



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-05981

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

10/17/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On January 25, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On April 28, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 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 the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

¹ GE 1 ((SF 86), dated January 25, 2012).

Considerations), and detailed reasons why the DOD 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.

Applicant received the SOR on May 8, 2014. In a sworn statement, dated May 27, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 21, 2014. The case was assigned to me on July 23, 2014. A Notice of Hearing was issued on July 25, 2014, and I convened the hearing, as scheduled, on August 12, 2014.

During the hearing, four Government exhibits (GE 1 through GE 4) and nine Applicant exhibits (AE A through AE I) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 19, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted six additional documents, which were marked as exhibits AE J through AE O and admitted into evidence without objection. The record closed on August 26, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.c., and 1.f. through 1.i.). He denied the two remaining allegations (¶¶ 1.d. and 1.e.). Applicant's answers and explanations are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 31-year-old employee of a defense contractor, for which, since October 2011, he has served as a software engineer.² Applicant graduated from high school in 2001.³ He periodically attended two different universities, and in 2012, he was awarded a bachelor's degree in computer information systems.⁴ He plans on enrolling in a master's degree program.⁵ Applicant was married in January 2008.⁶ He and his wife have a son born in 2008 and a daughter born in 2010. He also has one stepson born in 2006.⁷ Applicant has never served with the U.S. military.⁸ He has held a secret security clearance since October 2006.⁹

² GE 1, *supra* note 1, at 13-14.

³ GE 1, *supra* note 1, at 11-12.

⁴ Tr. at 50; GE 1, *supra* note 1, at 12-13.

⁵ GE 2 (Personal Subject Interview, dated March 15, 2012), at 2.

⁶ GE 1, *supra* note 1, at 22.

⁷ GE 1, *supra* note 1, at 28-29; Tr. at 47.

Financial Considerations

Because of his highly specialized experience and expertise, Applicant generally works on government contracts that routinely expire, causing him to periodically move around in his search for new employment.¹⁰ There was nothing unusual about Applicant's finances until about 2008, when he claimed he initially started experiencing financial difficulties.¹¹ One child was born that year, and various medical expenses were incurred because Applicant did not have health insurance.¹² With insufficient salary to maintain his monthly payments, some accounts became delinquent.

In 2010, Applicant's wife gave birth once more, again without health insurance.¹³ She also decided to remain home to care for the three children.¹⁴ In May 2010, at about the same time the youngest child was born, Applicant's job became "fragile" as the government contract with his employer was about to expire, and he had not received any offers from the incoming contractor. He was forced to look for employment elsewhere.¹⁵ He found a new job over 400 miles and eight and one-half hours away in another city.¹⁶ The monthly mortgage payments for his residence were too high for his salary, so Applicant vacated the residence and attempted to sell it.¹⁷ He consulted with a realtor, and because he owed more on the mortgage than the house was worth – the house was "under water" – he attempted to obtain a short sale.¹⁸ Although there were a number of potential buyers, the bank rejected every offer received.¹⁹ The property went into foreclosure in early 2011, and it was sold by the bank.²⁰

In September 2011, the process started anew when the contract on which Applicant was working was nearing expiration and Applicant's employer was underbid

⁸ GE 1, *supra* note 1, at 20; Tr. at 49.

⁹ GE 1, *supra* note 1, at 36; Tr. at 7.

¹⁰ Applicant's Answer to the SOR, dated May 27, 2014, at 3; Tr. at 19.

¹¹ GE 2, *supra* note 5, at 2.

¹² GE 2, *supra* note 5, at 2.

¹³ GE 2, *supra* note 5, at 2; Tr. at 49-50.

¹⁴ GE 2, *supra* note 5, at 2.

¹⁵ Applicant's Answer to the SOR, *supra* note 10, at 2; Tr. at 38-39.

¹⁶ Tr. at 39.

¹⁷ GE 2, *supra* note 5, at 2.

¹⁸ Tr. at 41.

¹⁹ Tr. at 41.

²⁰ Applicant's Answer to the SOR, *supra* note 10, at 2; GE 2, *supra* note 5, at 1; Tr. at 41.

on the ensuing contract. In October 2011, he located another job several states away.²¹ In June 2013, sequestration took place, and Applicant and other employees were laid off. He was given one week's severance pay and was unemployed for two months.²² He was able to obtain another job with a new employer and relocated back to the state he had left in 2011. His new employer did not give him any relocation assistance or moving expense reimbursement, and he used whatever savings he had to pay for the relocation expenses.²³ With insufficient money to maintain his monthly payments, some accounts became delinquent and others remained delinquent.

In August 2014, Applicant engaged the professional services of financial counselors to assist him in negotiating repayment plans with his creditors and paying off some of his accounts. As part of the program, Applicant agreed to make monthly payments of \$136 to the financial counseling company, to return or destroy all his credit cards, and to close all the accounts that had zero balances.²⁴ Applicant recently furnished a personal monthly budget. A review of that document reveals a total monthly income of \$5,893. With routine monthly living expenses of \$4,093, including rent, utilities, food, and transportation, as well as his debt payment, he has approximately \$1,800 available for discretionary spending or savings.²⁵ All of Applicant's newer accounts are current.²⁶

The SOR identified 12 delinquent debts that had been placed for collection, charged off, or foreclosed upon, as generally reflected by a February 2012 credit report²⁷ and a February 2014 credit report.²⁸ Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in some instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts in the credit reports, as well as in the SOR, especially the medical accounts, do not reflect a creditor's name. While the SOR includes some account numbers, there are a number of accounts reflected without account numbers. Several accounts in the credit reports are listed without any account numbers and others with only partial account numbers. Those debts listed in the SOR and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

²¹ Applicant's Answer to the SOR, *supra* note 10, at 3; Tr. at 44.

²² Applicant's Answer to the SOR, *supra* note 10, at 3; Tr. at 45-46.

²³ Applicant's Answer to the SOR, *supra* note 10, at 3; Tr. at 46.

²⁴ AE N (Debt Management Agreement, dated August 22, 2014).

²⁵ AE L (Personal Monthly Budget, undated).

²⁶ Tr. at 55.

²⁷ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 3, 2012).

²⁸ GE 4 (Equifax Credit Report, dated February 7, 2014).

There is an unidentified medical account (SOR ¶ 1.a.) for \$53.96 that was placed for collection.²⁹ Applicant paid the collection agent, leaving a zero balance.³⁰ The account has been resolved. There is another unidentified medical account (SOR ¶ 1.b.) for \$307.01 that was placed for collection with the same collection agent.³¹ Applicant and the collection agent agreed to a repayment plan calling for monthly payments of \$25.³² He made the first of his payments and as of May 20, 2014, the remaining balance had been reduced to \$282.01.³³ The account is in the process of being resolved.

There is an emergency physicians medical account (SOR ¶ 1.c.) for \$504 that was placed for collection.³⁴ Applicant stated that he had been negotiating a repayment plan with the creditor, but the account was recently sold to another company, and he has been unable to identify or locate that new collection agent.³⁵ He did not submit any documentation to support his claim that he had been in negotiations with the collection agent or that the account had been sold to another collection agent. The account has not been resolved.

There is an unidentified medical account (SOR ¶ 1.d.) for \$101 that was placed for collection.³⁶ Applicant has attempted to identify or locate the unidentified creditor, but has been unable to do so.³⁷ While the account is listed in the February 2014 Equifax Credit Report, it does not appear in the April 2014 Equifax Credit Report. There is no indication that the account was deleted because of the statute of limitations. Since the original source document for the allegation in the SOR has been superseded by a newer source document, I conclude the account has been resolved.

There is an unidentified medical account (SOR ¶ 1.e.) for \$2,315 that was placed for collection.³⁸ Applicant has attempted to identify or locate this unidentified creditor as well, but has been unable to do so.³⁹ While the account is listed in the February 2014 Equifax Credit Report, it does not appear in the April 2014 Equifax Credit Report. There

²⁹ GE 4, *supra* note 28, at 2; AE B (Equifax Credit Report, dated April 10, 2014), at 84-85.

³⁰ AE A (E-mail, dated May 20, 2014); Tr. at 25-26.

³¹ GE 4, *supra* note 28, at 2; AE B, *supra* note 29, at 85.

³² Tr. at 26-28.

³³ AE A, *supra* note 30; Tr. at 26-28.

³⁴ GE 4, *supra* note 28, at 2; AE B, *supra* note 29, at 86.

³⁵ Tr. at 29-30.

³⁶ GE 4, *supra* note 28, at 2.

³⁷ Tr. at 30.

³⁸ GE 4, *supra* note 28, at 2.

³⁹ Tr. at 30.

is no indication that the account was deleted because of the statute of limitations. Since the original source document for the allegation in the SOR has been superseded by a newer source document, I conclude the account has been resolved.

There is a medical account (SOR ¶ 1.f.) for \$308 that was placed for collection.⁴⁰ Applicant negotiated a repayment plan with the creditor, and it was agreed that he would make monthly payments of \$25 until the account is resolved.⁴¹ His first payment was made in May 2014, with others in June 2014 and July 2014.⁴² The account is in the process of being resolved.

There is a medical account (SOR ¶ 1.g.) for \$1,434 that was placed for collection.⁴³ Applicant negotiated a repayment plan with the creditor, and it was agreed that he would make monthly payments of \$10 until the account is resolved.⁴⁴ His first payment was made in May 2014.⁴⁵ The account is in the process of being resolved.

There is a bank credit card account (SOR ¶ 1.k.) with a \$300 credit limit that was transferred to another bank. The account, with a past-due balance of \$294, was placed for collection and charged off.⁴⁶ The account was sold to a debt purchaser, identifying itself as a factoring company, in May 2013, and the high credit and past-due balance were initially increased to \$506 (SOR ¶ 1.j.), and subsequently to \$561 (SOR ¶ 1.h.).⁴⁷ Applicant and the debt purchaser entered into a repayment arrangement in May 2014, and Applicant has made monthly payments of \$84.27 since that time.⁴⁸ Adding confusion to the entire matter, on May 5, 2014, Applicant made a payment of \$224.53 to another collection agent as a settlement of the entire account.⁴⁹ The account, listed three separate times in the SOR, has either been resolved, or Applicant has overpaid it.

There is a bank credit card account (SOR ¶ 1.i.) with a \$2,000 credit limit and a past-due balance of \$2,564 that was charged off.⁵⁰ Applicant and the creditor entered

⁴⁰ GE 4, *supra* note 28, at 2; AE B, *supra* note 29, at 87.

⁴¹ Tr. at 31-33.

⁴² AE C (Payment Receipt, dated May 21, 2014); AE J (Transaction History, dated July 14, 2014), at 2; AE K (Transaction History, dated August 13, 2014), at 2.

⁴³ GE 4, *supra* note 28, at 2; AE B, *supra* note 29, at 87-88.

⁴⁴ Tr. at 34-35.

⁴⁵ AE D (Payment Receipt, dated May 20, 2014).

⁴⁶ GE 3, *supra* note 27, at 10; AE B, *supra* note 29, at 48.

⁴⁷ AE B, *supra* note 29, at 48-50, 58-59; Tr. at 35-37.

⁴⁸ AE E (Letter, dated May 21, 2014); AE J, *supra* note 42, at 3; AE K, *supra* note 42, at 3.

⁴⁹ AE G (Statement, dated May 7, 2014).

⁵⁰ AE B, *supra* note 29, at 52-55; GE 4, *supra* note 28, at 4.

into a repayment arrangement in May 2014, and Applicant has made monthly payments of \$75 since that time.⁵¹ The account is in the process of being resolved.

As noted above, there is a home mortgage with a high credit of \$123,525 that was transferred to a bank, and the bank subsequently foreclosed on the residence when there was a past-due balance of \$21,384 and a remaining balance of \$120,916 (SOR ¶ 1.I.).⁵² Applicant contends the public records reflect that the house was sold for approximately \$90,000, leaving a deficiency of about \$30,000.⁵³ He did not submit any documentation to support his contentions regarding the amount of the sale or the potential deficiency. He has never received any communication from the bank informing him of the sale or requesting payment of any deficiency.⁵⁴ The bank was involved in substantial wrongdoing on a national scale involving improper foreclosures, and Applicant received a payment of \$300 from the bank as part of the overall national settlement.⁵⁵ The accuracy of the information appearing in the credit reports is open to question as the status is reflected merely as “foreclosure process started.” It remains unclear if the account has been resolved as part of the overall national settlement, or if it is currently in the process of being resolved.

Work Performance and Character References

Applicant’s program manager and a coworker are effusive in support of Applicant’s application for a security clearance. He has been characterized as trustworthy and reliable, and described as possessing exceptional work ethic and overall performance, as well as loyalty to his work and coworkers. Applicant’s judgment has never been questioned.⁵⁶

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.”⁵⁷ 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

⁵¹ AE F (Letter, dated May 22, 2014); Tr. at 37.

⁵² GE 3, *supra* note 27, at 11; GE 4, *supra* note 28, at 4; AE B, *supra* note 29, at 3-6, 80-84.

⁵³ Tr. at 41-42.

⁵⁴ Tr. at 41-42.

⁵⁵ Tr. at 42-43; AE O (Check, dated April 28, 2013); Applicant’s Answer to the SOR, *supra* note 10, at 2; Treas. OIG-13-049, *Safety and Soundness: Improvement Needed in OCC’s Oversight of Foreclosure Related Consent Orders* (Sep. 9, 2013); Treas. OCC Case No. AA-EC-11-18 (Apr. 13, 2011).

⁵⁶ AE H (Character Reference, dated May 15, 2014); AE I (Character Reference, dated May 12, 2014).

⁵⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”⁵⁸

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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.”⁵⁹ 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.⁶⁰

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.”⁶¹

⁵⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁹ “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).

⁶⁰ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶¹ *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.”⁶² 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Although he encountered some financial difficulties as early as 2008, Applicant’s most significant financial problems arose in 2010 and continued for several years thereafter. He was unable to continue making his routine monthly payments, and various accounts became delinquent and were either placed for collection or charged off. One account went into foreclosure. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *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*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *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, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are*

⁶² See Exec. Or. 10865 § 7.

*clear indications that the problem is being resolved or is under control is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*⁶³

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's continuing financial difficulties, initially since 2008, but reappearing in 2010, make it difficult to conclude that they occurred "so long ago" or were "so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were largely beyond Applicant's control. Because of the nature of his employment and the government contracting system, he worked on government contracts that routinely expire, causing him to periodically move around the country in his search for new employment. Obtaining employment frequently resulted in vacating one house and searching for another. Relocation expenses were rarely reimbursed. Health insurance was not always available. In addition, the national economic situation resulted in his sequestration and unemployment, and those factors merely exacerbated his financial problems.

Applicant acted responsibly by addressing most of his delinquent accounts and working with his creditors in an effort to set up repayment arrangements.⁶⁴ His overall repayment strategy has been successful, and he has resolved, in addition to the non-SOR accounts, some of the accounts alleged in the SOR. He is also in the process of resolving other SOR-related accounts that are currently in repayment plans. It appears that he may have overpaid one account because it had been transferred to several collection agents, and he paid one and is paying another one. Because of the national home mortgage scandal involving his mortgage holder, it is unclear if there is a continuing deficiency or if the deficiency was wiped out as part of the overall national settlement.

⁶³ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(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. June 4, 2001)).

⁶⁴ "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.

He also engaged the professional services of financial counselors to assist him in negotiating repayment plans with his creditors and paying off some of his accounts. He agreed to make monthly payments to the financial counseling company, to return or destroy all his credit cards, and to close all the accounts that had zero balances. He has approximately \$1,800 available each month for discretionary spending or savings. All of Applicant's newer accounts are current. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.⁶⁵

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(a):

- (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), the ultimate determination of whether to grant eligibility for 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.⁶⁶

There is some evidence against mitigating Applicant's conduct. His handling of his finances permitted a number of accounts to become delinquent. As a result, in 2008 and again in 2010, various accounts became delinquent and were either placed for collection or charged off. One account eventually went to foreclosure.

The mitigating evidence under the whole-person concept is more substantial. He has an outstanding reputation in the workplace. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Rather, Applicant's problems were largely beyond his control. Because of his highly specialized experience and expertise, the nature of his employment, and the

⁶⁵ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁶⁶ 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).

government contracting system, he was required to periodically move around the country in his search for new government contracts and new employment. Relocation expenses were rarely reimbursed, health insurance was not always available, and the fall-out from the poor national economy, his sequestration, and unemployment, were devastating to his financial well-being.

Applicant did not ignore his debts. Instead, he addressed whatever delinquent debts he could, when he could. Applicant set up repayment arrangements. Applicant has resolved, or is in the process of resolving, nearly all of his accounts, including those identified in the SOR. As for two remaining accounts, once Applicant can identify and locate the creditors, he intends to resolve them. There are clear indications that Applicant's financial problems are under control. His actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶⁷

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 has demonstrated a "meaningful track record" of debt reduction and elimination efforts. Nevertheless, this decision should serve as a warning that his failure to continue his debt-resolution efforts or the actual accrual of new delinquent debts will adversely affect his future eligibility for a security clearance.⁶⁸ Overall, the evidence

⁶⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

⁶⁸ While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant's financial condition. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant's security clearance. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd.

leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Duplicate of Subparagraph 1.h.
Subparagraph 1.k:	Duplicate of Subparagraph 1.h.
Subparagraph 1.l:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge