



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



In the matter of:)
)
) ISCR Case No. 21-01381
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

12/23/2021

Decision

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 July 28, 2020, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On September 5, 2021, 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* (December 10, 2016) (AG), 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 September 20, 2021, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 2) A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on November 2, 2021, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on November 15, 2021. His response was due on December 15, 2021. Applicant timely responded to the FORM and submitted a statement and two pages of photographs, to which there was no objection. The case was assigned to me on December 13, 2021. The record closed on December 15, 2021.

Findings of Fact

In his response to the SOR, Applicant admitted, with brief comments, nearly all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a., 1.e. through 1.i., and 1.k. through 1.m.). Applicant's admissions and 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 65-year-old employee of a defense contractor. He has been serving as a project manager with his current employer since August 2014. He was previously employed by other employers in similar positions (March 2011 – May 2013; and June 2013 – August 2014), and as a security officer (August 2003 – April 2006; May 2006 – August 2007; August 2007 – February 2008; February 2008 – April 2009; and May 2009 – March 2011). He is a 1974 high school graduate. He has never served with the U.S. military. He was apparently granted a top secret clearance in 2020. He was married in 1977. He has one child, born in 1980.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (Enhanced Subject Interview, dated October 20, 2020); Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 2, 2020); Item 5 (Equifax Credit Report, dated June 21, 2021); and Item 2 (Answer to the SOR, dated September 20, 2021).

On November 7, 2017, Applicant and his wife voluntarily filed a petition for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. They listed \$280,630 worth of assets and \$389,737 in liabilities. (Item 7) A bankruptcy plan was confirmed in May 2018, and certain claims were allowed. The bankruptcy trustee paid \$31,648.64 (of the allowed \$223,331.15) for the ongoing mortgage, and \$813,31 (of the allowed \$6,164.20)

for other secured claims, totaling \$32,461.95 in principal paid, and \$400.68 in interest paid. Including \$6,542.85 expenses for administration, the total disbursements were \$39,405.48. However, because Applicant failed to fulfill his obligations, the bankruptcy trustee filed an action to remedy default by Applicant, and the case was eventually dismissed on August 1, 2019. (Item 8)

In his SF 86, Applicant denied having any delinquency issues involving routine accounts in the last seven years (referring to 2013 – 2020), but he did acknowledge that he had filed for bankruptcy, and that the bankruptcy had been discharged in 2019 before it was completed. He stated that he would be “settling with creditors as needed.” (Item 2, at 37-39) A review of his credit reports from 2020 – 2021 indicates that there are numerous delinquent accounts.

Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) on October 20, 2020. He stated that his financial troubles started in September 2014 because his position was changed from hourly to salary, resulting in a \$20,000 annual salary loss. Before September 2014, his annual salary was approximately \$120,000. In 2016, he was demoted, reducing his annual income to about \$60,000. Although he tried cutting costs, because of his diminished income, he was unable to keep up with his monthly payments. He sought legal guidance and was advised to file for bankruptcy. Some bankruptcy payments were made, but he could not sustain making them while also making vehicle payments, as well as payments for food, shelter, and utilities. The bankruptcy was dismissed in 2019. (Item 3, at 2)

When questioned about a variety of accounts in his name, Applicant was generally unaware of the specifics of the accounts, or the accounts in general, and claimed that some of the accounts belonged to his wife. He contended that several of the accounts had been, or should have been, resolved. (Item 3, at 2-4) At the time of the interview, Applicant acknowledged that he had previously been promoted, and that his annual salary had increased to \$81,000; that he had sold his house, and he was renting at a lower rate; and that because he had inherited his deceased parents’ residence, he would move into it to save even more money. He anticipated offering his creditors lump-sum payments in an effort to settle and resolve his delinquent debts. However, he had not yet approached any of his creditors in an effort to resolve those debts. (Item 3, at 2)

In addition to an allegation pertaining to the bankruptcy filing and dismissal, the SOR alleged 13 still-delinquent accounts totaling approximately \$69,822, as set forth below:

SOR ¶ 1.b. refers to unpaid federal taxes in the amount of approximately \$647 for the years 2015 and 2016. A proof of claim was filed by the Internal Revenue Service (IRS) as part of the bankruptcy proceedings, but, contrary to Applicant’s assertion, no payment was ever made. (Item 8, at 2; Item 9) The account has not been resolved.

SOR ¶¶ 1.c. and 1.d. refer to unpaid state taxes in the amounts of approximately \$561 (for 2016) and \$881 (for 2017). Proofs of claim were filed by the state tax department as part of the bankruptcy proceedings, but, contrary to Applicant’s assertions, no

payments were ever made by the bankruptcy trustee, and there is no documentary evidence to support Applicant's contentions that payments were ever made before or after the bankruptcy. (Item 8, at 2; Item 10; Item 11) The accounts have not been resolved.

SOR ¶ 1.e. refers to an unspecified type of credit union account with an unpaid balance of about \$5,915 that was placed for collection. (Item 4, at 2; Item 5, at 2) It is unclear if the particular account was specifically included in the bankruptcy because, while there was another account with the same creditor, there are no matching unpaid balances or account numbers. No bankruptcy payments were ever made. (Item 8, at 2) The account has not been resolved.

SOR ¶ 1.f. refers to an unspecified type of bank account with an unpaid balance of about \$12,107 that was placed for collection and eventually sold to a debt purchaser. (Item 4, at 12; Item 5, at 3) It is unclear if the account was specifically included in the bankruptcy because there are no matching unpaid balances or account numbers. No bankruptcy payments were ever made. Applicant claimed to be unaware of the account, and at one point disputed it. He failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.g. refers to an unspecified type of bank account with an unpaid balance of about \$13,541 that was placed for collection and eventually sold to a debt purchaser. (Item 4, at 12; Item 5, at 3) It is unclear if the account was specifically included in the bankruptcy because there are no matching unpaid balances or account numbers. No bankruptcy payments were ever made. Applicant failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.h. refers to an unspecified type of bank account with an unpaid balance of about \$4,887 that was placed for collection and eventually sold to a debt purchaser. (Item 4, at 12; Item 5, at 3) It is unclear if the account was specifically included in the bankruptcy because there are no matching unpaid balances or account numbers. Applicant contends the account belongs to his wife, but he offered no proof of that contention. (Item 3, at 4) No bankruptcy payments were ever made. Applicant failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.i. refers to an unspecified type of bank account with an unpaid balance of about \$4,460 that was placed for collection and eventually sold to a debt purchaser. (Item 4, at 13; Item 5, at 3-4) Although a bankruptcy claim was asserted and allowed, no bankruptcy payments were ever made. (Item 8, at 2) Applicant failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.j. refers to a secured automobile-loan account with an unpaid balance of about \$14,643 that was placed for collection and eventually charged off. (Item 4, at 11; Item 5, at 4) At one point, Applicant claimed that the vehicle was returned to the creditor, but at another point he claimed the vehicle was repossessed two years earlier, and that

there was no deficiency owed to the creditor. (Item 3, at 3) No bankruptcy payments were ever made. He failed to submit any documentation to support his contention that there was no deficiency balance, as well as to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.k. refers to an unspecified type of unsecured credit-union account with an unpaid balance of about \$3,989 that was placed for collection and eventually charged off. (Item 4, at 13; Item 5, at 5) Although a bankruptcy claim was asserted and allowed, no bankruptcy payments were ever made. (Item 8, at 2) Applicant failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.l. refers to an unspecified type of bank account with an unpaid balance of about \$5,638 that was placed for collection and eventually charged off. (Item 4, at 12; Item 5, at 5) It is unclear if the account was specifically included in the bankruptcy because there are no matching unpaid balances or account numbers. No bankruptcy payments were ever made. Applicant failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.m. refers to a cellular-telephone account with an unpaid balance of about \$1,549 that was placed for collection. (Item 4, at 13) Applicant claimed that the account belonged to his wife. It is unclear if the account was specifically included in the bankruptcy because there are no matching unpaid balances or account numbers. No bankruptcy payments were ever made. Applicant failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

SOR ¶ 1.n. refers to a cellular-telephone account with an unpaid balance of about \$1,004 that was placed for collection. (Item 3, at 3; Item 4, at 13) Applicant claimed that he was unaware of the account and contended that he uses the same carrier, but that his account is not delinquent. While there is one creditor with the same name listed in the bankruptcy, it is unclear if the account was specifically included in the bankruptcy because there are no matching unpaid balances or account numbers. No bankruptcy payments were ever made. Applicant failed to indicate what efforts he made to resolve the account since the bankruptcy was dismissed. The account has not been resolved.

In November 2017, when he filed his bankruptcy petition, Applicant reported that his monthly income was \$5,971 or \$5,319, depending on the page in which it was reported. (Item 7, at 8, 38) In addition, he was receiving a monthly retirement pension of \$1,529. His wife was also receiving monthly Social Security payments of \$529. (Item 7, at 39) During the calendar year 2015, his annual gross income was reported as \$82,765, plus a \$19,628 pension, totaling \$102,393. During that same period, his wife's Social Security totaled \$8,097. (Item 7, at 44) Combined, their family income was \$110,490. The following year, he reported his annual gross income as \$84,920, plus a \$22,137 pension, totaling \$107,057. His wife's Social Security totaled \$8,100. (Item 7, at 44) Combined, their family income for 2016 was \$115,157. Other than Applicant's bankruptcy-related debt counseling, there is no evidence of financial counseling or a budget. His Answer to the SOR included a statement that he was currently earning approximately \$83,000 per

year as well as his retirement pension of about \$20,000, totaling approximately \$103,000 per year. (Item 1) While he furnished that annual gross income information, he failed to report his net monthly income, his monthly household expenses, or any monthly debt payments. In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. In response to the FORM, he indicated that he was repairing the house he inherited and was not yet in a position to enter into agreements with his creditors. There is a paucity of evidence to indicate that his financial problems are now under control, and it is difficult to determine if Applicant is currently in a better position financially than he had been.

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;
- (f) failure to . . . pay annual Federal, state, or local income tax as required.

In addition to an allegation pertaining to the Chapter 13 bankruptcy filing and dismissal, the SOR alleged 13 still-delinquent accounts totaling approximately \$69,822. Applicant attributed his inability to maintain those accounts in a current status to work-related issues that resulted in his annual income being reduced on a periodic basis from \$120,000 in 2014 to about \$60,000 in 2016. However, that information is at odds with the information he submitted in his bankruptcy petition. In 2015, his combined annual family income was \$110,490. The following year, the combined annual family income was \$115,157. The inconsistencies in his income information raise questions as to both an inability to pay or an unwillingness to pay, and Applicant failed to fully address those issues. 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to . . . pay the amount owed and is in compliance with those arrangements.

None of the mitigating conditions apply. During the period from 2014 until the present, Applicant's combined annual family income was between \$110,000 and \$120,000. He had both an annual salary and a retirement pension, and at least during some of those years, his wife's Social Security. While he did commence making payments via his Chapter 13 bankruptcy plan to hold off collection efforts by numerous creditors, nearly all of those payments went towards his ongoing mortgage. Some payments went to a secured claim. Not one of the payments was ever sent to the creditors holding his delinquent unsecured debts or federal or state taxes. Although he repeatedly stated that he would address his delinquent debts over the past few years, as recently as November 2021, he still claimed that he was not in a position to do so.

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))). While he did make payments under the bankruptcy plan to the bankruptcy trustee between 2018 and 2019, he stopped doing so, and the bankruptcy was dismissed. Between the date of the bankruptcy dismissal in August 2019 and the date of his response to the FORM in November 2021, he made no claimed or verifiable efforts to address any of the delinquent debts.

Based on the evidence, it appears that Applicant actually ignored his delinquent accounts for a substantial multi-year period. Because of his failure to confirm payment of even his smallest delinquent account (a delinquent \$561 state tax) and his failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the conclusion that his financial problems are not under control or that he is not truly interested in resolving them. Other than his limited payment activities under the bankruptcy plan that ended in 2019, since then he has not acted responsibly by failing to address his delinquent accounts and by failing to make limited, if any, efforts of working with his creditors. The Appeal Board has previously commented on such a situation:

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

maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

An applicant who begins to resolve his 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) In this instance, Applicant has failed to offer any evidence that he has even begun making such efforts after the bankruptcy was dismissed in August 2019 – over two years ago.

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. In this instance, since the bankruptcy was dismissed, Applicant offered no specifics regarding any repayment efforts; submitted no documentary evidence to reflect any payments made; and only made promises of proposed actions. Not one delinquent debt has been resolved.

The nature, frequency, and recency of Applicant's financial difficulties, and his general failure to voluntarily and timely start to resolve them after August 2019, is sufficient to conclude that his financial difficulties were not infrequent. The timeliness of his efforts to resolve his debts is not good, and the delay in commencing to do so, is another negative factor.

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."

(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 evidence that Applicant participated in the bankruptcy-related debt counseling, there is no evidence of financial counseling or a budget. Applicant's in-action,

under the circumstances, casts 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 considerations. Applicant is a 65-year-old employee of a defense contractor. He has been serving as a project manager with his current employer since August 2014. He was previously employed by other employers in similar positions and as a security officer. He is a 1974 high school graduate. He was apparently granted a top secret clearance in 2020. In an effort to resolve some delinquent accounts, in November 2017, he voluntarily filed for bankruptcy under Chapter 13, and subsequently made payments under a bankruptcy plan.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant's bankruptcy was dismissed because of his failure or refusal to continue making payments under the bankruptcy plan. While he did commence making payments via his Chapter 13 bankruptcy plan to hold off collection efforts by numerous creditors, nearly all of those payments went towards his ongoing mortgage. Some payments went to a secured claim. Not one of the payments was ever sent to the creditors holding his delinquent unsecured debts or federal or state taxes. He has 13 still-delinquent accounts totaling approximately \$69,822, and not one of those accounts was ever addressed either before or after the bankruptcy, and to this day, over two years after the bankruptcy was dismissed, he still has ignored each and every one of them, including a delinquent state tax of only \$561. Although he repeatedly stated that he would address his delinquent debts over the past few years, and has had a combined

annual family income of between \$110,000 and \$120,000, as recently as November 2021, he still claimed that he was not in a position to do so.

Because of Applicant's failure to confirm any payments, and his failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the conclusion that his financial problems are not under control. He has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors. There are lingering questions if Applicant is currently in a better position financially than he had been, as well as continuing doubt about his current reliability, trustworthiness, and good judgment.

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.

With the exception of his limited payment activities under the bankruptcy plan, Applicant's track record of zero verifiable efforts to resolve the debts and the lengthy period of non-contact with his creditors is negative and disappointing. 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).

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.n.: Against 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