DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 14-02913
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

01/15/2015

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On June 14, 2003, Applicant applied for a security clearance and submitted an Electronic Personnel Security Questionnaire (EPSQ) version of a security clearance application.[1] On June 27, 2007, he submitted a Questionnaire for Non-Sensitive Positions (SF 85).[2] On February 1, 2013, he submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application.[3] On July 24, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order

[1] GE 6 (EPSQ, dated June 14, 2003).

[2] GE 5 (SF 85, dated June 27, 2007).

[3] GE 1 (e-QIP, dated February 1, 2013).

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on August 13, 2014. In a sworn statement, dated August 15, 2014, Applicant responded to the SOR allegations,[4] but failed to indicate whether or not he wished to have a hearing. By a separate letter, also dated August 15, 2014, he elected to have his case decided on the written record in lieu of a hearing.[5] It is unclear if Department Counsel requested a hearing pursuant to Directive ¶ E3.1.7., or if Applicant changed his mind, for the record is silent and that request for a decision on the written record was never addressed during the hearing.[6] Department Counsel indicated the Government was prepared to proceed on November 6, 2014. The case was assigned to me on November 14, 2014. A Notice of Hearing was issued on December 2, 2014, and I convened the hearing as scheduled on December 18, 2014.

During the hearing, seven Government exhibits (GE 1 through GE 7) and ten Applicant exhibits (AE A through AE J) were admitted into evidence without objection. Applicant and one other witness testified. The transcript (Tr.) was received on January 6, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as AE K and AE L and admitted into evidence without objection**.** The record closed on January 14, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations and personal conduct (¶¶ 1.a. through 1.f., and 2.a. and 2.b.). Applicant's answers are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

[4] Applicant's Answer to the SOR, dated August 15, 2014.

[5] Applicant's Supplemental Answer to the SOR, dated August 15, 2014.

[6] Both parties were asked if there were any unresolved procedural matters to take up before getting into the evidence, and they both responded with a "no." *See* Tr. at 10.

Applicant is a 51-year-old employee of a defense contractor. He has worked for the same employer in different geographic locations since September 2007.[7] A June 1982 high school graduate,[8] in September 2002, Applicant received an associate's degree in applied science,[9] and he is currently enrolled with an online university working towards another degree.[10] He has held a secret security clearance since 1983.[11] Applicant was married in June 1988, separated in November 2010, and divorced in May 2013.[12] They have two sons (born in 1991 and 1995).[13]

Military Service

Applicant enlisted in the U.S. Air Force in August 1983, and he served on active duty until he retired honorably as a master sergeant (E7) in December 2006. During his military service, he was awarded the Meritorious Service Medal (with one device), the Air Force Commendation Medal (with two devices), the Air Force Outstanding Unit Award (with seven devices), the Air Force Good Conduct Medal (with six devices), the National Defense Service Medal (with one device), the Global War on Terrorism Service Medal, the Air Force Long Overseas Ribbon (with three devices), the Air Force Longevity Service Ribbon (with four devices), the USAF NCO PME Graduate Ribbon (with two devices), the Small Arms Expert Marksmanship Ribbon (Rifle), and the Air Force Training Ribbon.[14]

Financial Considerations

In June 2008, Applicant suffered a major stroke that caused him to be hospitalized for one or two weeks and with three months in rehabilitation with physical therapy and occupational therapy relearning to walk, talk, and get his vision back to normal.[15] While he still experiences some physical results of the stroke, his cognitive abilities are essentially normal.[16] His medical expenses were satisfied by his health insurance from his employer and TRICARE, but he was placed on short-term disability

[7] GE 1, *supra* note 3, at 11; Tr. at 62.

[8] GE 5, *supra* note 2, at 2; GE 2 (Personal Subject Interview, dated March 22, 2013), at 2.

[9] GE 5, *supra* note 2, at 2; GE 2, *supra* note 8, at 2.

[10] GE 2, *supra* note 8, at 2.

[11] GE 6, *supra* note 1, at 7; GE 2, *supra* note 3, at 6; Tr. at 52.

[12] GE 1, *supra* note 3, at 19-21; AE B (Decree of Divorce, dated May 13, 2013).

[13] GE 1, *supra* note 3, at 25-26; GE 2, *supra* note 8, at 5.

[14] AE J (Certificate of Release or Discharge from Active Duty (DD Form 214, dated December 31, 2006); GE 1, *supra* note 3, at 17.

[15] Tr. at 61-63.

[16] Tr. at 65.

by his employer and only received 65 percent of his normal pay during that period.[17] Nevertheless, Applicant was still able to make his normal monthly payments.

There was nothing unusual about Applicant's finances until about November 2010. When he and his wife separated, he was current on his accounts and was routinely paying the normal family bills including home mortgage, rent, and his wife's automobile insurance. Applicant had hoped to engage in a simple dissolution of marriage, but that was not to be for the property settlement negotiations turned rather nasty when his wife told Applicant she was going to take him for every cent she could.[18] Things became so contentious that he was forced to spend approximately $16,000 on attorney's fees protecting his financial assets.[19] The divorce decree resulted in Applicant taking a financial bath.

Applicant's wife retained 100 percent of the net proceeds from the sale of the family home; she retained the newer vehicle, but assumed the remaining debt on it; she retained the proceeds in Applicant's Thrift Savings Plan (TSP), his 401(k) account (approximately $40,000), a mutual fund, and several Individual Retirement Arrangements **(**IRAs**);** she retained the proceeds from their joint checking account, and the marital portion of Applicant's military retirement.[20] Applicant was ordered to continue paying for his wife's mortgage, child support, and a number of credit card accounts.[21] The parties were ordered to jointly file federal income tax returns for the tax years 2011 and 2012. In addition, Applicant was to provide his wife all the documentation, such as W2s and 1099s so she could have the forms completed and filed by a specific tax preparation service.[22]

There came a point during the general period of separation and divorce when Applicant simply did not have sufficient funds to keep up with his expected monthly payments. Some accounts became delinquent and were placed for collection or charged off. Because the financial arrangements had not yet been finalized before the actual property settlement, there was also some hesitancy on Applicant's part as to which accounts he was responsible for paying. In an effort to reduce his expenditures, Applicant moved in with a friend, and while he does not pay any rent, he does pay $700 a month for the utilities and cable.[23] In April 2014, approximately 11 months after the divorce, Applicant filed a Voluntary Petition for bankruptcy under Chapter 13 of the U.S.

[17] Tr. at 64-65.

[18] Tr. at 58.

[19] Tr. at 38, 58.

[20] AE B, *supra* note 12, at 4-7.

[21] AE B, *supra* note 12, at 5, 7; Tr. at 38.

[22] AE B, *supra* note 12, at 8.

[23] Tr. at 48.

Bankruptcy Code.[24] He listed approximately $223,438 in liabilities, including a mortgage for $172,113, and approximately $51,325 in unsecured nonpriority claims.[25] As of September 11, 2014, Applicant had paid the bankruptcy trustee $5,500 to be disbursed to approved claimants.[26] During the period October 2014 through December 2014, he paid an additional $6,000,[27] bringing the total paid to the trustee to $11,500.[28] On November 7, 2014, the plan was confirmed by the bankruptcy judge, and she ordered payments to claimants.[29] Disbursements commenced on November 25, 2014, and it is anticipated that they will continue at the rate of $2,000 per month until August 2016.[30]

Applicant went to the family services center to obtain financial counseling. With the assistance of the financial counselor, he prepared a personal financial profile, including an action plan.[31] A review of that document reveals a total monthly net income of approximately $3,428; and routine monthly living expenses, including bankruptcy payments, of approximately $2,213; leaving approximately $1,215 available for discretionary spending or savings.[32]

The SOR identified five delinquent debts that had been placed for collection or charged off, as reflected by a February 2013 credit report[33] and a March 2014 credit report.[34] There is also an allegation that Applicant had failed to file his federal income tax return for the tax year 2011, but no unpaid balance is indicated. Those five debts, totaling approximately $51,499, and their respective current status, as well as the income tax issue, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.a.): There is a bank line of credit with a credit limit of $10,300 and a remaining balance of $9,792 that was 180 days or more past due.[35] The account was

[24] AE A (Voluntary Petition, dated April 18, 2014); GE 7 (Docket Text and Extracts of Voluntary Petition, various dates).

[25] GE 7 (Summary of Schedules, dated April 18, 2014).

[26] AE H (Annual Case Summary Report, dated September 11, 2014).

[27] AE F (Cashier's Check and Personal Money Order Receipts, various dates).

[28] AE L (Bankruptcy Financials, dated December 19, 2014).

[29] AE G (Order, dated November 7, 2014).

[30] AE L, *supra* note 28; Tr. at 47.

[31] AE K (Personal Financial Profile, undated).

[32] AE K, *supra* note 31.

[33] GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 15, 2013).

[34] GE 3 (Equifax Credit Report, dated March 28, 2014).

[35] GE 4, *supra* note 33, at 10; GE 3, *supra* note 34, at 2.

opened to assist Applicant's mother-in-law to move across country to reside with Applicant and his wife.[36] The account was current until Applicant vacated the marital home, but because of the additional expenses associated with the separation, he simply ran out of money to deal with the account.[37] The court subsequently ordered Applicant to be responsible for the account.[38] The account was included in his bankruptcy petition as an unscheduled nonpriority claim,[39] and the first disbursement in the amount of $1,757.23 was made on November 25, 2014.[40] The account is in the process of being resolved.

(SOR ¶ 1.b.): There is a credit card that Applicant had with his 21-year-old son (as an authorized user) with a credit limit of $12,000 and a remaining balance of $1,794 that was placed for collection and eventually charged off.[41] Applicant used the card for about $3,500 in medical bills for his son,[42] and his son increased the balance by purchasing vast amounts of clothing and other unspecified items.[43] When he realized what his son had done, Applicant took the card away from him.[44] Applicant's son never offered to reimburse him for those charges.[45] Applicant continued to make the monthly payments for about six months until he could no longer afford to do so.[46] The account was included in his bankruptcy petition as an unscheduled nonpriority claim,[47] and the first disbursement in the amount of $2,021.38 was made on November 25, 2014.[48] The account is in the process of being resolved.

(SOR ¶ 1.c.): There is a credit card with a credit limit of $8,700 and a remaining balance of $7,375 that was $583 past due for over 60 days when it was placed for collection.[49] The account was current until Applicant vacated the marital home, but because of the additional expenses associated with the separation, he simply ran out of

[36] Tr. at 35.

[37] Tr. at 35-36.

[38] Tr. at 36.

[39] GE 7, *supra* note 25, at 7; AE H, *supra* note 26.

[40] AE L, *supra* note 28.

[41] GE 4, *supra* note 33, at 9; GE 3, *supra* note 34, at 2.

[42] GE 2 (Personal Subject Interview, dated March 22, 2013), at 5.

[43] GE 2, *supra* note 43, at 5-6; Tr. at 37.

[44] Tr. at 37.

[45] Tr. at 38.

[46] Tr. at 38.

[47] GE 7, *supra* note 25, at 7; AE H, *supra* note 26.

[48] AE L, *supra* note 28.

[49] GE 4, *supra* note 33, at 8; GE 3, *supra* note 34, at 2.

money to continue making his monthly payments. At some point, the creditor started garnishment proceedings, and Applicant's military retirement served as the source of the payments.[50] Because the account was included in his bankruptcy petition as an unscheduled nonpriority claim,[51] the garnishments ceased,[52] and the first disbursement in the amount of $835.50 was made on November 25, 2014.[53] The account is in the process of being resolved.

(SOR ¶ 1.d.): There is a credit card with a credit limit of $9,500 and a remaining balance of $10,079 that was $772 past due for over 60 days when it was placed for collection.[54] The account was current until Applicant vacated the marital home, but because of the additional expenses associated with the separation, he simply ran out of money to continue making his monthly payments. The court subsequently ordered Applicant to be responsible for the account.[55] The account was included in his bankruptcy petition as an unscheduled nonpriority claim,[56] and the first disbursement in the amount of $1,819.82 was made on November 25, 2014.[57] The account is in the process of being resolved.

(SOR ¶ 1.e.): There is a credit card with a credit limit of $12,854 that was $1,566 past due for over 150 days when it was placed for collection and eventually charged off.[58] The account was current until Applicant vacated the marital home, but because of the additional expenses associated with the separation, he simply ran out of money to continue making his monthly payments. The court subsequently ordered Applicant to be responsible for the account.[59] The account was included in his bankruptcy petition as an unscheduled nonpriority claim,[60] but because the creditor failed to timely submit a required Proof of Claim, the delinquency was discharged.[61] The account has been resolved.

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[50] Tr. at 40.

[51] GE 7, *supra* note 25, at 7; AE H, *supra* note 26.

[52] Tr. at 40.

[53] AE L, *supra* note 28.

[54] GE 4, *supra* note 33, at 10; GE 3, *supra* note 34, at 2.

[55] Tr. at 42.

[56] GE 7, *supra* note 25, at 8; AE H, *supra* note 26.

[57] AE L, *supra* note 28.

[58] GE 4, *supra* note 33, at 6; GE 3, *supra* note 34, at 3.

[59] Tr. at 42-43.

[60] GE 7, *supra* note 25, at 7.

[61] Tr. at 43. An unsecured creditor must file a Proof of Claim in a Chapter 13 case. *See* FRBP 3002 (a). If a Proof of Claim is not filed, the creditor's right to receive any distribution from the estate is barred. 11 U.S.C. § 502(b)(9). Furthermore, because of the structure of a Chapter 13 case, the creditor's claim is not only barred, but also discharged. 11 U.S.C. § 1328(a).

(SOR ¶ 1.f.): Applicant's 2011 federal income tax return was not filed until 2013. As noted above, the divorce court ordered the parties to jointly file for the tax years 2011 and 2012. Applicant was to provide his wife all the documentation, such as W2s and 1099s so she could have the forms completed and filed by a specific tax preparation service. Applicant did not discover that his wife had not timely filed the return for 2011 until 2013 when the tax preparation service submitted documentation for his signature for both tax years 2011 and 2012.[62] Applicant was due refunds for both 2011 and 2012, and under the property settlement, he was to have received 50 percent of the refunds, but his ex-wife never forwarded his share to him.[63] He timely filed his return for the tax year 2013.[64] There is no evidence of any continuing penalty because of the late 2011 filing, and the matter appears to have been resolved.

Personal Conduct

(SOR ¶ 2.a.): On February 1, 2013, when Applicant completed his e-QIP, he responded to questions pertaining to his financial record. One question in Section 26 – Financial Record – Taxes asked if, in the past seven years, he had failed to file or pay federal, state, or other taxes when required by law or ordinance. Applicant answered "no" to the question. He certified that the response was "true, complete, and correct" to the best of his knowledge and belief, but the response to that question was, in fact, false for Applicant's 2011 federal income tax return was not filed until 2013. He subsequently explained that he only learned of his ex-wife's failure to timely file the tax return when the tax preparation service submitted documentation for his signature for both tax years 2011 and 2012, and that information was not known to him when he completed the e-QIP.[65] In complying with the divorce court mandate, Applicant had provided his ex-wife all the documentation, such as W2s and 1099s, so she could have the forms completed and filed by a specific tax preparation service. He essentially complied with his obligations, but she had failed to complete her own obligations. While the late filing was technically his responsibility as well, his response to the inquiry in the absence of knowledge of her failure, did not constitute a knowing falsification by him.

(SOR ¶ 2.b.): Another question in Section 26 – Financial Record (Delinquency Involving Routine Accounts) asked if, in the last seven years, he had bills or debts turned over to a collection agency; been over 120 days delinquent on any debt not previously entered, and if he was currently over 120 days delinquent on any debt. Applicant answered "no" to those questions. He certified that the response was "true, complete, and correct" to the best of his knowledge and belief, but the response to those questions was, in fact, false for at that time Applicant had several accounts that were either placed for collection or were over 120 days delinquent. He subsequently explained that when he completed the e-QIP a final determination had not yet been

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[62] Tr. at 44-45.

[63] Tr. at 45-46.

[64] Tr. at 45.

[65] Tr. at 52-53.

made by the divorce court as to which accounts he would be responsible.[66] He denied intending to falsify his response, but conceded that upon reflection, he probably should have furnished a more thorough explanation.[67]

Work Performance and Character References

Applicant's supervisor, site lead, section chief, and co-worker characterized Applicant in highly favorable terms. Applicant is a hard working individual who consistently demonstrates skilled knowledge, outstanding work ethic, dedication to the job, thoroughness, consistency, positive attitude, honesty, openness, trustworthiness, professionalism, and integrity.[68]

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."[69] 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."[70]

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

[66] Tr. at 54-55.

[67] Tr. at 55-56.

[68] AE C (Character Reference, dated November 18, 2014); AE D (Character Reference, dated November 19, 2014); AE E (Character Reference, dated November 18, 2014); Tr. at 25-31.

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

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

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."[71] 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.[72]

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."[73]

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."[74] 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.

[71] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

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

[74] *See* Exec. Or. 10865 § 7.

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. Also, "failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same" is potentially disqualifying. Applicant's most significant financial problems arose during the period of his 2010 separation and 2013 divorce. He was unable to continue making his routine monthly payments and various accounts became delinquent and were placed for collection or charged off. He failed to timely file his federal income tax return for 2011. AG ¶¶ 19(a), 19(c), and 19(g) 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."[75]

[75] 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.'

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, as noted above, Applicant's initial financial problems started in November 2010 when he and his wife separated and continued to May 2013 when they were finally divorced. Maintaining separate households was difficult for Applicant, and when the final divorce decree was issued, his finances were dramatically impacted when his wife was awarded a significant portion of the family assets, and he was made responsible for the family liabilities, including the cost of relocating his wife's mother across country. Applicant was forced to prioritize his monthly payments because of an inability to make his normal payments. He reduced discretionary expenses, moved in with a friend to eliminate rent, took a credit card from his son, and attempted to continue paying his creditors to the best of his ability. Nevertheless, some accounts became delinquent and were placed for collection or charged off. In April 2014, he filed for bankruptcy under Chapter 13. As of December 2014, Applicant had paid the bankruptcy trustee $11,500 to be disbursed among his creditors. Applicant pays the trustee $2,000 each month, and it is anticipated that by August 2016, his nonpriority, unsecured debts will be eliminated.

As for the delinquent tax filing, as noted above, the divorce court ordered the parties to jointly file for the tax years 2011 and 2012. Applicant complied with the requirement that he provide his wife all the documentation, such as W2s and 1099s so she could have the forms completed and filed by a specific tax preparation service. It was Applicant's ex-wife who failed to timely file the income tax return. Applicant did not discover that his wife had not done so until 2013 when the tax preparation service submitted documentation for his signature for both tax years 2011 and 2012. He timely filed his return for the tax year 2013. There is no evidence of any continuing penalty because of the late 2011 filing, and the matter appears to have been resolved.

Applicant received counseling from a financial counselor, and the counselor assisted him in developing an action plan based on Applicant's personal financial profile. Applicant now has approximately $1,215 available for discretionary spending or savings each month. All of Applicant's newer accounts are current. Four of Applicant's SOR-related accounts are in the process of being resolved with monthly payment arrangements under the bankruptcy, and those payments are being routinely made through the bankruptcy trustee. The one remaining SOR-related account was discharged, not because of any lack of effort by Applicant, but rather by the refusal of the creditor to timely file a Proof of Claim. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances

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> 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 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)).

confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.[76]

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

> a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, on January 31, 2013, when Applicant completed his e-QIP, he responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record asked if, in the past seven years, he had failed to file or pay federal, state, or other taxes when required by law or ordinance; he had bills or debts turned over to a collection agency; been over 120 days delinquent on any debt not previously entered, and if he was currently over 120 days delinquent on any debt. Applicant answered "no" to those questions. He certified that the responses were "true, complete, and correct" to the best of his knowledge and belief, but the responses to those questions were, in fact, false.

Applicant's responses provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely the result of misunderstanding of the true facts on his part. Applicant subsequently denied intending to falsify his responses and explained that he had simply answered the questions honestly at that time for he had no knowledge of his ex-wife's failure to timely file the 2011 income tax return and he was still awaiting the court decision as to what the final property settlement would be. Upon reflection, Applicant now concedes that he should have furnished a better explanation regarding the delinquent accounts, but he stands by his response pertaining to the tax filing.

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

I have considered Applicant's educational background and lengthy professional career, including his military career, in analyzing his actions. Applicant is an intelligent, talented, and experienced individual, and his explanation, under the circumstances, should be afforded some weight. His confusion and resultant actions are understandable and his position is reasonable. As it pertains to the alleged deliberate falsifications, Applicant's credible explanation has refuted AG ¶ 16(a). In this instance, I conclude that Applicant's actions do cast doubt on his reliability, trustworthiness, or good judgment.

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.[77]

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

The mitigating evidence under the whole-person concept is more substantial. Applicant has an outstanding reputation in the military and in the workplace. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Rather, his problems were caused by a combination of factors, including his major stroke in 2008, his separation in 2010, his divorce in 2013, his then-wife's vow to take him for every cent she could, the divorce court's awarding his wife a substantial portion of his financial assets and making Applicant responsible for most of the family debts, and his son's misuse of a credit card, all of which were largely beyond Applicant's control. Applicant has resolved, or is in the process of

[77] *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).

resolving, all of the accounts identified in the SOR through the Chapter 13 bankruptcy process. There are clear indications that Applicant's financial problems are under control. His actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.

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.[78]

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and personal conduct. *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

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

Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge