DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-02993
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicholas Temple, Esquire, Department Counsel
For Applicant: *Pro se*

06/28/2021

_____

Remand 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 January 25, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On February 24, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (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), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA 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.

In a notarized statement, dated March 16, 2020, Applicant responded to the SOR, and he requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 29, 2020. The case was assigned to me on November 5, 2020. A Notice of Hearing was issued on November 23, 2020. I convened the hearing as scheduled on December 14, 2020.

During the hearing, Government Exhibits (GE) 1 through GE 3, Applicant Exhibits (AE) A through AE H (all originally attached to his Answer to the SOR), and Administrative Exhibit I were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on December 3, 2020. I kept the record open until January 13, 2021, to enable him to supplement it. He took advantage of that opportunity and timely submitted numerous documents, some of which were duplicates of documents already in evidence. The new documents were marked and admitted as AE I through AE R (actually AE S, part of which was identical to AE B) without objection. Because of questions raised regarding a credit report that apparently had been used by an investigator from the U.S. Office of Personnel Management (OPM) during his April 2019 interview of Applicant, Department Counsel was requested to furnish Applicant and me a copy of that credit report. Slightly more than one hour after the hearing closed, Department Counsel submitted two additional credit reports, tentatively marked as GE 4 and GE 5, for my consideration. Unfortunately, those two documents were mislaid and overlooked during my analysis of the case. The record closed on January 13, 2021.

On February 3, 2021, after having considered all of the evidence, with the exception of GE 4 and GE 5, I issued a decision in the case. The decision was that it was clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Accordingly, his eligibility for access to classified information was granted. Department Counsel subsequently appealed that decision.

On April 28, 2021, the Defense Office of Hearings and Appeals (DOHA) Appeal Board issued a decision, remanding the case for the following reasons:

> As a threshold matter, a question exists about whether the record of this proceeding is complete. At the hearing . . . , the Judge requested Department Counsel provide an additional credit report in a post-hearing submission. . . . A couple of hours after the hearing, Department Counsel sent the Judge an email that had two credit reports attached and offered those documents into evidence. . . . Department Counsel also forwarded the proffered exhibits to Applicant separately. . . . The record of the proceeding closed on January 13, 2021. . . , and it does not contain the two credit reports. . . . In the decision, the Judge identifies the exhibits the parties submitted and that description does not include the credit reports that Department Counsel proffered as GE 4 and 5.

> A Judge is required to prepare a full and complete record. . . .Failure to create or preserve a complete record is error and can impair the Board's ability to perform our review function. . . . Because the record appears to be incomplete, we are remanding it to the Judge to address this purported error.

ISCR Case No. 19-02993 at 1-2 (App. Bd. Apr. 28, 2021)

Findings of Fact

In his response to the SOR, Applicant admitted, with extensive comments as well as documentary attachments, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.t.). As a result of a review of the evidence submitted, as discussed below, it appears that some of his admissions were ill-advised and erroneous. Applicant's admissions and his comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 46-year-old employee of a defense contractor. He has been serving as a security officer since January 2018. Because of his employment schedule, he has also been working concurrently with at least one, and sometimes two, other employers in an identical capacity. He received his General Education Diploma (GED) in 1994 or 1995, a bachelor's degree in 2006, and a master's degree in 2011. He enlisted in the U.S. Navy in December 1996, and served on active duty until May 2006, when he was placed on the temporary disability retired list and honorably discharged as a petty officer second class (pay grade E-5). He was granted a secret clearance in 1996. He was married in 1997, and divorced in 2003. He remarried in 2006, and was divorced in 2016. He was remarried in 2020. He has two children, born in 1995 and 2016. His youngest child resides with him. (Tr. at 41)

Military Awards and Decorations

During his period of active duty, Applicant received the Good Conduct Medal (3 awards), the Navy and Marine Corps Achievement Medal (2 awards), the Navy Expert Pistol Medal, the Navy Expert Rifle Medal, the National Defense Service Medal, and the Global War on Terrorism Service Medal (AE I)

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 2 (Equifax Credit Report, dated September 3, 2019); GE 3 (Enhanced Subject Interview, dated April 29, 2019, and Subject Contact, dated May 16, 2019); GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 21, 2019); Applicant's Answer to the SOR, dated March 16, 2020; AE L (Statement, undated); and GE 4 (Equifax Credit Report, dated December 14, 2020).

When he was interviewed by the OPM investigator in April 2019, Applicant acknowledged that he had several delinquent accounts. His significant financial difficulties commenced in April 2014 when he was injured in the line of duty while in an altercation trying to subdue a suspect found in an unauthorized location. He sustained a shoulder injury that had previously been injured. His shoulder was surgically repaired in August 2014, and he was required to use a sling fulltime for six weeks, with no shoulder motion. He was out of work for approximately one year. (Tr. at 49-50; AE D; AE E; Answer to the SOR) During his post-surgery recovery period, he took a brief holiday in the Dominican Republic, costing approximately $500. (Tr. at 54-55) Another similar-type incident occurred in 2015, and he again underwent surgical repairs to the same shoulder in July 2015. He was out of work for approximately another year. (Tr. at 58; AE C; AE F) During that post-surgery recovery period, he took a brief holiday in Jamaica, costing somewhere between $500 and $1,000. (Tr. at 62-63) He was initially denied full workers' compensation because his injuries had not reached the designated level required. As a result of the combined injuries, Applicant's income plummeted until he could regain full use of his shoulder and arm and go back to work full time. (AE C; Answer to the SOR) He engaged the services of an attorney to fight the workers' compensation decision, and although he settled for $50,000, his lawyer was paid roughly $15,000 of that amount. (Tr. at 57-58; Answer to the SOR)

Applicant attributed another factor to his financial difficulties. Between surgeries, his wife "tricked" or "lured" him to go out of town for their anniversary, and when they returned home, he discovered her family had emptied their residence. His wife then left him with nothing but the house. (Tr. at 50) As a result of his injuries and his wife's refusal to assist him with the mortgage, bills accumulated. He used credit cards to pay bills, and took out loans to pay earlier loans - until he realized he wasn't improving his financial status. (Tr. at 52; AE 3, at 12)

In October 2016 – approximately three and one-quarter years before the SOR was issued – Applicant engaged the professional services of a law firm to assist him in resolving his debts. They advised him to stop making any payments to facilitate settlements. (AE 3, at 12) He entered their debt-resolution program and, starting on November 1, 2016, he agreed to pay them an $800 retainer fee; make monthly $847.88 payments, including monthly legal administration fees of $89, monthly banking fees of $10.95, and monthly service costs of $454.46, continuing through February 1, 2021. Additionally, if the law firm was unsuccessful in settling accounts, Applicant agreed to pay the law firm for litigation services and trial preparation costs. The program listed 17 different accounts that were to be handled. (AE A; AE B) Unfortunately, because of his financial naivety, he relied completely on the guidance furnished him by the law firm, and the law firm, in turn, charged him for its services, but has failed to either keep him timely or adequately informed about the specific status of the enrolled accounts, or timely respond to specific inquiries sent to it by him. Applicant's superficial knowledge about his own accounts, and the frequently misleading statements by the law firm, have caused him to make inaccurate statements regarding some accounts, when those statements should have accurately referred to completely different accounts.

In July 2020, Applicant also engaged the services of a credit-repair organization to "clean up" his credit report and remove all inconsistencies by disputing the entries. (Tr. at 106-107) Although he said he would submit a report of their activities, he failed to do so. (Tr. at 37-38)

The SOR alleged 20 delinquent accounts totaling approximately $84,055. Because of the way the listed accounts appear in Applicant's debt-resolution program (partial creditor names; some partial account numbers; some full account numbers; and some missing account numbers), it is difficult to align the SOR-alleged accounts with those in the debt-resolution program, especially since the credit report on which the SOR-listed allegations are based, also does not fully identify essential account information. The SOR-alleged accounts are set forth as follows:

SOR ¶ 1.a. refers to a home mortgage with an original loan of $347,000 that fell into arrears. When Applicant was ordered by the court to vacate the residence during pre-foreclosure proceedings in October 2018, he stopped making payments. The deficiency increased to $31,402. (GE 2, at 1; GE 5, at 6) By March 2020, the deficiency had been reduced to $19,782. (GE 5, at 6) There was no foreclosure because the divorce court trustee stepped in, and the residence was sold to Applicant. (Tr. at 65) The account was settled in October 2018, when the law firm paid the creditor $321.34 on his behalf. The creditor considered the account to be paid in full with a zero balance – a year and a quarter before the SOR was issued. (AE J; AE B – Letter from Creditor, dated, October 22, 2018; Tr. at 65-66) The account has been resolved.

SOR ¶ 1.b. refers to a credit-card account with an unpaid balance of $17,189 that was charged off. (GE 2, at 2; GE 5, at 6) While the law firm contends that the account was successfully settled, Applicant's request of them for documents to support their claim and the specifics of the settlement has gone unheeded or ignored. (AE B, at 2; AE S, at 3; AE L, at 1) Other than the law firm's representation, the documentary support regarding the settlement is missing. Nevertheless, it appears that the account has been resolved.

SOR ¶ 1.c. refers to a credit-card account with an unpaid balance of $10,102 that was charged off. (GE 2, at 2; GE 5, at 7; GE 4, at 3) The law firm previously stated that the account was new (AE B, at 1; AE S, at 3), but earlier documentation issued by the law firm shows it as one of those listed in the debt-resolution program. (AE A, at 22) Applicant contends that the law firm is negotiating a settlement with the creditor, with payments to come out of his escrow account with them. (AE L, at 2) While the specific status of the account is not yet known, it appears that it is in the process of being resolved.

SOR ¶ 1.d. refers to a bank-issued charge account with an unpaid balance of $3,846 that was placed for collection and transferred or sold to a debt purchaser. (GE 2, at 2; GE 5, at 10, 22) The account is one of the 17 accounts enrolled in the law firm's initial agreement, but the status is still listed as "new." (AE A, at 22; AE B, at 1; AE S, at 3) Applicant contends that the creditor will not speak to him about the account because he is represented by the law firm. (AE L, at 2) While the specific status of the account is not yet known, it appears that it is in the process of being resolved.

SOR ¶ 1.e. refers to a bank-issued charge account with an unidentified creditor with an unpaid and past-due balance of $3,441 or $3,442 (depending on the credit report source) that was placed for collection and transferred or sold to a debt purchaser. (GE 2, at 2; GE 5, at 22; GE 4, at 2) There was purportedly a judgment obtained for $3,442, but there is no evidence of such judgment. Although Applicant contends that the account was enrolled in the debt-resolution program, without additional specific information from him, it is difficult to align it with any of the several accounts with the same creditor, collection agent, or debt purchaser, in the program. (AE B; L, at 2) Since the status of the account has not been clearly furnished, I conclude that the account has not been resolved.

SOR ¶ 1.f. refers to a digital-payment-platform account with an unpaid balance of $3,377 that was placed for collection and transferred or sold to a debt purchaser. (GE 2, at 2) The account was enrolled in the debt-resolution program. Although the law firm reported the account was new, in May 2017 – two and three-quarters years before the SOR was issued – the account was settled for $1,511, with payments to be made between May 31, 2017 and April 30, 2018. (AE B – Collection Agent Letter's dated May 31, 2017, and June 1, 2017; AE S) As recently as shortly after the hearing, Applicant asserted that the collection agent for the creditor, that he erroneously thought was a multinational technology company, will not speak to him about the account because he is represented by the law firm. (AE L, at 2) Despite Applicant's confusion regarding the account, considering the absence of documentary proof of the payments having actually been made, the specific status of the account is not yet known, but it appears that it was in the process of being resolved.

SOR ¶ 1.g. refers to a bank issued credit-card account with an unpaid balance of $2,569 that was placed for collection and charged off. (GE 2, at 2; GE 5, at 7) The account was enrolled in the debt-resolution program, and as recently as January 2021, it was still reported as new. (AE S) Applicant contends that the account is in negotiation pending a payment plan agreement. (AE L, at 2) While the specific status of the account is not yet known, it appears that it is in the process of being resolved.

SOR ¶ 1.h. refers to a credit-card account with an unpaid balance of $926 that was placed for collection and charged off. As of December 2020, the past-due balance had increased to $1,911. (GE 2, at 2; GE 5, at 12; GE 4, at 5) It is unclear if the account was enrolled in the debt-resolution program, for there is an account with the same creditor, but a different account number reflected (none of the four digits listed for the account in the program appear as part of two other accounts with the same creditor that are alleged in the SOR), and as recently as January 2021, it was still reported as new. (AE S) Applicant contends that the account is in negotiation pending a payment plan agreement. (AE L, at 2) Since the status of the account has not been clearly furnished, I conclude that the account has not been resolved.

SOR ¶ 1.i. refers to a credit-card account with an unpaid balance of $2,324 that was placed for collection and charged off. (GE 2, at 2; GE 5, at 8) The account was enrolled in the debt-resolution program, and as recently as January 2021, it was still reported as new. (AE S) Applicant contends that the account is in negotiation pending a

payment plan agreement. (AE L, at 2) While the specific status of the account is not yet known, it appears that it is in the process of being resolved.

SOR ¶ 1.j. refers to a cellular telephone account with an unpaid balance of $1,604 that was placed for collection. (GE 2, at 2; GE 4, at 1; GE 5, at 22) The account was not enrolled in the debt-resolution program. Applicant contends that the account is being disputed as fraudulent (AE L, at 2), but other than his statement, he offered no other evidence to support his characterization, or to support that a dispute had actually been filed. The account has not been resolved.

SOR ¶ 1.k. refers to a credit-card account with an unpaid balance of $606 that was placed for collection and charged off. As of December 2020, the past-due balance had increased to $1,369. (GE 2, at 2; GE 5, at 13; GE 4, at 5) As noted above with respect to SOR ¶ 1.h., it is unclear if the account was enrolled in the debt-resolution program, for there is an account with the same creditor but a different account number reflected (none of the four digits listed for the account in the program appear as part of two other accounts with the same creditor that are alleged in the SOR), and as recently as January 2021, it was still reported as new. (AE S) Applicant contends that the law firm is negotiating the account. (AE L, at 2) Since the status of the account has not been clearly furnished, I conclude that the account has not been resolved.

SOR ¶ 1.l. refers to an Internet cable account with an unpaid balance of $1,215 that was placed for collection. (GE 2, at 3; GE 5, at 8) The account was not enrolled in the debt-resolution program. Applicant contends that the account is being disputed because he returned the equipment to the creditor by mail when he moved out of the residence. (AE L, at 2), but other than his statement, he offered no other evidence to support his claim, or to support that a dispute had actually been filed. While the account no longer appears in his 2020 credit report, there is no evidence that the account has been resolved.

SOR ¶ 1.m. refers to an unknown type of bank-issued account with an unpaid and past-due balance of $1,151 that was placed for collection and transferred or sold to a debt purchaser. (GE 2, at 3; GE 5, at 22; GE 4, at 2) It is unclear if the account was enrolled in the debt-resolution program, as the name of the new creditor-debt purchaser is not among those listed, but the name of the original creditor, with a different account number, is listed. (AE B - Creditor Letter, dated August 15, 2018) Nevertheless, Applicant contends that the account is being negotiated by the law firm. (AE L, at 2) Other than his statement, he offered no evidence to support his claim. While the specific status of the account is not yet known, it appears that it is in the process of being resolved.

SOR ¶¶ 1.n. and 1.o. refer to two bank-issued credit-card accounts with the same creditor with unpaid balances of $740 and $634 that were placed for collection and charged off. (GE 2, at 3; GE 5, at 8; GE 4, at 4) One of the accounts was enrolled in the debt-resolution program, but it is unclear which one was enrolled because the law firm failed to list the specific account number enrolled. (AE B, at 1) As recently as January 2021, the one enrolled account was still reported as new. (AE S) Applicant contends that both accounts are being handled by the law firm. (AE L, at 3) In the absence of more

information from both the law firm an Applicant, the specific status of the accounts is not yet known, but it appears that at least one of them is in the process of being resolved.

SOR ¶ 1.p. refers to an unspecified type of bank-issued account with an unpaid balance of $672 that was placed for collection and transferred or sold. (GE 2, at 3; GE 5, at 23) It is unclear if the account was enrolled in the debt resolution program, for there are three accounts with the same creditor, but different account numbers reflected. (AE B, at 1; AE S) Applicant contends that the account is enrolled in his debt-resolution program. (AE L, at 3) While the account no longer appears in his 2020 credit report, there is no evidence that the account has been resolved.

SOR ¶ 1.q. refers to a credit-card account with an unpaid balance of $247 that was placed for collection and charged off. (GE 2, at 3; GE 5, at 12)) The account was enrolled in the debt- resolution program, and as recently as January 2021, it was reported as settled. (AE S) In May 2017 – two and two-quarter years before the SOR was issued – a settlement was reached on an outstanding balance of $3,432, which called for a settlement balance of $1,373, with payments commencing on May 30, 2017, and continuing until December 30, 2017. (AE B – Creditor Letter, dated May 8, 2017) Applicant's 2020 credit report refers to the account as having been settled and "paid for less than full balance" and "paid charge off." (GE 4, at 9) Shortly after the hearing was held, Applicant said he was trying to talk to the creditor to determine facts about the account. (AE L, at 3) The account has been resolved.

SOR ¶ 1.r. refers to a charge account with an unpaid and past-due balance of $481 that was placed for collection and charged off. (GE 2, at 3; GE 5, at 9) It does not appear that the account was enrolled in the debt-resolution program. Applicant contends that the account was settled for $288 on an unspecified date, and while he furnished a confirmation number, he claimed that a receipt was being mailed to him. (AE L, at 3) No such receipt was submitted by him. In the absence of more conclusive evidence, I conclude that the account is merely in the process of being resolved.

SOR ¶ 1.s. refers to a bank-issued credit-card or charge account with an unpaid balance of $399 that was placed for collection. (GE 2, at 3; GE 5, at 23) It is unclear if the account was enrolled in the debt-resolution program, because there are three accounts with the same issuing bank, but different commercial companies, and partial or no account numbers listed. (AE B, at 1; AE S) Applicant indicated that he attempted to call the collection agent, one not identified in the SOR, but it would not talk to him because he was represented by the law firm. (AE L, at 3) The account has not been resolved.

SOR ¶ 1.t. refers to a credit-card account with an unpaid balance of $281 that was placed for collection and charged off. (GE 2, at 3; GE 5, at 9) The account was enrolled in the debt-resolution program, and as recently as January 2021, it was reported as settled. (AE S) On September 14, 2019 – nearly five months before the SOR was issued – a settlement was reached, and the account was reported as settled in full. (AE K; AE L, at 3) Applicant's 2020 credit report refers to the account as having been settled and "paid for less than full balance." (GE 4, 8-9) The account has been resolved.

It is unclear if Applicant had additional debts that were not alleged in the SOR because the initial source information came from a September 2019 credit report that failed to report essential account information (full account numbers; the full identity of initial creditors, rather than partial abbreviations; and the initial source of accounts transferred or sold to eventual credit purchasers). Furthermore, it appears that the law firm's emphasis was on costs rather than adequately listing the accounts enrolled in the debt resolution program; furnishing detailed documentation of payments made; or timely responding to Applicant's inquiries. Applicant's financial bewilderment, when combined with these two problems, has resulted in significant confusion.

Applicant submitted documentation regarding several accounts which could not be aligned with those alleged in the SOR or in the debt resolution program, and it is highly possible, if not probable, that these other accounts are referred to in the SOR with a different identity. For example, while SOR ¶¶ 1.h. and 1.k. refer to two accounts with the same creditor, each with relatively modest balances, Applicant submitted documentation indicating that substantial payments had been made to the same creditor with a different account number. (AE O) In addition, while SOR ¶¶ 1.d., 1.f., and 1.p. refer to three accounts with the same debt purchaser, Applicant submitted documentation indicating that payments had been made, either through voluntary payment or by garnishment, well before the SOR was issued, to the same debt purchasers for bank-issued charge accounts that appear to be different from the one associated with SOR ¶ 1.d., and both accounts have been resolved. (AE P; AE R; AE Q)

Applicant reported approximately $9,160 in net monthly income; $4,809 in routine monthly expenses; and $3,225 in debt payments, including his monthly payment to the law firm; leaving an anticipated monthly remainder of approximately $1,126 that might be available for discretionary spending or savings. (AE M) While he never underwent formal financial counseling, Applicant considers the guidance and direction he receives from the law firm and the credit-repair organization to be such counseling. (Tr. at 105-106)

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

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." "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))

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. (*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 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." (*Egan, 484 U.S. at 531*)

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 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.

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 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; and

(c) a history of not meeting financial obligations.

Applicant had 20 delinquent SOR-alleged accounts totaling approximately $84,055, as well as a number of delinquent accounts that were not alleged in the SOR. He claimed that he did not have sufficient funds to maintain them in a current status. He used credit cards to pay bills, and took out loans to pay earlier loans. Although he admitted that all of the accounts alleged in the SOR were still delinquent as of the date the SOR was issued, his admissions with regard to some of the accounts were erroneous. Nevertheless, at some point, all of the accounts were delinquent. AG ¶¶ 19(a) and 19(c) have been established, but there is insufficient evidence that Applicant had been unwilling to satisfy his debts regardless of an ability to do so, and AG ¶ 19(b) has 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;

(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.

AG ¶¶ 20(a), 20(b), and 20(d) apply, and AG ¶ 20(c) partially applies. AG ¶ 20(e) does not apply. 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. Sept. 13, 2016)). Applicant attributed his financial problems to having been injured on several occasions while serving as a security officer, with his injuries resulting in disability-based unemployment for lengthy periods; his decreased income while he was unable to return to work; and his wife's actions in removing all the contents of their residence, refusing to assist him with their residence mortgage, along with their eventual divorce.

As noted in the Appeal Board Decision and Remand Order, Chief Department Counsel and Department Counsel argued:

> The Judge's mitigation analysis runs counter to the record evidence and fails to consider important aspects of the case. They contend the 17 debts listed in Applicant's debt resolution program, including two that have been resolved, are not debts listed in the SOR. More specifically, they challenge the Judge's conclusion that the debts in SOR ¶¶ 1.b and 1.q have been resolved. They note that Applicant has multiple accounts with some creditors and contend that, because the debt resolution program documentation does not list account numbers, it is impossible to determine which accounts are in that program. They also assert that Applicant's

> installment agreements with various creditors do not address any of the alleged debts and none of those agreements reflect that actual payments are being made towards the debts. They further argue the Judge failed in his mitigation analysis to consider Applicant's current financial circumstances, his taking of international vacations while unemployed, his purchase of an expensive vehicle that he cannot afford to operate, and his acquisition of additional debts.

ISCR Case No. 19-02993 at 3 (App. Bd. Apr. 28, 2021)

It is a well-accepted precept that 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.

In this instance, Applicant had such a plan well before the SOR was issued. Although he is financially naïve, he engaged the professional services of a law firm to assist him in resolving his delinquent debts, and he enrolled in their debt resolution program, starting in October 2016 – approximately three and one-quarter years before the SOR was issued. In addition to a retainer and other costs, he pays that law firm $847.88 per month to handle his accounts. In reviewing the law firm's reports to him, several accounts, both SOR-related and unrelated, have been paid off, several accounts have been settled, and others are in the queue. In my analysis of the evidence, I have given substantial weight to the statements and reports from the representatives of the law firm regarding the status of various accounts. If the attorney reported that an account is in the debt resolution program, is in an active repayment plan, or has been settled, in the absence of contradictory evidence, I have accepted the reported status. This process chosen by Applicant is not too dissimilar from seeking bankruptcy protection under Chapter 13 of the U.S. Bankruptcy Code where accounts may be included in the Trustee's report with a queue awaiting more active participation, i.e., scheduled payments.

With respect to one of the main evidentiary documents in the record – the September 2019 credit report (GE 2) – the Appeal Board has explained that it is "well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. *See*, *e.g.*, ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006)." (Emphasis added) It noted that the burden then shifts to the applicant to establish either that he is not responsible for the debt or that matters in mitigation apply. (ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010)) However, there is a substantial risk when one accepts, at face value, the contents of some credit reports without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified

sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is.

In this particular instance, the September 2019 credit report referred to numerous creditors for several delinquent accounts. Because of abbreviated names and acronyms, multiple and partial account numbers for the same account listed several times under different creditors, debt purchasers, or collection agents, many of those entries are garbled and redundant, and have inflated the financial concerns. One can conclude that the information in that particular credit report – actually a summary or secondary evidence pertaining to an account – might be less accurate, trustworthy, or reliable than the other evidence of record. It certainly does not furnish the information, much less evidence, necessary to make an informed decision. This difficulty has arisen and created unnecessary confusion for Applicant, Department Counsel, and this Administrative Judge in aligning alleged accounts with documents submitted in mitigation by Applicant. Interestingly, Chief Department Counsel and Department Counsel argue that "because the debt resolution program documentation does not list account numbers, it is impossible to determine which accounts are in that program" – an argument that could also apply to the fact-deficient GE 2.

The issue with the September 2019 credit report was minimized somewhat by the submission of the other two credit reports (GE 4 and GE 5). Not only did GE 5 furnish more detailed and thorough information regarding initial creditor names, it supplied more complete account numbers to enable a better alignment of the alleged accounts with those reported in the credit reports. In addition, GE 4, the initially withheld December 2020 credit report, supplied much-needed exculpatory-mitigating evidence regarding some of the accounts that was not included in GE 2.

Applicant's monthly payments to the law firm, as well as his strong showing that his delinquent accounts are either resolved, in the process of being resolved, or about to be resolved, along with the amount of money that is available for discretionary spending or savings each month, indicate that his financial problems are substantially in the past. While he might have a reasonable basis to dispute the legitimacy of some debts, he failed to provide any documented proof to substantiate the basis of his disputes.

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. Jun. 4, 2001)).

While there is no evidence of formal financial counseling, Applicant did seek guidance and assistance from the law firm and the credit-repair organization to resolve his debts and clean up his financial situation. Now that he has returned to work, he is in a much better position financially than he had been. Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment. *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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

There is some evidence against mitigating Applicant's financial considerations. He initially used credit cards to pay bills, and took out loans to pay earlier loans. When the SOR was issued, it was alleged that Applicant had 20 delinquent accounts totaling approximately $84,055. It appears that he also had a number of delinquent accounts that were not thoroughly or accurately in his credit report.

The mitigating evidence is simply more substantial and compelling. Applicant is a 46-year-old employee of a defense contractor. He has been serving as a security officer since January 2018. Because of his employment schedule, he has also been working concurrently with at least one, and sometimes two other employers in an identical capacity. He received his GED in 1994 or 1995, a bachelor's degree in 2006, and a

master's degree in 2011. He enlisted in the U.S. Navy in December 1996, and served on active duty until May 2006, when he was placed on the temporary disability retired list and honorably discharged as a petty officer second class (pay grade E-5). He was granted a secret clearance in 1996.

Applicant's financial difficulties arose in 2014 because of two incidents of work-related injuries, about one year apart, and he was unable to work. His workers' compensation was reduced or delayed until he obtained a settlement. Adding to his financial problems were his wife's actions and her refusal to contribute to mortgage payments while he was unable to work. In October 2016 – approximately three and one-quarter years before the SOR was issued, he enrolled in a debt-resolution program. In addition to a retainer, he makes monthly payments of $847.88 to enable the law firm program to resolve his debts. They have been successful in resolving some accounts, settling some accounts, and are in the process of resolving other accounts. The law firm has also resolved debts that were not alleged in the SOR.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases, stating:

> 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 plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's current financial track record is good. He started focusing on his delinquent accounts years before the SOR was issued. Overall, the evidence no longer leaves me with any questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. *See* SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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. through 1.t.: For Applicant

Conclusion

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

_____
ROBERT ROBINSON GALES
Administrative Judge