DCPP was not making sufficient progress resolving his debts. (Tr. 36)

SOR ¶ 1.b alleges Applicant filed for Chapter 13 bankruptcy in May 2017. In June 2018, this bankruptcy was dismissed for failure to make plan payments. In 2015, his annual income was about \$74,000 (\$54,000 from employment and \$20,000 from his Air Force retirement). (GE 6 at 43 of 50) In 2016, Applicant's gross income was about \$10,000 less and totaled \$64,000 (\$44,000 from employment and \$20,000 from his Air Force retirement). (AE B; GE 6 at 43 of 50) Applicant changed employment, and he said his income was reduced. (Tr. 39-40) His Chapter 13 bankruptcy filing indicates his monthly gross pay for the previous 10 months was \$3,200 monthly; his retired pay was \$1,600 monthly; and his income from part-time employment was \$390 monthly. (GE 6 at 37 of 50, 38) His total gross income at the time he filed his Chapter 13 was \$65,000. (GE 6 at 45 of 50) He said he filed for Chapter 13 because he wanted to pay his debts. (Tr. 40) In April

2017, he accepted employment with an annual pay of \$53,000, an increase of about \$10,000 in his gross pay from wages. (AE B; GE 6 at 43 of 50) It is unclear whether he disclosed the \$10,000 in increased income to the bankruptcy court.

Applicant's Chapter 13 filing indicates 20 claims totaling about \$256,000 as follows: vehicle loan (\$9,100); Internal Revenue Service (IRS) debt (\$5,900); first mortgage debt (\$153,000); vehicle loan (\$31,600); four credit union debts (\$1,100; \$2,500; \$1,100; and \$2,400); eight loans (\$12,700; \$6,100; \$2,200; \$6,600; \$600; \$1,300; \$4,400; and \$1,800); two telecommunications debts (\$300 and \$600); unspecified debt (\$200); and credit card debt (\$2,500). (GE 6 at 11-18, 26 of 50) His monthly income was \$5,457; his monthly expenses were \$2,058; and his debt owed to the government was \$3,087. (GE 6 at 26 and 27 of 50) His first mortgage arrearage was \$17,000, and his second mortgage arrearage was \$3,000. (GE 6 at 28 and 29 of 50) Prior to filing for bankruptcy in 2017, he borrowed five personal loans ranging from \$14,600 to \$2,400, and he said he thought he could pay them back if he was able to secure better paying employment. (Tr. 83; GE 6 at to 32 and 35 of 50) He borrowed funds to help him make payments on other debts. (Tr. 83) He conceded that his borrowing pattern showed "bad decisions." (HE 3)

Claim 2 on Applicant's Chapter 13 bankruptcy is an IRS claim for \$5,900. (GE 6 at 11 of 50) Elsewhere his bankruptcy filing indicates a federal tax debt of \$3,100 which was incurred in 2015. (GE 6 at 26, 27, 30, and 36 of 50)

Applicant's Chapter 13 bankruptcy filing shows he had \$2,300 monthly available to address his delinquent debts. (GE 6 at 48 of 50) His monthly Chapter 13 payment was \$3,147. (GE 3 at 4) Applicant was in the Chapter 13 for 10 months, and he paid \$22,097. (GE 6 at 48-50 of 50) His plan required him to make monthly payments for five years. (Tr. 41) All of the payments were distributed to secured creditors. (GE 6 at 48-50 of 50) The IRS debt for \$5,900 was unsecured and no payments to the IRS were made through his Chapter 13 bankruptcy. (GE 6 at 48-50 of 50)

Applicant said he was unable to make the Chapter 13 monthly payments to the trustee because he needed to pay \$1,300 to fix his home air conditioner. (Tr. 41) He only had \$1,000 monthly remaining after making the bankruptcy payment to support himself and two daughters. (Tr. 41) His attorney suggested he "flip" the Chapter 13 and file for a Chapter 7 bankruptcy. (Tr. 41-42) Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Applicant had to wait eight years from the original date of filing before he could file another Chapter 7. In this instance, he waited eight years and one month to file after his 2010 Chapter 7 bankruptcy to file his 2018 Chapter 7 bankruptcy.

SOR ¶ 1.a alleges Applicant filed for Chapter 7 bankruptcy in June 2018 and claimed \$64,102 in nonpriority unsecured claims. His nonpriority unsecured debts were discharged in October 2018. He did not have any unemployment in 2018. (Tr. 78) His pay throughout 2018 was consistent. (Tr. 79) His gross pay was \$80,000. (GE 7 at 53 of 58) At the time he filed for bankruptcy, he had a first mortgage of \$155,000 and a second mortgage of \$20,000. (Tr. 81) His mortgages were current evidently due to the payments of the Chapter 13 trustee. (Tr. 81) He owned two vehicles, and he surrendered both of them. (Tr. 82) He did not list any priority unsecured debts on his Chapter 7 bankruptcy.

(GE 7 at 30 of 58) He indicated he anticipated a federal income tax refund for 2018 of \$2,100. (GE 7 at 26 of 58)

Around February 2016, Applicant purchased a new Toyota Camry, and he borrowed about \$34,000. (Tr. 61; GE 6 at 29 of 50) When he filed for Chapter 13 bankruptcy, he owed \$32,200 on his loan, and he assessed the value of the vehicle at \$22,000. (GE 6 at 29 of 50) His monthly vehicle payment was about \$600. (Tr. 55) He decided to surrender the Camry, and he used the bankruptcy process to avoid paying the balance owed to the creditor. (Tr. 55) About 10 days after his debts were discharged in his 2018 bankruptcy, he bought a new Chevy Malibu. (Tr. 60) His monthly payment on the Chevy Malibu loan is \$520. (Tr. 54) He purchased the vehicle because he has a long commute to work, and he needed a reliable vehicle. (Tr. 54-56)

Applicant received financial counseling as part of his bankruptcies, and after his 2018 bankruptcy, he completed several financial courses. (Tr. 43-45, 73-74; AE O) He utilizes a budget to control his expenses. (Tr. 46) When he uses a credit card, he pays the balance at the end of the month. (Tr. 53) He pays more than the monthly payment on his two vehicles. (Tr. 54) His annual gross income is \$90,000, and he invests six percent of his income in his 401(k) account (balance about \$1,000). (Tr. 46, 52, 65; AE H; AE I) He also invests in a Roth IRA account (balance about \$3,500 increased by \$1,200 from 12 months ago), and he pays his daughter's college tuition. (Tr. 46; AE H) He maintains a savings account for emergencies. (Tr. 47) He has \$2,777 available on a monthly basis for investments, emergencies, and savings. (Tr. 48-49; AE C) He has about \$4,500 in his checking account, and about \$1,100 in his savings accounts. (Tr. 49-50; AE E; AE F)

Applicant promised to maintain his financial responsibility in the future. (Tr. 59) He expected his income to increase in the future, and he pledged that he would continue to ensure his expenses were kept to a minimum. (Tr. 59-60)

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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

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

administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

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

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

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations." The record establishes AG ¶¶ 19(b) and 19(c).

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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;

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

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Bankruptcy does not necessarily equate to a good-faith effort to resolve financial problems. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019). "[T]he 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.'" *Id.* (citing ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). An Applicant must show that filing for bankruptcy was necessary, prudent, and appropriate under all of the circumstances in order to mitigate security concerns. See *generally id.* at 3-4.

Applicant filed for Chapter 7 bankruptcy in August 2001. His nonpriority unsecured debts were discharged in November 2001. Applicant said his first spouse was spending excessively and gambling. He blamed his first spouse for mishandling the family finances while he was away from home for training. Applicant provided an adequate explanation for seeking relief under Chapter 7 of the Bankruptcy Code, and SOR ¶ 1.d is mitigated.

Applicant filed for Chapter 7 bankruptcy the second time less than nine years after his first bankruptcy in May 2010, and he claimed \$56,368 in nonpriority unsecured claims. His nonpriority unsecured debts were discharged in October 2010. After Applicant retired from the Air Force in 2007, his income was reduced because he was underemployed. His gross pay on active duty was about \$73,000. He said he also had a period of unemployment. In 2007 and 2008, he earned about \$52,000 to \$54,000 annually. In 2009, his gross income was about \$60,000 (about \$40,000 from his post-retirement employment and about \$20,000 in Air Force retirement pay). Applicant's reduction in pay was an adequate explanation for seeking relief under Chapter 7 of the Bankruptcy Code, and SOR ¶ 1.c is mitigated.

Applicant did not provide a persuasive good-faith explanation for why it was necessary for him to file the Chapter 13 bankruptcy in 2017. He indicated he was separated from his second wife; however, he did not explain how the separation adversely affected his finances. A Chapter 13 bankruptcy is a strong indication that Applicant was showing good faith in the resolution of his debts because he utilized this means to pay his creditors to the extent he was able to do so. As part of the Chapter 13 bankruptcy

process, the Bankruptcy Court assessed his ability to pay his creditors and determined his monthly payment.

The U.S. Courts Website, <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics>, indicates:

A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." (1) If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

* * *

Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection.

Applicant failed to make the required payments, and his 2017 Chapter 13 bankruptcy was dismissed. He did not establish his good faith when he stopped making payments to the trustee. Applicant did not establish that he showed good faith when he converted or flipped his Chapter 13 to a Chapter 7 bankruptcy. He did not take sufficient action to control his spending leading up to filing for bankruptcy in 2017.

Applicant took some important steps towards reestablishing his financial responsibility after his OPM PSI but before the SOR was issued. There is no evidence of delinquent debts after he received a discharge of his debts through bankruptcy in October 2018. He received financial counseling, and he generated a budget. The Appeal Board has stated:

[T]he timing of ameliorative action is a factor which should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened.

ISCR Case No. 17-04110 at 3 (App. Bd. Sept. 26, 2019) (reversing grant of a security clearance and citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)).

Applicant indicated he has a substantial remainder available to pay his debts, and he did not prove that he was unable to establish payment plans and pay his debts in 2017 and 2018. He did not meet his burden of establishing that he acted reasonably and responsibly in regard to his finances. Financial considerations security concerns are not mitigated.

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(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 AG ¶ 2(c), "[t]he 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 54-year-old software test engineer and information technology specialist employed by a defense contractors since August 2012. In 2013, he received a bachelor's degree. Applicant completed 23 years of Air Force service, and he honorably retired as a master sergeant in 2007. His highest Air Force award was a meritorious service medal. He completed numerous training courses in the Air Force. He held a security clearance during his entire Air Force career. He has not had any security violations.

Applicant presented some important mitigating information. Circumstances beyond Applicant's control harmed his finances, and it was reasonable for him to obtain bankruptcy discharges of his debts in 2001 and 2010. This enabled him to obtain a fresh financial start. After he obtained the bankruptcy discharge in October 2018, he did not generate any new delinquent debt. He received financial counseling, and he generated a budget.

The evidence against mitigation is more persuasive. Applicant spent and borrowed excessively leading up to his filing his Chapter 13 wage earner's plan. His two mortgages were behind about \$20,000 in 2017. Before he filed for bankruptcy in 2017, he was borrowing and then using the proceeds to pay other personal loans. His debts were

generated through excessive spending. It was not prudent to borrow with the expectation that he would obtain better-paying employment. He did not establish his good faith when he failed to complete the Chapter 13 payment plan. Applicant's failure to "satisfy debts, and meet financial obligations [indicates his] poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about [his] reliability, trustworthiness, and ability to protect classified or sensitive information." AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

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: | AGAINST APPLICANT |
| Subparagraphs 1.a and 1.b: | Against Applicant |
| Subparagraphs 1.c and 1.d: | For Applicant |

Conclusion

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

Mark Harvey
Administrative Judge