DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 12-10665
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

03/18/2016

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 January 11, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On January 29, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an 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 Considerations), and detailed

[1] GE 1 (e-QIP, dated January 11, 2012).

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 February 10, 2015. On March 2, 2015, Applicant responded to two of the SOR allegations. On June 10, 2015, she responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on April 9, 2015. The case was initially assigned to another administrative judge on April 27, 2015. A Notice of Hearing was issued on June 12, 2015. On August 5, 2015, the case was transferred to me for administrative reasons. I convened the hearing as scheduled on August 6, 2015.

During the hearing, seven Government exhibits (GE) 1 through 7, and eight Applicant exhibits (AE) A through H, were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 14, 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 G through AE Q, and admitted into evidence without objection**.** The record closed on September 8, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted five of the factual allegations outright (¶¶ 1.a., 1.b., 1.f., 1.g., and 1.k.) as well as a portion of another factual allegation (¶ 1.c.) pertaining to financial considerations. He denied the remaining factual allegations or portions thereof. 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 55-year-old employee of a defense contractor. He has been a software engineer since November 2014.[2] He also held different positions with other defense contractors since January 2001. A June 1979 high school graduate,[3] Applicant earned a bachelor's of science degree in Management/Computer Information Systems in September 2014.[4] He enlisted in the U.S. Marine Corps in August 1979 and served honorably until he retired in January 2001.[5] He served on two sea service deployments.[6] During his period of service, Applicant was awarded the following awards and decorations: the Sea Service Deployment Ribbon (two awards), the Meritorious

[2] Tr. at 78.

[3] GE 1, *supra* note 1, at 8-9.

[4] AE I (Degree Certificate, dated 2014).

[5] GE 1, *supra* note 1, at 12; AE H (Statement, dated August 6, 2015), at 1, 4; Tr. at 27, 81. Although Applicant's e-QIP reflects his service as the U.S. Marine Corps Reserve, during the hearing, he corrected that designation and denied that he was in a reserve component. *See* Tr. at 84.

[6] AE K (Certificate of Release or Discharge from Active Duty (DD Form 214), dated January 31, 2001).

Mast, the Good Conduct Medal (six awards), the Certificate of Commendation (two awards), the National Defense Service Medal, the Meritorious Unit Commendation, the Navy Unit Commendation, the Marine Corps Recruiting Ribbon, and the Expert Pistol Badge.[7] He was granted a top secret security clearance with access to Sensitive Compartmented Information (SCI) in 2007 and a top secret security clearance without SCI in 2009.[8] Applicant was married in November 1984 and divorced in November 1996. He married his current wife, also a retired Marine, in May 1997.[9] He has an adopted son (born in 1986), a biological son (born in 1994), and his wife's nephew whom he considers a son.[10]

Financial Considerations[11]

It is unclear when Applicant first experienced substantial financial difficulties, but the seeds of that condition were apparently planted in 2006 when he and his wife decided to invest in what his wife called her "dream home." Their neighbor's residence sold for over $530,000 in 2005, and the housing market seemed robust and healthy. In September 2006, Applicant purchased what was to be their residence (the dream home) financed through Bank A using a split loan of about $556,630 on the first adjustable rate mortgage (ARM) loan, and $134,373 on the second loan. They placed their original residence, which they had purchased in 1999 for about $359,000 and subsequently refinanced, on the housing market. Unbeknownst to Applicant, at that time the initial rumblings of a national financial disaster commenced, and the housing market collapsed. The original residence was still on the market as housing prices plummeted. In an effort to draw income, Applicant rented that property during various periods from 2007 to 2010, but he was unable to do so after June 2010. Unfortunately, the monthly rent received was less than the monthly mortgage payments. Applicant found it difficult to keep up with his monthly mortgage payments on both properties, and in the 2009 time-frame, he had some late payments, especially when the original residence was unoccupied.

The monthly ARM mortgage payments on the dream home increased from approximately $3,000 to over $4,000 in 2007, and then they increased again the following year. In 2011, Applicant sought to work out an agreement with Bank B, the entity that had acquired Bank A, to pay the delinquent loans in an installment plan. Bank

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[7] AE K, *supra* note 6.

[8] GE 1, *supra* note 1, at 29-30; Tr. at 29-30.

[9] GE 1, *supra* note 1, at 14-16; AE H, *supra* note 5, at 1.

[10] GE 1, *supra* note 1, at 18-19; Tr. at 28, 80-81.

[11] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 18, 2012); GE 5 (Equifax Credit Report, dated November 7, 2014); GE 2 (U.S. Bankruptcy Court, Chapter 13 Petition File, dated September 27, 2011); GE 3 (U.S. Bankruptcy Court, Chapter 13 Petition File, dated June 12, 2012); GE 4 (U.S. Bankruptcy Court, Chapter 13 Petition File, dated February 8, 2013); Applicant's Answer to the SOR, dated March 2, 2015. More recent information can be found in the exhibits furnished and individually identified.

B rejected the idea. In August 2011, Bank B agreed to allow the house to be placed on the market as a short sale. Within 30 days of that decision, Bank B issued a foreclosure notice. Applicant engaged the services of an attorney in an effort to save the residence.[12]

(SOR ¶ 1.a.): In September 2011, Applicant and his wife jointly filed a voluntary petition for bankruptcy under Chapter 13, listing $1,417,399.67 in liabilities, listing state and federal income tax, charge accounts, credit cards, student loans, an automobile loan (for a 2005 Lexus), and lines of credit. The petition reflected total assets of $892,675, including two real estate properties with a combined worth of $839,600 and personal property worth $53,075.[13] The Docket Text of the U.S. Bankruptcy Court indicated the presence of plan deficiencies and objections by the Trustee. Although the plan was modified, the case was dismissed on May 22, 2012.

(SOR ¶ 1.b.): On June 12, 2012, Applicant and his wife again jointly filed a voluntary petition for bankruptcy under Chapter 13 (with the same attorney, Trustee, and judge), listing $1,371,062 in liabilities, listing state and federal income tax, charge accounts, credit cards, student loans, (two automobile loans for a 2005 Lexus and a 2012 Toyota Camry), and lines of credit. The petition reflected total assets of $975,076, including two real estate properties with a combined worth of $900,000 and personal property worth $75,076.[14] Once again, the Docket Text of the U.S. Bankruptcy Court indicated the presence of plan deficiencies and objections by the Trustee. Although the plan was modified, the case was dismissed on September 19, 2012.

(SOR ¶ 1.c.): On February 8, 2013, Applicant and his wife again jointly filed a voluntary petition for bankruptcy under Chapter 13 (with the same attorney and Trustee, but a different judge), listing $980,341.82 in liabilities, listing state and federal income tax, charge accounts, credit cards, student loans, automobile loans, and lines of credit. The petition reflected total assets of $618,497, including two real estate properties (including the original residence and another property, but not the dream home) with a combined worth of $505,000 and personal property worth $113,497. Once again, the Docket Text of the U.S. Bankruptcy Court indicated the presence of plan deficiencies and objections by the Trustee. The case was dismissed on June 4, 2013.

Applicant attributed the repeated bankruptcy filings to his attorney's inability to get the necessary numbers entered or amended correctly. Further, he claims he was unaware that there were separate filings and was of the belief that they were all related as one bankruptcy case. Applicant was advised by his attorney to not make any payments on his listed accounts during the pendency of the bankruptcy. As a result,

[12] AE A (Letter, dated April 22, 2013). Applicant's attorney indicated that the bankruptcy filing was "used as a mechanism in order to deal with some mortgage irregularities that they faced with their lender." The irregularities were not specified.

[13] It should be noted that the SOR erroneously alleged liabilities of $892,675, *but see* GE 2, *supra* note 11, Summary of Schedules, at 1.

[14] It should be noted that the SOR erroneously alleged liabilities of $975,076, *but see* GE 3, *supra* note 11, Summary of Schedules, at 1.

accounts that had been current became delinquent. In addition, Applicant's wife became depressed, and Applicant and his wife encountered some marital difficulties. When the second bankruptcy was dismissed, in order to deal with her depression, she started gambling without Applicant's knowledge. When he learned of her actions and her losses of $6,000 in December 2012 or January 2013, he convinced her to stop.

Following his attorney's guidance, Applicant approached Credit Union C, the holder of the mortgage on the original residence, and requested a voluntary foreclosure on the property. In January 2013, the original residence was foreclosed upon and title was transferred back to Credit Union C. In January 2012, the remaining balance on the mortgage was $311,347, down from the original $359,000. After Credit Union C sold the foreclosed property for $360,000, the amount realized apparently wiped out any potential deficiency, and Applicant does not owe any money to Credit Union C. However, there was apparently a second mortgage on the property held by Bank D for $150,000. The remaining unpaid balance on that mortgage was approximately $141,195.60. That balance was forgiven in May 2015.[15]

Shortly after filing his most recent bankruptcy, in March 2013, Applicant was informed that the dream house had been foreclosed upon and sold as well. There is no evidence of a deficiency balance on the first loan, and Applicant's November 2014 credit report reflects a zero remaining balance. There is an allegedly remaining past-due second loan balance of $59,649 on the total loan balance of $134,373. It is unclear if that balance had been eliminated by the foreclosure. Applicant engaged the professional services of a credit repair firm to assist him in correcting erroneous entries on his credit report, and while they were successful with certain entries, they were unsuccessful in dealing with other entries.[16] This debt seems to be one of the unsuccessful efforts.

In addition to the three Chapter 13 bankruptcy filings, the SOR identified seven purportedly continuing delinquent accounts, totaling approximately $168,903 (not including a specified amount for one second mortgage), which had been placed for collection or foreclosed, as well as tax debts to the state and Federal Government. He has already resolved, or is in the process of resolving most of the accounts.

Those debts which Applicant has already resolved, or is in the process of resolving, are described as follows: unpaid income taxes owed to the U.S. Internal Revenue Department (IRS) for the tax year 2009 in the amount of $3,452.97 for which Applicant has an installment agreement under which he is paying $250 each month; and unpaid income taxes owed to the IRS for the tax year 2013 in the amount of $1,922.47 for which Applicant has another installment agreement under which he is paying $500 each month (SOR ¶ 1.d.), leaving a combined remaining balance of

[15] AE Q (Letter, dated May 7, 2015); AE P (Statement, undated); AE G (Monthly Account Statement, dated May 19, 2010); Tr. at 44-47.

[16] AE O (Statement, undated).

$6,943.21, including penalties and interest, reduced by a credit of $2,140;[17] unpaid state income taxes for the tax year 2009 in the amount of $1,475 for which Applicant had a payment arrangement and he made a final payment of $1,612.05, leaving a zero balance;[18] the second mortgage loan with Bank D for $141,195.60, described above (SOR ¶ 1.h.), which has been forgiven, leaving a zero balance; a credit card with a high credit of $7,338 and a past-due balance of $6,638 (SOR ¶ 1.i.) that was transferred or sold to a debt purchaser who increased the remaining balance to $7,338.29. In March 2014, Applicant and the creditor established a repayment agreement under which Applicant is to make monthly $100 payments, and he has done so;[19] and a credit card with a high credit of $7,164 and a past-due balance of $5,687 (SOR ¶ 1.j.) that was transferred or sold to a debt purchaser who increased the remaining balance to $7,163.58. In March 2014, Applicant and the creditor established a repayment agreement under which Applicant is to make monthly $211 payments, and he has done so.[20]

There are two accounts which have not been entered into the resolution process. As noted above, there is an allegedly remaining past-due second loan balance of $59,649 on the total loan balance of $134,373 (SOR ¶ 1.g.) opened with Bank A that was obtained by Bank B on the dream home. It is unclear if that balance had been eliminated by the foreclosure. Applicant's efforts to enter into a repayment plan with Bank B were rejected. In August 2011, Bank B agreed to allow the house to be placed on the market as a short sale, but within 30 days of that decision, Bank B issued a foreclosure notice – a rather clear indication that Bank B was unwilling to work with Applicant in resolving the delinquency to the satisfaction of both parties. Instead, it wanted the property. The property was foreclosed upon. While there is little evidence as to the amount realized by Bank B following the sale of the property, and it is unclear if the amount satisfied the first mortgage loan, it is equally unclear if it satisfied the second mortgage loan as well.[21]

[17] AE B (Installment Agreement Payment Voucher, dated February 25, 2015); AE J (Installment Agreement Payment Voucher, dated August 26, 2015); AE H, *supra* note 5, at 3.

[18] AE C (Official Payment, dated February 27, 2015); AE F (Payment Arrangement Coupon, dated July 23, 2015); AE N (Notice, dated August 27, 2015).

[19] AE D (Repayment Agreement, dated March 19, 2014); AE M (Transaction History, undated).

[20] AE E (Repayment Agreement, dated March 19, 2014); AE M, *supra* note 19.

[21] If a second mortgage lender does not receive enough money from the first mortgage lender's foreclosure to satisfy the debt, it can sue the borrower in court for the difference. The promissory note that was signed when the second mortgage was issued serves as a promise to pay. The second mortgage lender can sue the purchaser on that promissory note. When the house sells at foreclosure auction, any property tax and IRS liens on the property are paid off first. Whatever is left goes to the first mortgage holder, to pay the mortgage debt, interest, and the costs of foreclosure. Once those amounts are paid off, the second mortgage lender is next in line.

Often, foreclosure sales don't yield enough for the first mortgage lender to get fully paid off. As foreclosure doesn't discharge the unpaid mortgage debt, second-mortgage lenders can often sue the borrower for what is still owed, depending on the state in which the property is located. The property in this instance is located in a state that authorizes such lawsuits. Since going to court costs money, some lenders may do a cost-benefit analysis to see if a

In this case, the mortgage lender for both mortgages is the same. The foreclosure occurred in early 2013, and while there appears to be a continued opportunity to file suit against Applicant, the inaction by Bank B, as both the first and the second mortgage lender, might be construed to mean either a disinterest in doing so or that the loan was paid off in the foreclosure sale. As of August 2015, Bank B was still not interested in accepting a payment plan.

The one other remaining unresolved debt is an unspecified line of credit with a high credit of $2,776, a past-due balance of $438, and an overall balance of $2,395 (SOR ¶ 1.k.). Applicant disputed the account and indicated that his credit repair firm was assisting him in correcting the erroneous entry on his credit report. He indicated that they were successful in having the entry removed from one of the three credit reporting agencies, but he failed to identify that particular agency. He subsequently indicated he was disputing the amount, but he failed to say why. Applicant explained that the account referred to a time-share property program that he did not pursue after completing some documentation.[22] He failed to submit any documentation to substantiate the basis of his dispute, and he failed to indicate what actions, other than those of the credit repair firm, were taken to actually resolve the dispute. The debt is listed in Applicant's November 2014 credit report.

Applicant's family income during the period 2009 through 2012 came from various sources. In 2009, he received a pension of $22,332; a military retirement of $22,537; and rental income of $24,000, for a combined total of $68,869. In 2010, he received a pension of $22,332; a military retirement of $23,450; and rental income of $24,000, for a combined total of $69,782. In 2011, he received a salary of $107,329.53; a pension of $16,749; a military retirement of $17,946; and rental income of $18,000; and his wife received an income of $116,082.52, for a combined total of $276,107.05. In 2012, he received a salary of $111,970.69; a pension of $23,168; no military retirement; and no rental income; and his wife received an income of $122,190.40; and a military retirement of $24,971, for a combined total of $282,300.09.[23]

In February 2013, in their bankruptcy petition, Applicant and his wife listed their combined average net monthly income as $13,488.04; monthly expenses of $10,442.85; and a monthly remainder of $3,045.19 available for discretionary saving or spending.[24] Although requested to furnish a Personal Financial Statement to reflect his 2015 financial profile, Applicant failed to do so. He received financial counseling associated with at least one of his bankruptcy filings. While he is in the process of resolving nearly all of the delinquent accounts, with little progress with the two

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suit is worth the expense. In some instances, the lender and the borrower may be able to negotiate a resolution acceptable to both parties.

[22] Tr. at 72-74.

[23] GE 2, *supra* note 11, at 28; GE 3, *supra* note 11, at 26; GE 4, *supra* note 11, at 34.

[24] GE 4, *supra* note 11, at 28.

remaining accounts, it appears that Applicant's financial status has improved significantly, and that his financial problems are finally under control.

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."[25] 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."[26]

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."[27] 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.[28]

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

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

[27] "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).

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[29]

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."[30] 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. Applicant's financial problems arose sometime around September 2006 when he purchased his wife's dream home and was unable to sell or rent his original residence. He subsequently fell behind in his monthly mortgage payments and

[29] *Egan*, 484 U.S. at 531.

[30] *See* Exec. Or. 10865 § 7.

federal and state income tax payments. Upon filing the first of three bankruptcies under Chapter 13, he stopped making monthly payments on his other accounts. Two residences were lost to foreclosure. Other accounts became delinquent and they were placed for collection. Applicant's three Chapter 13 bankruptcy proceedings were subsequently dismissed. 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."[31] Under AG ¶ 20(e) it is potentially mitigating if "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(b), 20(c), and 20(d) all apply. AG ¶ 20(e) does not apply. With the exception of Applicant's wife's gambling losses of $6,000, Applicant's financial problems were not caused by his personal frivolous or irresponsible spending. Also, despite purchasing a 2012 Toyota Camry in the midst of his bankruptcy filings, it does not appear that he spent beyond his means. Instead, his initial financial problems occurred as a result of poor timing when he purchased his wife's dream home during a period when the housing market seemed robust and healthy. His intentions of renting or selling his original residence were ultimately dashed when the national economy and the associated housing market collapsed shortly thereafter. Monthly ARM mortgage payments increased repeatedly, and the rents he received were less than his mortgage obligations. That period of personal financial devastation was largely beyond his control.

[31] 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)).

Following the guidance of an attorney, Applicant filed for bankruptcy protection under Chapter 13, essentially to forestall foreclosure proceedings, but the three filings were unsuccessful and the cases were dismissed. Complying with his attorney's continuing guidance, Applicant did not make his normal monthly payments on various accounts, causing them to become delinquent. Both the dream home and the original residence were foreclosed upon.

Applicant kept in contact with his creditors and never shied away from his fiscal responsibilities. He worked with two mortgage lenders, and after a voluntary foreclosure of his original residence, the first mortgage loan was satisfied, and the second mortgage loan balance was forgiven. His efforts with Bank B continue to be frustrating. When Applicant attempted to work with Bank B on an installment plan for delinquent payments on the dream home, his offer was rejected. When he sought permission to have the house placed on the market as a short sale, within 30 days of granting Applicant permission to do so, Bank B issued a foreclosure notice. Bank B held both the first and the second mortgage loans on the dream home. The first mortgage appears to have been satisfied by the foreclosure, but it remains unclear what the present status of the second mortgage loan might be. As recently as August 2015, Bank B has not shown any interest in accepting a payment plan or seeking payment on the second mortgage.

As to the remaining delinquent accounts, Applicant has already resolved, or is in the process of resolving all but one of them. He has installment agreements with the IRS and repayment agreements with the various other creditors and debt purchasers. Applicant disputes the unspecified line of credit account related to a time-share property program he apparently entered into, but he failed to submit any documentation to substantiate the basis of his dispute, and he failed to indicate what actions, other than those of the credit repair firm, were taken to actually resolve the dispute.

In February 2013, in their most recent bankruptcy petition, Applicant and his wife listed their combined average net monthly income as $13,488.04; monthly expenses of $10,442.85; and a monthly remainder of $3,045.19 available for discretionary saving or spending. He received financial counseling associated with at least one of his bankruptcy filings. While he is in the process of resolving nearly all of the delinquent accounts, with little progress on the two remaining accounts, it appears that Applicant's financial status has improved significantly, and that his financial problems are finally under control. He appears to have acted prudently and responsibly with the assistance of attorneys. Applicant's actions, under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.[32]

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):

[32] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

> (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.[33]

There is some evidence against mitigating Applicant's conduct. Applicant failed to insure that his mortgages on his wife's dream home and his original residence were kept current and that his normal monthly payments for other accounts were made. He failed to make timely federal and state income taxes over several years. He filed for bankruptcy protection under Chapter 13 on three occasions and eventually all three cases were dismissed. He lost both residences to foreclosure. Applicant's wife incurred $6,000 in gambling losses during the period because of her depression.

The mitigating evidence under the whole-person concept is more substantial. He has been a software engineer since November 2014, and he also held different positions with other defense contractors since January 2001. He is an honorably retired member of the U.S. Marine Corps. He served on two sea service deployments. He has held a top secret security clearance with SCI access. His wife is also a retired Marine. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. Applicant's financial problems were caused, almost exclusively by his poor timing in purchasing a residence just before the national economy and the housing market collapsed. He was a normal individual hoping to invest in desirable real estate – his wife's dream home – when his economic world capsized. Mortgage payments soared while property values "tanked." He was unable to sell one property and subsequently unable to even rent it. Instead of ignoring his creditors, Applicant attempted to work with them. He commenced a course of conduct to address and resolve his financial problems, and he hired several attorneys to assist him. As noted above, Applicant has resolved, or is in the process of resolving, nearly all of those delinquent accounts. There are installment agreements and repayment agreements in place, and Applicant has been routinely making the agreed monthly payments, on nearly all of the remaining accounts, including his federal and state income taxes. With the exception of one second mortgage on a foreclosed property and the time-share property program line of credit, there are no other

[33] *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).

delinquent accounts. There are clear indications that Applicant's financial problems are under control.

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. [34]

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts, and he started to do so before the SOR was issued. This decision should serve as a warning that Applicant's failure to continue his debt resolution efforts pertaining to his remaining delinquent accounts, or the actual accrual of new delinquent debts, will adversely affect his future eligibility for a security clearance.[35]

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 Applicant has mitigated the security concerns arising from his financial considerations. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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

[35] 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 Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a security clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." Nevertheless, the Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions, such as an interim, conditional, or probationary status, 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).

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

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