DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 14-00895
	)	
Applicant for Security Clearance	)	

Appearances

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

09/29/2014

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 July 8, 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).[1] On April 24, 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 September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

[1] GE 1 ((SF 86), dated July 8, 2013).

Considerations), 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.

It is unclear when Applicant received the SOR. In a sworn statement, dated May 29, 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 14, 2014.

During the hearing, five Government exhibits (GE 1 through GE 5) and four Applicant exhibits (AE A through AE D) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 25, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted seven additional documents which were marked as AE E through AE K and admitted into evidence without objection. The record closed on August 27, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.d., and 1.f.). He denied the one remaining allegation (¶ 1.e.). 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, and he is seeking to retain the secret security clearance which was granted to him in 2001.[2] He has been employed by the same defense contractor since August 2007, and currently serves as an electronic technician.[3] Applicant was laid off in July 2007 and remained unemployed until August 2007.[4] At the time of his lay-off, Applicant received severance pay.[5] He has never served with the United States military.[6]

A June 1979 high school graduate, Applicant has periodically attended college classes since October 2007, but has not earned a degree.[7] He was married in May

[2] GE 1, *supra* note 1, at 37-38.

[3] GE 1, *supra* note 1, at 10-11.

[4] GE 1, *supra* note 1, at 12.

[5] GE 5 (Personal Subject Interview, dated July 24, 2013), at 1.

[6] GE 1, *supra* note 1, at 14.

[7] GE 2, *supra* note 2, at 9-10.

1982, and divorced in January 1997; and married a second time in July 2002.[8] He has two daughters, born in 1983 and 1984,[9] as well as three step-daughters, born in 1986, 1989, and 1991.[10]

Financial Considerations

There was nothing unusual about Applicant's finances until about 1997 when he and his first wife divorced. Maintaining his own residence and a separate residence for his ex-wife and two children, in addition to his child support obligations, as well as his various credit card balances, was more than his salary could sustain.[11] With insufficient money to maintain his monthly payments, some accounts became delinquent.[12] In July 1999, Applicant filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and in October 1999, about $20,000 of Applicant's unsecured nonpriority claims were discharged (SOR ¶ 1.a.).[13] As a result of the bankruptcy discharge, Applicant's financial situation was dramatically improved. Financial good fortune continued, and in November 2002, Applicant had a 401(k) retirement account worth $34,000, a residence worth $440,000, and a monthly net remainder of $1,925 available for discretionary spending or savings.[14] At that time, other than his mortgage, Applicant had no installment or credit card debts.

Applicant's next period of financial difficulty arose in July 2007 when he was laid off. As the economy started to deteriorate, he was unable to obtain a new job in the local area, and after he obtained his new job in August 2007, he was forced to relocate, first himself, and eventually the entire family, at his own expense, across the country to another state.[15] In 2008, before the family relocated, Applicant's wife lost her job.[16] He was unable to sell his old residence. In an effort to work out some type of mortgage modification, Applicant was in constant contact with the mortgage holder, but it was "pretty much uninterested."[17] He took a loan from his 401(k) to save his residence.[18] One of the results of his efforts to save his residence from foreclosure was to place him

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[8] GE 1, *supra* note 1, at 16-18.

[9] GE 1, *supra* note 1, at 25-27.

[10] GE 1, *supra* note 1, at 27-29.

[11] Applicant's Answer to the SOR, dated May 29, 2014, at 1; Tr. at 25-26, 54-55.

[12] Tr. at 55.

[13] Tr. at 27; Applicant's Answer to the SOR, *supra* note 11, at 1.

[14] GE 2 (Personal Financial Statement, dated November 3, 2002).

[15] Tr. at 22-25.

[16] Applicant's Answer to the SOR, *supra* note 11, at 2.

[17] Tr. at 23.

[18] Tr. at 28, 33.

into a higher income tax bracket. Applicant's accountant timely e-filed Applicant's 2007 income tax return with an installment agreement request and a $200 payment, but the filing was rejected. The payment was returned with a memo stating that he did not owe any taxes.[19] He later submitted a hard copy of his return by mail.[20] Although Applicant received letters from the Internal Revenue Service (IRS) acknowledging his request for an installment agreement,[21] he also received IRS letters denying his income tax return had been received.[22] At one point, Applicant was told that he owed the IRS over $100,000.[23] Because he was unable to resolve the issues with the IRS, Applicant engaged the services of a tax resolution service to assist him. Resolution was finally achieved in late 2013.[24] The tentative balance owed the IRS was determined to be $40,000 (SOR ¶ 1.b.), but a significant portion of that amount can be abated.[25] Commencing in January 2014, Applicant started making monthly installment payments of $576 to the IRS.[26] Applicant's IRS delinquency is in the process of being resolved.

The SOR identified four other delinquent debts that had been placed for collection, charged off, or went to foreclosure, as generally reflected by a July 2013 credit report and a March 2014 credit report.[27] Those four debts listed in the SOR and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

There was a first mortgage loan of $359,600 on the residence for which Applicant had attempted to seek a home loan modification that was foreclosed upon in 2008 (SOR ¶ 1.c.).[28] The mortgage holder took title of the residence in November 2008 and sold it at a foreclosure sale.[29] Notwithstanding the zero balance and past-due balance reflected in Applicant's July 2013 credit report, the SOR alleges that the approximate amount of $359,600 is still owed and remains unpaid. Applicant was issued a Form 1099-A, Acquisition or Abandonment of Secured Property, reflecting a principal balance

[19] Tr. at 28, 30.

[20] Tr. at 29-30.

[21] Tr. at 29; AE J (IRS Letter, dated June 17, 2008).

[22] Tr. at 29-31.

[23] Tr. at 31.

[24] Tr. at 31; AE E (Letter, dated March 14, 2014).

[25] Tr. at 32, 39; AE A (E-mail, dated July 13, 2014).

[26] AE B (Account Activity, dated August 7, 2014).

[27] GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 12, 2013); GE 4 (Equifax Credit Report, dated March 4, 2014).

[28] GE 3, *supra* note 27, at 7; AE G (TransUnion Credit Report, dated July 28, 2014), at 3-4.

[29] Tr. at 33.

of $347,460.47, and a fair market value of the property of $365,244.67.[30] Block 5 of the Form 1099-A reflects that the borrower is not personally liable for repayment of the debt.[31] (emphasis added) Applicant believed he had also received a Form 1099-C, Cancellation of Debt, reflecting a debt of nearly $200,000. Both forms are not generally issued for the same debt, and it appears that he was mistaken. Nevertheless, he contended he paid the taxes on that cancelled debt in 2008.[32] Applicant was unable to submit the Form 1099-C, and there is no allegation that he failed to pay his tax on the cancelled debt.

Applicant is not liable for the deficiency, if there was one, for under California law, there is a provision called the Anti-Deficiency Statute,[33] which states in relevant part:

> No deficiency judgment shall lie in any event after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract of sale, or under a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of that real property or estate for years therein, or under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser.

Under this section, generally if there is a foreclosure on a dwelling and there is a deficiency, the lender has no recourse regarding "purchase money loans," also called "non-recourse loans," the amount set forth in the mortgage used to finance the purchase of the dwelling. The collateral or dwelling is considered full satisfaction. However, there is a caveat, for the protection is afforded only if the borrower actually dwells in the property, a fact which has been met in this instance. There is another pertinent law, called the One Form of Action Rule,[34] which states in relevant part: "There can be but one form of action for the recovery of any debt, or the performance of any right secured by mortgage upon real property." Accordingly, the comment in the July 2013 credit report credit that there is a zero balance, as well as the comment in the Form 1099-A that the borrower is not personally liable for repayment of the debt are accurate reflections of the facts, and there is no deficiency. The account has been resolved.

[30] AE H (Form 1099-A, dated November 19, 2008).

[31] AE H, *supra* note 30.

[32] Tr. at 34.

[33] Cal. Code Civ. Proc. § 580(b). Department Counsel objected to my raising the Anti-Deficiency issues. I left the record open to afford the parties the opportunity to submit briefs on the applicability or non-applicability of the Anti-Deficiency Act in this instance, but no submissions were made. *See* Tr. at 47-49.

[34] Cal. Code Civ. Proc. § 726(a).

There was a second mortgage or home equity loan of $182,432 on the same residence that was charged off in September 2008 (SOR ¶ 1.d.).[35] During the hearing, Applicant was under the impression that the lender had issued him "a Form 1099,"[36] but upon subsequent reflection, he determined he was in error, and the document was actually the Form 1099-A he had received from the mortgage lender on his first mortgage.[37] Since the second mortgage is subordinate to the first mortgage, the interests of the second mortgage holder normally become a lien on the property. When the property was acquired by the first mortgage holder and sold, the second mortgage holder might receive repayments when the first mortgage is paid off. Applicant's July 2014 credit report reflects a zero balance on the charged-off account.[38] There is insufficient evidence to determine if the second mortgage was actually paid off when the residence was sold by the first mortgage holder or if there is still a remaining unpaid balance. Under these circumstances, I conclude the account has not been resolved.

There was a lawn service account with a balance of $530 that was placed for collection in September 2010 (SOR ¶ 1.e.).[39] Applicant contends he verbally cancelled the monthly service "multiple times." While the company stopped the service, it continued taking monthly deductions from his checking account.[40] In an effort to thwart those monthly deductions, Applicant closed his checking account.[41] In July 2013, Applicant indicated he would dispute the account or set up a repayment plan.[42] In July 2014, Applicant filed a formal dispute with Experian.[43] Following Experian's processing of the dispute, the negative credit item was not changed.[44] Applicant does not believe he should be responsible for the charges, and he has not recently indicated how he planned to resolve the matter, of if he still intends to do so. The account has not been resolved.

There was an unspecified type of account with a city with a balance of $493 that was placed for collection in February 2009 (SOR ¶ 1.f.).[45] Because he had never received a bill, Applicant contacted the creditor to obtain information regarding the

[35] GE 3, *supra* note 27, at 8; AE G, supra note 28, at 1-2.

[36] Tr. at 50.

[37] AE K (Statement, undated).

[38] AE G, *supra* note 28, at 1-2.

[39] GE 3, *supra* note 27, at 9.

[40] Applicant's Answer to the SOR, *supra* note 11, at 2; Tr. at 41.

[41] Applicant's Answer to the SOR, *supra* note 11, at 2; Tr. at 41.

[42] GE 5, *supra* note 5, at 4.

[43] AE D (Dispute, dated July 28, 2014).

[44] AE I (Report, dated August 24, 2014).

[45] GE 3, *supra* note 27, at 9.

charges but the creditor was unable to furnish any information.[46] In July 2013, Applicant indicated he would dispute the account or set up a repayment plan.[47] In July 2014, Applicant filed a formal dispute with both TransUnion and Experian.[48] Following Experian's processing of the dispute, the negative credit item was deleted.[49] The result of the TransUnion dispute is unclear. The account has been resolved.

Applicant recently furnished a personal financial statement. A review of that document reveals a total monthly family net income of $6,200. With routine monthly living expenses, including rent, utilities, food, and transportation, as well as his IRS debt payments, of $3,262, he has approximately $2,938 available for discretionary spending or savings.[50] Applicant's assets have also appreciated to the point where he now has a 401(k) worth $170,000, and bank savings of $5,000.[51] All of Applicant's newer accounts are current.[52] It appears that Applicant's financial problems are under control.

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."[53] 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."[54]

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.

[46] Applicant's Answer to the SOR, *supra* note 11, at 2; Tr. at 42.

[47] GE 5, *supra* note 5, at 4.

[48] AE D, *supra* note 43; Applicant's Answer to the SOR, *supra* note 11, at 2; Tr. at 42.

[49] AE I, *supra* note 44.

[50] AE F (Personal Financial Statement, undated).

[51] AE F, *supra* note 50; AE C (Investment Summary, dated August 7, 2014).

[52] AE G, *supra* note 28, at 6-10.

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

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

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."[55] 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.[56]

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."[57]

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."[58] 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

[55] "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).

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

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

[58] *See* Exec. Or. 10865 § 7.

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. Although he encountered some financial difficulties as early as 1997, Applicant's most recent significant financial problems arose in 2007, and continued for several years thereafter. He was unable to continue making his routine monthly payments, and various accounts became delinquent and were either placed for collection, charged off, or foreclosed upon. 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*.[59] In addition, AG ¶ 20(e) may apply where *the individual has a reasonable basis*

[59] 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

to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶¶ 20(a) and 20(e) partially apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties initially since 1997, but reappearing in 2007, 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 largely beyond Applicant's control. The initial period of financial difficulty arose when he and his first wife separated, maintained separate households, and then divorced. Maintaining two residences, in addition to his child support obligations, as well as his various credit card balances, was more than his salary could sustain. With insufficient money to maintain his monthly payments, some accounts became delinquent. His Chapter 7 bankruptcy resolved those financial problems, and from October 1999 until at least July 2007, his financial situation remained excellent.

Things deteriorated when Applicant was laid off in July 2007, and while he was able to obtain another job in August 2007, he was forced to relocate his family, at his own expense, across the country to another state. In 2008, before the family relocated, Applicant's wife lost her job. With the collapsing economy and a disinterested mortgage lender, Applicant was unable to sell the house or get a mortgage modification for it. He initiated a good-faith effort to resolve his problems when he took a loan from his 401(k) to save his residence, but one of the unintended results of his efforts to save his residence from foreclosure was to place him into a higher income tax bracket. After lengthy and unusual delays in dealing with the IRS, commencing in January 2014, Applicant started making monthly installment payments of $576 to the IRS.

Applicant's residence was foreclosed upon in 2008, and the mortgage holder took title of the residence and sold it at a foreclosure sale. Applicant was issued a Form 1099-A, reflecting a principal balance of $347,460.47, and a fair market value of the property of $365,244.67. As noted above, block 5 of the Form 1099-A reflects that the borrower is not personally liable for repayment of the debt. There was also a second mortgage or home equity loan of $182,432 on the same residence that was charged off in 2008. Since the second mortgage is subordinate to the first mortgage, the interests of the second mortgage holder normally become a lien on the property. There is insufficient evidence to determine if the second mortgage was actually paid off when the residence was sold by the first mortgage holder or if there is still a remaining unpaid balance.

> 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)).

Applicant disputed the two remaining SOR-related delinquent debts because he was unaware of one and felt he should not have been responsible for the other. One dispute, pertaining to an account for which even the creditor could not furnish information, was successful and the negative listing was deleted from his credit report. The other dispute was denied, and it is unclear what Applicant's current intentions regarding the debt might be.

While Applicant did not receive traditional financial counseling, he did engage the professional services of a tax resolution service to assist him with respect to his IRS issue. A review of his current finances reveals a total monthly family net income of $6,200, general household and debt expenses of $3,262, and approximately $2,938 available for discretionary spending or savings. Applicant's 401(k) is now worth $170,000, and he has bank savings of $5,000. All of Applicant's newer accounts are current. Applicant acted responsibly by addressing all of his delinquent accounts, and attempting to work with his creditors.[60] With his current job, 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.[61]

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

[60] "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.

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

aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[62]

There is some evidence against mitigating Applicant's conduct. His handling of his finances on two separate occasions permitted a number of accounts to become delinquent, placed for collection, charged off, or to be foreclosed upon. In 1999 he had about $20,000 of unsecured nonpriority claims discharged under Chapter 7 of the U.S. Bankruptcy Code. In 2007, he again permitted various accounts to become delinquent, placed for collection, charged off, or to be foreclosed upon. One account for $530, a lawn service account, has been unresolved since 2010. The current status of the charged-off second mortgage remains unclear.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Rather, his problems were largely beyond Applicant's control. The financial difficulties of the 1997-1999 time period were due primarily to his separation and eventual divorce, maintaining separate households, child support obligations, and his various credit card balances. The expenses were simply more than his salary could sustain. His Chapter 7 bankruptcy resolved those financial problems, and from October 1999 until at least July 2007, his financial situation remained excellent.

Applicant's most recent period of financial deterioration occurred when he was laid off in July 2007. A month later he obtained another job, but he was forced to relocate his family, at his own expense, across the country. In 2008, Applicant's wife lost her job. Applicant was unable to sell his house or get a mortgage modification for it, so he took a loan from his 401(k) to save his residence. That effort to save his residence from foreclosure not only placed him into a higher income tax bracket, but it failed to save the house from foreclosure. Applicant was issued a Form 1099-A, reflecting a principal balance of $347,460.47, a fair market value of the property of $365,244.67, and an entry that the borrower is not personally liable for repayment of the debt. In January 2014, Applicant started making monthly installment payments of $576 to the IRS. 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 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:[63]

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of

[62] *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).

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

> 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.

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts. Nevertheless, this decision should serve as a warning that his failure to continue his debt resolution efforts or the actual accrual of new delinquent debts will adversely affect his future eligibility for a security clearance.[64] 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. *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

[64] 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. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). *See also* ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); 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).

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