



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



In the matter of: )

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Applicant for Security Clearance )

) ISCR Case No. 13-01004<sup>1</sup>

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

03/10/2014

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant is an Army combat veteran. His statement of reasons (SOR) lists 16 delinquent or charged off accounts totaling \$92,319. Four debts were withdrawn, reducing the debt total to \$69,372. In the previous year, he paid \$9,680 towards his largest SOR debt. Several other debts are paid or otherwise resolved. He made sufficient progress resolving his financial problems to mitigate financial considerations concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 14, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) (GE 1). On October 29, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

<sup>1</sup>I corrected the number on the SOR to 13-01004. (Tr. 3)

The SOR alleged security concerns under Guideline F (financial considerations). (HE 2) The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On November 8, 2013, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On January 17, 2014, Department Counsel was ready to proceed on Applicant's case. On February 3, 2014, DOHA assigned Applicant's case to me. On February 4, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for February 18, 2014. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of the hearing, and his hearing was held as scheduled by video teleconference. (Tr. 18) At the hearing, Department Counsel offered three exhibits, and Applicant offered eight exhibits. (Tr. 13-14, 27-28; GE 1-3; AE A-H) There were no objections, and I admitted GE 1-3 and AE A-H. (Tr. 27-28) On February 27, 2013, DOHA received the transcript of the hearing. At Applicant's request, I held the record open until March 7, 2014. (Tr. 79-80) On March 6, 2014, I received 10 exhibits from Applicant, which were admitted without objection. (AE I-R)

### **Procedural Issue**

Department Counsel made a motion to withdraw the allegation in SOR ¶ 1.a (\$21,488) as a duplicate of the debt in SOR ¶ 1.b (\$30,937), and he moved to withdraw the allegation in SOR ¶ 1.m (\$324) as a duplicate of the debt in SOR ¶ 1.j (\$328). (Tr. 20-21) He moved to withdraw the allegations in SOR ¶¶ 1.n (\$884) and 1.o (\$251) as those debts were allocated to Applicant's spouse under their divorce decree. (Tr. 20-21) There were no objections, and I granted Department Counsel's motion. (Tr. 21)

### **Findings of Fact<sup>2</sup>**

In Applicant's response to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.m, and 1.p, and he explained why he denied responsibility for the debts in SOR ¶¶ 1.n and 1.o. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 35-year-old helicopter-repair technician, who has worked for the same defense contractor since 2005. (Tr. 5, 9) In 1997, he received a graduate equivalency diploma (GED). (Tr. 6) He has three college credits. (Tr. 7) He married in 1999, and he was divorced in October 2008. (Tr. 5; SOR response) He has two children who are ages 9 and 13. (Tr. 6)

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<sup>2</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant served on active duty in the Army from April 1999 to January 2005. (AE D) His military occupational specialty was CH-47 helicopter repair. (AE D) He left active duty as a sergeant (E-5); he was discharged for medical reasons,<sup>3</sup> and he received an Honorable discharge. (Tr. 7) He is receiving \$522 a month from the Department of Veterans Affairs (VA). (Tr. 8) He served in Afghanistan from January 2002 to June 2002. (AE D) There is no evidence of illegal drug use. He disclosed some financial delinquencies on his May 14, 2013 SF 86.

## Financial Considerations

Applicant indicates the primary source of his financial plight was his divorce, which was final in 2008. Almost all of his SOR debts predate his divorce.

Applicant was injured in a vehicle accident in July 2008; however, he was not unemployed and did not receive a decrease in his income. (Tr. 30-31) In January 2011, Applicant's claim was settled for \$32,500. (AE Q) Applicant received about \$14,000 after his attorney and costs such as medical expenses were paid. (Tr. 32)

Applicant's history of delinquent debt is documented in his credit reports, SOR response, and hearing record. Applicant's SOR lists 16 delinquent or charged off accounts totaling \$92,319. Four debts were withdrawn, reducing the debt total to \$69,372. The remaining 12 SOR debts are as follows: (1) vehicle debt in ¶ 1.b (\$30,937); (2) vehicle debt in ¶ 1.c (\$16,559); (3) mortgage debt in ¶ 1.d (\$14,241); (4)-(5) two bank debts in ¶ 1.e (\$3,367) and ¶ 1.f (\$2,389); (6)-(11) six medical debts totaling \$1,551 as follows: ¶ 1.g (\$106); ¶ 1.h (\$294); ¶ 1.i (\$178); ¶ 1.k (\$496); ¶ 1.l (\$334); and ¶ 1.p (\$143); and (12) communications debt in ¶ 1.j (\$328).

The vehicle repossession debt in SOR ¶ 1.b (\$30,937) is being paid through garnishment of Applicant's salary. (Tr. 40-42) In 2007, Applicant purchased a truck for about \$22,000. (Tr. 39) He made monthly payments of about \$700 monthly for about six months. (Tr. 39) The vehicle was repossessed and sold at auction. (Tr. 40) Applicant's June 12, 2013 credit report shows an unsatisfied judgment filed in August 2008 in the amount of \$21,488. (GE 2 at 4) Applicant's September 14, 2013 credit report shows the same judgment. (GE 3 at 1) In March 2013, the creditor obtained a garnishment order for \$880 a month against Applicant; however, Applicant did not receive notice of his court date and did not have an opportunity to contest the garnishment. (Tr. 40-43, 74) Over the last 11 months, Applicant has paid \$9,680 towards this debt because of the garnishment of his pay. (Tr. 43)

The vehicle repossession debt in SOR ¶ 1.c (\$16,559) resulted from the repossession of Applicant's former spouse's vehicle. (Tr. 51) His June 12, 2013 credit report shows the debt went into charged-off status in October 2007. (GE 2 at 4) Applicant admitted that he was responsible for this debt. The vehicle was purchased

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<sup>3</sup>While on active duty, Applicant fell and injured his back. (Tr. 37-38) Applicant received \$24,729 in medical severance pay; however, the Government recouped these funds when the Department of Veterans Affairs (VA) provided disability payments. (Tr. 8; AE D)

new in 2004 or 2005. (Tr. 52) He has not had any contact with the creditor since he called the creditor and requested that the creditor take the vehicle back. (Tr. 53) His divorce decree allocated four debts to Applicant and one debt to his former spouse; however, the debt in SOR ¶ 1.c was not mentioned in his divorce decree. (SOR response)

The debt in SOR ¶ 1.d (\$14,241) resulted from the foreclosure of Applicant's residence. (Tr. 46) Applicant purchased a residence for \$93,000 in 2005 with no down payment, using a VA guaranteed loan.<sup>4</sup> (Tr. 46; GE 2 at 6) At the time of the foreclosure, he owed \$98,000 on the debt. (Tr. 47) The bank creditor provided \$1,000 to Applicant because of an "enforcement action related to deficient mortgage servicing and foreclosure processes." (Tr. 48; AE K) The bank provided a 2013 Internal Revenue Service (IRS) 1099-MISC which documented the rationale for the \$1,000 payment. (AE K) The creditor is not seeking collection from Applicant. (Tr. 49)

Applicant did not make any payments on his delinquent credit card debts in SOR ¶ 1.e (\$3,367) and 1.f (\$2,389), which are being collected by the same collection company. (Tr. 53-54) Applicant's June 12, 2013 credit report shows both debts. (GE 2 at 7) The debt in SOR ¶ 1.f shows an activity date of November 2006 and a status in December 2007 as open. (GE 3 at 2) Applicant's September 14, 2013 credit report shows the debt in SOR ¶ 1.e, but not the debt in SOR ¶ 1.f. (GE 3 at 2)

The telecommunications debt in SOR ¶ 1.j (\$328) is unpaid. (Tr. 55-56) Applicant's SOR listed six medical debts totaling \$1,551 as follows: ¶ 1.g (\$106); ¶ 1.h (\$294); ¶ 1.i (\$178); ¶ 1.k (\$496); ¶ 1.l (\$334); and ¶ 1.p (\$143). Applicant explained that he did not pay these debts because he believed his attorney was supposed to use the settlement from his accident to pay his medical debts. (Tr. 32-34, 54-58) Applicant's attorney provided documentation showing he settled and paid medical debts for \$1,023, \$365, \$397 in 2011. (AE M-R) The medical debts in Applicant's credit reports do not

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<sup>4</sup>The VA loan guarantee is as follows: "For loans between \$45,000 and \$144,000, the minimum guaranty amount is \$22,500, with a maximum guaranty, of up to 40 percent of the loan up to \$36,000, subject to the amount of entitlement a veteran has available." As to whether the VA loss on a loan must be repaid, the VA explains:

Must the loan be repaid?

Yes. A VA guaranteed loan is not a gift. It must be repaid, just as you must repay any money you borrow. The VA guaranty, which protects the lender against loss, encourages the lender to make a loan with terms favorable to the veteran. But if you fail to make the payments you agreed to make, you may lose your home through foreclosure, and you and your family would probably lose all the time and money you had invested in it. If the lender does take a loss, VA must pay the guaranty to the lender, and the amount paid by VA must be repaid by you. If your loan closed on or after January 1, 1990, you will owe the Government in the event of a default only if there was fraud, misrepresentation, or bad faith on your part.

Factsheet VAP 26-4 is available on the VA website at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&uact=8&ved=0CD4QFjAA&url=http%3A%2F%2Fwww.benefits.va.gov%2Fhomeloans%2Fdocs%2Fvap\\_26-4\\_online\\_version.pdf&ei=q4QbU\\_zSCaST0QH0mIDwAg&usq=AF\\_QjCNFv0-ay6SGFdfcDFIaE7aENpSq0cA](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&uact=8&ved=0CD4QFjAA&url=http%3A%2F%2Fwww.benefits.va.gov%2Fhomeloans%2Fdocs%2Fvap_26-4_online_version.pdf&ei=q4QbU_zSCaST0QH0mIDwAg&usq=AF_QjCNFv0-ay6SGFdfcDFIaE7aENpSq0cA).

specify a particular medical creditor. (GE 2, 3) Some of his SOR medical debts could be co-pays on his children's or his own medical treatments. (Tr. 54-55)

Applicant's 2008 divorce decree states he owed \$3,791 in back child support. (SOR response; Tr. 43) His monthly child support payment is \$397. (Tr. 43) Applicant has not paid his overdue child support; however, he is making some extra payments to his former spouse through prescription, medical, and dental payments. (Tr. 44) His children require four different medications, which cost Applicant about \$150 monthly. (Tr. 61) He does not have documentation to show his extra payments to his former spouse. (Tr. 44) Some of his children's medical expenses are covered by insurance. (Tr. 62) Applicant's spouse has not sought payment from Applicant for the \$3,791 back child support noted in their divorce decree, and this debt was not listed on his SOR.

Applicant's monthly gross pay is \$4,800. (Tr. 58) He has a remainder of about \$500 at the end of each month after paying his expenses. (Tr. 63) He has received several raises from his employer over the last eight years. (Tr. 58) His monthly rent is \$700, and his landlord describes him as a "wonderful tenant," who always pays his rent on time. (AE L)

When Applicant completed his security clearance application, he said he was contemplating seeking discharge of his debts through Chapter 7 of the Bankruptcy Code. (Tr. 45; GE 1) He elected not to file for bankruptcy because of concern that it would adversely affect his security clearance. (Tr. 45) He is still contemplating filing for bankruptcy, but has not done so. (Tr. 71) He received some financial counseling. (GE 1)

Applicant described his remorse and regret about his delinquent debt and conceded that he should have been more aggressive and responsible about his finances. Applicant assures that his attitude towards his debts and creditors has changed. He will ensure that his debts are paid or resolved.

### **Character Evidence**

A retired Army Chief Warrant Officer 3 has worked closely with Applicant for more than five years. (SOR response) He described Applicant as diligent, trustworthy, honest, mature, conscientious, and hard working. (SOR response) Another character reference, who has worked with Applicant for more than ten years in the United States and Afghanistan and inspected Applicant's work, described him as honest, loyal, an outstanding worker, dependable, and dedicated. (AE E) Another friend and colleague wrote that Applicant is highly professional, trustworthy, honest, and "very respectful of classified information, rules and restrictions." (AE H) The contractor's program manager and deputy program manager said Applicant is punctual and "meets the standard for work ethic and quality." (AE G, F)

In 2010, Applicant received a safety award for detecting and stopping another employee from engaging in a dangerous action. (AE C) He received particularly high scores in his most recent annual rating for his job knowledge and the quantity and

quality of his work. (AE J) He is an asset to his employer. (AE C) Applicant has not received any adverse or disciplinary actions from his employer. (Tr. 59; AE F, G)

Applicant's DD Form 214 lists the following awards: Army Commendation Medal (two awards); Army Achievement Medal (two awards); Army Good Conduct Medal; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; Overseas Ribbon; National Defense Service Medal; Noncommissioned Officer Professional Development Ribbon; Army Service Ribbon; Aircraft Crewman Badge; and Driver and Mechanic Badge. (AE D)

## **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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in his credit reports, SOR response, and hearing statement. His SOR lists 16 delinquent or charged off accounts totaling \$92,319. Four debts were withdrawn, reducing the debt total to \$69,372. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) 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;

(b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>5</sup> and

(e) 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.

The Appeal Board concisely explained the Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in

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<sup>5</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) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation, punctuation, 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)).



*Egan, supra.* “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant’s conduct in resolving his debts warrants application of AG ¶¶ 20(a) and 20(b). Applicant’s divorce and the division of the family debts and households caused him to fall behind on his debts. His financial problems were affected by circumstances largely beyond his control. He paid \$9,680 towards the SOR debt in ¶ 1.b (\$30,937). The debt in SOR ¶ 1.d (\$14,241) is not established because the VA may have paid any delinquency on his residence and may not be seeking repayment from Applicant. Applicant has six medical debts and his attorney provided proof that three payments were made to medical creditors in 2011. Applicant needs to further investigate his medical debts to ensure that some of them are not copays for his children or as a result of his own medical treatment, and to dispute any medical debts that are erroneous.

Applicant has been contemplating filing for discharge of his debts under Chapter 7 of the Bankruptcy Code since at least May 2013, when he completed his SF 86. He did not do so because of his concern about his security clearance. Under the facts of this case, he would have been better served to have filed for bankruptcy because his debts would have been discharged months ago, and he would have saved thousands of dollars.<sup>6</sup>

Partial application of AG ¶ 20(c) is warranted. Applicant received some financial counseling. Although there is limited evidence of record that he established and maintained contact with his creditors,<sup>7</sup> his financial problem is being resolved or is under control.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable actions to begin resolution of his largest SOR debt, establishing some good faith. AG ¶ 20(e) is not applicable as he did not provide proof that he disputed any debts that were removed from his credit report.

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<sup>6</sup>Resolution of his debts using bankruptcy in this case would not necessarily have an adverse effect on Applicant’s eligibility for access to classified information, so long as he did not generate new delinquent debt after his debts were discharged. Bankruptcy would clearly resolve all of his delinquent SOR debts, result in a fresh financial start, and would be substantially less costly than continuing payments on the repossessed vehicle under the garnishment order and resolving his other delinquent debts through payment plans.

<sup>7</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.

In sum, Applicant fell behind on his debts because of his divorce. He conceded he failed to act as aggressively as he should have to address some of his debts. He paid \$9,680 towards the SOR debt in ¶ 1.b (\$30,937) through garnishment.<sup>8</sup> He promised to resolve his delinquent debts<sup>9</sup> and show more financial responsibility in the future. He has established his financial responsibility. It is unlikely that financial problems will recur. His efforts are sufficient to mitigate financial considerations security concerns. This determination should not be construed to mean more effort to resolve his remaining debts is unnecessary. Assuming financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

### **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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 35-year-old helicopter-repair technician, who has worked for the same defense contractor since 2005. Applicant served on active duty in the Army from April 1999 to January 2005. He left active duty as a sergeant (E-5); he was discharged

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<sup>8</sup>Of course, Applicant loses some mitigating credit because some debt payments were made through garnishment of his salary even though his opportunity to establish a payment plan was limited because of his other financial commitments. Payment of a debt "though garnishment rather than a voluntary effort diminishes its mitigating force." *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns).

<sup>9</sup>The Appeal Board has indicated that promises to pay delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

for medical reasons; and he received an Honorable discharge. He is receiving \$522 a month from the VA. He served in Afghanistan from January 2002 to June 2002. There is no evidence of illegal drug use. He disclosed some financial delinquencies on his May 14, 2013 SF 86 and indicated he planned to file for bankruptcy; however, he did not do so because of an exaggerated concern that it would adversely affect his eligibility for a security clearance.

Applicant married in 1999, and he was divorced in October 2008. He is paying child support for his two children, who are ages 9 and 13. His divorce contributed to his financial woes. He received numerous medals and awards, lauding his contributions to the United States in peace and war. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor, and as a Soldier. He provided five character letters from his employer and an evaluation, which emphasized his reliability, diligence, and trustworthiness. There is every indication that he is loyal to the United States and his employer.

Applicant's progress over the last year shows he has acted responsibly to repair his finances. He paid almost \$10,000 to resolve his delinquent debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

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

Applicant understands what he needs to do to establish and maintain his financial responsibility. There is simply no reason not to trust him. He has established a

“meaningful track record” of debt re-payment. I am confident he will keep his promise to pay his remaining delinquent SOR debt and avoid future delinquent debt.<sup>10</sup>

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated, and eligibility for access to classified information is granted.

### **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 |
| Subparagraphs 1.a, 1.m-1.o: | Withdrawn     |
| Subparagraphs 1.b-1.l:      | For Applicant |

### **Conclusion**

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

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Mark Harvey  
Administrative Judge

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<sup>10</sup>Of course, the government can re-validate Applicant’s financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have authority to grant a conditional clearance. ISCR Case No. 99-0901, 2000 WL 288429 at \*3 (App. Bd. Mar. 1, 2000). See *also* ISCR Case No. 04-03907 at 2 (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.” and citing ISCR Case No. 03-07418 at 3 (App. Bd. Oct. 13, 2004)). This footnote does not imply that this Applicant’s clearance is conditional.