



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 12-10756  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

04/05/2016

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On April 30, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On May 30, 2013, he submitted another e-QIP.<sup>2</sup> On May 21, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to 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

<sup>1</sup> Item 4 (e-QIP, dated April 30, 2012).

<sup>2</sup> Item 7 (e-QIP, dated May 30, 2013).

made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive 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 June 4, 2015. In a sworn statement, dated June 8, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.<sup>3</sup> A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on August 18, 2015, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on August 28, 2015. A response was due by September 27, 2015. On September 9, 2015, Applicant submitted his response with attachments. Department Counsel had no objections to the documents submitted, and I marked them as Applicant Items (AI) A through F. The case was assigned to me on October 16, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, acknowledged, and addressed the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. through 1.d.). 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 58-year-old employee of a defense contractor. He has been serving as a general maintenance worker with his current employer since January 2012.<sup>4</sup> He also held a number of different positions, including that of over the road truck driver, heavy equipment operator, and warehouse worker, with other employers over the years. A June 1976 high school graduate, Applicant earned a commercial driver's certificate and license from a technical college, but did not earn a degree.<sup>5</sup> He enlisted in the Army National Guard in April 1976 and served honorably until he was discharged in April 1997.<sup>6</sup> Applicant has never held a security clearance.<sup>7</sup> Applicant was married in August 1977.<sup>8</sup> He has two children, born in 1978 and 1979.<sup>9</sup>

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<sup>3</sup> Item 3 (Applicant's Answer to the SOR, dated June 8, 2015).

<sup>4</sup> Item 7, *supra* note 2, at 10-11.

<sup>5</sup> Item 6 (Personal Subject Interview, dated May 21, 2012), at 1; Item 7, *supra* note 2, at 9-10.

<sup>6</sup> Item 7, *supra* note 2, at 17-18. It is unclear if Applicant was merely discharged or if he retired.

<sup>7</sup> Item 7, *supra* note 2, at 37-38.

<sup>8</sup> Item 7, *supra* note 2, at 20-21.

## Financial Considerations<sup>10</sup>

Applicant's employment/unemployment record is similar to a swinging door, for Applicant has routinely gone from one status to the other status from 2009 through January 2012.<sup>11</sup> From April 1990 until February 2009, Applicant was employed by a tire manufacturer. He lined up a new job with a company in another state, and he relocated his family to that other state. When he arrived, he was confronted with the realization that his new would-be employer had implemented a hiring freeze before he arrived, and his job was no longer available. Applicant's wife was also unemployed due to the move. She found a part-time job with a large box store, and Applicant worked on his commercial driver's certificate. While searching for jobs, they used Applicant's savings and 401(k) and retirement money to pay their routine bills. Their 401(k) funds enabled them to address the routine bills, but the withdrawal of that money also resulted in federal income tax and tax penalties for early withdrawal. Applicant found a temporary full-time job in September 2009, and his wife found a full-time job in December 2009. Applicant's temporary employment contract expired in December 2009. He was again unemployed from December 2009 until March 2010. He did not qualify for unemployment compensation during that period. He obtained another job in March 2010 and retained it until June 2011. His next job only lasted from June 2011 until October 2011. He was unemployed from October 2011 until January 2012, when he obtained his current job. His wife was laid off and remained unemployed from April 2011 until January 2014.

Because money was so tight over the entire period, they struggled to pay their bills. Their family helped when they could, and Applicant's wife's unemployment compensation also offered some relief. But those sources ceased, and the financial struggles remained. As a result, some accounts became delinquent. While he timely filed his state and federal income tax returns, some income taxes went unpaid. State and federal income tax liens were filed. A voluntary repossession occurred, and several accounts were placed for collection, charged off, and transferred or sold to other commercial entities.

In April 2013, Applicant and his wife explored the engagement of a money management organization to obtain a variety of financial services. A budget was created and assessed; the causes of his financial hardship were identified; financial goals, such as reducing debt, getting control of a budget, paying off debt, and building a savings account, were discussed; and a financial action plan was established. A debt repayment plan forecast was prepared, listing nearly all delinquent accounts. The proposed

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<sup>9</sup> Item 7, *supra* note 4, at 24-25.

<sup>10</sup> General source information pertaining to the financial issues and accounts discussed below can be found in the following exhibits: Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 4, 2012); Item 8 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 15, 2013); Item 10 (Equifax Credit Report, dated March 23, 2015); Item 6, *supra* note 5; Item 9 (Personal Subject Interview, dated July 2, 2013). More recent information can be found in the exhibits furnished and individually identified.

<sup>11</sup> It should be noted that dates used to describe periods of employment and unemployment pertaining to both Applicant and his wife are approximations, because Applicant's explanations in various exhibits (such as his two e-QIPs, his two Personal Subject Interviews, and his Answer to the SOR) are somewhat inconsistent.

monthly payment of \$1,335 (\$1,434, including setup fee and guidebooks, for the first month) was simply too much for Applicant's budget, and he had to decline the service.<sup>12</sup>

Applicant contacted his creditors and many of them agreed to work with Applicant in an effort to establish repayment plans or other methods of resolving his debts. Accounts were closed and repayment agreements successfully made and paid off or settled. Two creditors were difficult to deal with for they wanted payments that were too high for Applicant to make.

The SOR identified four purportedly continuing delinquent accounts, totaling approximately \$51,295, which had been placed for collection. Those debts and their respective current status, according to the above-cited credit reports, Applicant's e-QIPs, comments to investigators from the U.S. Office of Personnel Management (OPM), and his Answer to the SOR, are described as follows:

(SOR ¶ 1.a.): This is a credit union credit card with a high credit of \$2,500 that was sold to the financial services company identified in the SOR in 2006 at a time when the account was current. The credit limit was increased to \$8,500 and the high credit was increased first to \$8,590 and then to \$8,835. In 2013, the account became 60-days past due in the amount of \$435. In April 2013, Applicant contacted the creditor and sought a repayment plan but the proposed monthly payment was simply too much for Applicant at that time. He contacted the creditor again in June 2013 and sought approval to be enrolled in their hardship program, but his request was denied. He was, however, enrolled in their special payment relief program for 12 months with monthly payments of \$137. Applicant made the monthly payments, and when the program ended in June 2014, he again attempted to enroll in the hardship program. He was accepted, but the required monthly payments of \$187 were simply too much, and he countered with an offer of between \$30 and \$75 per month. Applicant made such payments "when [he] could" until April 2015 when his account was blocked. The account had been transferred or sold to another company. Applicant called the new company and they agreed to a monthly repayment schedule for 24 months, starting in June 2015, with Applicant making monthly payments of \$85.20 by automatic electronic transfer. At the end of the plan in June 2017, there will be a reevaluation. Monthly transfers have been made.<sup>13</sup> The account is in the process of being resolved.

(SOR ¶ 1.b.): This is a bank credit card for an account with a home repair store with a credit limit of \$3,000 and a high credit of \$3,134 that became 30 days past due in the amount of \$156 in 2013. By early 2015 the past-due balance had increased to \$655. In April 2013, Applicant contacted the creditor and sought to enroll in their hardship program. He was successful in gaining entry into a temporary repayment program under which he was to make monthly payments of \$36 for 12 months. Applicant made the

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<sup>12</sup> AI F (Financial Plan, dated April 12, 2013); Item 3, *supra* note 3, at 2.

<sup>13</sup> Item 3 (Payment Agreement, dated June 11, 2015); Item 3, *supra* note 3, at 1-2; Item 3 (Collection Letter and Payment Coupon, dated April 9, 2015); AI E (Collection Letters, Payment Coupons, and Checks, various dates). Although Applicant reported that he made payments for 12 months under the special payment relief program, he failed to furnish any documentation related to the program or supporting his contentions that he had made the payments under the program.

monthly payments, and when the program ended in June 2014, he again attempted to enroll in the hardship program or some other repayment program. In February 2015 – three months before the SOR was issued – an agreement was reached with Applicant making monthly payments of \$66 by automatic electronic transfer. Monthly transfers have been made.<sup>14</sup> The account is in the process of being resolved.

(SOR ¶ 1.c.): This is a state income tax lien in the amount of \$11,490 filed in August 2010 because of Applicant's failure to pay his income tax for an unspecified period believed to be tax year 2009. Applicant enrolled in an installment agreement with the state department of revenue under which he agreed to make monthly payments of \$325 until the balance was paid off. Applicant made the monthly payments during the course of the agreement, and on December 12, 2013 – approximately 18 months before the SOR was issued – the balance was paid off to the satisfaction of the state. Despite the resolution of the debt, Applicant's March 2015 credit report continues to erroneously reflect that the lien remains unpaid and not released or settled.<sup>15</sup> Nevertheless, despite the possibility that the lien may not have been released, or possible incorrect reporting, the account has been resolved.

(SOR ¶ 1.d.): This is a federal income tax lien in the amount of \$28,451 filed by the Internal Revenue Service (IRS) in August 2011 because of Applicant's failure to pay his income taxes, penalties, and interest for tax years 2009 (\$10,902.39) and 2010 (\$17,549.42). Applicant approached the IRS in April 2010 in an effort to obtain a direct debit installment agreement. He also made a payment of \$2,800. Under that agreement, Applicant initially agreed to make monthly payments of \$600 by automatic electronic transfer until the balance was paid off. In June 2011, the installment agreement had to be modified to \$250 per month because of the family layoffs. The monthly \$600 payments were routinely made from July 2010 through May 2011. The monthly \$250 payments were routinely made from August 2011 through April 2013. In June 2013, the payments were reduced again to \$100 per month with an understanding that they would increase to \$325 in May 2014. The monthly payments were routinely made during that entire period. Applicant paid \$6,600 to the IRS between July 2010 and July 2011; \$2,750 between July 2011 and July 2012; \$2,600 between July 2012 and July 2013; \$1,650 between July 2013 and July 2014; and \$3,900 between July 2014 and July 2015. The monthly payments are continuing.<sup>16</sup> While the tax liens are still in place, it is clear that, since April 2010 – over five years before the SOR was issued – Applicant has been in the process of resolving the account.

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<sup>14</sup> Item 3 (Payment Agreement, dated February 6, 2015); Item 3, *supra* note 3, at 3); AI C (Checks, various dates). Although Applicant reported that he made payments for 12 months under the temporary repayment program, he failed to furnish any documentation related to that program or supporting his contentions that he had made the payments under the program.

<sup>15</sup> Item 3 (Agreement Letter, dated December 13, 2013); Item 3, *supra* note 3, at 3; Item 6, *supra* note 5, at 3-4; Item 7, *supra* note 2, at 40-41; Item 10, *supra* note 10, at 4.

<sup>16</sup> Item 3, *supra* note 3, at 3-4; Item 3 (IRS Letters and Annual Installment Agreement Statements, various dates); Item 3 (Notice of Federal Tax Lien, dated August 22, 2011); AI D (Transaction Details, various dates).

In April 2013, Applicant's budget listed a net monthly income (for only himself, for his wife was still unemployed) as \$2,026; monthly expenses of \$3,200.69; and a monthly deficit of minus \$1,959.69.<sup>17</sup> Applicant did not submit a Personal Financial Statement reflecting his current net monthly income, his estimated monthly expenses, his total debt payments (aside from the monthly payments described above), or any monthly remainder available for discretionary spending or savings. While he is in the process of resolving his three remaining accounts, because of his wife's employment, it now appears that Applicant's financial problems are under control and that his financial status has improved significantly.

## **Work Performance and Character References**

Applicant's division manager believes that Applicant is an outstanding employee, and he characterized him as trustworthy, honest, and dependable. Applicant performs his job very well, and he goes out of his way to assist others.

## **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>18</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>19</sup>

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.

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<sup>17</sup> AI F, *supra* note 12, at 2-3.

<sup>18</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>19</sup> 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.”<sup>20</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>21</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>22</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>23</sup> 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:

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<sup>20</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>21</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>22</sup> *Egan*, 484 U.S. at 531.

<sup>23</sup> 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. Applicant's significant financial problems arose in 2010 when he had insufficient money to maintain all of his monthly payments and was unable to pay his federal and state income taxes. He withdrew funds from his 401(k) and incurred additional income tax, penalties, and interest for doing so. Various accounts became delinquent. Some of those accounts, both SOR and non-SOR, were placed for collection, charged off, and transferred or sold to other commercial entities. A voluntary repossession occurred. State and federal income tax liens were filed. 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>24</sup>

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<sup>24</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)).



AG ¶ 20(a) partially applies. AG ¶¶ 20(b), 20(c), and 20(d) apply. The nature, frequency, and relative recency of Applicant's financial difficulties, arising primarily because of his and his wife's repeated periods of unemployment since about 2010, facilitate the conclusions that those financial issues were rather frequent, but they occurred under such circumstances that they are unlikely to recur. Applicant's financial problems were not caused by his frivolous or irresponsible spending, and he did not spend beyond his means. Instead, those financial problems were largely beyond his control. As noted above, Applicant's employment/unemployment record is similar to a swinging door, for he routinely went from one status to the other status from 2009 through January 2012. For nearly two decades before that, Applicant had been employed by one employer. He lined up a new job with a company in another state, and he relocated his family to that other state. When he arrived, he was confronted with the realization that his new would-be employer had implemented a hiring freeze before he arrived, and his job was no longer available. Applicant's wife was also unemployed due to the move. During the ensuing years, both Applicant and his wife had the misfortune to be unemployed on a periodic basis. During periods of unemployment and underemployment they used Applicant's savings and 401(k) and retirement money to pay their routine bills. Unfortunately, the withdrawal of his 401(k) funds resulted in federal income tax and tax penalties for early withdrawal. In January 2012, Applicant obtained his current job. His wife finally found a job in January 2014.

Applicant never shied away from his fiscal responsibilities. He did not ignore his creditors. Instead, he initiated a good-faith effort to repay his overdue creditors and set upon a course to resolve his debts. In April 2013, Applicant and his wife explored the engagement of a money management organization to obtain a variety of financial services. A budget was created and assessed; the causes of his financial hardship were identified; financial goals, such as reducing debt, getting control of a budget, paying off debt, and building a savings account, were discussed; and a financial action plan was established. A debt repayment plan forecast was prepared, listing nearly all delinquent accounts. The proposed monthly payment of \$1,335 (\$1,434, including setup fee and guidebooks, for the first month) was simply too much for Applicant's budget, and he had to decline the service. Instead, with the information he had learned, Applicant contacted his creditors and many of them agreed to work with Applicant in an effort to establish repayment plans or other methods of resolving his debts. A variety of non-SOR and SOR-related accounts were closed and repayment agreements successfully made and paid off or settled well before the SOR was issued.

The SOR listed four accounts that were purportedly delinquent and unpaid as of May 2015. However, in 2010, Applicant entered into repayment plans with the state and IRS, and in 2013, he did so with the two credit card creditors. Applicant's state income tax balance of \$11,490 was paid off in December 2013 – approximately 18 months before the SOR was issued. His three remaining repayment plans call for automatic electronic transfers, and they have been continuously been made since those plans were made or modified. Applicant appears to have acted prudently and responsibly in bringing his financial problems under control, and his financial status has improved

significantly. Applicant's actions, under the circumstances confronting him, no longer cast doubt on his current reliability, trustworthiness, or good judgment.<sup>25</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>26</sup>

There is some evidence against mitigating Applicant's conduct. Applicant failed to make his monthly payments on a variety of accounts, and they became delinquent. Because Applicant failed to timely pay his state and federal income taxes, in August 2010, the state department of revenue filed an income tax lien in the amount of \$11,490, and in August 2011, the IRS filed an income tax lien, in the amount of \$28,451, against Applicant.

The mitigating evidence is more substantial and compelling. Applicant served honorably with the Army National Guard. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. Applicant's financial problems were not caused by his frivolous or irresponsible spending, and he did not spend beyond his means. Rather, they were largely beyond his control. Attempting to better his family life and financial situation, Applicant lined up a new job with a company in another state, and he relocated his family. Upon his arrival, the new company advised him that his new job was no longer available because a hiring freeze had been implemented. Periodic unemployment and underemployment for both Applicant and his wife ensued. He resolved a number of accounts and entered into

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<sup>25</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>26</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. June 2, 2006).

repayment plans well before the SOR was issued. In 2010, Applicant entered into repayment plans with the state and IRS, and in 2013, he did so with the two credit card creditors. The state tax lien has been resolved and the remaining IRS tax lien and the two credit card accounts are in the process of being resolved under repayment plans with automatic electronic transfers of funds. There are clear indications that Applicant's financial problems are being resolved and 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.<sup>27</sup>

Applicant's credit reports include numerous positive entries indicating most debts are paid as agreed. Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts, and he started to do so several years before the SOR was issued. Based on the evidence presented, I conclude that he will continue to do so.

Overall, the evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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<sup>27</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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

### **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