DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-00661
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Erin P. Thompson, Esquire, Department Counsel
For Applicant: *Pro se*

10/21/2022

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Decision

_____

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On August 24, 2021, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On May 2, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 1, 2022, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on August 1, 2022, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on August 9, 2022. His response was due on September 8, 2022. Applicant chose not to respond to the FORM, for as of September 21, 2022, no response had been received. The record closed on September 8, 2022.The case was assigned to me on October 19, 2022.

Findings of Fact

In his response to the SOR, Applicant admitted, with comments, most of the SOR allegations. (SOR ¶¶ 1.a., 1.b., 1.d., and 1.f. through 1.i.). Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 49-year-old prospective employee of a defense contractor. He was hired as a material analyst in August 2021, but as of November 2021, he had not yet commenced working for the company. He was previously employed in a variety of positions by other employers as a crane technician (June 2017 until March 2020), barista (April 2016 until June 2017), and quality assurance agent (July 2011 until July 2015). He was unemployed on two separate occasions, from July 2015 until April 2016, and from March 2020 until at least August 2021. He never served with the U.S. military. He attended ITT Technical Institute (ITT Tech) and received an associate's degree in 2011. He has never held a security clearance. He was married in 2009 and divorced in 2012. He has been cohabiting since 2020. He has two children, born in 2004 and 2008. The youngest child was subsequently adopted by her stepfather.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (Answer to the SOR, dated July 1, 2022); Item 3 (SF 86, dated August 24, 2021); Item 4 (Enhanced Subject Interview, dated November 8, 2021); and Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 21, 2021).

In his SF 86, Applicant acknowledged having some financial issues associated with delinquent accounts. (Item 3 at 38-41) On November 8, 2021, he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). During that

interview, he discussed a number of delinquent accounts and indicated that he would contact his creditors in an effort to establish repayment plans. (Item 4 at 5-7)

The SOR alleged nine still-delinquent accounts, including four student loans totaling approximately $36,156, and five other unpaid accounts totaling $13,822, for a grand total of $49,978, as set forth below:

SOR ¶¶ 1.a., 1.b. 1.d., and 1.f. refer to student loan accounts with the U.S. Department of Education with unpaid balances of $16,565; $11,705; $4,583; and $3,303 that were placed for collection. (Item 2; Item 3 at 39-40; Item 4 at 5-7; Item 5 at 5) In 2020, Applicant stated that ITT Tech steered students towards subprime loans and made false promises that it would offer a bachelor's degree program, but it did not and instead went bankrupt. He would never have gone there for his associate's degree if he had known ITT Tech's true intentions. He is aware of litigation involving ITT Tech and a debt relief program that is expected to resolve the issue. (Item 2; Item 3 at 39-40; Item 4 at 5-7) Further discussion regarding these accounts appears below.

SOR ¶ 1.c. refers to a credit-card account with an unpaid balance of $8,629 that was placed for collection and charged off. (Item 4 at 6; Item 5 at 5) Although Applicant acknowledged that it must be a very old credit card that he had forgotten about, he indicated to the OPM investigator that he would contact the creditor in an effort to resolve the account. (Item 4 at 6) In his Answer to the SOR, he denied the allegation, claiming that he had no record of the account. He did not state that he had made any efforts to contact the creditor. The account has not been resolved.

SOR ¶ 1.e. refers to a credit-card account with an unpaid balance of $3,478 that was placed for collection and charged off. (Item 4 at 6-7; Item 5 at 6) Although Applicant acknowledged that it must be a very old credit card that he had forgotten about, he indicated to the OPM investigator that he would contact the creditor in an effort to resolve the account. (Item 4 at 6) In his Answer to the SOR, he denied the allegation, claiming that he had no record of the account. He did not state that he had made any efforts to contact the creditor. The account has not been resolved.

SOR ¶ 1.g. refers to a credit-card account with an unpaid balance of $1,113 that was placed for collection. (Item 3 at 38-39; Item 4 at 5; Item 5 at 7) Applicant. acknowledged that he used it for living expenses. In November 2021, he indicated to the OPM investigator that he would contact the creditor within the next few months in an effort to resolve the account. (Item 4 at 5) In his Answer to the SOR, he stated that he planned to contact the creditor for the payoff amount. He submitted no evidence, including documentary evidence, that he had ever contacted the creditor between his November 2021 promise to do so and September 2022, when the record closed, to indicate that any resolution efforts had been made. The account has not been resolved.

SOR ¶ 1.h. refers to a medical account with an unpaid balance of $380 that was placed for collection. (Item 3 at 41; Item 4 at 6; Item 5 at 7) In November 2021, Applicant indicated to the OPM investigator that he would contact the creditor within the next few months in an effort to resolve the account. (Item 4 at 6) In his Answer to the SOR, he

stated that he will rectify as soon as possible. He submitted no evidence, including documentary evidence, that he had ever contacted the creditor between his November 2021 promise to do so and September 2022, when the record closed, to indicate that any resolution efforts had been made. The account has not been resolved.

SOR ¶ 1.i. refers to an electric utility account with an unpaid balance of $222 that was placed for collection. (Item 3 at 40-41; Item 4 at 6; Item 5 at 7) In November 2021, Applicant indicated to the OPM investigator that he was "currently making $50 payments until the account is paid." (Item 4 at 6) In his Answer to the SOR, he seemed to reverse his former statement when he stated that he will rectify as soon as possible. He submitted no evidence, including documentary evidence, that he had ever contacted the creditor between his November 2021 promise to do so and September 2022, when the record closed, to indicate that any resolution efforts had been made. The account has not been resolved.

ITT Technical Institute (ITT Tech)

ITT Tech was considered a predatory for-profit college, and PEAKS, its holding company, would offer students tuition costs through private loans. A lawsuit was filed after ITT Tech – the university that Applicant attended and generated extensive student loans – entered bankruptcy and closed its 137 campuses in 2016. After the school's closure, hundreds of thousands of students were still required to pay for their outstanding student loans. A 2018 lawsuit settlement forgave $600 million that 750,000 students owed to the school. In June 2019, the Consumer Financial Protection Bureau (CFPB) reached a settlement with ITT Tech that discharged about $168 million in private student loans. In August 2019, an additional settlement was reached, including a judgment against ITT Tech for $60 million and an injunction that prohibited ITT Tech from offering student loans in the future. In September 2020, the CFPB reached another settlement, requiring ITT Tech to forgive $330 Million in outstanding student loan balances. In total, ITT Tech erased more than $500 million in private student loan debt. As noted by The Washington Post on September 15, 2020:

> Forty-eight state attorneys general and the Consumer Financial Protection Bureau have secured more than $330 million in private student-loan forgiveness for 35,000 former students of ITT Technical Institute.
>
> A judgment order entered Tuesday puts to rest a 2014 lawsuit accusing the defunct for-profit chain of steering students into predatory loans. PEAKS Trust, a private loan program run by ITT Tech and affiliated with Deutsche Bank entities, has agreed to forgo the collection of the outstanding education debt from ITT Tech students. It will also ask credit-reporting agencies to delete references to those loans from the credit reports of affected borrowers.
>
> Eligible borrowers will be notified by PEAKS or their loan servicer and need to do nothing to receive forgiveness. At least 1,100 former ITT Tech

students in Maryland will receive relief, while 1,840 borrowers in Virginia will have their private loans canceled.

“Maryland students were deceived when they were pressured into taking on these predatory loans,” Maryland Attorney General Brian E. Frosh (D) said in a statement Tuesday. “PEAKS will be required by this settlement to provide debt relief to Maryland students who we allege were misled while they were working hard to further their education.”

ITT Tech created two in-house student-loan programs as private lenders retreated from the market at the height of the 2008 financial crisis. Banks stopped extending credit to students at for-profit colleges, because of their historically high default rates.

ITT Tech issued students “temporary credits” to cover remaining tuition after federal and private student loans were taken into account. Some former students said the credits were marketed as grants, while others said they were told the credit would not have to be repaid until six months after graduation. But when the temporary credit became due, ITT Tech allegedly pressured students into accepting loans with double-digit interest rates from PEAKS.

According to the complaint, students said they were pulled out of class or threatened with expulsion if they refused to accept the loan terms. Many of the former students lacked the means to continue their education and said they felt there were no other options than to accept the loans. Eighty percent of the loans fell into default as students could not keep up with payments.

Even as students began defaulting in great numbers around 2011, ITT Tech continued issuing the high-cost loans. The tactics landed the company’s top brass in the crosshairs of the Securities and Exchange Commission. The federal agency settled fraud cases in 2018 against former ITT chief executive Kevin Modany and former chief financial officer Daniel Fitzpatrick for allegedly deceiving investors about high rates of late payments and defaults on student loans backed by the company.

The SEC said executives made secret payments on delinquent accounts to delay defaults instead of disclosing the tens of millions of dollars in impending losses to investors. Executives assured investors in conference calls that the programs were performing well, while ITT’s obligations to pay out on soured loans began to balloon, according to that complaint.

Before shutting down in 2016, ITT Tech was being investigated by more than a dozen state attorneys general and two federal agencies for alleged fraud, deceptive marketing or steering students into predatory loans. That legal morass led an accrediting body to threaten to end its relationship with

> the chain, which resulted in the Education Department curtailing ITT's access to federal student aid.
>
> Days after closing and leaving 35,000 students and 8,000 employees in the lurch, the company filed for bankruptcy protection to liquidate its business.

(washingtonpost.com/education/2020/09/15/former-students-defunct-itt-tech-receive-330-million-private-student-loan-forgiveness/)

A more recent update, referred to by Applicant, took place on August 16, 2022:

> Today, the U.S. Department of Education . . . announced that it will discharge all remaining federal student loans that borrowers received to attend [ITT Tech] from January 1, 2005, through its closure in September 2016. The decision, which follows Departmental findings based on extensive internal records, testimony from [ITT Tech] managers and recruiters, and first-hand accounts from borrowers, will result in 208,000 borrowers receiving $3.9 billion in full loan discharges. This includes borrowers who have not yet applied for a borrower defense < Caution-https://studentaid.gov/borrower-defense/ > to repayment discharge. These borrowers will have the federal student loans they received to attend [ITT Tech] discharged without any additional action on their part.
>
> "It is time for student borrowers to stop shouldering the burden from [ITT Tech]'s years of lies and false promises," said U.S. Secretary of Education Miguel Cardona. "The evidence shows that for years, [ITT Tech]'s leaders intentionally misled students about the quality of their programs in order to profit off federal student loan programs, with no regard for the hardship this would cause. The Biden-Harris Administration will continue to stand up for borrowers who've been cheated by their colleges, while working to strengthen oversight and enforcement to protect today's students from similar deception and abuse."
>
> Today's action brings the total amount of loan relief approved by the Biden-Harris Administration to nearly $32 billion for 1.6 million borrowers. This includes $13 billion related to institutions that took advantage of borrowers. It represents the Department's continued commitment to providing debt relief to eligible borrowers.
>
> Today's [ITT Tech] announcement builds on the Administration's previous actions related to [ITT Tech], which has resulted in the approval of $1.9 billion in discharges for 130,000 students to date. This includes borrower defense findings that [ITT Tech] engaged in widespread and pervasive misrepresentations related to the ability of students to get a job or transfer credits, and lying about the programmatic accreditation of [ITT Tech]'s associate degree in nursing. Separately, the Department announced an expanded window for borrowers who attended but did not graduate from [ITT Tech] to receive closed school discharges.

> "[ITT Tech] defrauded hundreds of thousands of students, as we identified when I was the director of the [CFPB]," said Federal Student Aid Chief Richard Cordray. "By delivering the loan relief students deserve, we are giving them the opportunity to resume their educational journey without the unfair burden of student debt they are carrying from a dishonest institution."
>
> The Department's findings around [ITT Tech] were assisted by significant and extensive work by attorneys general across the country, the [CFPB], and Veterans Education Success. The Department received important evidence from half the country's state offices of attorneys general, led by Colorado and Oregon Attorneys General and supported by significant evidence from the Iowa and New Mexico Attorneys General.
>
> The Department's findings are based on extensive evidence, including internal [ITT Tech] policies and records; recruitment materials and brochures; recordings of interactions between [ITT Tech]'s representatives and prospective students; testimony from former students, employees, and administrators; investigative files and submissions from congressional investigators and state offices of attorneys general; and the tens of thousands of individual borrower defense applications submitted by former [ITT Tech] students. . . .
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> "The automatic loan cancellation announced today will provide life-changing relief that has long been owed to former [ITT Tech] students," said Rohit Chopra, director of the CFPB. "Far too many Americans are still on the hook for loans they acquired at colleges that profited from deceiving students, and the CFPB will continue to work with the Department of Education to address predatory student loan debt, to protect students, and to hold wrongdoers accountable."

(washingtonpost.com/education/2022/08/16/itt-tech-student-loan-forgiveness/)

Based on all of the above, Applicant is no longer legally responsible for the student loans generated by ITT Tech and PEAKS, and it appears that all he has to do to obtain forgiveness for the loans is to complete and submit the appropriate application.

There is no evidence of financial counseling, a budget, or anything to describe with any specificity Applicant's current financial situation. He did not report his net monthly income, his monthly household expenses, or any monthly debt payments (for even the most insignificant of his delinquent debts such as the utility bill). In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. There is a paucity of evidence to indicate that his financial problems are now under control, and it is difficult to determine if Applicant is currently in a better position financially than he had been.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "Substantial evidence" is "more than a scintilla but less than a preponderance." (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is

because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan, 484 U.S. at 531*)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (*See* Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

> Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so; and

(c) a history of not meeting financial obligations.

The SOR alleged nine still-delinquent accounts, including four student loans totaling approximately $36,156, and five other unpaid accounts totaling $13,822, for a grand total of $49,978. AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence to indicate an unwillingness to satisfy debts regardless of an ability to do so.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

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

AG ¶¶ 20(b) and 20(e) apply. As noted above, Applicant has been through one divorce in 2012 – well before the financial issues arose – and has been unemployed on two separate occasions (from July 2015 until April 2016, and from March 2020 until at least August 2021). He was clearly the victim of ITT Tech – a predatory for-profit college – and its lending practices. The attorney generals of 48 states and the CFPB went after that college and its holding company to extract justice for the defrauded students. AG ¶ 20(d) does not apply because Applicant has failed, over a substantial period, to initiate any good-faith efforts to repay his overdue creditors despite promising to do so in several instances, and falsely claiming in another instance that he was making payments.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). Between the date he was interviewed by the OPM investigator in November 2021, and the date his response to the FORM was expected in

September 2022, he made no claimed or verifiable efforts to address any of the delinquent debts.

Based on the evidence, it is clear that Applicant intentionally ignored his delinquent accounts for a substantial multi-year period. Because of his failure to confirm payment of even his smallest delinquent account (the utility bill for $222), the overwhelming evidence leads to the conclusion that his financial problems are not under control. He has not acted responsibly by failing to address his delinquent accounts and by failing to make limited, if any, efforts of working with his creditors. The Appeal Board has previously commented on such a situation:

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

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (*See, e.g.,* ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018) In this instance, Applicant has failed to offer any evidence that he has even begun making such efforts.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant clearly stated that such efforts were anticipated, but he took no verified efforts to do so. While his student loans may be on the cusp of being legally resolved because of the actions of the states and federal government, with regard to Applicant's remaining debts totaling $13,822, not one delinquent debt has been resolved by him.

Applicant's credit report indicates that two of his debts are in charged-off status. Eventually the charged-off debts will be dropped from his credit report. "[T]hat some debts have dropped off his 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 (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.*

The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

There is no verifiable evidence of financial counseling, a budget, or current financial information. Applicant's inaction under the circumstances casts doubt on his current reliability, trustworthiness, and good judgment. *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

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

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence

and have not merely performed a piecemeal analysis. *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *see also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial considerations. Applicant is a 49-year-old prospective employee of a defense contractor. He was hired as a material analyst in August 2021, but as of November 2021, he had not yet commenced working for the company. He was previously employed in a variety of positions by other employers as a crane technician (June 2017 until March 2020), barista (April 2016 until June 2017), and quality assurance agent (July 2011 until July 2015). He was unemployed on two separate occasions, from July 2015 until April 2016, and from March 2020 until at least August 2021. He attended ITT Tech and received an associate's degree in 2011. Forty-eight state attorneys general and the CFPB have secured hundreds of millions in private student-loan forgiveness for thousands of former students of ITT Tech. Applicant was clearly one of the victims of ITT Tech – a predatory for-profit college – and its lending practices.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has five remaining debts totaling $13,822. In November 2021, he indicated to the OPM investigator that he was currently making $50 payments on one account until the account is paid, but In his Answer to the SOR, he seemed to reverse his former statement when he stated that he will rectify as soon as possible. Between the date he was interviewed by the OPM investigator in November 2021, and the date his response to the FORM was expected in September 2022, he made no claimed or verifiable efforts to address <u>any</u> of the delinquent debts.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

> In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's track record of zero claimed or verifiable efforts to resolve the non-student loan debts and the lengthy period of non-contact with his creditors is negative and disappointing. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. *See* SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph1. b.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge