



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 21-02255

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel

For Applicant: Brittany Forrester, Esq.

08/22/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant's overall finances show he has a track record of responsible handling of his finances. His only delinquent debts are medical and total about \$13,000, and he is working to resolve them. He mitigated security concerns arising under Guideline F (financial considerations). Eligibility for access to classified information is granted.

Statement of the Case

On November 2, 2020, Applicant completed and signed an Electronic Questionnaires for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On October 1, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA 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; 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 DCSA 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 February 25, 2022, Applicant responded to the SOR and requested a hearing. (Transcript (Tr.) 8; HE 3) On April 20, 2022, Department Counsel was ready to proceed.

On May 6, 2022, the case was assigned to me. On June 15, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 13, 2022. (HE 1) The hearing was held as scheduled. During the hearing, Department Counsel offered 6 exhibits; Applicant offered 12 exhibits; there were no objections to GE 1-6 and AE A, and AE D through AE L; and those exhibits were admitted into evidence. (Tr. 12-21; GE 1-6; Applicant Exhibit (AE) A, AE D-AE L) Department Counsel objected to AE B and AE C because parts of them were illegible. (Tr. 19-20) AE B and AE C are attached to the record with Applicant's other exhibits, and they were admitted into evidence after Applicant discussed them. The parts of the documents that are illegible are not admitted or considered. (AE B, AE C) The two documents are status reports from the lone SOR creditor concerning Applicant's debts. Applicant promised to provide better copies after the hearing. He provided more recent status reports from the creditor. On July 25, 2022, DOHA received a transcript of the hearing. Applicant provided three post-hearing exhibits, which was admitted into evidence without objection. (AE M-AE O) The record closed on July 27, 2022. (Tr. 119, 132)

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 SOR allegations in ¶¶ 1.c, 1.d, 1.l, 1.m, 1.n, 1.q, 1.r, 1.t, 1.u, 1.x, 1.y, 1.cc, 1.dd, 1.ee, and 1.ff. (HE 3) He denied the remaining SOR allegations. (*Id.*) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 54-year-old information technology technical support problem solver, and he has been working for his current employer since September 2020. (Tr. 23, 25, 74) In 1986, he graduated from high school. (Tr. 105) In 2005, he received an associate's degree. (GE 1 at 11) In 2014, he received a bachelor's degree. (*Id.*) In 2016, he received a master's degree in business administration, strategy, and leadership. (Tr. 105; AE H) In 2018, he received a master's degree in business administration, entrepreneurship, and innovation. (Tr. 105; GE 1 at 12; AE H) He is working on his Ph.D. in business administration. (Tr. 21-22; AE K) He has never served in the U.S. military. (GE 1 at 19) In 1990, he married, and his children were born in 1997 and 1999. (Tr. 22, 104; GE 1 at 22, 25-26) His spouse is a special education teacher. (Tr. 58) She does not get paid in the summer. (Tr. 74)

Applicant's daughter graduated from college one year ago, and his son graduated from college two years ago. (Tr. 80) Applicant paid or borrowed funds for their college educations. (Tr. 77-80) His daughter's income from her employment is low, and Applicant is paying for a recreational vehicle in which she lives. (Tr. 77) His son is autistic; however,

he was able to graduate from college. (Tr. 77-78) His son is unable to find employment, and Applicant provides financial support for him. (Tr. 78)

Financial Considerations

All of the debts on the SOR are owed to the same medical creditor, and the SOR creditor used a single collection agent. Applicant had medical insurance for at least the previous five years, and when he had a surgery, the medical insurance only paid for part of surgery or test charges. (Tr. 107) He was billed for the remainder. (Tr. 107-108) He was unsure about the annual cap on charges in his insurance policy. (Tr. 107) He did not provide a copy of his medical insurance policy.

Applicant paid a law firm \$129 monthly since about 2019 or 2020, to verify or dispute negative entries on his credit report based on the Fair Credit Reporting Act (FCRA). (Tr. 27, 108, 113-114) Applicant provided documentation from the law firm covering the period from January 2021 to present and listing the accounts the law firm challenged. (AE O at 1-52) He also provided sample letters from the law firm to creditors asking for verification information from the creditors and disputing negative credit report entries. (AE O) For example, from January 2022 to July 2022, the law firm sent letters on 19 different dates challenging 76 negative credit report account entries, including some that were unrelated to the SOR debts. (AE O) The reason Applicant employed the law firm was to improve his credit score. (Tr. 110-111) He provided sample letters from the law firm. (AE O) When a negative entry was removed from a credit report, the law firm did not provide the reason for the deleted information. (AE M) The debt could be deleted for a variety of reasons. (*Id.*) He also pays the law firm \$129 monthly to dispute his daughter's medical debts. (Tr. 112) When the law firm told him a debt owed to the SOR creditor was successfully disputed, he contacted the SOR creditor, and the SOR creditor advised him that he did not owe the debt. (Tr. 116) He did not know why the debts were deleted except in the instances where he paid the debts. (AE M)

In 2010, a spider bit Applicant, and he had a MRSA infection. (Tr. 40) He was hospitalized for 30 days, and his bill was about \$22,000; however, his insurance paid most of the bill. (Tr. 41) He used up the funds in his accounts to pay his medical bills. (Tr. 42-43)

Applicant's October 28, 2015 credit report shows 36 accounts totaling \$163,233, and all accounts are paid as agreed or with zero balances or both, except for eight medical debts in collections totaling \$1,721 for the following amounts: \$492; \$260; \$249; \$249; \$150; \$150; \$121; and \$50. (GE 3 at 11-13) None of the eight accounts in collection are on his November 28, 2020 credit report or listed on the SOR. (HE 2; GE 4)

From 2016 to 2018, Applicant received treatments for his diabetes and liver. (Tr. 41-43) In 2018, he had surgery under general anesthesia. (Tr. 39) He lost his employment in 2019, at least in part because of his illnesses and an inability to travel. (Tr. 97-98) His company put him on disability status, and for about two months in late 2019, he was not paid. (Tr. 99-100) He used credit cards to live. (Tr. 100) After losing his job in 2019, his employment was sporadic until he received his current employment. (Tr. 101)

In 2018, Applicant had two atrial cardiac ablations, and the hospital had two nurse anesthetists and one anesthesiologist for the surgeries. (HE 3 at 1) The anesthesiology bills are in SOR ¶¶ 1.a for \$3,023, 1.b for \$2,841, and 1.e for \$1,804. (*Id.*) Applicant said the creditor advised him that he is no longer responsible for these three debts. (*Id.*) He disputed these debts on his credit report. (*Id.*) He also had a 12-lead EKG and an echocardiogram after each cardiac ablation, and they were billed in SOR ¶¶ 1.c and 1.d for \$2,793 and \$2,264, respectively. (*Id.*) SOR ¶ 1.t for \$150 was for a separate 12-lead EKG and echocardiogram in relation to a possible cardiac ablation. (*Id.* at 2) SOR ¶ 1.y for \$96 was for a post-surgery office visit. (*Id.* at 3) Applicant said the SOR ¶¶ 1.c, 1.d, 1.t, and 1.y debts were his responsibility. (*Id.* at 1-3)

SOR ¶¶ 1.f for \$1,467 and 1.g for \$1,309 related to the anesthesiology for two colonoscopies. (HE 3 at 1) The creditor agreed that Applicant did not have to pay these two debts, and he disputed their presence on his credit report. (*Id.*)

SOR ¶ 1.h for \$1,144 was for an endoscopy done under anesthesiology to band esophageal varices from complications related to stage 2 non-alcoholic cirrhosis of his liver. (HE 3 at 1) Applicant said he did not owe this debt. (*Id.*)

SOR ¶ 1.q for \$163 was for an office visit to a surgeon to assess the need for surgery to repair a severe anal fistula. (HE 3 at 2) SOR ¶ 1.i for \$1,030 was for general surgery. SOR ¶¶ 1.j for \$706, 1.k for \$684, and 1.z for \$85 were for anesthesiology to repair a severe anal fistula. (HE 3 at 1-3) SOR ¶¶ 1.r for \$162, 1.s for \$158, 1.v for \$139, 1.x for \$108, and 1.bb for \$77 were for wound care after the fistula surgery. (*Id.* at 2-3) He received follow-up wound care 15 to 20 times on a weekly basis for several months. (*Id.* at 1-2) Applicant said he did not owe the debts in SOR ¶¶ 1.i, 1.j, 1.k, 1.s, 1.v, 1.z, and 1.bb; however, he accepted responsibility for three debts in SOR ¶¶ 1.q, 1.r, and 1.x. (*Id.* at 2-3)

SOR ¶ 1.l for \$515 was for a colonoscopy /C polypectomy via Snare (Hot), which was used to remove about 12 pre-cancerous polyps. (HE 3 at 2) It was done under light general anesthesiology including ventilator support. (*Id.*) Applicant accepted responsibility for this debt. (*Id.*)

SOR ¶¶ 1.m for \$318 and 1.u for \$150 were for Iron/Platelet infusions. (HE 3 at 2) Applicant said he has had about 15 of these infusions on a weekly basis. (*Id.* at 2) He accepted responsibility for these two debts. (*Id.*)

SOR ¶ 1.n for \$264 was for an emergency room visit for lower leg cellulitis that was determined to be MRSA. (HE 3 at 2) He was admitted for inpatient treatment for about one week for IV antibiotics and further diagnostic procedures. (*Id.*) Upon discharge, he received six weeks of continuous at-home antibiotics through a PIC line. (*Id.*) Applicant accepted responsibility for this debt. (*Id.*)

SOR ¶ 1.o for \$196 was for an emergency room visit for chest pain and supraventricular tachycardia. (HE 3 at 2) SOR ¶ 1.aa for \$80 was for an overnight sleep study to determine whether there was a connection with his atrial fibrillation. (HE 3 at 3)

SOR ¶¶ 1.cc for \$68, 1.dd for \$68, 1.ee for \$68, and 1.ff for \$60 were for four consultations with specialists in relation to his diagnosis of atrial fibrillation, and Applicant was referred to a cardiologist for further care. (*Id.* at 2-3) Applicant said he no longer owes the debt in SOR ¶ 1.o; however, he accepted responsibility for the four debts in SOR ¶¶ 1.cc, 1.dd, 1.ee, and 1.ff. (*Id.* at 3)

SOR ¶ 1.p for \$193 was for an EGD (esophagogastroduodenoscopy) to monitor and remove (band) esophageal varices. (HE 3 at 2) It was done under light general anesthesia. (*Id.*) Applicant said he no longer owes this debt. (*Id.*)

SOR ¶ 1.w for \$119 was for a telehealth call to discuss Applicant's liver disease. (HE 3 at 3) Applicant said he no longer owes this debt. (*Id.*)

In the November 2, 2020 SCA, Applicant disclosed he had \$19,966 in medical debts resulting from surgery and other professional services in 2015, and he said he was working with the collection agent to pay this debt. (GE 1 at 36) He said he was paying \$25 to \$100 every few weeks. (*Id.* at 37) None of the medical debts from 2015 are listed on his current SOR.

The October 1, 2021 SOR alleges 32 delinquent medical debts totaling \$22,302 owed to the same collection agent. Applicant admitted that he received the medical services that resulted in the SOR debts. (Tr. 67) He provided a list of 21 bills from the creditor totaling \$12,583: \$103; \$163; \$96; \$219; \$1,854; \$68; \$60; \$60; \$2,793; \$2,305; \$318; \$61; \$68; \$2,264; \$68; \$2,264; \$828; \$150; \$150; \$264; and \$515. (AE B) Applicant believed that these 21 debts were all that he owed to the creditor. (Tr. 44) The creditor's letter indicates Applicant paid four medical debts for \$20, \$162, \$109, and \$103 for medical services received in 2019 and 2021. (Tr. 46-47; AE B) The creditor asked Applicant to pay off one or two of the smaller medical debts every month. (Tr. 47)

The following table shows the list of debts owed to the same creditor from three credit reports and a statement from the creditor, AE B. The creditor's statement indicated 8 of 21 debts on the creditor's list were not listed on the SOR, and 13 of the 21 debts were listed on the SOR. The creditor's statement said the total was \$12,583; however, the column total in the following table is \$14,671. (AE B)

SOR Paragraph	Amount of Medical Debt on November 28, 2020 credit report (GE 4)	Amount of Medical Debt on September 21, 2021 Credit Report (GE 5)	Amount of Medical Debt on March 27, 2022 Credit Report (GE 6)	Amount of Medical Debt on AE B (Feb. 2022)
1.a	\$3,023 (page 2)	\$3,023 (page 4)	\$3,023 (page 4)	
1.b	\$2,841 (page 2)	\$2,841 (page 5)	\$2,841 (page 5)	
1.c.	\$2,793 (page 3)	\$2,793 (page 4)	\$2,793 (page 5)	\$2,793
				\$2,305
1.d	\$2,264 (page 3)	\$2,264 (page 4)	\$2,264 (page 5)	\$2,264
				\$2,264
				\$1,854

1.e	\$1,804 (page 3)	\$1,804 (page 4)	\$1,804 (page 4)	
1.f	\$1,467 (page 4)	\$1,467 (page 2)	\$1,467 (page 4)	
1.g		\$1,309 (page 2)	\$1,309 (page 3)	
1.h	\$1,144 (page 4)	\$1,144 (page 4)	\$1,144 (page 4)	
1.i	\$1,030 (page 4)	\$1,030 (page 2)	\$1,030 (page 4)	
				\$828
1.j	\$706 (page 5)	\$706 (page 3)	\$706 (page 3)	
1.k	\$684 (page 5)	\$684 (page 3)	\$684 (page 4)	
1.l	\$515 (page 5)	\$515 (page 5)	\$515 (page 5)	\$515
1.m	\$318 (page 6)	\$318 (page 4)	\$318 (page 5)	\$318
1.n	\$264 (page 6)	\$264 (page 5)	\$264 (page 5)	\$264
				\$219
1.o	\$196 (page 6)	\$196 (page 5)	\$196 (page 5)	
1.p	\$193 (page 7)	\$193 (page 3)	\$193 (page 3)	
1.q	\$163 (page 7)	\$163 (page 2)	\$163 (page 4)	\$163
1.r	\$162 (page 7)	\$162 (page 3)	\$162 (page 3)	
1.s	\$158 (page 8)	\$158 (page 1)	\$158 (page 3)	
1.t	\$150 (page 8)	\$150 (page 5)	\$150 (page 5)	\$150
1.u	\$150 (page 8)	\$150 (page 5)	\$150 (page 5)	\$150
1.v	\$133 (page 9)	\$139 (page 3)	\$139 (page 3)	
1.w		\$119 (page 2)	\$119 (page 3)	
1.x	\$108 (page 9)	\$108 (page 2)	\$108 (page 3)	
				\$103
1.y	\$96 (page 9)	\$96 (page 3)	\$96 (page 4)	\$96
1.z	\$85 (page 10)	\$85 (page 2)	\$85 (page 4)	
1.aa	\$80 (page 10)	\$80 (page 5)	\$80 (page 3)	
1.bb	\$77 (page 10)	\$77 (page 3)	\$77 (page 4)	
1.cc	\$68 (page 11)	\$68 (page 4)	\$68 (page 3)	\$68
1.dd	\$68 (page 11)	\$68 (page 4)	\$68 (page 3)	\$68
1.ee	\$68 (page 11)	\$68 (page 3)	\$68 (page 4)	\$68
1.ff	\$60 (page 12)	\$60 (page 2)	\$60 (page 4)	\$60
				\$61
				\$60
TOTAL	\$20,735	\$22,302	\$22,302	\$14,671

Applicant believed the legitimate medical debts were listed on AE B and the incorrect debts were not. (Tr. 53-54) The medical debts on AE B resulted from medical treatments he received in 2017, 2018, and 2019, and those debts were his responsibility. (Tr. 50-53) He did not make payments for a time because the SOR creditor wanted to consolidate the debts, and for him to make large payments. (Tr. 109-110) Recently, the SOR creditor agreed that he could pay off the smaller medical debts first, which enabled him to pay six debts. (Tr. 110) He made the following payments to the SOR creditor: May 12, 2022 (\$80); May 20, 2022 (\$60); June 3, 2022 (\$69); June 15, 2022 (\$69); July 5, 2022 (\$36); and July 15, 2022 (\$69). (Tr. 54-55, 70; AE I; AE N) Over the last two years, he made about \$380 in payments to the creditor. (Tr. 71)

Applicant gave a higher priority to paying his credit card debts than his medical debts because he was not being charged interest on his medical debts and some credit cards were charging up to 30 percent interest. (Tr. 109) According to the most recent list he received from the SOR creditor, he owed the medical creditor \$13,321 for 20 debts for services received from 2017 to 2021 in the following amounts: \$199; \$250; \$250; \$250; \$199; \$250; \$250; \$163; \$97; \$1,904; \$226; \$2,793; \$2,366; \$318; \$2,264; \$852; \$150; \$150; \$515; and \$196. (Tr. 45, 68; AE N) Most of the debts that were deleted from his credit report were due to the challenges from the law firm he hired to dispute debts and not through Applicant paying the debts. (Tr. 68) The creditor is satisfied with his current payment plans. (Tr. 79)

Applicant has had credit counseling. (Tr. 60-61; AE D) His budget indicates net income of \$8,684; and expenses of \$7,582. (Tr. 71-72; AE J) He has \$800 in his checking account and \$3,400 in his savings account. (Tr. 81) His budget does not fully reflect his payments to support his son. (Tr. 79) He is trying to save for his retirement. He budgeted \$100 monthly to pay the SOR creditor. (AE J) He believes he can pay about \$200 a month in the future towards his medical debts. (Tr. 47-48, 59) Despite his medical problems, he kept his mortgage and other financial accounts in a current status. (Tr. 62) Since he began his current employment in September 2020, he paid off several credit cards with low balances and a signature loan that he took out in 2015 to pay for his daughter's education. (Tr. 75)

Applicant's July 8, 2022 TransUnion credit report shows five medical-collection accounts (opened in 2018 and 2019) owed to the SOR creditor as follows: \$1,804; \$684; \$2,793; \$1,467; and \$2,264. (AE M; Pt. II, pages 101-102) His TransUnion credit report also showed 41 satisfactory accounts. (AE M; Pt. II, page 104) His July 5, 2022 Experian credit report shows seven medical-collection accounts (opened in 2017, 2018, and 2019) owed to the SOR creditor as follows: \$195; \$2,264; \$2,793; \$318; \$1,804; \$1,467; and \$684. (AE M; Pt. II pages 126-129) His Experian credit report also showed 42 satisfactory accounts. (AE M; Pt. II page 131) His June 30, 2022 Equifax credit report shows 16 medical-collection accounts (opened in 2017, 2018, 2019, and 2020) owed to the SOR creditor as follows: \$150; \$1,467; \$1,804; \$2,264; \$2,793; \$162; \$108; \$85; \$163; \$684; \$96; \$68; \$318; \$150; \$195; and \$193. (AE M; Pt. II pages 156-161) His Equifax credit report also showed 39 satisfactory accounts. (AE M; Pt. II page 161)

Applicant has eight credit cards, and their balances are: \$2,557; \$3,026; \$1,168; \$913; \$2,538; \$2,941; \$517; and \$450. (Tr. 82-90; GE 6) He has a 2016 F-250 truck and a 2013 F-150 truck. (Tr. 95) In 2020, he purchased the used F-250 for \$37,440, and it was 100 percent financed. (Tr. 96) All of his credit cards are close to their maximum or over the maximum due to the latest monthly payment not yet being made, and he makes the minimum payments every month. (Tr. 82-83) His spouse has two credit cards. (Tr. 90)

Applicant has a significant amount of equity in his home, and he intends to take out a home-equity loan at about a 5.6 percent interest rate which he can use to pay off his truck, his recreational vehicle where his daughter lives, six of his credit cards, and apply \$11,000 towards the debts owed to the SOR creditor. (Tr. 73-74, 77, 102) His

monthly interest payments will be reduced about \$450. (Tr. 103) When his student loans come out of deferment, his monthly payment will be \$1,200. (Tr. 93) He is current on his state and federal income taxes. (Tr. 94)

Applicant's plan is to pay his debts and establish his financial responsibility. (Tr. 111) When the school year begins, he and his wife will have additional income, and they will be able to make their student loan payments.

Character Evidence

The vice president of the company where Applicant is employed has known Applicant for 12 years and currently supervises him. (Tr. 33) He described Applicant as an exceptional employee who is diligent, trustworthy, responsible, competent, and honest. (Tr. 33-38) He volunteers in his community, and he is passionate about caring for his family and contributing to the success of his company. (Tr. 65-66)

Applicant provided six character statements from friends, coworkers, supervisors, and his spouse. (AE G) The general sense of their statements is that Applicant is honest, responsible, diligent, trustworthy, helpful, generous, professional, and reliable. Their statements support continuation of his security clearance.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance

decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

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

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [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. . . . 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: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record evidence establishes AG ¶¶ 19(a) and 19(c). The mitigating section, *infra*, contains discussion of the disqualifying conditions.

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

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the

applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

AG 20(a) does not apply. Applicant’s ongoing, unpaid debts evidence a continuing course of conduct and are considered recent. See ISCR 17-03146 at 2 (App. Bd. Jul. 31, 2018) (citing ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017)).

Applicant presented some important mitigating information. He suffered serious debilitating illnesses which adversely affected his finances. He was unable to travel and lost his employment. He used credit cards to support his family. His son is autistic, and his son is unable to find employment. He provides financial support for his son, who is now an adult. Applicant’s credit reports reflect numerous paid debts or debts with a zero balances or in paid as agreed status, except for about 32 medical debts ranging from \$60 to about \$3,000. His illnesses and resulting medical debts were largely due to circumstances beyond his control. See ISCR Case No. 05-11366 at 4 n. 9 (App. Bd. Jan. 12, 2007) (citations omitted)). Applicant showed his financial responsibility by maintaining contact with his SOR creditor and attempting to negotiate partial payments to keep debts current or establish payment plans for resolution of debts.

Applicant challenged the veracity of his medical debts, which is a reasonable approach, because of the complexity of the medical billing system and corresponding medical insurance. However, the record does not explain why the hospital decided to stop pursuing about \$10,000 in medical debt. Perhaps some of Applicant’s debts should have been included in his surgical debt and presented to his insurance company for payment or presented more than once to his insurance company because of the possibility of insurance payment errors. Perhaps three anesthesiology practitioners were not medically necessary for one surgery, and the hospital realized billing for three anesthesiology practitioners was inappropriate. Perhaps the hospital went to the insurance company and received some additional payments. There are a myriad of possible reasons why some medical bills were forgiven or dropped and other apparently similar medical debts are still being pursued for payment. The law firm’s requests for verification documentation followed by removal of negative credit report entries do not establish valid disputes of negative financial entries on Applicant’s credit reports.

“[I]t is an applicant’s responsibility to present evidence sufficient to mitigate the concerns raised in the SOR, and the applicant bears the ultimate burden of persuasion that he or she should be granted a clearance. Directive ¶ E3.1.15. See, e.g., ISCR Case No. 16-02243 at 2 (App. Bd. Nov. 30, 2018). See also ISCR Case No. 17-01193 at 4 (App. Bd. Jan 22, 2019) (It is reasonable to expect an applicant to present corroborating documentation of his or her efforts to establish mitigation of the concerns raised in the SOR.)

ISCR Case No. 21-01551 at 4 (App. Bd. July 20, 2022). Applicant did not provide a copy of his medical insurance policy, and his correspondence with his insurance company, and he did not meet his burden of showing why the hospital dropped some debts and continued to seek payment of others. AG ¶ 20(e) is not established.

Applicant provided proof that he paid six medical debts totaling \$380 from May to July 2022. He owes the medical creditor about \$13,321 for 20 debts. The medical creditor is satisfied with his progress in repaying his debts.

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) in order to claim the benefit of [the “good faith” mitigating condition].

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) (internal citation and footnote omitted)). Applicant showed some good faith when he resolved several SOR debts.

Applicant has a history of paying his debts, including his medical debts. He paid his medical debts for treatments in 2015. He promised to pay his SOR medical debts, and I found his statement at his hearing to be candid and credible. He plans to refinance his house and use the additional funds to pay high-interest rate debts and most of his medical debts. The delinquent SOR debts occurred under such circumstances that they are unlikely to recur. There are clear indications his financial problems are under control. His history of handling his finances does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are established. Financial considerations security concerns are mitigated.

Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

Applicant is a 54-year-old information technology technical support problem solver, and he has been working for his current employer since September 2020. He has two master's degrees, and he is working on his Ph.D. in business administration. In 1990, he married, and his children were born in 1997 and 1999. His spouse is a special education teacher, and she does not get paid in the summer.

The vice president of the company where Applicant is employed described him as an exceptional employee who is diligent, trustworthy, responsible, competent, and honest. He volunteers in his community, and he is passionate about caring for his family and doing good work for his company. The general sense of six character statements is that Applicant is honest, responsible, diligent, trustworthy, helpful, generous, professional, and reliable. Their statements support continuation of his security clearance. See ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (noting admissibility of "good security record," but commenting that security concerns may nevertheless not be mitigated).

Applicant acted responsibly under the circumstances, when he kept his eight credit cards and mortgage in current financial status. He paid his medical debts from 2015, and six medical debts in the last two years. His only delinquent debts are medical, and there are currently 20 delinquent medical debts totaling \$13,321. He understands that he needs to pay his debts, and the conduct required to retain his security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a “meaningful track record” of debt re-payment. I am confident he will maintain his financial responsibility.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a through 1.ff:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge