



**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. 14-00282

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

09/10/2014

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On September 5, 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 March 18, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

<sup>1</sup> GE 1 ((SF 86), dated September 5, 2013).

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 April 7, 2014. In a sworn statement, dated April 22, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 1, 2014. The case was assigned to me on July 10, 2014. A Notice of Hearing was issued on July 25, 2014, and I convened the hearing, as scheduled, on August 13, 2014.

During the hearing, three Government exhibits (GE 1 through GE 3) and five Applicant exhibits (AE A through AE E) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 21, 2014. I kept the record open to enable Applicant to supplement it, but he apparently chose not to take advantage of that opportunity. The record closed on August 26, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.d.). He denied the one allegation regarding personal conduct (§ 2.a.). Applicant's answers and explanations 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 53-year-old employee of a defense contractor, for which he has worked since September 1981.<sup>2</sup> He did not serve with the U.S. military.<sup>3</sup> Applicant held a secret security clearance since April 1982.<sup>4</sup>

Applicant graduated from high school in June 1979.<sup>5</sup> He was employed part time during his junior year and full time (after school and during holidays and weekends) during the senior year.<sup>6</sup> Applicant married his first wife in August 1984, and divorced her in August 1994.<sup>7</sup> He married his second wife in December 1999, and separated from

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<sup>2</sup> GE 1, *supra* note 1, at 10.

<sup>3</sup> GE 1, *supra* note 1, at 12.

<sup>4</sup> GE 2 (Personal Subject Interview, dated October 7, 2013), at 6.

<sup>5</sup> GE 2, *supra* note 4, at 2.

<sup>6</sup> GE 1, *supra* note 1, at 2.

<sup>7</sup> GE 1, *supra* note 1, at 15.

her in November 2010.<sup>8</sup> He has no biological children, but did adopt both his first wife's two children, including a handicapped adult daughter, and his second wife's two children.<sup>9</sup>

## Financial Considerations

There was nothing unusual about Applicant's finances until about 2007 or 2008 when the national economy collapsed. During the housing boom of the 1990s, Applicant purchased and subsequently refinanced his residence to consolidate debt and pay off some bills. His finances were generally unremarkable until his marriage started to deteriorate. At one point he was supporting his first wife's disabled daughter (and still is doing so), as well as the residents of his home: his wife, his wife's two children, and their respective boyfriends and girlfriends.<sup>10</sup> When he and his wife separated in 2010, he "quit being an open wallet and helping them whenever they needed money," and moved out of the house, leaving them to reside there.<sup>11</sup> He moved into his motor home, and still resides in it.<sup>12</sup>

With the collapsed economy, the value of his residence plummeted and he was under water on his mortgage. He attempted to "renegotiate" his mortgage but was unable to do so because he was gainfully employed, was still making his monthly payments, and could not qualify for the refinance. He then turned his attention to trying to sell the residence with a short sale. In late 2011, the short sale was finally approved by the mortgage holder of both his first and second mortgage, leaving a deficiency for the combined mortgages of about \$150,000.<sup>13</sup> The mortgage holder waived the deficiency and issued Applicant two Forms 1099, thereby increasing Appellant's income for the year, resulting in higher income tax.<sup>14</sup> He paid his increased income tax.<sup>15</sup>

Applicant had been paying the minimum due on his credit cards for some time before the economic collapse, and was using the credit cards to pay an unspecified variety of other debts and obligations. At one point, when credit became much more difficult to get, lower credit limits were imposed, and Applicant found himself with no other accessible funds to pay his bills. As a result, some accounts became delinquent and were placed for collection or charged off. During 2011, in an effort to resolve two of

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<sup>8</sup> GE 1, *supra* note 1, at 14-15.

<sup>9</sup> GE 1, *supra* note 1, at 23-25.

<sup>10</sup> Tr. at 22.

<sup>11</sup> Tr. at 22-23.

<sup>12</sup> Tr. at 22-23.

<sup>13</sup> Tr. at 26-27.

<sup>14</sup> Tr. at 27; GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 19, 2013), at 8.

<sup>15</sup> Tr. at 27.

those delinquent accounts, Applicant applied for a hardship withdrawal from his 401(k) retirement account. The application was denied.<sup>16</sup>

In 2011, Applicant engaged the professional services of a debt relief services company specializing in debt settlement to assist him with the short sale of his house and negotiate with several of his creditors. He paid the company an application fee and a retainer of \$250 or \$350.<sup>17</sup> Applicant is currently paying child support for his adopted disabled adult daughter (\$95 or \$100 per week) as well as repayments for his 401(k) loan.<sup>18</sup> He contends that all of his newer accounts are current.<sup>19</sup> When afforded the opportunity to enter into repayment plans or to furnish a personal financial statement to enable me to determine if he has the financial ability to make reasonable payments to his delinquent accounts, he failed to do so.<sup>20</sup>

The SOR identified four delinquent debts that had been placed for collection or charged off, as generally reflected by a September 2013 credit report.<sup>21</sup> Those debts listed in the SOR and their respective current status, according to the credit report, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

There is a credit card account (SOR ¶ 1.a.) with a past-due balance of \$18,796 that was placed for collection.<sup>22</sup> In October 2013, Applicant advised the investigator from the U.S. Office of Personnel Management (OPM) that he had opened the account in an effort to build credit, but was eventually unable to continue making his monthly payments due to an unspecified "financial hardship." He claimed he attempted to settle the account but "the creditor was uncooperative and would only settle the account for an amount that [Applicant] could not pay."<sup>23</sup> After his debt relief services company contacted the creditor, Applicant no longer received collection notices, and assumed that the account "was satisfied as part of the bank bailout with short sale."<sup>24</sup> Applicant indicated he was unaware that he still owed money on the account, and he stated he intended to resolve the account once funds become available.<sup>25</sup> He did not furnish an anticipated date. In December 2013, the creditor issued Applicant a Form 1099-C,

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<sup>16</sup> AE C (Letter, dated June 7, 2011); Tr. at 28-29.

<sup>17</sup> AE D (Letter, dated April 8, 2011); Tr. at 32-33.

<sup>18</sup> Tr. at 31-32, 34.

<sup>19</sup> Tr. at 44, 54.

<sup>20</sup> Tr. at 41-43, 50.

<sup>21</sup> GE 3, *supra* note 14.

<sup>22</sup> GE 3, *supra* note 14, at 6.

<sup>23</sup> GE 2, *supra* note 4, at 6.

<sup>24</sup> GE 2, *supra* note 4, at 6.

<sup>25</sup> GE 2, *supra* note 4, at 6.

Cancellation of Debt, which indicated \$17,673.31 had been discharged.<sup>26</sup> The account has been resolved.

There is a credit card account (SOR ¶ 1.b.) with an unpaid balance of \$16,658 that was placed for collection and charged off.<sup>27</sup> In October 2013, Applicant furnished the OPM investigator the same narrative regarding the account described in (SOR ¶ 1.a.). Applicant had opened the account to build credit; he was unable to continue making his monthly payments due to an unspecified financial hardship; he attempted to settle the account but the creditor was uncooperative; the creditor would only settle the account for an amount that Applicant could not pay; after his debt relief services company contacted the creditor, Applicant no longer received collection notices; he assumed that the account was satisfied as part of the bank bailout with short sale; he was unaware that he still owed money on the account; and he stated he intended to resolve the account once funds become available.<sup>28</sup>

In his answer to the SOR, Applicant added that he was working with his credit counselor to settle the debt, and that he had funds available from his 401(k) to do so at the beginning of 2014.<sup>29</sup> During the hearing, Applicant stated that in 2011, the creditor had offered to settle the account for \$10,000, but he was unable to pay that amount. He subsequently was hoping to get the creditor to accept that amount or a lesser amount.<sup>30</sup> In February 2014, Applicant offered to settle two delinquent credit card debts, including this one, for a combined \$10,000, but the effort failed.<sup>31</sup> Applicant has been unable to obtain the anticipated loan from the 401(k) or borrow money from family members.<sup>32</sup> He has not made any payments to the creditor because his debt relief services company advised him not to do so.<sup>33</sup> The account has not been resolved.

There is a credit card account (SOR ¶ 1.c.) with an unpaid balance of \$12,864 that was placed for collection and charged off.<sup>34</sup> In October 2013, Applicant furnished the OPM investigator the same narrative regarding the account described in (SOR ¶¶ 1.a. and 1.b.). Applicant had opened the account to build credit; he was unable to continue making his monthly payments due to an unspecified financial hardship; he attempted to settle the account but the creditor was uncooperative; the creditor would

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<sup>26</sup> AE A (Form 1099-C, dated December 16, 2013).

<sup>27</sup> GE 3, *supra* note 14, at 7-8.

<sup>28</sup> GE 2, *supra* note 4, at 6.

<sup>29</sup> Applicant's Answer to the SOR, dated April 22, 2014.

<sup>30</sup> Tr. at 30.

<sup>31</sup> Tr. at 39.

<sup>32</sup> Tr. at 37-38.

<sup>33</sup> Tr. at 39.

<sup>34</sup> GE 3, *supra* note 14, at 7.

only settle the account for an amount that Applicant could not pay; after his debt relief services company contacted the creditor, Applicant no longer received collection notices; he assumed that the account was satisfied as part of the bank bailout with short sale; he was unaware that he still owed money on the account; and he stated he intended to resolve the account once funds become available.<sup>35</sup>

In his answer to the SOR, and during the hearing, Applicant described the identical efforts (and non-efforts) he referred to above regarding the other two credit cards. The account has not been resolved.

There is a credit card account (SOR ¶ 1.d.) with an unpaid balance of \$3,604 that was placed for collection and charged off.<sup>36</sup> In October 2013, Applicant furnished the OPM investigator the same narrative regarding the account described in (SOR ¶¶ 1.a. through 1.c.). Applicant had opened the account to build credit; he was unable to continue making his monthly payments due to an unspecified financial hardship; he attempted to settle the account but the creditor was uncooperative; the creditor would only settle the account for an amount that Applicant could not pay; after his debt relief services company contacted the creditor, Applicant no longer received collection notices; he assumed that the account was satisfied as part of the bank bailout with short sale; he was unaware that he still owed money on the account; and he stated he intended to resolve the account once funds become available.<sup>37</sup>

In his answer to the SOR, Applicant added that in February 2014, with the assistance of his credit counselor, he settled the debt.<sup>38</sup> The account was settled for \$500.<sup>39</sup> The account has been resolved.

## Personal Conduct

On September 5, 2013, when Applicant completed his SF 86, he responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record asked if, in the last seven years, he had: bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed, and if he was currently over 120 days delinquent on any debt. Applicant answered “no” to all of 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.

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<sup>35</sup> GE 2, *supra* note 4, at 6.

<sup>36</sup> GE 3, *supra* note 14, at 7. There was a past-due balance of \$2,577 and an unpaid balance of \$3,604, but \$3,635 was actually charged off in September 2011.

<sup>37</sup> GE 2, *supra* note 4, at 8.

<sup>38</sup> Applicant's Answer to the SOR, *supra* note 29.

<sup>39</sup> AE B (Letter, dated April 28, 2014).

Applicant subsequently denied intending to falsify his responses, and explained that he had simply answered the questions very quickly, relying on outdated information.<sup>40</sup> He claimed he was unaware of the delinquent accounts until they were brought to his attention by the OPM investigator.<sup>41</sup>

## **Work Performance and Character References**

The president of Applicant's union supports Applicant's application, and indicated that the organization "is proud of his affiliation and holds him in the highest esteem for his loyalty, integrity and honesty."<sup>42</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>43</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>44</sup>

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

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<sup>40</sup> Tr. at 47.

<sup>41</sup> Applicant's Answer to the SOR, *supra* note 29.

<sup>42</sup> AE E (Character Reference, dated July 30, 2014).

<sup>43</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>44</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”<sup>45</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>46</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>47</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>48</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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<sup>45</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>46</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>47</sup> *Egan*, 484 U.S. at 531.

<sup>48</sup> See Exec. Or. 10865 § 7.



Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Although he encountered some financial difficulties as early as 2007 or 2008, Applicant's most significant recent financial problems arose in 2011, and continue to the present. He was unable to continue making his routine monthly payments, and various accounts became delinquent and were either placed for collection or charged off. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.<sup>49</sup>

AG ¶¶ 20(b) and 20(c) minimally apply. AG ¶¶ 20(a) and 20(d) do not apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties initially since 2007 or 2008, but reappearing in 2011, make it difficult to conclude that it

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<sup>49</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 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)).

occurred “so long ago” or “was so infrequent.” While there is evidence that some of his financial difficulties may have been caused by his separation and other unspecified financial hardship, without more detailed explanations, it is difficult to assess to what degree those financial hardships were beyond Applicant’s control. There are no periods of unemployment, and other than the issues with his underwater mortgage, a matter not addressed in the SOR, Applicant has not provided any specifics as to the causes of his financial difficulties.

What he did furnish was a generic, not very credible, template of an explanation covering all of his creditors: Applicant had opened the account to build credit; he was unable to continue making his monthly payments due to an unspecified financial hardship; he attempted to settle the account but the creditor was uncooperative; the creditor would only settle the account for an amount that Applicant could not pay; after his debt relief services company contacted the creditor, Applicant no longer received collection notices; he assumed that the account was satisfied as part of the bank bailout with short sale; he was unaware that he still owed money on the account; and he stated he intended to resolve the account once funds become available.

While Applicant received guidance and assistance from a debt relief services company in establishing the non-SOR short sale and settling one \$3,604 debt for \$500, there is a paucity of evidence that that particular company offered him any financial counseling on debt management, budgeting, or repayment plans. Applicant contends that all of his newer accounts are current, and that he intends to resolve the remaining accounts, something he has repeatedly stated in the past. However, in the absence of a personal financial statement or documentary evidence that he has taken more recent steps to make small payments or negotiate reasonable repayment plans or settlements, an assessment of his intentions and ability to take meaningful action remains difficult.

Applicant contends he acted responsibly by addressing all of his delinquent accounts, and having his debt relief services company work with his creditors.<sup>50</sup> But that debt relief services company did little on his behalf to resolve his accounts other than advising him to make no payments on the remaining delinquent credit cards. Applicant seems adamant in not resolving his remaining delinquent debts at face value although he had received something of value over the years. When he could not negotiate an acceptable reduced settlement amount, he simply ignored his creditors. One creditor simply closed an account and issued Applicant a Form 1099-C. There are clear indications that Applicant’s financial problems are not under control. Applicant’s actions under the circumstances confronting him, and lingering questions regarding his candor, do cast doubt on his current reliability, trustworthiness, or good judgment.<sup>51</sup>

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<sup>50</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.

<sup>51</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

## **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 several conditions 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 September 5, 2013, when Applicant completed his SF 86, he responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record asked if, in the last seven years, he had: bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed, and if he was currently over 120 days delinquent on any debt. Applicant answered “no” to all of 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 submission was a deliberate falsification, as alleged in the SOR, or merely the result of misunderstanding or simply answering the questions too quickly, relying on outdated information. He acknowledged that he had received collection notices from his creditors, but once those notices stopped coming, he assumed that his debt relief services company had resolved the accounts. While he might possibly assume the accounts had been resolved and were no longer over 120 days delinquent, Applicant failed to explain why he failed to acknowledge that in the last seven years, he had bills or debts turned over to a collection agency, or any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He denied the false responses were deliberate or an attempt to falsify the material facts. I have considered Applicant's educational background and lengthy professional career in analyzing his actions. Applicant is an intelligent, talented, and experienced individual, but his explanations, to be accepted, require that a substantial degree of unreasonableness be ignored. If Applicant had acknowledged the deliberate nature of his actions and expressed that it was foolish on

his part to have falsified his responses and concealed the truth, his actions might have been considered aberrant behavior out of character for him. However, Applicant clings to his explanation that when he completed the SF 86 he was unaware that his accounts were delinquent, placed for collection, or charged off. His position is unreasonable. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. If the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*, AG ¶ 17(c) may apply. Also, AG ¶ 17(d) may apply if *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*. None of the mitigating conditions apply.

### **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>52</sup>

There is some evidence in favor of mitigating Applicant's conduct. He has a lengthy professional career with one employer, has possessed a security clearance since April 1982 without incident, and appears to have been a good provider for his adopted step-children, one of whom is a disabled adult. He settled one delinquent credit

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<sup>52</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).

card account with a balance of \$3,604 for \$500 in February 2014. Another delinquent credit card account with a past-due balance of \$18,796 was resolved when the creditor issued him a Form 1099-C.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>53</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.

The disqualifying evidence under the whole-person concept is more substantial. Applicant’s meaningful track record is not one of actual debt reduction through payment of debts. Of the four delinquent debts listed in the SOR, Applicant is credited with resolving one \$3,604 debt with a settlement for \$500. One debt was resolved, but not paid, when the creditor simply issued him a Form 1099-C. Applicant’s actual track record is one of stalling and refusing to make payments or enter into reasonable settlement arrangements with creditors.

When Applicant completed his SF 86, he responded to various financial questions and certified that the responses were “true, complete, and correct” to the best of his knowledge, but the responses to the questions were, in fact, false. He denied the responses were deliberate or an attempt to falsify the material facts. Furthermore, when subsequently asked for explanations for his answers, he furnished a generic, not very credible, template of an explanation covering all of his creditors: Applicant had opened the account to build credit; he was unable to continue making his monthly payments due to an unspecified financial hardship; he attempted to settle the account but the creditor was uncooperative; the creditor would only settle the account for an amount that Applicant could not pay; after his debt relief services company contacted the creditor, Applicant no longer received collection notices; he assumed that the account was

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<sup>53</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

satisfied as part of the bank bailout with short sale; he was unaware that he still owed money on the account; and he stated he intended to resolve the account once funds become available. For Applicant's explanations to be accepted, it would require that a substantial degree of unreasonableness be ignored. Accordingly, I have concluded that he deliberately falsified his responses in an attempt to conceal the truth about his financial problems. Overall, the evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct issues. 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge