



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



In the matter of: )  
 )  
----- ) ISCR Case No. 12-10413  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro se*

03/13/2013

**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 June 11, 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).<sup>1</sup> On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on November 1, 2012.<sup>2</sup> On December 19, 2012, the DOD 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

<sup>1</sup> GE 1 ((SF 86), dated June 11, 2012).

<sup>2</sup> GE 2 (Applicant's Answers to Interrogatories, dated November 1, 2012).

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.

Applicant received the SOR on January 4, 2013. In a sworn but undated statement, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. It is unclear when Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on February 4, 2013. A Notice of Hearing was issued on February 5, 2013, and I convened the hearing, as scheduled, on February 13, 2013.

During the hearing, five Government exhibits (GE 1 through GE 5) and nine Applicant exhibits (AE A through AE I) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 22, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted six additional documents which were marked as exhibits (AE J through AE O) that were admitted into evidence without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all but one (¶ 1.e.) of the factual allegations pertaining to financial considerations. Applicant's admissions 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 two defense contractors who, since October 2009, had served as a full-time armed security officer, and since June 2012, had served as a part-time Survival, Evasion, Resistance, and Escape (SERE) role player. He was laid off in September 2012. While he is still employed, he is not permitted to work because he needs a security clearance to continue doing so.<sup>3</sup> He was previously employed by other employers in various positions, including parking valet, restaurant busser, order filler, talent escort, and general laborer.<sup>4</sup> Applicant has been unemployed on several occasions. Although he attempted to enlist in the U.S. Navy, a medical condition he had made that impossible, and his request for a medical waiver was denied.<sup>5</sup> It is unclear if Applicant was ever granted a security clearance, although he believes he was granted an interim secret security clearance as well as an unspecified authorization for a public trust position to allow him access to the facility

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<sup>3</sup> Tr. at 31.

<sup>4</sup> GE 1, *supra* note 1, at 12-15; Personal Subject Interview, dated July 17, 2012, at 2, attached to GE 2, *supra* note 2; Tr. at 16, 31.

<sup>5</sup> GE 1, *supra* note 1, at 21; Tr. at 8, 15.

where he works.<sup>6</sup> Applicant graduated from high school in June 2000, and attended one semester of college in 2001.<sup>7</sup> He has never been married, and he has no children.

## Financial Considerations

There apparently was nothing unusual about Applicant's finances until about 2009. In the years prior to that point, Applicant had a full-time job as well as a part-time job, and although the state where he was living was "pricey," he was able to control his finances and pay his bills.<sup>8</sup> In 2009, he moved back to his parents' home to care for his mother (she had medical and physical health problems) and assist his father (extensive period of unemployment).<sup>9</sup> He saved money by residing with his parents at no cost, but contributed funds to pay for the family bills.<sup>10</sup> As a result of a reduced income and increased medical expenses for his mother as well as himself, Applicant exhausted his savings to meet monthly living expenses and debt. Accounts became delinquent and were either placed for collection or charged off.

Applicant contacted a number of his creditors and collection agents regarding his delinquent accounts, and tried to work out repayment arrangements. He obtained financial counseling that included a debt management program, and also set up a budget and a repayment schedule reflecting anticipated steps in his repayment plan. His plan prioritizes accounts, listing nine accounts, but three other accounts are recognized in the plan but not included in it.<sup>11</sup> Although the plan calls for specific monthly payments, an analysis of Applicant's income indicated an inability to proceed with the payments because of Applicant's current layoff status.<sup>12</sup> Nevertheless, Applicant was able to address several accounts, including non-SOR accounts, and they have either been settled, paid off, or were in the process of being paid.

In response to the DOD interrogatories, Applicant provided a personal financial statement reflecting a monthly net salary of \$1,060; monthly household, utility, transportation, and food expenses of \$1,150; and monthly debt repayments of \$496.22; leaving a negative monthly remainder of \$586.22.<sup>13</sup> Applicant's income was actually his

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<sup>6</sup> GE 1, *supra* note 1, at 33; Tr. at 7.

<sup>7</sup> GE 1, *supra* note 1, at 11; Tr. at 6-7; Personal Subject Interview, *supra* note 4.

<sup>8</sup> Tr. at 57.

<sup>9</sup> Tr. at 16, 28.

<sup>10</sup> Tr. at 28-29.

<sup>11</sup> AE N (Financial Counselor letter, dated February 20, 2013).

<sup>12</sup> AE N, *supra* note 11.

<sup>13</sup> Personal Financial Statement, undated, attached to GE 2, *supra* note 2.

unemployment compensation, and he had been using it to make payments on various accounts.<sup>14</sup>

The SOR identified 19 purportedly continuing delinquencies.<sup>15</sup> Those accounts can be divided into three separate categories: those already paid off, in the process of being resolved, or otherwise already resolved; those debts which Applicant has disputed, and the debt has been removed from his credit reports; and those which Applicant has placed on his prioritized list to be addressed, but has not yet done so.

In the first category, there is a medical account with an unidentified medical provider in the amount of \$296 that was placed for collection with one collection agency and transferred or sold to another collection agency (**SOR ¶ 1.a.**).<sup>16</sup> Applicant and the collection agent agreed upon a settlement amount of \$162, and Applicant made his initial \$80 payment on February 13, 2013, with the final \$82 payment scheduled for March 7, 2013.<sup>17</sup> The account has been resolved.

There is a medical account with an unidentified medical provider in the amount of \$10 that was placed for collection (**SOR ¶ 1.e.**).<sup>18</sup> On November 8, 2012, Applicant paid the entire amount.<sup>19</sup> The account has been resolved.

There is a medical account with an unidentified medical provider in the amount of \$206 that was placed for collection (**SOR ¶ 1.f.**).<sup>20</sup> Applicant and the collection agent agreed to a repayment plan, and commencing in December 2012, he started making \$30 monthly payments which are automatically withdrawn from his bank account.<sup>21</sup> The account is in the process of being resolved.

There are two student loans with a combined total balance of \$12,689.29 that were placed for collection and subsequently transferred or sold to a collection agent

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<sup>14</sup> Personal Financial Statement, undated, attached to GE 2, *supra* note 2; Tr. 46.

<sup>15</sup> Unfortunately, many of the accounts listed in the SOR are referenced solely by abbreviated versions of the identities of the creditor or collection agent, with no account number, or a creditor or collection agent identified only as "medical payment data" or unidentified creditor or collection agent with either partial or complete account numbers. Many of the accounts listed have been transferred or sold to other collection agents or debt purchasers, making efforts to identify or track the original creditor that much more difficult. In addition, Applicant's memory regarding various debts was confused, and he mixed debts appearing in the interrogatories with debts appearing in the SOR.

<sup>16</sup> GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 13, 2011), at 8; GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 20, 2012), at 10; GE 5 (Equifax Credit Report, dated November 7, 2012), at 1.

<sup>17</sup> AE K (Letter, undated); AE J (Statement, dated February 19, 2013), at 1; Tr. at 34-35.

<sup>18</sup> GE 3, *supra* note 16, at 9; GE 5, *supra* note 16, at 1; AE J, *supra* note 17, at 1; Tr. at 38-39.

<sup>19</sup> AE C (Account History, dated February 6, 2013), at 10; AE J, *supra* note 17, at 1; Tr. at 38-39.

<sup>20</sup> GE 3, *supra* note 16, at 8.

<sup>21</sup> AE C, *supra* note 19, at 1-2; Tr. at 40.

**(SOR ¶ 1.m.).**<sup>22</sup> Applicant acknowledged being neglectful in making his monthly \$276 payments,<sup>23</sup> and he filed an unemployment deferment request, based on his current laid-off status.<sup>24</sup> The loans were placed into forbearance, the monthly payments were reduced to \$141.86, and no payments are required until May 7, 2013.<sup>25</sup> With the loans in forbearance, they should no longer be reflected in Applicant's credit reports as in collection. These accounts are in the process of being resolved.

In the second category, there is an account with a mobile telephone company in the amount of \$1,128 that was placed for collection and subsequently transferred or sold to a collection agent **(SOR ¶ 1.g.).**<sup>26</sup> Applicant was unaware of the account, as he had never received any correspondence regarding it.<sup>27</sup> He disputed the account with Experian, and it was deleted from his credit report.<sup>28</sup> Applicant would be willing to pay the account if it could be shown that it is a valid account belonging to him.<sup>29</sup> Although Experian has deleted the account, Equifax has noted the dispute, but has refused to delete it.<sup>30</sup> The account is in the process of being resolved, or conceivably already might have been resolved.

There is a credit card account in the amount of \$656 that was placed for collection **(SOR ¶ 1.i.),** but eventually sold to a factoring company as an account receivable.<sup>31</sup> Applicant was unaware of the account, as he had never received any correspondence regarding it.<sup>32</sup> He disputed the account with Experian, and it was deleted from his credit report.<sup>33</sup> Applicant would be willing to pay the account if it could be shown that it is a valid account belonging to him.<sup>34</sup> The account is not listed in the Equifax credit report.<sup>35</sup> The account is in the process of being resolved, or conceivably already might have been resolved.

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<sup>22</sup> GE 4, *supra* note 16, at 11, 13; GE 5, *supra* note 16, at 2.

<sup>23</sup> Tr. at 43; AE H (Billing Statement, dated January 16, 2013).

<sup>24</sup> AE G (Unemployment Deferment Request, dated February 13, 2013).

<sup>25</sup> AE L (Letter, dated February 19, 2013); Tr. at 43-44.

<sup>26</sup> GE 4, *supra* note 16, at 9; GE 5, *supra* note 16, at 2; GE 3, *supra* note 16, at 6.

<sup>27</sup> Tr. at 41.

<sup>28</sup> Tr. at 41; AE F (Experian Dispute Results, dated October 10, 2012).

<sup>29</sup> Tr. at 41; AE J, *supra* note 17, at 1.

<sup>30</sup> GE 5, *supra* note 16, at 2.

<sup>31</sup> GE 3, *supra* note 16, at 6; GE 4, *supra* note 16, at 9.

<sup>32</sup> Tr. at 41.

<sup>33</sup> Tr. at 41; AE F, *supra* note 28.

<sup>34</sup> Tr. at 41; AE J, *supra* note 17, at 1.

<sup>35</sup> See GE 5, *supra* note 16.

There is an account with the same mobile telephone company as that listed above in the amount of \$111 that was placed for collection (**SOR ¶ 1.j.**).<sup>36</sup> Applicant was unaware of the account, as he had never received any correspondence regarding it.<sup>37</sup> He disputed the account with Experian, and it was deleted from his credit report.<sup>38</sup> Applicant would be willing to pay the account if it could be shown that it is a valid account belonging to him.<sup>39</sup> The account is not listed in the Equifax credit report.<sup>40</sup> The account is in the process of being resolved, or conceivably already might have been resolved.

There is a credit card account with a high credit of \$513 that was placed for collection and charged off, and subsequently sold to a debt purchaser (**SOR ¶ 1.i.**).<sup>41</sup> The debt purchaser increased the high credit to \$573, and declared the unpaid balance to be \$706.<sup>42</sup> Applicant disputed the account with Experian, and it was deleted from his credit report.<sup>43</sup> Applicant would be willing to pay the account if it could be shown that it is a valid account belonging to him.<sup>44</sup> Although Experian has deleted the account, Equifax has merely noted the dispute, but has refused to delete it.<sup>45</sup> The account is in the process of being resolved, or conceivably already might have been resolved.

There is an unspecified account in the amount of \$359 that was placed for collection (**SOR ¶ 1.q.**).<sup>46</sup> Applicant is not familiar with the named creditor and plans to dispute it.<sup>47</sup> Applicant would be willing to pay the account if it could be shown that it is a valid account belonging to him.<sup>48</sup> The account is not listed in either the Equifax credit report, or the most recent combined credit report.<sup>49</sup> It is listed only in his August 2011

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<sup>36</sup> GE 4, *supra* note 16, at 9.

<sup>37</sup> Tr. at 41.

<sup>38</sup> Tr. at 41; AE F, *supra* note 28.

<sup>39</sup> Tr. at 41; AE J, *supra* note 17, at 2.

<sup>40</sup> See GE 5, *supra* note 16.

<sup>41</sup> GE 4, *supra* note 16, at 8.

<sup>42</sup> GE 4, *supra* note 16, at 10.

<sup>43</sup> Tr. at 42; AE F, *supra* note 28.

<sup>44</sup> Tr. at 41; AE J, *supra* note 17, at 2.

<sup>45</sup> GE 5, *supra* note 16, at 1.

<sup>46</sup> GE 3, *supra* note 16, at 7.

<sup>47</sup> Tr. at 45.

<sup>48</sup> AE J, *supra* note 17, at 2.

<sup>49</sup> See GE 5, *supra* note 16; GE 4, *supra* note 16.

combined credit report.<sup>50</sup> The account is in the process of being resolved, or conceivably already might have been resolved.

In the third category are the remaining debts, all of which were placed for collection, listed in the SOR: There is a cable or internet account in the amount of \$254 (**SOR ¶ 1.b.**).<sup>51</sup> Applicant contacted the collection agent, but it will not accept periodic partial payments, and will only accept one payment for the entire amount.<sup>52</sup> There is another cable or internet account with the same company, but with a different collection agent in the amount of \$640 (**SOR ¶ 1.c.**).<sup>53</sup> Applicant contacted the collection agent, but it could not find this additional account in Applicant's name in its records.<sup>54</sup> Applicant believed this charge was for equipment that he had already turned in to the original creditor.<sup>55</sup> There is a medical account in the amount of \$92 (**SOR ¶ 1.d.**).<sup>56</sup> There is a medical account with an identified medical provider in the amount of \$767 (**SOR ¶ 1.h.**).<sup>57</sup> The account is no longer listed in his most recent credit report.<sup>58</sup> There is a medical account with an unidentified medical provider in the amount of \$590 (**SOR ¶ 1.k.**),<sup>59</sup> that was eventually sold to a factoring company as an account receivable. The account is no longer listed in his most recent credit report.<sup>60</sup> There is an apartment lease account in the amount of \$1,695 (**SOR ¶ 1.n.**).<sup>61</sup> When Applicant contacted the rental office, it no longer had any records of an account in his name.<sup>62</sup> The account is no longer listed in his most recent credit reports.<sup>63</sup> There is a medical account with an unidentified medical provider in the amount of \$473 (**SOR ¶ 1.o.**).<sup>64</sup> The account is no longer listed in his most recent credit reports.<sup>65</sup> There is a medical account with an

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<sup>50</sup> GE 3, *supra* note 16, at 7.

<sup>51</sup> GE 4, *supra* note 16, at 5; GE 5, *supra* note 16, at 1.

<sup>52</sup> AE J, *supra* note 17, at 1; Tr. at 37.

<sup>53</sup> GE 3, *supra* note 16, at 7; GE 4, *supra* note 16, at 5; GE 5, *supra* note 16, at 1.

<sup>54</sup> AE J, *supra* note 17, at 1; Tr. at 37.

<sup>55</sup> Tr. at 37-38.

<sup>56</sup> GE 3, *supra* note 16, at 8; GE 4, *supra* note 16, at 8; GE 5, *supra* note 16, at 1.

<sup>57</sup> GE 3, *supra* note 16, at 6; GE 4, *supra* note 16, at 8.

<sup>58</sup> See GE 5, *supra* note 16.

<sup>59</sup> GE 3, *supra* note 16, at 7; GE 4, *supra* note 16, at 10.

<sup>60</sup> See GE 5, *supra* note 16.

<sup>61</sup> GE 3, *supra* note 16, at 6.

<sup>62</sup> Tr. at 44-45; AE J, *supra* note 17, at 2.

<sup>63</sup> See GE 4, *supra* note 16; See GE 5, *supra* note 16.

<sup>64</sup> GE 3, *supra* note 16, at 7.

<sup>65</sup> See GE 4, *supra* note 16; See GE 5, *supra* note 16.

unidentified medical provider in the amount of \$422 (SOR ¶ 1.p.).<sup>66</sup> The account is no longer listed in his most recent credit reports.<sup>67</sup> There is a medical account with an unidentified medical provider in the amount of \$218 (SOR ¶ 1.r.),<sup>68</sup> that was eventually sold to a factoring company as an account receivable. The account is no longer listed in his most recent credit reports.<sup>69</sup> There is a medical account with an unidentified medical provider in the amount of \$109 (SOR ¶ 1.s.).<sup>70</sup> The account is no longer listed in his most recent credit reports.<sup>71</sup>

## Work Performance and Character References

Applicant's work performance and character have been described by a senior company manager in extremely positive terms. He has been described as mature, devoted, dependable, thoughtful, caring, exceptional, and a trusted asset. Applicant was the only member of the contract security team to ever win the Commanding General Coin of Excellence.<sup>72</sup> The Garrison Command Group also described Applicant's selfless service and professionalism.<sup>73</sup> The commanding general, a major general, commented on Applicant's dedication and outstanding service, and referred to Applicant as highly motivated.<sup>74</sup>

## 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."<sup>75</sup> 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."<sup>76</sup>

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<sup>66</sup> GE 3, *supra* note 16, at 7.

<sup>67</sup> See GE 4, *supra* note 16; See GE 5, *supra* note 16.

<sup>68</sup> GE 3, *supra* note 16, at 8.

<sup>69</sup> See GE 4, *supra* note 16; See GE 5, *supra* note 16.

<sup>70</sup> GE 3, *supra* note 16, at 8.

<sup>71</sup> See GE 4, *supra* note 16; See GE 5, *supra* note 16.

<sup>72</sup> AE E (Character Reference, dated February 1, 2013).

<sup>73</sup> AE E (Letter, undated).

<sup>74</sup> AE E (Letter, dated September 19, 2011).

<sup>75</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>76</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.



When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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."<sup>77</sup> 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.<sup>78</sup>

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."<sup>79</sup>

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."<sup>80</sup> Thus, nothing

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<sup>77</sup> "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 (4<sup>th</sup> Cir. 1994).

<sup>78</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>79</sup> *Egan*, 484 U.S. at 531

<sup>80</sup> See Exec. Or. 10865 § 7.

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. Commencing in 2009, Applicant started experiencing some financial difficulties, and over the next few years those difficulties increased to the point where he was unable to make routine monthly payments for a number of accounts. His accounts eventually started becoming delinquent and were placed for collection or sold. 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 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.<sup>81</sup> In addition, it is potentially mitigating under AG ¶ 20(e) when *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.*

AG ¶¶ 20(a), 20(d), and 20(e) partially apply, and AG ¶ 20(c) applies. The nature, frequency, and relative recency of Applicant's continuing and escalating financial difficulties since 2009 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." He initially reduced his expenses by residing with his parents at no cost, but contributed funds to pay for the family bills. With reduced income and increased medical expenses, Applicant exhausted his savings to meet monthly living expenses and debt. Nevertheless, Applicant contacted a number of his creditors and collection agents regarding his delinquent accounts, and tried to work out repayment arrangements. He disputed those accounts he did not recognize, and several of them were deleted from his credit report. He eventually obtained financial counseling that included a debt management program, and also set up a budget and a repayment schedule reflecting anticipated steps in his repayment plan. However, an analysis of Applicant's income indicated an inability to proceed with the payments because of Applicant's current lay-off status. Nevertheless, he was able to address several accounts, including non-SOR accounts, and they have either been settled, paid off, or were in the process of being paid. Applicant's efforts were, unfortunately, thwarted by his layoff, and now he is unable to address accounts with his limited unemployment compensation. When he returns to full employment, Applicant is prepared to resolve all of his remaining accounts, even those that were deleted from his credit reports. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>82</sup>

AG ¶ 20(b) applies. Commencing in 2009, and continuing over the next few years, several events, largely beyond his control, occurred that caused him financial problems that made it difficult for him to remain current on all of his accounts: his mother's medical condition; his own medical condition; his father's lengthy period of unemployment; Applicant's repeated periods of unemployment, however brief; and Applicant's layoff in September 2012. As to this last incident, Applicant was making

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<sup>81</sup> 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 [or statute of limitations]) 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)).

<sup>82</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

good strides in addressing and resolving a number of delinquent accounts when, based largely on the contents of a 2011 credit report, he was laid off and unable to continue addressing his accounts. It is of some interest that the oldest credit report reflects a number of delinquent accounts that found themselves included in the SOR, but those same accounts, no longer included in more recent credit reports, remain in the SOR. With a reduced income and increased medical expenses, Applicant exhausted his savings to meet monthly living expenses and debt. Accounts became delinquent and were either placed for collection or sold. Applicant's indebtedness was not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were caused by circumstances largely beyond his control. Under the circumstances, while he was admittedly neglectful with respect to his education loans which are now in forbearance, Applicant subsequently acted responsibly by addressing his delinquent accounts.<sup>83</sup>

### **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.<sup>84</sup>

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, accounts were placed for collection or sold.

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<sup>83</sup> "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.

<sup>84</sup> 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).

The mitigating evidence under the whole-person concept is more substantial. Applicant contacted his creditors and collection agents, and sought the assistance of a financial counselor. Applicant prioritized his accounts and resolved a number of accounts. While he was unable to commence making payments simultaneously on all of the accounts, Applicant did attempt to enter into repayment plans with his creditors. The initial result was positive. His efforts were made that much more difficult when he was laid off. Nevertheless, once he regains full employment, Applicant is prepared to resolve those remaining accounts, including those that have been deleted from his credit report, as well. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment. He possesses an excellent reputation in the workplace.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>85</sup>

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. Applicant has made some significant timely efforts to resolve his accounts, but his efforts were thwarted by his current layoff. This decision should serve as a warning that, upon regaining full employment, his failure to continue his debt resolution efforts or the accrual of new delinquent debts will adversely affect his future eligibility for a security clearance.<sup>86</sup> 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

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<sup>85</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

<sup>86</sup> 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. DOHA has no authority to attach conditions to an applicant's security clearance. See, e.g., ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 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).

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:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	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.

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ROBERT ROBINSON GALES  
Administrative Judge