DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-01793
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq.

07/11/2023

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Decision

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HARVEY, Mark, Administrative Judge:

Applicant established a track record of debt resolution. Guideline F (financial considerations) security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On October 18, 2021, Applicant completed a Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On December 1, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued an 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)

On December 22, 2022, Applicant responded to the SOR, and he requested a hearing. (HE 3) On March 7, 2023, Department Counsel was ready to proceed. On March 14, 2023, the case was assigned to me. On March 20, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 21, 2023. (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 15 exhibits. (Transcript (Tr.) 21-23; GE 1-GE 6; Applicant Exhibit (AE) A-AE O) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 21-23; GE 1-GE 6; AE A-AE O) On May 1, 2023, DOHA received a transcript of Applicant's security clearance hearing. No post-hearing exhibits were submitted.

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.h. (HE 3) He also provided clarifying and mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 44-year-old program manager. (Tr. 24-25) His resume provides details about his professional experiences and accomplishments. (AE K) His first marriage was from 2012 to 2013, and his current marriage was in 2014. (Tr. 24) His two children are ages five and two. (Tr. 24) He was promoted from deputy program manager to program manager in April 2022. (Tr. 25) He has held a security clearance since 2004, and there is no evidence of security violations, alcohol abuse, use of illegal drugs, or criminal conduct. (Tr. 25, 53; GE 1)

Financial Considerations

Applicant said his debts became delinquent because of divorce, unemployment, and underemployment. (Tr. 57) In December 2013, he borrowed funds to pay a $67,000 divorce settlement in a Middle Eastern country. (Tr. 26-28, 57-60) He was not permitted to leave the Middle Eastern country until the settlement was paid. (Tr. 58)

From July 2009 to July 2014, Applicant was employed in a foreign country, and his annual salary was $115,000 to $120,000. (Tr. 27-28) From July 2014 to September 2014, he was unemployed for about six weeks. In September 2014, his annual pay was reduced to $75,000, when he changed employment to a different company in the same Middle Eastern country. (Tr. 27-28) His new employment did not include housing, car allowance, and some other benefits he received during his previous employment. (Tr. 61) He was able to make payments for several months on multiple accounts, and then in April 2015, he started defaulting on multiple debts. (Tr. 60) He had more delinquent debts than those listed on the SOR, and he paid some of the other delinquent debts before he addressed the debts listed in the SOR. (Tr. 51) He contacted some debt consolidation companies

about assistance with his debts; however, he did not agree to enroll in their programs. (Tr. 31) In his October 18, 2021 SCA, he listed all of the SOR debts except for the State A tax liens plus three other debts on which he was making payments. (GE 1) On July 8, 2022, he paid $934 to resolve one non-SOR delinquent bank debt. (GE 2 at 35, 37) On June 15, 2022, he paid another delinquent debt listed on his SOR. (GE 2 at 36)

The SOR alleges 10 delinquent debts totaling $144,299 as follows:

SOR ¶¶ 1.a, 1.c, 1.d, and 1.e allege Applicant has four charged-off debts totaling $108,853, which he owed to the same credit union for $24,766; $42,103; $22,261; and $19,723. He had a signature loan, a credit-card debt, and two vehicle loans, respectively. (Tr. 29) The two vehicles with liens from the creditor were returned to the creditor at one of their branch locations in a Middle Eastern country in 2015. (Tr. 32, 61-64) He was unaware of what the credit union employees did with the two vehicles. The vehicle debts were SOR ¶¶ 1.d and 1.e, and he believed the creditor did not give him a credit for the return of the vehicles. (Tr. 32-34, 62-63)

When he was unable to make payments to the credit union because of his reduced salary, he contacted the creditor, and he received a one-month forbearance. (Tr. 29; AE A) He defaulted on the loans in April 2015. (Tr. 26-27, 60; AE A) He repeatedly contacted the creditor over the years, and the creditor's best offer is for him to pay 45 percent of the debt over a two-year period. (Tr. 29; AE A) He asked the creditor to credit him with returning the two vehicles; however, the creditor refused to do so. (Tr. 34) The monthly payments would be $2,400 for a total of about $55,000. (Tr. 29) He provided a copy of his correspondence with the creditor. (Tr. 30; AE A) He was unable to afford the $2,400 monthly payments. (Tr. 30)

Applicant most recently communicated with the creditor six weeks before his hearing, and the creditor's offer continued to be to settle the debt for 45 percent of the face amount by making payments over 24 months. (Tr. 54) The four debts are not accruing interest. (Tr. 55, 67) He has currently saved $4,000 to pay the creditor. (Tr. 55) Once he has a larger amount available, he plans to offer the creditor an initial lump-sum payment and then to make payments under a more realistic payment plan. (Tr. 66) In his SCA and response to interrogatories, he noted the four debts were collection-barred by the statute of limitations and had aged off or been dropped from his credit report. (GE 1; GE 2 at 20, 49) He is not relying on the statute of limitations to avoid paying the four debts. He intends to pay or settle the four debts.

SOR ¶ 1.b alleges Applicant has a bank credit-card debt placed for collection for $7,501. He defaulted on the credit-card debt in April 2015. (Tr. 34) The account was transferred to several different collection agents. (Tr. 35) Applicant settled the debt and received a December 21, 2022 letter indicating the debt was resolved. (Tr. 35, 52; AE B)

SOR ¶ 1.f alleges Applicant has a charged-off bank debt for $1,180. Applicant said the debt was paid in full, and he provided a bank account statement showing the debt was paid in December 2022. (Tr. 35-36, 50; AE C)

SOR ¶¶ 1.g, 1.h, 1.i, and 1.j allege Applicant has four state tax liens from State A for tax years (TY) 2013 to 2016 for $1,088; $9,169; $7,695; and $8,813. (GE 2 at 14-17) The total debt owed to State A was $26,767. (GE 2 at 40) Applicant moved from State A in July 2009 to a Middle Eastern country. (Tr. 36, 43) He planned to reside in a state with no income taxes when he returned to the United States. (Tr. 36) His only connection to State A was his State A driver's license, which expired in 2012. (Tr. 36, 43) He believed he was not required to file a State A income tax return or pay taxes to State A because he did not consider himself to be a resident of State A. (Tr. 36-37) He did not do anything to establish residence in a tax-free state until he left the Middle Eastern country, and he returned to the United States in 2018. (Tr. 77) After 2018, he lived in a state with no state income taxes. (Tr. 37, 46) His spouse is a resident of the tax-free state where he currently resides. (Tr. 78) He filed his federal income tax returns in 2019 within the time limits authorized by the IRS for a U.S. citizen living outside the United States, and State A wanted him to pay income taxes for TYs 2013 to 2016. (Tr. 36-37, 47)

Applicant first learned of State A's tax liens when DOHA contacted him in October of 2022. (Tr. 37, 43, 65) He advised DOHA that he did not believe he was a resident of State A, and he disagreed with having to pay taxes to State A. (Tr. 48-49; GE 2 at 24, 56) On November 10, 2022, State A asked Applicant to agree to an automatic payment plan involving an $1,811 monthly deduction from his account starting on December 8, 2022. (Tr. 38; GE 2 at 38) Instead of utilizing the payment plan, he borrowed the funds from his parents, and he paid the state tax liens. (Tr. 38-39, 52) A December 16, 2022 letter from State A indicates the four liens owed to State A are paid. (Tr. 39; AE E) He has the option of repaying the debt owed to his parents, or his parents will reduce his inheritance by the amount of the payment. (Tr. 39)

Applicant provided a personal financial statement. (Tr. 31; AE F) His current annual salary is $170,000. (Tr. 71) His spouse's annual salary is about $43,000. (Tr. 71) He put aside $4,200 in the last three months to start building up a fund to pay the credit union for the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. (Tr. 31-32, 68, 77) He is confident that he can repay the four remaining unresolved delinquent debts. (Tr. 40) He has not accrued any new delinquent debts since 2014. (Tr. 69)

Applicant's October 20, 2022 credit report lists 11 accounts. (GE 4) None of the accounts have ever been past due. (*Id.* at 2) For 10 accounts, the status is "Pays account as agreed." (*Id.* at 3-7) One account with a zero balance has a status of "Charge-off," and the charged-off amount is zero. (*Id.* at 5)

Character Evidence

Applicant's supervisor for 18 months described him as the top person he supervised out of 114 employees. (Tr. 17; AE J) Applicant has outstanding integrity, honesty, reliability, and trustworthiness. (Tr. 18-19) He was the program manager for the company's $70 million contract. (Tr. 17-18) If his supervisor was starting a new company, Applicant is the first person he would hire. (Tr. 20) He received performance awards, completed courses, received certificates of achievement, and accomplished several certifications. (AE I) His letters of recommendation laud his diligence and professionalism.

(AE J) He has excellent performance evaluations. (AE H) He volunteers in his community. (Tr. 42; AE L) He is dedicated to his company, community, and family. (Tr. 40-42)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

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

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

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

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

> Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

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

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: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." The record establishes AG ¶¶ 19(a), 19(c), and 19(f). 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 was divorced in a Middle Eastern country, and he was required to pay $67,000 to his spouse. He was unemployed for about six weeks and underemployed once he became employed. In 2015, multiple debts became delinquent. 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 maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant provided supporting documentary evidence that he initiated or maintained contact with several creditors. SOR ¶ 20(b) is established.

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

In his SCA and response to interrogatories, Applicant noted the four debts were collection-barred by the statute of limitations and had aged off or been dropped from his credit report. However, he is not relying on the statute of limitations to avoid paying the four debts. An explanation of the relationship between state statutes of limitations and security concerns is helpful.

State statutes of limitations for various types of debts range from 2 to 15 years. *See* Nolo Law for All website, Chart: Statutes of Limitations in All 50 States, http://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html. It is illegal under the Fair Debt Collection Practices Act for a creditor to threaten to sue to collect a time-barred debt. *See* Federal Trade Commission website, "Debt Collection FAQs," http://www.consumer.ftc.gov/articles/0117-time-barred-debts. The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

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

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

Once Applicant stopped making payments, the creditor had to file suit within the statute of limitations to maintain the collectability of their debt. There is no evidence that the creditors in SOR ¶¶ 1.a, 1.b, 1.d, or 1.e took judicial action to pursue collection of these four debts. Assuming but not deciding that these four SOR debts are collection barred, they are still relevant to financial considerations security concerns:

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

ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2014). The Appeal Board has "held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value." ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) (citing ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008); ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005); ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003)). *See, e.g.,* ISCR Case No. 08-01122 (App. Bd. Feb. 9, 2009) (reversing grant of security clearance); ADP Case No. 06-14616 (App. Bd. Oct. 18, 2007) (reversing grant of security clearance and stating "reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems" (citing ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)).

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. *See* ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicants are not required "to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (denial of security clearance remanded) (citing ISCR Case No.13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *See* ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant paid or settled all of the SOR debts except the debts in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. He promised to expeditiously resolve the last four debts. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. His delinquent debts "occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment," and ability to protect classified information. AG ¶¶ 20(b) and 20(d) apply. Security concerns about Applicant's finances 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.

The rationale for approving Applicant's clearance is more substantial than the reasons for denying his clearance. Applicant is a 44-year-old program manager. His resume provides details about his professional experiences and accomplishments. He was promoted from deputy program manager to program manager in April 2022. He has held a security clearance since 2004, and there is no evidence of security violations, alcohol abuse, use of illegal drugs, or criminal conduct.

Applicant's supervisor for 18 months described him as the top person he supervised out of 114 employees. He has outstanding integrity, honesty, reliability, and trustworthiness. If his supervisor was starting a new company, Applicant is the first person he would hire. He received performance awards, completed courses, received certificates of achievement, and accomplished several certifications. His letters of recommendation laud his diligence and professionalism. He has excellent performance evaluations. He volunteers in his community. He is dedicated to his company, community, and family.

Applicant acted responsibly under the circumstances. His debts resulted from divorce in 2014, unemployment in 2024, and underemployment in 2015 to 2018. He made a good-faith mistake when he assumed he had changed his state of residence for state income tax purposes while he was living in the Middle East; however, he failed to establish connections to his new state of residence. He realized his financial mistakes; he took corrective actions; and he assured that he will continue to endeavor to maintain his financial responsibility.

The remaining four SOR debts are owed to the same creditor, who is seeking $2,400 monthly payments for 24 months. Applicant believed he was unable to make these monthly payments because of his other financial responsibilities. He is saving about $1,000 monthly to accumulate enough money to settle or negotiate a more reasonable payment plan. All of the other SOR debts are resolved. I am confident he will maintain his financial responsibility. He understands that he needs to pay his debts, and the conduct required to retain his security clearance. He was sincere and credible at his hearing. His efforts at debt resolution are shown in his October 20, 2022 credit report, which reflects 10 accounts in "Pays as agreed status," and one paid charged-off account with a zero balance. He has made the necessary efforts at debt resolution and establishment of his financial responsibility. He has established a "meaningful track record" of debt re-payment. *See* ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). I am confident he will maintain his financial responsibility.

Applicant is advised that the grant of a security clearance now does not mean the Government is unable to check his credit and the status of his debts in the future. He may be required to show documented resolution of the four unresolved debts in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. A broken promise to pay debts made during a security clearance hearing can have adverse consequences in a future security clearance adjudication. It is imperative that he continue his efforts to resolve these four debts, and that he 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. Applicant's evidence was sufficient to overcome the *Dorfmont* presumption. 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.h: For Applicant

Conclusion

In light of all of the circumstances in this case, it is 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 granted.

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Mark Harvey
Administrative Judge