



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 13-01058

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel

For Applicant: *Pro se*

03/27/2014

**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 May 22, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On October 22, 2013, 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; Department of Defense 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

<sup>1</sup> Item 5 (SF 86), dated May 22, 2013.

Guideline F (Financial Considerations), and detailed reasons why the DOD CAF could not make a preliminary 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 October 24, 2013. In a statement, notarized November 12, 2013, Applicant responded to the SOR allegations, supported by documentation, and elected to have his case decided on the written record in lieu of a hearing.<sup>2</sup> On November 14, 2013, he submitted an amended response to the SOR, and furnished additional documentation.<sup>3</sup> A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on December 6, 2013, 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."<sup>4</sup> It appears, however, that the version of the Adjudicative Guidelines furnished was an outdated, superseded version of Enclosure 2 of the Directive.<sup>5</sup> The result of that action was that Applicant may have relied on modified, but incorrect, adjudicative guidelines when he responded to the SOR. While it does not appear that the error was ever corrected, in his February 2014 response to the FORM, he did refer to the correct AG, and the issue has been minimized. Applicant received the FORM on December 20, 2013, and he submitted responses on January 6, 2014, and February 14, 2014. By letter, dated March 11, 2014, Department Counsel did not object to the response. The case was assigned to me on March 18, 2014.

### **Findings of Fact**

In his Answers to the SOR, Applicant admitted four of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a., and 1.d. through 1.f.). Applicant's admissions and other comments 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 63-year-old employee of a defense contractor. He has been serving as a field service representative since April 2013. He was previously employed as an aircraft inspector, and an airframe and powerplant (A&P) mechanic.<sup>6</sup> He was unemployed from September 2012 until April 2013, when the airline he worked for went

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<sup>2</sup> Item 3 (Applicant's Answer to the SOR).

<sup>3</sup> Item 4 (Applicant's Amended Answer to the SOR).

<sup>4</sup> See Letter to Applicant from the Defense Office of Hearings and Appeals (DOHA), dated December 6, 2013.

<sup>5</sup> Item 3 (Guideline F, Encl. 2, Atch. 6, DoDD 5220.6, dated January 2, 1992).

<sup>6</sup> Item 5, *supra* note 1, at 10-13.

into bankruptcy.<sup>7</sup> Applicant served in an enlisted capacity with the U.S. Army National Guard (ANG) from May 1969 until May 1971, and was administratively discharged under honorable conditions with a general discharge certificate due to unsuitability.<sup>8</sup> He received an associate's degree in June 1972, and attended a community college for seven additional months, but did not obtain another degree.<sup>9</sup> Applicant was married in September 1987, and divorced in April 2002.<sup>10</sup> He has one son, born in October 1993.<sup>11</sup> He has never held a security clearance.<sup>12</sup>

### **Financial Considerations**<sup>13</sup>

There was nothing unusual about Applicant's finances until he went through a financially distressing divorce process in 2001 – 2002, and then incurred unexpectedly large medical bills in 2003, resulting from his affliction with kidney stones.<sup>14</sup> Additional financial problems occurred when his employer went bankrupt and Applicant became unemployed in September 2012. He remained unemployed until April 2013. He had previously enjoyed "very good credit" until 2001.<sup>15</sup> At some point, because of insufficient money to continue making all of his monthly payments, some of his accounts became delinquent, placed for collection, or were charged off. Two accounts went to judgment. He contacted his creditors and, when he was able to do so, he entered into repayment arrangements or settled some accounts for less than the full amount. In an effort to address his remaining accounts, when Applicant obtained his current position, he immediately volunteered for a potentially dangerous overseas deployment to generate additional salary.<sup>16</sup>

The SOR identified seven delinquent debts totaling \$12,313 that had been placed for collection, charged off, or went to judgment, as generally reflected by a May 2013 credit report<sup>17</sup> and a September 2013 credit report.<sup>18</sup> Some accounts listed in the

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<sup>7</sup> Item 5, *supra* note 1, at 11.

<sup>8</sup> Item 5, *supra* note 1, at 14.

<sup>9</sup> Item 5, *supra* note 3, at 9.

<sup>10</sup> Item 5, *supra* note 3, at 16-17.

<sup>11</sup> Item 5, *supra* note 3, at 21.

<sup>12</sup> Item 5, *supra* note 3, at 35.

<sup>13</sup> Other than two credit reports furnished by Department Counsel, Applicant's submissions serve as the only other source of the information in evidence, for the file does not contain any interrogatories, personal subject interview, or a personal financial statement. An investigation was performed by the U.S. Office of Personnel Management (OPM), but no portion of the report of investigation (ROI) is included in the FORM. Also troubling is that Applicant indicated he had enclosed several documents along with his February 14, 2014 submission, but those documents are not in the FORM.

<sup>14</sup> Item 3 (Additional Information, dated November 12, 2013), at 1.

<sup>15</sup> Item 3 (Additional Information), *supra* note 14, at 1.

<sup>16</sup> Item 3 (Additional Information), *supra* note 14, at 1.

<sup>17</sup> Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 30, 2013).

credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in some instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Several accounts are listed with only partial account numbers. Those debts listed in the SOR and their respective current status, according to the credit reports, evidence submitted by the Government and Applicant, and Applicant's comments regarding the same, are described below.

(SOR ¶ 1.a.) There is an account with an automobile rental company in the amount of \$102 for automobile insurance that Applicant's former employer (the bankrupt airline), after the fact, refused to pay. Applicant explained his predicament to the creditor and even offered to settle the account for 50 percent, but the creditor refused.<sup>19</sup> Applicant both disputed and admitted the allegation, and acknowledged that he is willing to pay the balance.<sup>20</sup> The account is not listed in either of the 2013 credit reports, and while it is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under ¶ E3.1.14 of the Directive for pertinent allegations, the absence of any such credit report adverse information should be considered in a positive light.<sup>21</sup> Furthermore, the source of the allegation is unclear. Nevertheless, it appears that this account has not yet been resolved.

(SOR ¶ 1.b.) There is a bank credit card account with a credit limit of \$3,200 and high credit of \$3,807 that was acquired by a larger bank and subsequently placed for collection before it was sold to a debt purchaser.<sup>22</sup> In October 2012, that debt purchaser obtained a default judgment against Applicant in the amount of \$4,015.<sup>23</sup> In September 2013, the debt purchaser offered to settle the account for \$2,800,<sup>24</sup> and on October 7, 2013, Applicant's attorney forwarded a check in that amount to the debt purchaser.<sup>25</sup> On November 6, 2013, a Satisfaction of Judgment was filed in the court, and any cause of action against Applicant was waived and discontinued with prejudice.<sup>26</sup> The account has been resolved.

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<sup>18</sup> Item 6 (Equifax Credit Report, dated September 26, 2013).

<sup>19</sup> Item 3, *supra* note 2, at 1, 5.

<sup>20</sup> Item 3, *supra* note 2, at 1, 5.

<sup>21</sup> See ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010).

<sup>22</sup> Item 7, *supra* note 17, at 10.

<sup>23</sup> Item 7, *supra* note 17, at 6.

<sup>24</sup> Item 3 (Letter, dated September 26, 2013).

<sup>25</sup> Item 3 (Check, dated October 7, 2013).

<sup>26</sup> Item 4 (Satisfaction of Judgment, dated November 6, 2013), attached to Applicant's Amended Answer to the SOR.

(SOR ¶ 1.c.) There is a bank credit card account with an unspecified credit limit or high credit that was placed for collection before it went to judgment against Applicant in the amount of \$1,974 in September 2010.<sup>27</sup> In September 2013, Applicant's attorney forwarded a check to the creditor, and on October 2, 2013, a Satisfaction of Judgment was filed in the court, announcing that the judgment had been "wholly satisfied."<sup>28</sup> The account has been resolved.

(SOR ¶ 1.d.) There is a bank credit card account with a credit limit of \$2,500 and high credit of \$2,555 that was past due \$2,653 when it was placed for collection and charged off.<sup>29</sup> Applicant contends the account was closed and settled for less than the full amount,<sup>30</sup> but it is unclear if he had submitted any documentation to support that there was a settlement for any amount, or that there were any payments made. In this regard, in his February 14, 2014 Response to the FORM, Applicant indicated that he had enclosed several photocopies of Form 1099-C (Cancellation of Debt), two of which were related to his accounts with this particular creditor (the same creditor identified in SOR ¶¶ 1.e. and 1.f.), to show that the accounts were settled for less than the full amount.<sup>31</sup> Those documents were not included in the FORM, and in the absence of such documentation, it is impossible to determine if the documents refer to this particular account. Although he indicated it has been his intention to fully pay the account when he is financially able to do so, he also believes this "older debt" should no longer be listed on his credit report.<sup>32</sup> It remains unclear if the account has been resolved.

(SOR ¶ 1.e.) There is a bank credit card account with a credit limit of \$1,000 and high credit of \$1,219 that was past due \$1,259 when it was placed for collection and charged off.<sup>33</sup> Applicant contends the account was closed and settled for less than the full amount,<sup>34</sup> but it is unclear if he had submitted any documentation to support that there was a settlement for any amount, or that there were any payments made. In this regard, see my comments above regarding the Form 1099-C. Although he indicated it has been his intention to fully pay the account when he is financially able to do so, he also believes this is another "older debt" that should no longer be listed on his credit report.<sup>35</sup> It remains unclear if the account has been resolved.

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<sup>27</sup> Item 7, *supra* note 17, at 6.

<sup>28</sup> Item 3 (Satisfaction of Judgment, dated October 2, 2013); Item 3 (Letter, dated September 30, 2013).

<sup>29</sup> Item 7, *supra* note 17, at 8; Item 6, *supra* note 18, at 1-2.

<sup>30</sup> Item 3, *supra* note 2, at 5.

<sup>31</sup> Response to the FORM, dated February 14, 2014.

<sup>32</sup> Response to the FORM, dated January 6, 2014; Response to the FORM, dated February 14, 2014.

<sup>33</sup> Item 7, *supra* note 17, at 9; Item 6, *supra* note 18, at 2.

<sup>34</sup> Item 3, *supra* note 2, at 5.

<sup>35</sup> Response to the FORM, dated January 6, 2014; Response to the FORM, dated February 14, 2014.

(SOR ¶ 1.f.) There is a bank credit card account with a credit limit of \$1,000 and high credit of \$1,233 that was past due \$1,556 when it was placed for collection and charged off.<sup>36</sup> Applicant contends the account was closed and settled for less than the full amount,<sup>37</sup> but it is unclear if he had submitted any documentation to support that there was a settlement for any amount, or that there were any payments made. In this regard, see my comments above regarding the Form 1099-C. Although he indicated it has been his intention to fully pay the account when he is financially able to do so, he also believes this is another “older debt” that should no longer be listed on his credit report.<sup>38</sup> It remains unclear if the account has been resolved.

(SOR ¶ 1.g.) There is a regional hospital medical account with a past-due balance of \$754.53 that was placed for collection in March 2013.<sup>39</sup> Applicant attributed the unpaid balance to the fact that his former bankrupt employer’s insurance failed to cover the medical procedures he received.<sup>40</sup> Applicant paid the collection attorney \$100 on May 28, 2013, and \$754.53 on August 16, 2013.<sup>41</sup> He received a refund of \$100 in September 2013.<sup>42</sup> The account has been resolved.

There is no evidence to indicate that Applicant ever received financial counseling.

Department Counsel noted that despite alleged financial hardships, Applicant had managed to take annual trips to a particular Caribbean island from 2008 through 2012.<sup>43</sup> Applicant explained that he took those trips while he was employed by two airlines, and the airfare was free. The sole purpose of the trips was to visit and bond with his only child.<sup>44</sup>

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>45</sup> As Commander in Chief,

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<sup>36</sup> Item 7, *supra* note 17, at 8; Item 6, *supra* note 18, at 2.

<sup>37</sup> Item 3, *supra* note 2, at 5.

<sup>38</sup> Response to the FORM, dated January 6, 2014; Response to the FORM, dated February 14, 2014.

<sup>39</sup> Item 3 (Collection Letter, dated March 13, 2013); Item 7, *supra* note 17, at 12.

<sup>40</sup> Item 3 (Handwritten Note on Collection Letter), *supra* note 39.

<sup>41</sup> Item 3 (Handwritten Note on Collection Letter), *supra* note 40; Item 3 (Checking Account History Data, dated November 4, 2013).

<sup>42</sup> Item 3 (Check, dated September 12, 2013).

<sup>43</sup> FORM, at 6; Item 5, *supra* note 1, at 24-30.

<sup>44</sup> Response to the FORM, dated January 6, 2014.

<sup>45</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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>46</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.

In the decision-making process, facts must be established by “substantial evidence.”<sup>47</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>48</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

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<sup>46</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>47</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>48</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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>49</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>50</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:

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. While Applicant occasionally experienced some degree of financial difficulties between 2001 and 2012, at some point after September 2012, he found himself with insufficient funds to continue making his routine monthly payments and various accounts became delinquent, and were placed for collection or charged off. Two accounts went to judgment. 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

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<sup>49</sup> *Egan*, 484 U.S. at 531

<sup>50</sup> See Exec. Or. 10865 § 7.



¶ 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>51</sup>

AG ¶¶ 20(c) and 20(d) apply. AG ¶¶ 20(a) and 20(b) partially apply. The nature, frequency, and relative recency of Applicant's financial difficulties since 2012 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were substantially beyond Applicant's control. Commencing in about 2001 - 2002, Applicant started experiencing some financial difficulties when he went through a financially distressing divorce process. He was divorced in 2003. He also incurred unexpectedly large medical bills when he underwent treatment for kidney stones. His main financial problems arose when his employer went bankrupt and Applicant became unemployed. He remained unemployed until April 2013. During that period, some accounts became delinquent, placed for collection, or were charged off. Two accounts went to judgment. Applicant contacted his creditors and, when he was able to do so, he entered into repayment arrangements or settled some accounts for less than the full amount. In an effort to address his remaining accounts, when Applicant obtained his current position, he immediately volunteered for a potentially dangerous overseas deployment to generate additional salary.

Applicant acted responsibly by addressing his delinquent accounts and working with his creditors.<sup>52</sup> With the assistance of an attorney, he focused on two of his three

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<sup>51</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>52</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.

largest accounts (SOR ¶¶ 1.b. and 1.c.) and resolved them. He also paid off his delinquent medical account (SOR ¶ 1.g.). There were also three credit card accounts with the same creditor (SOR ¶¶ 1.d., 1.e., and 1.f.). Applicant contends the accounts were closed and settled for less than the full amount, but it is unclear if he had submitted any documentation to support that there were settlements for any amounts, or that there were any payments made. As noted above, in his February 14, 2014 Response to the FORM, Applicant indicated that he had enclosed several photocopies of Form 1099-C, two of which were related to his accounts with this particular creditor, to show that the accounts were settled for less than the full amount. Those documents were not included in the FORM, and in the absence of such documentation, it is impossible to determine if the documents refer to these particular accounts. The FORM did not address the absence of the claimed submissions. Applicant has apparently resolved all of his non-SOR accounts. In addition, he has definitely resolved three of the seven SOR accounts, is willing to resolve another small SOR account, and has possibly resolved the remaining three SOR accounts. With his current job, while there is no evidence that he has ever received financial counseling, there are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>53</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>54</sup>

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<sup>53</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>54</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's conduct. His handling of his finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection or charged off. Two accounts went to judgment.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems were not caused by frivolous or irresponsible spending, and, despite the assertions of Department Counsel that he found money for recreation in the Caribbean rather than for paying his bills, he did not spend beyond his means. Rather, his problems were substantially beyond Applicant's control. Commencing in about 2001 - 2002, Applicant started experiencing some financial difficulties when he went through a financially distressing divorce process. He was divorced in 2003. He also incurred unexpectedly large medical bills when he underwent treatment for kidney stones. His main financial problems arose when his employer went bankrupt and in September 2012, Applicant became unemployed. He remained unemployed until April 2013. Applicant eventually secured another position, and he immediately volunteered for a potentially dangerous overseas deployment to generate additional salary. He has paid off, settled, or otherwise resolved, or is in the process of resolving, nearly all of his accounts, including his non-SOR accounts. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment. The entire situation occurred under such circumstances that it is unlikely to recur.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>55</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

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<sup>55</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has demonstrated a “meaningful track record” of debt reduction and elimination efforts. This decision should serve as a warning that his failure to continue his debt resolution efforts or the accrual of new delinquent debts will adversely affect his future eligibility for a security clearance.<sup>56</sup> Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

### **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

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<sup>56</sup> While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant’s financial condition. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant’s security clearance. See, e.g., ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).