



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



In the matter of:)
)
 ---) ISCR Case No. 12-06333
)
 Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

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 September 25, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On February 7, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to the interrogatories on March 10, 2014.² On October 28, 2014, the DOD 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*

¹ GE 1 (e-QIP, dated September 25, 2011).

² GE 2 (Applicant's Answers to Interrogatories, dated March 10, 2014).

(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 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.

It is unclear when Applicant received the SOR as the receipt in the case file is undated. On November 25, 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 March 11, 2015. The case was initially assigned to another administrative judge on March 30, 2015, but was reassigned to me on July 9, 2015. A Notice of Hearing was issued on July 31, 2015, and I convened the hearing as scheduled on August 26, 2015.

During the hearing, five Government exhibits (GE) 1 through 5, and no Applicant exhibits (AE) were admitted into evidence without objection. One Administrative Exhibit was also admitted. Applicant testified. The transcript (Tr.) was received on September 3, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He timely submitted a number of documents, which were marked as AE A through AE AA, and admitted into evidence without objection. The record closed on September 23, 2015.

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., 1.e., and 1.f.).³ Applicant's answers 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 58-year-old employee of a defense contractor. He is an American Merchant Mariner who has been serving in various licensed engineering positions aboard a number of different ships operated by several companies, since April 1991.⁴ He has been with his current employer since September 2011.⁵ He is a June 1975 high school graduate.⁶ After attending a service academy for six months, Applicant tendered his resignation and withdrew from it in January 1976.⁷ He attended several different

³ During the hearing, Department Counsel determined that ¶¶ 1.c. and 1.f. referred to the same debt during different time periods. Accordingly, Department Counsel moved to amend the SOR by withdrawing ¶ 1.f. There being no objection, the SOR was amended and ¶ 1.f. was withdrawn. See Tr. at 87-88.

⁴ GE 1, *supra* note 1, at 11-16.

⁵ GE 1, *supra* note 1, at 10.

⁶ Tr. at 24-25.

⁷ Tr. at 25.

universities and finally received a bachelor's of science degree in marine engineering in April 1982.⁸ He enlisted in the U.S. Navy in April 1976 and remained in the active reserve until he was honorably discharged in April 1982.⁹ Applicant received a reserve commission in April 1982,¹⁰ and he received another honorable discharge in June 1994 when he underwent a reduction in force (RIF).¹¹ He was granted a secret security clearance at some point while he was with the U.S. Navy.¹² Applicant was married in January 1992 and divorced in January 2002.¹³ He married his second wife in February 2010.¹⁴ He has one son, born in 1993.¹⁵

Financial Considerations

It is unclear when Applicant first started having issues with his finances, but he referred to several factors which contributed to financial problems over the years: (1) his son was born with two handicaps, including achondroplastic dwarfism, or achondroplasia, and broad spectrum autism; (2) in 1999 or 2000, he and his first wife downsized their residence and he was forced to store his papers and records; (3) he spent various periods at sea, and upon his return, his papers and presumably his mail would be in piles awaiting his attention; (4) his first wife, an independently wealthy woman, refused to cook and would not permit him to cook, causing extra costs; (5) although he was divorced in 2002 (for financial reasons), he and his first wife continued to reside together until 2004, when he relocated and moved in with his brother; (6) he sends his first wife at least \$300 per month for his son, purchased televisions and game systems, and maintains health and life insurance for his son; (7) he pays for care and maintenance for his son; (8) he was unemployed between ship assignments, and especially during the Fall of 2008 when he lost his license; (9) he supports his second wife's stepson and half-brother; (10) his second wife became disabled with rheumatoid arthritis and has been out of work since October 2012; (11) his second wife has been on disability since April 2013; (12) her monthly net income dropped from \$3,000 to approximately \$2,000; (13) Applicant has been disorganized since 2002 due to numerous moves and periods (between a few days and six months) at sea; (14) Applicant has made some unspecified bad financial decisions; and (15) he lost some of

⁸ GE 2 (Personal Subject Interview, dated March 27, 2012), at 1; GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 4; Tr. at 26.

⁹ GE 1, *supra* note 1, at 20; GE 2 (Personal Subject Interview), *supra* note 8, at 7; AE (Report of Separation from Active Duty (DD 214N), dated April 29, 1976); AE R (Honorable Discharge Certificate, dated April 8, 1982).

¹⁰ GE 1, *supra* note 1, at 21; GE 2 (Personal Subject Interview), *supra* note 8, at 7.

¹¹ GE 1, *supra* note 1, at 21.

¹² GE 1, *supra* note 1, at 39.

¹³ GE 1, *supra* note 1, at 24.

¹⁴ GE 1, *supra* note 1, at 23.

¹⁵ GE 1, *supra* note 1, at 29.

his stored records at his brother's residence because of hurricane damage in 2004.¹⁶ The cumulative or combined effect of one or more of those factors resulted in accounts becoming delinquent and Applicant's failure to timely file his federal income tax returns for the tax years 2003 through 2005, and 2008 through 2012.¹⁷

During periods between ship assignments – called layoffs – Applicant did whatever he could to generate additional salary. He worked in the family business – a boarding home for mentally ill veterans – including yard work and maintenance, bookkeeping, conveying residents to medical appointments, and shopping; doing maintenance and serving as a waterfront person at a religious summer camp; stage manager, technical advisor, and actor, at a children's theater company; operating a laundry; sales representation; cleaning stadiums; and numerous other part-time odd jobs.¹⁸ He was also active as an instructor, training various activities for the Red Cross; and he supported the Boy Scouts and his university.¹⁹

Upon realizing the extent of his financial problems, in October 2009 – five years before the SOR was issued – Applicant engaged the professional services of a law firm to assist him in resolving his debt issues. For a monthly fee, the firm was authorized to negotiate on his behalf with six identified creditors in an effort to obtain settlements. The firm did not provide consumer credit counseling or debt consolidation.²⁰ As a result of their efforts, debts totaling less than \$20,000 were resolved.²¹ During the period June 2013 through August 2014 – also well before the SOR was issued – Applicant hired another firm to repair his credit. They analyzed his credit report to identify mistakes and other disputable items, furnished him some financial guidance, and contacted the major credit bureaus and individual creditors in order to have the disputable items removed and the mistakes corrected.²² Applicant currently maintains a list of commitments, in lieu of a budget, so he can exercise control over his expenses. He gets little support from his wife, despite having granted her a power of attorney, because “she has an aversion to writing checks or making payments – even opening the mail.”²³

In addition to the unfiled federal income tax returns for several years, the amended SOR identified six delinquent debts that had been placed for collection,

¹⁶ Tr. at 37-49; GE 1, *supra* note 1, at 42-50, 60. Applicant explained an unusual financial situation with his first wife: her money was her money; and his money was their money. Nearly everything supporting the household was paid for by Applicant. See Tr. at 40.

¹⁷ Tr. at 59-61.

¹⁸ Tr. at 29-35, 53.

¹⁹ Tr. at 54-55.

²⁰ AE G (Legal Service Agreement, dated October 7, 2009); Tr. at 91-94.

²¹ Tr. at 93-94.

²² AE N (Letter, dated August 28, 2015); Tr. at 94-95.

²³ Tr. at 74, 95-96.

charged off, or had gone to judgment, as reflected by an October 2011 credit report,²⁴ a January 2014 credit report,²⁵ and a March 2015 credit report.²⁶ Those income tax issues, as well as the debts, totaling approximately \$13,245, 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.

SOR ¶ 1.a.: Applicant failed to timely file his federal income tax returns for the tax years 2003 through 2005, and 2008 through 2012. For each of those years, Applicant set up over-deductions to ensure the Internal Revenue Service (IRS) was paid, and he filed extension requests.²⁷ Because of his disorganization, frequent moves, and periods of sea duty, and other issues described above, he failed to file his income tax returns within the extended deadlines. Applicant sends his necessary income tax paperwork to his accountant in another state, and the returns are generally prepared by the accountant for Applicant's eventual submission. The tax return for 2003 was finally filed in June 2006; the 2004 return was filed in June 2007; the 2005 return was filed in April 2009; the 2008 through 2011 returns were subsequently filed, but no specific dates were identified; and the 2012 return was filed in February 2015. Applicant received refunds for each year, or would have received refunds if his returns had been timely filed.²⁸ The federal income tax returns alleged in the SOR have been filed and the issue has been resolved.

SOR ¶ 1.b.: This is a home mortgage with a high credit of \$73,103, outstanding balance of \$75,574, and a past-due amount of \$2,817, now increased to \$9,260, that was placed for collection in 2013.²⁹ Applicant purchased the residence when his brother got married and Applicant needed a place to reside. Shortly after he purchased the residence, he moved into his fiancé-now wife's house. He was able to rent the residence, but the mortgage payments exceeded the rent payments he was receiving, and Applicant was unable to cover the full mortgage payments. He contacted the mortgage-lender to see if he could be eligible for a deed in lieu of foreclosure – a deed instrument in which the borrower conveys all interest in a real property to the lender to satisfy a loan that is in default and avoid foreclosure proceedings. Applicant followed the guidance he received from the lender and put the house on the market in June 2014, where it was supposed to be listed for at least 90 days. Subsequent discussions resulted in some confusion, and Applicant was told the house had to be listed for sale for a period of six months. Applicant's realtor submitted the additional documentation, and the lender determined the listing date would be December 8, 2014. In January

²⁴ GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 5, 2011).

²⁵ GE 3 (Equifax Credit Report, dated January 30, 2014).

²⁶ GE 5 (Equifax Credit Report, dated March 4, 2015).

²⁷ Tr. at 58-59.

²⁸ GE 1, *supra* note 1, at 40-41; AE O (Income Tax Return, dated February 14, 2015); Tr. at 59-68.

²⁹ GE 4, *supra* note 24, at 8; GE 3, *supra* note 25, at 4; GE 5, *supra* note 26, at 5-6.

2015, Applicant received an offer, but the lender took no action on it. The lender sent him some documents to sign, but since Applicant was at sea, he did not receive them. Applicant was approved for a pre-foreclosure sale program on June 1, 2015. On July 31, 2015, the lender acknowledged receipt of Applicant's request for a short sale, and indicated a decision would be made within 30 days from the date all required documentation is received. On August 21, 2015, Applicant and the proposed purchaser signed an FHA Purchase Agreement Addendum.³⁰ As of the week before the hearing, the lender indicated it had all the necessary documentation, and it would issue a decision on the short sale within seven to ten days.³¹ As of September 17, 2015, all required inspections and repairs have been completed, and final approval was anticipated within ten business days.³² The account may still be unresolved, but it appears to be in the process of being resolved.

SOR ¶¶ 1.c. and 1.f.: This is a bank credit card account with a credit limit of \$5,000, high credit of \$6,182, and a past-due balance of \$7,504, that was placed for collection and charged off. In December 2013, a judgment was obtained in the amount of \$6,182.³³ Applicant's attorney managed to settle the account with the creditor for an unspecified amount, thought to be approximately \$3,600.³⁴ The account has been resolved.

SOR ¶¶ 1.d.: This is a medical account with a remaining balance of \$54 that was placed for collection in 2013.³⁵ Applicant contends the account was paid in full on an unspecified date.³⁶ The account has been resolved.

SOR ¶ 1.e.: This is a bank credit card account with an unpaid balance of \$4,025 that was placed for collection and charged off in 2011.³⁷ Applicant was initially unable to negotiate a settlement, but after the account was charged off, his attorney purportedly managed to come to a settlement with the creditor for an amount less than \$4,025.³⁸ The attorney's status report indicates that the account had simply been "removed," without identifying from what media it was removed: the program or the credit report.³⁹

³⁰ Tr. at 77-82; AE B (Letter, dated June 1, 2015); AE C (Letter, dated July 31, 2015); AE D (Seller's Change Authorization, dated June 3, 2015); AE E (FHA Purchase Agreement Addendum, dated August 21, 2015).

³¹ Tr. at 79.

³² AE A (Letter, dated September 17, 2015), at 1.

³³ GE 4, *supra* note 24, at 7; GE 3, *supra* note 25, at 2, 5; GE 5, *supra* note 26, at 1.

³⁴ AF F (Creditor Status Report, undated); Tr. at 82-83.

³⁵ GE 3, *supra* note 25, at 2.

³⁶ Tr. at 84; AE A, *supra* note 32, at 1; AE H (Account Record, dated September 16, 2015).

³⁷ GE 4, *supra* note 24, at 13; GE 3, *supra* note 25, at 3; Tr. at 85.

³⁸ Tr. at 85.

³⁹ AE F, *supra* note 34, at 1.

Applicant did not submit any documentation to support his contention that the account has been settled or otherwise resolved. The account is not listed in Applicant's March 2015 credit report.⁴⁰ The account may still be unresolved simply because it was listed in a 2014 credit report, but it may also have been resolved because it does not appear in the recent credit report. It is unclear if the account has been resolved.

SOR ¶ 1.g.: This is a medical account with a high credit and past-due balance of \$105 that was placed for collection in 2011.⁴¹ The account was paid in full sometime before September 1, 2015.⁴² The account has been resolved.

SOR ¶ 1.h.: This is medical account with a high credit and past-due balance of \$62 that was placed for collection in 2009.⁴³ Applicant was not aware that the account had become delinquent because he never received any notices of delinquency.⁴⁴ The account was paid in full sometime before August 28, 2015.⁴⁵ The account has been resolved.

During the hearing, Applicant estimated that he earned between \$7,500 and \$8,000 each month after taxes; had expenses of approximately \$6,100; and realized a remainder of approximately \$1,500 available for discretionary savings or spending.⁴⁶ Applicant subsequently submitted a Personal Financial Statement reflecting an average net monthly income of \$7,000; total monthly expenses of \$6,909 (including \$720 for the non-residential mortgage which will end once the house is sold); leaving less than \$100 as a monthly remainder.⁴⁷ Applicant has two 401(k) retirement plans worth a combined total of approximately \$90,200.⁴⁸ Applicant contends that when he is aboard ship he works very hard to be frugal and find the least expensive ways to do things.⁴⁹

While one utility account briefly became past-due in August 2015, it was promptly paid off that same month.⁵⁰ All other non-SOR accounts have either been resolved with the assistance of Applicant's attorney, are current, or are in a repayment program.⁵¹

⁴⁰ See GE 5, *supra* note 26.

⁴¹ GE 4, *supra* note 24, at 9; GE 2 (Personal Subject Interview), *supra* note 8, at 7.

⁴² AE A, *supra* note 32, at 2; AE J (Account Information, dated September 1, 2015).

⁴³ GE 4, *supra* note 24, at 9.

⁴⁴ GE 2 (Personal Subject Interview), *supra* note 8, at 7.

⁴⁵ AE A, *supra* note 32, at 1; AE I (Statement, dated August 28, 2015).

⁴⁶ Tr. at 103-104.

⁴⁷ AE M (Personal Financial Statement, undated).

⁴⁸ AE K (Defined Contribution Plan, dated June 30, 2015); AE L (Plan, dated June 30, 2015).

⁴⁹ Tr. at 124-125.

⁵⁰ AE Z (Account Past Due Notice and Receipts, various dates).

Work Performance and Character References

The chief executive officer of a large international company, who is also a graduate of the U.S. Naval Academy, has known Applicant for approximately 50 years. Applicant is one of his closest friends. He considers Applicant to be one of the most trustworthy individuals he has ever known, and supports Applicant's eligibility for a high level security clearance.⁵² A coworker characterized Applicant as a sober individual who is a loyal and hardworking seaman.⁵³ Applicant's former scoutmaster noted that Applicant, an Eagle Scout, embodies the scout oath.⁵⁴

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."⁵⁵ 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."⁵⁶

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.

⁵¹ AE A, *supra* note 32, at 1-2; AE F, *supra* note 34, at 1-2; AE Y (Account Detail, undated).

⁵² AE S (Character Reference, dated September 7, 2015).

⁵³ AE T (Character Reference, undated); AE U (Character Reference, dated September 9, 2015).

⁵⁴ AE X (Character Reference, dated October 22, 1974).

⁵⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”⁵⁷ 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.⁵⁸

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.”⁵⁹

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.”⁶⁰ 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:

⁵⁷ “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).

⁵⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁵⁹ *Egan*, 484 U.S. at 531.

⁶⁰ See Exec. Or. 10865 § 7.

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. In addition, a "failure to file annual Federal, state, or local income tax returns as required. . ." may raise security concerns under AG ¶ 19(g). Applicant failed to timely file his federal income tax returns for 2003 through 2005, and 2008 through 2012. Several accounts were placed for collection or charged off, and one went to judgment. AG ¶¶ 19(a), 19(c), and 19(g) 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 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."⁶¹

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) partially applies. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. To his credit, he acknowledged having made some

⁶¹ 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)).

unspecified bad financial decisions and admitted being disorganized since 2002. The nature, frequency, and recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Instead, as noted above, Applicant's financial problems consisted of two components: failing to timely file his federal income tax returns over a span of years, and permitting some accounts to become delinquent. His finances were stretched due to his son's conditions, and his second wife's condition; problems with his first wife, supporting his second wife's stepson and half-brother, and his second wife's aversion to writing checks or opening the mail, especially when Applicant was at sea for lengthy periods. Added to those issues were his being forced to store his papers and records; spending various periods at sea, and upon his return, finding his papers in piles awaiting his attention; his unemployment between ship assignments; the loss of his license during the Fall of 2008; his second wife becoming disabled and out of work since October 2012, with the resulting drop in her income; and the loss of some of his stored records because of hurricane damage in 2004. The cumulative or combined effect of one or more of those factors resulted in accounts periodically becoming delinquent and Applicant's failure to timely file his federal income tax returns for the tax years 2003 through 2005, and 2008 through 2012. Many of those circumstances were substantially beyond his control, while some were within his control. Being disorganized may be an explanation, but it is not a valid excuse.

In October 2009 – five years before the SOR was issued – Applicant engaged the professional services of a law firm to assist him in resolving his debt issues. As a result of their efforts, some debts were resolved. During the period June 2013 through August 2014 – also well before the SOR was issued – Applicant hired another firm to repair his credit. They analyzed his credit report, furnished him some financial guidance, and contacted the major credit bureaus and individual creditors in order to have the disputable items removed and the mistakes corrected. Applicant currently maintains a list of commitments, in lieu of a budget, so he can exercise control over his expenses. With the assistance and guidance furnished him, Applicant has resolved, or is in the process of resolving, all of the accounts alleged in the SOR as well as accounts that were not in the SOR. As it pertains to the delinquent accounts, there are clear indications that Applicant's financial problems are under control. His actions, under the circumstances, no longer cast doubt on his current reliability, trustworthiness, or good judgment.⁶²

As it pertains to the untimely filing of his federal income tax returns, other concerns arise. Applicant's disorganization, lengthy absences while at sea, and the loss of records due to a hurricane, over a short period might be understandable. However, in this instance, Applicant essentially routinely delayed filing his income tax returns for several years each tax year. Although he had an accountant prepare his returns, he failed to furnish the accountant with the necessary documentation for lengthy periods, and when the prepared returns were sent to him for signature, inaction ensued because Applicant was frequently at sea. Applicant contends that he learned his lesson and now is more organized by storing his documentation by year, rather than simply piled in a

⁶² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

disorganized mess. Nevertheless, his embrace of organization was not complete as of the hearing, for delays seemed to be continuing. To his credit, for each of the tax years alleged, Applicant set up over-deductions to ensure the IRS was paid, and he filed extension requests. Unfortunately, he failed to meet the extended filing deadlines. The federal income tax returns alleged in the SOR have been filed, and it appears that the issue has finally been resolved.

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.⁶³

There is some evidence against mitigating Applicant's conduct. Applicant does not appear to be financially astute, and he failed to fully appreciate the requirement to timely file his federal income tax returns for the tax years 2003 through 2005, and 2008 through 2012. Also, various accounts became delinquent and were placed for collection, charged off, or went to judgment.

The mitigating evidence under the whole-person concept is more substantial. An Eagle Scout, former naval officer, and an American Merchant Mariner, Applicant has an outstanding reputation in the workplace and in the community. His failures to timely file his federal income tax returns, despite receiving extensions, were in large measure caused by situations over which he had little control. It is also true that the length of such delays was exacerbated by his own disorganization. Nevertheless, Applicant eventually took more assertive actions and finally filed those tardy returns. Applicant recognized that he needed assistance in resolving his other financial issues, and in October 2009, he obtained the professional services of the first of two companies to

⁶³ 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).

repair his credit and resolve his delinquencies. The majority of the delinquencies were resolved before the SOR was issued, but a few remained. Now, every delinquent account, both SOR and non-SOR, has either been resolved, or is in the process of being resolved. There are clear indications that Applicant's financial problems are under control. His actions under the circumstances no longer 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:

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.⁶⁴

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts, and he started to do so years before the SOR was issued. This decision should serve as a warning that Applicant's failure to continue the timely filing of annual federal income tax returns, not merely the filing of extensions for same, or the actual accrual of new delinquent debts, will adversely affect his future eligibility for a security clearance.⁶⁵

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude

⁶⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

⁶⁵ While this decision should serve as a warning to Applicant as security officials may continue to monitor his finances, this decision, including the warning, should not be interpreted as a conditional eligibility to hold a security clearance. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting 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. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. June 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

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:	Withdrawn
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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