



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



In the matter of:)
)
) ISCR Case No. 20-03146
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: Jerald Washington, Esq.

03/18/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to make sufficient progress resolving the debts listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated, and eligibility for access to classified information is denied.

Statement of the Case

On March 2, 2020, Applicant completed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On December 11, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) On

December 21, 2020, Applicant provided his response to the SOR, and he requested a hearing. (HE 3)

On March 18, 2021, Department Counsel was ready to proceed. On June 2, 2021, the case was assigned to another administrative judge. On October 28, 2021, the case was transferred to me for administrative reasons. On November 12, 2021, the Defense Office of Hearings and Appeals issued a Notice setting the hearing date for January 20, 2022. (*Id.*) His hearing was held as scheduled in the vicinity of Arlington, Virginia using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered three exhibits; Applicant offered 12 exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 13-16; GE 1-GE 3; Applicant Exhibit (AE) A-AE L) DOHA received a copy of the transcript on January 28, 2022.

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

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a through 1.h, and 1.j through 1.p. (HE 3) He provided some information about the current status of his debts: he disputed the debt in SOR ¶ 1.e; he did not admit or deny the debt in SOR ¶ 1.i; and he paid the debts in SOR ¶¶ 1.h, 1.k, 1.l, and 1.m. (*Id.*) He also provided mitigating information. (*Id.*) His admissions are accepted as findings of fact.

Applicant is a 61-year-old account manager. (Tr. 17-18; GE 1) In 1979, he received an associate's degree in electronics. (Tr. 17, 33; GE 1 at 13) He attended college for three years. (Tr. 33) He married in 2002, and his two children are ages 12 and 17. (Tr. 17)

Financial Considerations

Applicant and his spouse were partners in the ownership and management of a limited liability corporation (LLC) from 2002 to 2018. (Tr. 19) His LLC sold items totaling about \$15,000,000 through Internet-based sales. (Tr. 19-20; SOR response) He has a patent and trade marks for various products. (SOR response; AE F) He and his spouse obtained multiple credit cards from 2003 to 2005, which he used to fund business operations. (Tr. 32) His LLC had financial problems beginning around 2012 to 2013 because of increased Internet advertising costs to such an extent that his LLC was losing money. (Tr. 19-20) He unsuccessfully tried several strategies to reduce costs. (Tr. 20-21) In 2018, Applicant and his spouse closed the LLC. (Tr. 21) Applicant contended the debts were the responsibility of the LLC and not his personal responsibility. (Tr. 56) He did not provide the contracts used to obtain the credit or other documentation showing the LLC was responsible for the debts, or that he was not responsible for the debts. (Tr. 58-59)

Applicant's SOR alleges 16 delinquent debts totaling \$161,160 as follows: ¶ 1.a for \$30,429; ¶ 1.b for \$26,452; ¶ 1.c for \$26,075; ¶ 1.d for \$18,096; ¶ 1.e for \$16,395;

¶ 1.f for \$12,030; ¶ 1.g for \$6,642; ¶ 1.h for \$4,803; ¶ 1.i for \$3,356; ¶ 1.j for \$3,338; ¶ 1.k for \$3,183; ¶ 1.l for \$3,026; 1.m for \$2,900; 1.n for \$2,019; 1.o for \$1,699; and 1.p for \$717. (HE 2) According to the SOR, the following debts are charged off: ¶ 1.a through ¶ 1.e; ¶ 1.h; ¶ 1.i; ¶ 1.l; ¶ 1.m; ¶ 1.o; and ¶ 1.p. The following SOR debts are in collections: ¶ 1.f; ¶ 1.g; ¶ 1.j; ¶ 1.k; and ¶ 1.n.

Applicant used multiple credit cards and bank accounts to pay business expenses. (Tr. 23; SOR response) He discussed settlements with some creditors; however, they said he had to be in default a minimum of 120 days before they would negotiate a settlement with him. (Tr. 22, 56) When the LLC was closed, it had about \$874,000 in debt, and he was able to settle 60 to 70 percent of the debt. (Tr. 22, 29) He used a home equity loan for \$180,000 to pay some of the LLC-related debts. (SOR response) Other creditors would not discuss a settlement, particularly after the debt was charged off. (Tr. 23) Applicant did not retain any documentation about his proposals to settle debts, except for the documentation presented at his hearing and in his SOR response. (Tr. 50-52) Some SOR debts, including the debts in SOR ¶¶ 1.d, 1.f, 1.g, 1.j, and 1.p, were dropped from his credit report because he was in default more than seven years. (Tr. 24-28) Some debts remain on his credit report in charged-off status, for example, the same creditor is listed in SOR ¶¶ 1.a (\$30,429), 1.b (\$26,452), 1.c (\$26,075), 1.e (\$16,395), and 1.i (\$3,356), and his January 7, 2022 Experian credit report shows three charged-off debts for that creditor in the amounts of \$26,075, \$26,452, and \$30,429 with each debt having “66 potentially negative months.” (AE D) Evidently, seven years without payments will elapse in mid-2023 (84 negative months), and those three debts will be dropped from his credit report. The SOR ¶ 1.i account was removed from his credit report, and he did not remember whether he paid it. (Tr. 26)

Applicant said the creditor for the debts in ¶¶ 1.h (\$4,803), 1.k (\$3,183), and 1.l (\$3,026) sued his company, and he settled and paid off the debt without litigating the merits of his liability in court. (Tr. 25-26) On April 16, 2018, a state court issued a dismissal upon stipulated terms for a lawsuit listing the creditor in SOR ¶¶ 1.h, 1.k, and 1.j as the plaintiff, and “[Applicant by name], et. al.,” as the defendant(s) (not the LLC). (SOR response at 4) The settlement terms were that the defendant was required to pay \$1,000 on April 26, 2018, and \$404 monthly until \$10,690 is paid. (*Id.*) The LLC’s name appeared on the bottom of the page, near the name of the defendant, which was Applicant’s name. (*Id.*) Applicant’s counsel signed as attorney for the plaintiff as opposed to attorney for the LLC. (*Id.*) Applicant suggested that maybe they put his name on the heading for the lawsuit because he was the party in contact with the creditor about the debt. (Tr. 57-58) On May 12, 2020, the creditor wrote that the settlement amount for the debts in SOR ¶¶ 1.h, 1.k, and 1.l was paid, and the debt was resolved. (Tr. 47; AE B) The creditor’s correspondence was addressed to Applicant by name and not to his LLC. (AE B)

On June 21, 2017, Applicant agreed to settle the debt in SOR ¶ 1.m (\$2,900) with a current balance of \$4,200 under the following terms: pay \$2,500 on July 21, 2017, with the remaining \$1,700 balance to be paid in 36 monthly installments of \$47. (AE A) Applicant paid the debt in SOR ¶ 1.m. (Tr. 27, 47) Applicant said the debt in SOR ¶ 1.n for \$2,019 was the same debt as the debt in SOR ¶ 1.m. (Tr. 27)

Applicant said his spouse opened some of the accounts. (Tr. 28) He did not specify which accounts she opened, and he did not claim that any of them were solely her responsibility. Applicant contended the LLC was liable for the unpaid SOR debts, and he was not personally liable for them. (Tr. 28) Applicant did not receive any IRS Form 1099-C, cancellation of indebtedness, documents from the creditors. (Tr. 49)

Applicant worked on negotiations with the creditors for about two years after he defaulted, and then he learned about his state's three-year statute of limitations from a credit counseling service. He waited for the three-year state statute of limitations to expire in some instances for debts. (Tr. 52, 54) He explained his rationale for handling of his debts as follows:

[S]o I was really holding out for those three years for some of these charge offs. So once I reached the three years, I thought I was in a good position to renegotiate now because they - - you know, I have nothing to lose, and they have everything to gain. So, I did contact them three years afterwards because I was in a strong position, and they were still not interested in making a settlement. (Tr. 52-53)

Applicant's federal and state income taxes are current. (Tr. 30) He is not delinquent on any federal debts. (Tr. 30) His mortgage on his residence is almost paid. (Tr. 30) His net monthly salary after deductions for taxes and for his retirement account is \$8,200. (Tr. 35) Last year, he received an additional \$97,000 in commissions. (Tr. 35) He estimated his after tax income in 2021 to be about \$250,000. He has about \$250,000 in his savings account. (Tr. 36) He owns several properties and has stock and crypto coin investments. (Tr. 36-47) He estimated his net worth to be about \$2.5 million. (Tr. 60) His credit score is in the 700s. (SOR response) He was unable to file for bankruptcy because his income was too high. (Tr. 55)

Character Evidence

Applicant's character evidence, an award from a previous employer, performance evaluations, and management of a successful business support granting him access to classified information, and are important indicators of his excellent potential for important contributions to the national defense. (AE G-J) The general sense of his character evidence is that Applicant is honest, thoughtful, diligent, responsible, loyal, generous, kind, and exceptionally intelligent. Applicant is not an alcoholic or a gambler, and he does not live beyond his means. (Tr. 61) He is patriotic, and he never does anything that is criminal or illegal. (Tr. 61)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual

is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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

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

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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

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

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

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

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

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. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating

conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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

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

Applicant described one circumstance beyond his control, which adversely affected his finances. He and his spouse owned an LLC, and expenses increased so significantly they were unable to continue the business. However, "[e]ven if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his

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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Another component under AG ¶ 20(a) is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. He intentionally stopped making payments to cause the debts to go into default to improve his negotiating position. Applicant did not provide supporting documentary evidence that he maintained contact with the SOR creditors except for the two creditors which filed lawsuits relating to the five debts in SOR ¶¶ 1.h, 1.k, 1.l, 1.m, and 1.n. He did not provide letters or documents proposing settlements or payments to the other SOR creditors.

Applicant is credited with paying the debts in SOR ¶¶ 1.h (\$4,803), 1.k (\$3,183), 1.l (\$3,026), and ¶ 1.m (\$2,900). The debt in SOR ¶ 1.n (\$2,019) is the same debt as the debt in SOR ¶ 1.m. These five debts are mitigated.

Applicant indicated several of his SOR debts were dropped from his credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off.

Applicant received reasonable and accurate financial advice that the state statute of limitations for credit card debt is three years. For a revolving line of credit, like a credit card, the clock starts running for statute of limitations purposes when the Applicant failed to make his minimum payment. From that point forward the credit card company must file a lawsuit against him in court within 3-years to enforce the debt or it is considered collection barred. State statutes of limitations for various types of debts range from 2 to 15 years. See Nolo Law for All website, Chart: Statutes of Limitations in All 50 States, <http://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html>. According to the Federal Trade Commission, Consumer Information webpage, it is illegal under the Fair Debt Collection Practices Act for a creditor to threaten to sue to collect a time-barred debt. <http://www.consumer.ftc.gov/articles/0117-time-barred-debts>. The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving

security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be [haled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). South Carolina case law is not binding on state courts in other states. However, the South Carolina Court of Appeals' description of the basis for this long-standing legal doctrine is instructive. See also *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486 (1988) (where the U.S. Supreme Court noted that "The State's interest in a self-executing statute of limitations is in providing repose for potential defendants and in avoiding stale claims.").

Once Applicant stopped making payments, the creditor had to file suit within the statute of limitations to maintain the collectability of their debt. There is no evidence that the creditors in SOR ¶¶ 1.a through 1.g, 1.i, 1.j, 1.o, and 1.p took judicial action in court to pursue collection of these 11 debts totaling \$145,229. Assuming these 11 SOR debts are collection barred, they are still relevant to financial considerations security concerns:

Applicant's argument concerning the unenforceability of the largest debt due to the running of the statute of limitations fails to demonstrate the Judge erred. First, security clearance decisions are not controlled or limited by statutes of limitations. Second, absent an explicit act of Congress to the contrary, the Federal Government is not bound by state law in carrying out its functions and responsibilities. Applicant does not cite to any Federal statute that requires the Federal Government to be bound by state law in making security clearance decisions. Third, a security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, has been discharged in a bankruptcy, or is paid, the Federal Government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). In this case, the Judge's consideration of the unenforceable debt in making her security clearance eligibility determination was not arbitrary, capricious, or contrary to law.

ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2014). The Appeal Board has "held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value." ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) (citing ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008); ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005); ISCR Case No. 01-09691 at 2-3 (App.

Bd. Mar. 27, 2003)). See, e.g., ISCR Case No. 08-01122 (App. Bd. Feb. 9, 2009) (reversing grant of security clearance); ADP Case No. 06-14616 (App. Bd. Oct. 18, 2007) (reversing grant of security clearance and stating “reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems” (citing ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006))).

Applicant had ample financial resources over the last five years to resolve the 11 debts in SOR ¶¶ 1.a through 1.g, 1.i, 1.j, 1.o, and 1.p. There is no evidence that these 11 debts are being resolved. I have assumed that Applicant could not be held financially responsible for these 11 debts because of the state statute of limitations. However, he did not provide sufficient documentation about why he was unable to make greater documented progress resolving these 11 debts. He did not show with documentary evidence that the creditors would refuse payment notwithstanding the statute of limitations. There is insufficient assurance that this financial problem is being resolved. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 61-year-old account manager. In 1979, he received an associate’s degree in electronics, and he attended college for three years. He built a successful business with income of \$15,000,000. His character evidence, award from a previous employer, performance evaluations, and management of a successful business support granting him access to classified information, and are important indicators of his excellent potential for important contributions to the national defense. The general sense of his

character evidence is that Applicant is honest, thoughtful, diligent, responsible, loyal, generous, kind, and exceptionally intelligent. Applicant is not an alcoholic or a gambler, and he does not live beyond his means. He is patriotic, and he never does anything that is criminal or illegal.

Applicant provided important financial mitigating information. His finances were harmed by a circumstance beyond his control. All of his debts are current, except for the 11 debts in SOR ¶¶ 1.a through 1.g, 1.i, 1.j, 1.o, and 1.p. He is financially successful with about \$2,500,000 in net worth. He and his spouse have ample income to pay their debts and maintain their financial responsibilities. Aside from his unresolved SOR debts, he is an excellent candidate for a security clearance.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not provide documentation about why he was unable to make greater documented progress resolving the 11 debts totaling \$145,229 in SOR ¶¶ 1.a through 1.g, 1.i, 1.j, 1.o, and 1.p. He did not provide persuasive documentary evidence showing he made specific and reasonable offers to settle the 11 debts. His lack of documented responsible financial action in regard to these 11 debts for the last five years raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debt, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i and 1.j:	Against Applicant
Subparagraphs 1.k through 1.n:	For Applicant
Subparagraphs 1.o and 1.p:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge