



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



In the matter of:)
)
) ISCR Case No. 20-01877
)
Applicant for Security Clearance)

Appearances

For Government: William H. Miller, Esq., and John C. Lynch, Esq., Department Counsel
For Applicant: Brittany D. Forrester, Esq.

12/07/2022

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 2019, Applicant completed and signed a Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On April 16, 2021, the Defense Counterintelligence and Security Agency (DCSA) 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); Department of Defense (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 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)

Applicant provided an undated response to the SOR. (HE 3) On July 8, 2021, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On June 28, 2022, the case was assigned to me. On July 25, 2022, DOHA issued a notice of hearing, setting the hearing for September 6, 2022. (HE 1) Applicant's hearing was held as scheduled using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered six exhibits, and Applicant offered nine exhibits. (Transcript (Tr.) 12-14; GE 1-6; Applicant Exhibit (AE) A-AE I) There were no objections, and all proffered exhibits were admitted into evidence. (GE 1-6; AE A-AE I)

On September 15, 2022, DOHA received a transcript of Applicant's security clearance hearing. Department Counsel provided two post-hearing exhibits; Applicant provided 13 post-hearing exhibits; and all exhibits were admitted without objection. (GE 7, GE 8; AE J-AE V) The record closed on October 21, 2022. (Tr. 98, 105; AE V)

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.a through 1.g, and 1.i through 1.l. (HE 3) He denied the allegation in SOR ¶ 1.h. (HE 3) He also provided mitigating information. An enclosure to his SOR response is barely legible, and that document is reproduced as AE C. (Tr. 9) His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 47-year-old systems engineer employed by a large DOD contractor from February 2018 to the present, and he previously worked for the same employer for 14 years. (Tr. 15-17, 38, 40) He has worked as a systems engineer for 20 years. (Tr. 16) In 1997, he received a bachelor's degree. (GE 1 at 10) He has been married for 23 years, and he does not have any children. (Tr. 16, 36) He has not served in the military. (GE 1 at 25)

Financial Considerations

In 2010, Applicant was unemployed for about 10 months. (Tr. 74-75) He listed about \$12,000 in delinquent debts on his 2011 SCA. (Tr. 74-75) He has had three vehicles repossessed over the years. (Tr. 81)

Applicant explained his delinquent debts on the SOR were due to periods of unemployment. (Tr. 18) He was unemployed for a total of about 15 months during the following periods: from April to October 2013; from January to May 2014; and from January to May 2015. (Tr. 19-20, 40-42) His spouse works in retail, and over the years, she was sporadically unemployed or underemployed. (Tr. 32-33, 36, 42; AE U) His current annual pay is \$133,000, and his spouse's annual pay is about \$24,000. (Tr. 34)

He has received a pay raise for each of the last four years. (Tr. 38) From 2016 to 2018, his annual earnings were about \$80,000. (Tr. 39, 42-43, 73)

The SOR alleges 12 delinquent debts totaling \$32,275, and their status is as follows.

SOR ¶ 1.a alleges an account with an \$11,906 deficiency balance. Applicant said the debt is a vehicle-related bank debt. (Tr. 18, 20) It was financing for his spouse's 2008 vehicle, which was purchased around 2011. (Tr. 44-45) The creditor repossessed his vehicle and sold it at auction. (Tr. 20) In his December 2, 2019 SCA, Applicant said he communicated with the creditor and said he would make payments starting in early 2020. (GE 1 at 51) At his hearing, he said he was making \$100 monthly payments; however, he was unsure about how many payments were made. (Tr. 21, 48; AE G) An August 26, 2022 receipt from the creditor shows a \$100 payment, and a balance owed of \$9,071. (Tr. 46-48; AE G) An October 7, 2022 receipt from the creditor shows a \$200 payment, and a balance owed of \$8,871. (AE R)

SOR ¶ 1.b alleges a charged-off vehicle-related debt of unspecified amount. Applicant said he made monthly payments, and the debt is satisfied. (Tr. 21) He said the creditor repossessed the vehicle, and it was sold for sufficient funds to resolve the debt. (Tr. 52) On August 29, 2022, the creditor wrote a letter to Applicant, which states "We are pleased to advise you that your account was settled for less than the full balance and closed on October 25, 2017." (Tr. 22; AE A)

SOR ¶ 1.c alleges a telecommunications-related debt placed for collection for \$3,365. Applicant said he telephoned the creditor, and the creditor was unable to locate any information about the account. (Tr. 22-23, 55) He did not make any payments; however, if he receives information from the creditor, he will pay the debt. (Tr. 23, 54-56)

SOR ¶ 1.d alleges an insurance-related debt placed for collection for \$382. In his December 2, 2019 SCA, Applicant said he communicated with the creditor, and he scheduled his payment for December 2019. (GE 1 at 53) In his SOR response, Applicant said he was making \$32 monthly payments to the creditor; however, at his hearing, he revealed he did not actually make the payments. (Tr. 23, 57; SOR response) On August 27, 2022, the debt was paid with a single \$382 payment. (Tr. 23; AE D)

SOR ¶ 1.e alleges a telecommunications-related debt placed for collection for \$1,349. In his December 2, 2019 SCA, Applicant said he intended to pay the creditor \$968 over two months in 2020; however, he did not make the payments. (Tr. 58; GE 1 at 52) He said he did not pay the debt in 2020 as promised because he had other financial priorities. (Tr. 59) The creditor wrote that a payment of \$742 was received on August 29, 2022, and the debt is resolved. (Tr. 22, 59; AE I) The telecommunications creditor in SOR ¶ 1.e is a subsidiary of the creditor in SOR ¶ 1.c. (Tr. 24; AE I)

SOR ¶ 1.f alleges a charged-off credit union debt for \$2,039. In his December 2, 2019 SCA, Applicant said he communicated with the creditor and said he would make payments. (GE 1 at 42) He planned to start payments in early 2020. (*Id.*) Applicant said

he is making payments to address this debt. (Tr. 25) He provided two receipts dated August 26, 2022, and October 13, 2022, showing \$170 payments. (Tr. 25, 61; AE F; AE P)

SOR ¶ 1.g alleges a bank debt placed for collection for \$584. In his December 2, 2019 SCA, Applicant said he contacted the creditor, and he “negotiated a payment plan” in which the creditor agreed to accept \$50 monthly payments. (Tr. 64; GE 1 at 43) He said the “payment will go from now until early 2020 and then [he] will pay a lump sum as agreed” with the creditor. (GE 1 at 43) In his SOR response, he said he was going to make \$53 monthly payments to the creditor for 11 months. (Tr. 64; SOR response) At his hearing, he said he contacted the creditor, and the creditor advised him that he did not owe anything. (Tr. 26, 28) Department Counsel asked Applicant, “So is there any reason to doubt that you owe approximately \$584?” Applicant said, “I wouldn’t doubt it, but I don’t want to say yes, I do.” (Tr. 65) The debt does not appear on his current credit report. (Tr. 26) Applicant provided a document from the Internet indicating the creditor did not recognize his account number or SSN. (AE Q)

SOR ¶ 1.h alleges an \$844 debt placed for collection. Applicant did not remember having an account with the original creditor; he contacted the collection agent; the collection agent was unable to indicate the source of the debt; and he disputed his responsibility for this debt. (Tr. 26, 28, 67-68) This debt does not appear on his current credit report. (Tr. 27-29)

SOR ¶ 1.i alleges a charged-off credit union debt for \$9,072. In his December 2, 2019 SCA, Applicant said he communicated with the creditor and said he would make payments. (GE 1 at 52) He planned to start payments in early 2020. (*Id.*) Applicant said the debt was a credit-card debt; he is making payments to the creditor; however, he was unsure about how many payments. (Tr. 30, 48, 68) His only receipt for a payment made before his hearing was an August 26, 2022 receipt, which shows a \$100 payment and a balance owed of \$5,317. (Tr. 46-48, 68; AE G) An October 7, 2022 receipt provided after his hearing shows a \$200 payment and a balance owed of \$5,117. (AE R)

SOR ¶ 1.j alleges a bank debt placed for collection for \$2,091. In his December 2, 2019 SCA, Applicant said he agreed to pay the creditor \$161 monthly. (Tr. 69; GE 1 at 40) He said he has a payment agreement with the creditor, in which he agreed with a settlement of \$1,150. (Tr. 30; AE E) He made his first \$200 payment on August 29, 2022, and he plans to make five additional monthly payments of \$200. (Tr. 30, 69-70; AE B) After his hearing, he provided an undated receipt indicating the debt was settled in full. (AE O)

SOR ¶ 1.k alleges a jewelry-related debt placed for collection for \$67. On March 27, 2020, this debt was paid in full. (Tr. 31-32, 71-72; AE C at 1; AE H)

SOR ¶ 1.l alleges a charged-off debt for \$576. Applicant said the debt is paid, and the creditor indicated in an Internet posting that the debt has a zero balance. (Tr. 32, 72; AE C)

Applicant did not disclose on his December 2, 2019 SCA that he owed taxes for TY 2019. (SCA at 39; AE S) At his hearing, he said he filed his federal income tax returns (Tr. 88) He said he owes federal income taxes for several years totaling about \$7,500. (Tr. 88) He lives in a state that does not have state income taxes. (Tr. 89) After his hearing, at my request, he provided his October 16, 2022 tax transcripts for tax years (TY) 2018 through 2021. (AE S; AE T) He admitted he did not file his federal income tax return for TY 2020. (AE V) Adjusted gross income in the following table is rounded to the nearest \$1,000.

Tax Year	Adjusted Gross Income	Taxes Currently Owed	Date Return Submitted	Exhibit
2018	\$161,000	\$526	April 15, 2019	AE S
2019	\$176,000	\$3,459	July 15, 2020	AE S
2020			Not Filed	AE T
2021	\$140,000	\$1,229	April 15, 2022	AE S

Applicant received an extension until October 15, 2021, to file his TY 2020 tax return. (AE T) On May 18, 2019, and on April 26, 2021, he established installment agreements with the IRS. (AE S) For TY 2018, he made \$100 payments on September 3, 2020, and \$106 monthly payments on May 16, 2022, and on October 6, 2022. (AE S) On October 21, 2022, Applicant said he did not file his tax return for TY 2020 because his tax preparer said he needed his spouse's unemployment income before the tax return could be filed. (AE V) He did not explain what he and his spouse had done to obtain the needed unemployment information or why he did not file as a single taxpayer. He did not indicate he consulted with the IRS about whether to file an estimate of the unemployment income received or why he could not obtain the needed information from deposits to her bank account.

Applicant did not disclose on his December 2, 2019 SCA that his mortgage and his homeowner's association debts were over 120 days delinquent in the previous seven years; however, he did disclose 16 other delinquent accounts. (GE 1 at 40-54) According to a document Applicant provided after his hearing, from September 2018 to May 2019, Applicant's mortgage was 180 days past due. (AE K at 18) He said his mortgage was delinquent about six months during an unspecified period, and he obtained a loan modification. (Tr. 76, 93) His September 7, 2022 credit report indicates his mortgage was in forbearance in March 2020 and January 2022, and he received a loan modification in March 2022. (AE K at 17) He stopped making his mortgage payments for an unspecified period because of unemployment. (Tr. 93) Before the loan modification, he said his monthly mortgage payment was about \$2,300. (Tr. 93)

In March 2022, Applicant's mortgage balance was \$357,287; in April 2022, his mortgage was \$395,847; and his monthly payment was \$2,516. (AE K at 16) In his loan modification, unpaid interest was added to the principal of the loan. (Tr. 93) He refinanced his house around May 2022; the creditor received \$399,713; and that mortgage loan was closed. (AE K at 18) He received about \$100,000 cash from the refinance of his mortgage. (Tr. 83-84, 91) He did not use the proceeds from the refinancing to pay his SOR debts because some of his other debts were of a higher priority. (Tr. 94) He paid about \$954 in

August 2022 on his SOR debts; however, he did not make any other payments on his SOR debts in 2022 up to the date of his hearing. (Tr. 95)

Applicant's mortgage is now \$584,296, and it is current. (Tr. 79; AE K at 3, 12) His monthly mortgage payment is \$4,018. (AE K at 3) His homeowner's association monthly dues were about \$115. (Tr. 78) From the magnitude of the increase in his mortgage, he may have received substantially more than \$100,000 in the refinance. In 2016, he was behind \$6,778 on his homeowner's association dues. (Tr. 77) His homeowner's association dues are now current. (Tr. 80) In 2022, he said he purchased a vehicle for about \$50,000, and his monthly payments are about \$850. (Tr. 82) His September 7, 2022 credit report shows he financed \$56,760; his monthly payment is \$998; and his status is pays as agreed. (AE K at 39) He said he has about \$55,000 in his bank account, and he has about \$50,000 in a retirement account. (Tr. 87-88)

Applicant and his spouse described themselves as a frugal people. (Tr. 33; AE U) They made efforts to reduce expenses. (AE U) He received financial counseling. (Tr. 89) He is able to save about \$800 monthly. (Tr. 91) He plans to continue to make payments on the debts in the SOR, and he is current on all of his debts. (Tr. 33-34) His September 7, 2022 credit report does not show any accounts in collections. (AE K at 67)

Character Evidence

Applicant's spouse described him as a diligent and dedicated employee. (AE U) His supervisor from 2004 through 2009 described him a diligent, reliable, responsible, and trustworthy. (AE J) He is conscientious about safeguarding security. (AE J) He received several awards from his employer from 2019 to 2022. (AE N) The character evidence supports his access to classified information.

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 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.

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).

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." The record establishes AG ¶¶ 19(b) and 19(c). Further discussion of the disqualifying conditions and the applicability of mitigating 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 an 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 circumstances beyond his control, which adversely affected his finances. He and his spouse had periods of unemployment and underemployment. However, "[e]ven if [an applicant's] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the 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)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that he initiated or maintained contact with several of his creditors over the last five years. He maintained contact with several of his other creditors.

The SOR does not allege: (1) Applicant failed to timely file his federal income tax return for TY 2020; (2) he owes several thousand dollars to the IRS; (3) he failed to consistently comply with IRS installment agreements; (4) he failed to disclose on his

December 2, 2019 SCA that his mortgage and his homeowner's association debts were over 120 days delinquent in the last seven years; and (5) he failed to disclose on his December 2, 2019 SCA that he owed federal income taxes for TY 2019. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegations will not be considered except for the five purposes listed above.

The financial allegations in SOR ¶¶ 1.b through 1.e, 1.g, 1.h, 1.j, 1.k, and 1.l are mitigated. He either paid, disputed, or the creditor was unable to locate these debts, and they no longer appear on his credit reports as delinquent.

For SOR ¶ 1.a, Applicant made payments on August 26, 2022, and October 7, 2022, which totaled \$300, and reduced the debt to \$8,871. For SOR ¶ 1.f, on August 26, 2022, and October 13, 2022, he paid a total of \$340 and reduced the debt to \$1,700. For SOR ¶ 1.i, he made payments on August 26, 2022, and October 7, 2022, which totaled \$300, and reduced the balance owed to \$5,117. His documented progress in the last three years on the debts in SOR ¶¶ 1.a, 1.f, and 1.i occurred in August and October 2022 after he responded to the SOR.

[T]he timing of ameliorative action is a factor which should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened.

ISCR Case No. 17-04110 at 3 (App. Bd. Sept. 26, 2019) (citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)).

Applicant is not credited with mitigating the debts in SOR ¶¶ 1.a, 1.f, and 1.i. He did not provide documentary evidence of payments in 2020 and 2021 despite promises on his SCA to initiate payments in 2020. He only made two payments on each debt in 2022. According to his IRS tax transcripts, he and his spouse received adjusted gross income exceeding \$140,000 in TYs 2018, 2019, and 2021. He obtained at least \$100,000 in cash when he refinanced his house in 2022. He did not establish that he was unable

to make more progress sooner in the resolution of these three SOR debts, which now total \$15,688. He did not establish a track record of consistent payments on these three debts, and there is insufficient assurance that these three debts are 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 a 47-year-old systems engineer employed by a large DOD contractor from February 2018 to the present. He has worked as a systems engineer for 20 years. In 1997, he received a bachelor's degree. His character evidence indicates he is a diligent, dedicated, reliable, responsible, and trustworthy employee. He is conscientious about safeguarding security. He received several awards from his employer from 2019 to 2022. The character evidence supports his access to classified information.

Applicant did not provide a good enough reason for his delay in failing to pay or establish a consistent track record of payments for the debts in SOR ¶¶ 1.a, 1.f, and 1.i especially in light of his and his spouse's current income and the receipt of at least \$100,000 when he refinanced his house. He failed to provide a good explanation for why he did not use more of these funds to address these three delinquent SOR delinquent debts. He has not filed a tax return for TY 2020. He owes several thousand dollars to the IRS, and he has not consistently made payments under his IRS installment plan.

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. Applicant's evidence did not overcome the *Dorfmont* presumption.

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 establishment of a track record of timely paying his debts, 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. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j, 1.k, and 1.l:	For 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