DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-03922
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: *Pro se*

05/12/2021

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Decision

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GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding Financial Considerations. Eligibility for a security clearance is denied.

Statement of the Case

On May 30, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On April 8, 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.

On April 23, 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 June 30, 2020. Because of protocols associated with the COVID-19 pandemic, no further action was taken to schedule a hearing until the following year. On February 8, 2021, an Amendment to the SOR was issued. Applicant responded to the Amendment on February 10, 2021, and repeated his request for a hearing. The case was assigned to me on February 10, 2021. A Notice of Hearing by way of a Defense Collaboration Services (DCS) Video Teleconference was issued on March 24, 2021, scheduling the hearing for March 29, 2021. I convened the hearing as scheduled.

During the hearing, Government Exhibits (GE) 1 through GE 6 and Applicant Exhibit (AE) A II were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on April 7, 2021. I kept the record open until April 12, 2021, to enable him to supplement it. He took advantage of that opportunity and timely submitted additional documents which were marked and admitted as AE B through AE P without objection. The record closed on April 12, 2021.

Findings of Fact

In his Answers to the SOR, Applicant admitted three of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a., 1.k., and 1.l.). He denied the remaining allegations claiming that a bankruptcy under Chapter 7 of the Bankruptcy Code had discharged those liabilities. His comments with respect to both his admissions and his denials 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 33-year-old employee of a defense contractor. He has been serving as a test administrator with his current employer since March 2021. He previously served in security positions for an employer in Kuwait, and in automobile sales for other employers. A 2005 high school graduate, he received an associate's degree in 2020. He enlisted in the U.S. Marine Corps in July 2005, and he served on active duty until February 2015, when he was honorably discharged as a sergeant (E-5). He was initially granted a secret clearance in 2005, but that clearance was suspended by the U.S. Department of State from March 2015 until March 2018 based on his failure to report financial issues and disciplinary non-judicial punishment while on active duty. He does not currently hold a security clearance. He was married in 2013 and divorced in 2017. He has one son, born in 2014.

Military Awards and Decorations

During his military service, Applicant participated in Operation Iraqi Freedom (National Resolution/Iraqi Surge) from September 2006 until April 2007, and in Operation Iraqi Freedom (Iraqi Surge) from September 2007 until April 2008. He was awarded the Marine Corps Good Conduct Medal (two awards), the Iraqi Campaign Medal (with 1 star), a Letter of Appreciation, the Navy Unit Commendation (two awards), the Marine Corps Recruiting Ribbon, the Global War on Terrorism Service Medal, a Certificate of Appreciation, the National Defense Service Medal, the Sea Service Deployment Ribbon (two awards), the Expert Rifle Qualification Badge (two awards), and the Expert Pistol Qualification Badge.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (SF 86, dated May 30, 2018); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 26, 2018); GE 2 (Equifax Credit Report, dated October 21, 2019); GE 6 (Equifax Credit Report, dated January 25, 2021); and GE 5 (Enhanced Subject Interview, dated January 9, 2019).

After leaving active military duty, Applicant was unemployed on a number of occasions, but because of some level of confusion, or a lack of candor on his part, the dates that he reported were inconsistent. Some of his periods of unemployment were brought about by his being fired, a fact with which he sometimes disagreed, claiming instead that he had quit. (GE 5, at 4-5)

In May 2018, when Applicant completed his SF 86, he acknowledged that there was a state tax issue in the estimated amount of $200 that he planned to resolve when filing his next year's taxes. He added that when he viewed his credit report, he noticed "some errors" and in November 2017, and also in January 2018, he disputed the accounts that he claimed were errors, using slight variations of the following comments:

> I sent a letter to (Equifax, Experian, and TransUnion). According to the Fair Credit Reporting Act, Section 609 (a)(1) (A), you are required by federal law to verify – through the physical verification of the original signed consumer contract – any and all accounts you post on a credit report. Otherwise, anyone paying for your reporting services could fax, mail or email in a fraudulent account. I demand to see Verifiable Proof (an original Consumer Contract with my Signature on it) you have on file of the accounts listed below. Your failure to positively verify these accounts has hurt my ability to obtain credit. Under the FCRA unverified accounts must be removed and if you are unable to provide me a copy of verifiable proof, you must remove the accounts listed below.

GE 1, at 46-53; AE E; AE F; AE G; AE H

In January 2019, during an interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant essentially claimed to be unaware of numerous delinquent debts in his name until he obtained a copy of his credit report. With the exception of his unpaid state tax and delinquent child support, he disputed all of the debts discussed, even though he was aware in some instances what the account was for. Although Applicant was accorded the opportunity to provide documentation to support his explanations regarding the financial delinquencies discussed during the interview, he failed to do so.

Applicant contended that in November 2017, he engaged the professional services of an organization that provides access to credit histories, consumer reports, and credit monitoring. His purpose was to obtain help in disputing his credit report. As of January 2019, he was still using the organization's services. (GE 5, at 8-9) He was unable to furnish documentation to support his contention that he actually had that professional relationship. (AE O) As of January 2019, Applicant had not received any credit counseling or debt consolidation services. (GE 5, at 10)

In addition to the Chapter 7 bankruptcy, the SOR, as amended, alleged 11 delinquent accounts that were placed for collection, totaling approximately $118,977, as set forth as follows:

SOR ¶ 1.a. refers to a child support arrearage in the amount of $19,201 associated with Applicant's son. (GE 2, at 2; GE 6, at 3; GE 3, at 5; GE 5, at 10) Applicant and his wife – the mother of their child – were divorced in May 2017. (AE C) At some point, the court ordered him to pay monthly child support of $1,157, but Applicant refused to make any payments while disputing paternity and awaiting the results of a paternity test. (GE 1, at 53) As of September 23, 2020, Applicant was required to maintain the monthly child support payment, while adding a monthly $100 arrears payment, for a total monthly payment of $1,257. Periodic insufficient payments were garnished from his bank account. (Tr. at 36-37) The unpaid arrears balance as of September 23, 2020, had increased to approximately $24,085, and when approximately $3,971 in interest was added, the total amount owed increased to approximately $29,213. (AE J, at 1)

During the period August 2019 through July 2020, there was only one payment that came anywhere close to the court-ordered amount, and that occurred in May 2020, when the Internal Revenue Service (IRS) intercepted a $1,200 tax refund and applied it to the child support arrearage. (AE J, at 2-4) Applicant offered no documentation that reflected any child support payments made more recently than $100 in July 2020. (AE J, at 4) In November 2020, Applicant filed for joint custody and visitation on all three-day weekends, breaks and holidays. (AE I) During the hearing, he admitted to only paying the monthly $100 arrearage (AE A), but justified his limited payments by claiming that he is currently fighting "it" and did not know if his son is even alive. (Tr. at 77; AE O) The account has not been properly addressed by Applicant, and there is little evidence that he intends to do so.

SOR ¶ 1.k. refers to unpaid state taxes for the tax year 2016 in the amount of $200 that Applicant claimed he was unaware of until he received a notification in the mail in

January 2018. He told the OPM investigator that he intended to resolve the issue when he filed his 2018 state tax return in April 2019. (GE 5, at 8) When he submitted his Answer to the SOR in April 2020, he admitted that as of the date of the SOR (April 8, 2020) he had not resolved the debt, but also claimed that he was not 100 percent sure, so he intended to take care of the matter in 2020. (Answer to SOR, at 2) During the hearing, he admitted that he was not sure if the debt had been resolved by being withdrawn from his federal income tax refund. (Tr. at 40) In the absence of more definitive evidence regarding a payment to the creditor, the account has not been resolved.

SOR ¶¶ 1.b., 1.d., 1.f., 1.g., and 1.j. refer to loans for automobiles, trucks, or motor cycles, with unpaid balances of $18,811 (a truck); $27,673 (a pickup truck); $14,450 (an automobile); $14,738 (a motorcycle); and $17,908 (a BMW automobile), that were placed for collection. (GE 2, at 2, 9; GE 3, at 10-12; GE 5, at 9) Applicant contended that all of the vehicles, regardless of type, were returned to "the bank." (Tr. at 45) Several, but not all of the specific accounts, some of which were classified by him as charge accounts or unsecured loans, were included by name in Applicant's Chapter 7 bankruptcy and discharged on June 17, 2019. (GE 4, 21-22)

SOR ¶¶ 1.c., 1.e., 1.h., and 1.i., refer to a variety of accounts, some of which were charge accounts, unspecified types of accounts, or credit-card accounts with unpaid balances of $48 (unspecified); $3,658 (wife's credit card); $315 (unspecified); and $1,975 (charge account), that were placed for collection. (GE 2, at 2; GE 3, at 10-11; GE 5, at 9) Several, but not all of the specific accounts, were included by name in Applicant's Chapter 7 bankruptcy and discharged on June 17, 2019. (GE 4, 21-22)

SOR ¶ 1.l. refers to the Voluntary Petition of Bankruptcy under Chapter 7 that Applicant filed on March 12, 2019, and the ensuing discharge of his liabilities on June 17, 2019. In his Petition, he estimated between 1 and 49 creditors; and between $50,000 and $100,000 in liabilities. He identified only creditors who had unsecured claims totaling $56,613. (GE 4)

Aside from disputing 18 accounts that were listed in his credit reports as delinquent, including his child support obligations, Applicant did not get in touch with any of those creditors because he contends that he would not have had the money to resolve his debts. (Tr. at 85)

Effective December 1, 2017, Applicant started receiving 90 percent monthly service-connected disability compensation of approximately $2,042. (GE 4, at 51) When he filed his bankruptcy petition on March 12, 2019, he reported zero monthly income. (GE 4, at 39-40) At some point between May 28, 2018, and December 1, 2019, his monthly service-connected disability compensation was increased to 100 percent or approximately $3,777. (AE N) In addition to his service-connected disability compensation, during calendar year 2019, he received $12,522 in wages. (AE L) On October 19, 2020, he and his girlfriend purchased a new automobile which cost over $52,000, minus a trade-in. He paid the dealer $6,000 in cash, and the remaining unpaid balance was nearly $49,000. His current monthly payment is nearly $875. (GE 6, at 2-3; AE A; AE D). On March 19, 2021, he submitted a Personal Financial Statement in which

he claimed $3,779 in current net monthly income, an amount which appears to be his service-connected disability compensation rather than a salary; approximately $2,774 in monthly expenses; and a monthly remainder of approximately $1,404 available for discretionary spending or savings. (AE A) Starting with his new employment, effective January 16, 2021, he is also earning an annual salary of $31,604. (AE M) There is no evidence of a budget. Other than an on-line session of credit counseling associated with his bankruptcy filing, completed on February 22, 2019, there is no evidence of financial counseling. (GE 4, at 52)

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;

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay federal, state, or local income tax as required.

In addition to the Chapter 7 bankruptcy, the SOR, as amended, alleged 11 delinquent accounts that were placed for collection, totaling approximately $118,977. Included in that amount were Applicant's failure to pay $200 in state taxes for the tax year 2016; his failure to pay child support totaling (at the time the SOR was issued) $19,201 – an amount that has since increased to $26,540 in January 2021; and nine other delinquent debts that he recognized, but nevertheless disputed without a legitimate basis. Applicant's explanations pertaining to all of his delinquent debts are always inconsistent and sometimes confusing. While claiming insufficient funds to pay his creditors, as well as objections to being required to pay child support, he purchased an expensive new vehicle. He failed to submit any documentary evidence to show that he had resolved, or attempted to resolve, other than by Chapter 7 bankruptcy, any of the delinquent accounts alleged in the SOR. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) have 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(b) and 20(c) minimally apply, but none of the other conditions apply. Applicant conceded that his child support arrearage had not been resolved, in part because he had initially delayed making any payments because he was not sure if he was actually the parent of the child; subsequently because he was not permitted to exercise visitation rights; and eventually because he was not sure if the child was alive. As for the delinquent state tax from the tax year 2016, he had intended to resolve the issue when he filed his 2018 state tax return in April 2019, but when he submitted his Answer to the SOR in April 2020, he admitted that as of the date of the SOR (April 8, 2020) he had not resolved the debt. He also claimed that he was not 100 percent sure, so he intended to take care of the matter in 2020. During the hearing, he admitted that he was not sure if the debt had been resolved by being withdrawn from his federal income tax refund. As for the remaining delinquent debts, he simply disputed them without furnishing a reasonable basis to do so, even though he recognized those debts.

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)). The nature, frequency, and recency of Applicant's continuing financial difficulties, and his failure to voluntarily and timely resolve his delinquent accounts, make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for several years. The child support arrearage and the unpaid tax remain unresolved. Only the delinquent commercial accounts, including credit-card accounts, charge accounts, and loan accounts were addressed by the bankruptcy.

Department Counsel has argued that because Applicant failed to specifically list all of his delinquent accounts in the bankruptcy filing, several of the accounts were not discharged. That argument is not persuasive.

In a bankruptcy filing, most debtors list potential creditors, even when the debt may have been resold or transferred to a different collection agent or creditor, to ensure notice, and reduce the risk of subsequent dismissal of the bankruptcy. If Applicant failed to list some debts on his bankruptcy schedule, this failure to list some debts does not affect their discharge. Absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge, even when they are not listed on a bankruptcy schedule. *See Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr. S.D. FL 2010), *but see First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28-9 ABIJ 58 (Nov. 2009). There is no requirement to re-open the bankruptcy to discharge the debt. *Collier on Bankruptcy*, Matthew Bender & Company, Inc., 2010, Chapter 4-523, ¶ 523(a)(3)(A). Not all debts are discharged through

bankruptcy. Priority debts, such as tax debts, student loan debts, and child support obligations, are generally not discharged through bankruptcy. Secured debts such as home mortgages and car liens are not discharged unless the security (home or car) is foreclosed or repossessed.

While Applicant attributed his financial problems to several factors: periods of unemployment, a divorce, and insufficient funds, it appears that he was receiving funds (service-connected disability compensation and/or a salary) for several years. He contends that he had insufficient funds to even contact his creditors, but it is clear that he had sufficient funds to purchase a new automobile which cost over $52,000, minus a trade-in. He paid the dealer $6,000 in cash. Before accepting his new job with an annual salary of $31,604, he reported a monthly remainder of approximately $1,404 available for discretionary spending or savings. Nevertheless, rather than attempting to reduce the child support arrearage, he continues to sometimes pay $100 a month. His failure to make any attempts to resolve any of his delinquent accounts, including one for only $48, other than by disputing them or obtaining a bankruptcy discharge for most of them, is indicative of his disinterest in resolving them.

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)

Based on the evidence, it appears that Applicant intentionally chose to ignore his delinquent accounts even after he was interviewed by OPM. An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (*See, e.g.,* ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018). Applicant completed his SF 86 in May 2018; underwent his OPM interview in January 2019; and he filed his Voluntary Petition for Bankruptcy under Chapter 7 in March 2019. The initial SOR was issued in April 2020. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. Other than his efforts to dispute his delinquent accounts and have them removed from his credit reports, and his

subsequent bankruptcy filing to have his debts discharged, he made no efforts, much less reasonable efforts, to contact his creditors or attempt to resolve any of his delinquent accounts.

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. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

Other than the online financial counseling associated with the bankruptcy, there is no other evidence of financial counseling or a budget. Applicant's actions, or inaction, under the circumstances 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. Moreover, 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 in favor of mitigating Applicant's financial concerns. Applicant is a 33-year-old employee of a defense contractor. He has been serving as a test administrator with his current employer since March 2021. He previously served in security positions for an employer in Kuwait, and in automobile sales for other employers.

A 2005 high school graduate, he received an associate's degree in 2020. He enlisted in the U.S. Marine Corps in July 2005, and he served on active duty until February 2015, when he was honorably discharged as a sergeant (E-5). He was initially granted a secret clearance in 2005.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. As noted above, Applicant's security clearance was suspended by the U.S. Department of State from March 2015 until March 2018 based on his failure to report previous financial issues and disciplinary non-judicial punishment while on active duty. Those issues were based on his failure to disclose financial difficulties that he had at the time, as well as his actions involving insurance fraud.

Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3). *See* ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)) *See also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unlisted and unalleged conduct associated with his previous lack of candor will be considered only for the five purposes listed above – with emphasis on (a), (b), and (e).

The SOR, as amended, alleged 11 delinquent accounts that were placed for collection, totaling approximately $118,977. Included in that amount were Applicant's failure to pay $200 in state taxes for the tax year 2016; his failure to pay child support totaling (at the time the SOR was issued) $19,201 – an amount that has since increased to $26,540 in January 2021; and nine other delinquent debts that he recognized, but nevertheless disputed without a legitimate basis. In May 2018, when Applicant completed his SF 86, he acknowledged that there was a state tax issue in the estimated amount of $200 that he planned to resolve when filing his next year's tax return. He added that when he viewed his credit report, he noticed "some errors" and in November 2017, and also in January 2018, he disputed all of the accounts with the exception of his unpaid state tax and delinquent child support, and requested that they be removed from his credit report. In January 2019, during an OPM interview, he claimed to be unaware of the numerous delinquent debts in his name.

Applicant claimed insufficient funds to pay his creditors, and he objected to being required to pay child support. Nevertheless, he purchased an expensive new vehicle. He acknowledged making no effort to resolve the accounts that he had previously disputed, explaining that he did not have sufficient funds to do so.

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 track record is extremely poor at best. While he may have been successful in eventually having many of his delinquent accounts discharged in bankruptcy, his non-existent efforts to resolve those accounts, and his refusal to focus of his child support arrearage, over a lengthy period lead me to conclude that he never had any intention to do so. Instead, his actions supported delay, dispute, and discharge of his financial obligations. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. *See* SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9)

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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. through 1.k.	Against Applicant
Subparagraph 1.l.	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge