DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 14-01144
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

04/15/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges five delinquent or collection accounts totaling $50,654. He failed to provide sufficient documentation of the progress to resolve his financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On August 8, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 3) On April 11, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge

to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On June 11, 2014, Applicant responded to the SOR allegations, and on July 15, 2014, Applicant sent an email to the Defense Office of Hearings and Appeals and waived his right to a hearing. (Item 2) A complete copy of the file of relevant material (FORM), dated November 28, 2014, was provided to him on December 17, 2014.[1] Applicant did not respond to the FORM. The case was assigned to me on April 9, 2015.

Findings of Fact[2]

In Applicant's SOR response, he admitted responsibility for the debts in SOR ¶¶ 1.a, 1.b, 1.c, and 1.e.[3] He did not discuss the medical debt in SOR ¶ 1.d. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 51-year-old network and system security analyst, who worked for a company since July 2010.[4] Previously, he has worked as a systems developer from August 2006 to June 2010 for a federal contractor and from September 2000 to August 2006 as an instructor. In the last 15 years, he has not had any periods of unemployment. He has never served in the military. In 1986, he was married, and in 1995, he was divorced. In 1998, he was married, and in October 2010, he was divorced. He has resided with a cohabitant since 2010. His daughter was born in 1997, and his two former stepchildren were born in 1984 and 1988. He received an associate's degree in 1986. There is no evidence of security violations or use of illegal drugs. He disclosed some of his financial problems on his August 8, 2012 SF 86.

Financial Considerations

Applicant's credit reports and SOR allege five delinquent or collection accounts totaling $50,654 as follows: ¶ 1.a is a bank debt for an account that is 120 days or more past due in the amount of $1,829; ¶ 1.b is a bank debt in collection for $4,408; ¶ 1.c is a bank debt in collection for $3,722; ¶ 1.d is a medical debt in collection for $981; and ¶ 1.e is a bank debt in collection for $39,714. (Items 1, 5-7)

[1]The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated December 10, 2014, and Applicant's receipt is dated December 17, 2014. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

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

[3]The source for the information in this paragraph is Applicant's SOR response. (Item 2)

[4]Unless stated otherwise, Applicant's August 8, 2012 SF 86 is the source for the facts in this paragraph. (Item 3)

Applicant attributed his financial problems to divorce. (Item 2) In May 2007, he was separated from his spouse, and he was unable to afford the payments on three properties. (Item 2) His former spouse failed to pay her share of the debts. The debt in SOR ¶ 1.a related to a property that was repossessed by the bank in 2009 and resold. Applicant indicated the charged-off debt was for $41,829. (Item 2)

Applicant said the debts in SOR ¶¶ 1.b for $4,408 and 1.c for $3,722 resulted from credit cards his former spouse activated without his knowledge or permission. (Item 2) He did not provide documentation written to the credit reporting companies, creditors, or collection companies disputing his responsibility for these two debts. He did not provide copies of the agreements establishing the credit card accounts to show that his former spouse was solely responsible for these two debts.

Applicant did not address the medical-collection debt in SOR ¶ 1.d for $981. (Item 2) Applicant said the debt in SOR ¶ 1.e for $39,714 was actually past due in the amount of $2,004 with a total balance of $29,655. (Item 2) This debt resulted from a bank-repossession of property designated his former spouse's responsibility in their divorce decree. (Item 2) The divorce decree, which he provided, also specifies that the credit cards in his former spouse's name shall be her responsibility. (Item 2)

Applicant emphasized that he is making payments to address two substantial debts.[5] In 2008, he borrowed $10,000, which he used to consolidate his debts, and he paid the $10,000 debt down to $5,402 as of June 2014. He has reduced a credit card debt from $5,000 in 2012, to $3,953 as of June 2014.

On December 27, 2013, Applicant's counsel recommended that he not contact his creditors in order to negotiate a settlement on his debts because they did not appear to be actively pursuing Applicant for payment as it may be akin to "a case of kicking the sleeping dog."[6] His counsel noted that Applicant may "have a colorable defense that many, if not all of these potential claims are barred by the statute of limitations as no collection activity or payment has occurred for an extended period of time." He further advised that Applicant should wait until a claim is asserted then "raise a defense that they are time barred."

Applicant's FORM repeated the admonition about the absence of corroborating documentation and other mitigating information and explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. . . . If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 6) Applicant did not respond to the FORM.

[5]The source for the facts in this paragraph is Applicant's response to the SOR. (Item 2)

[6]The source for the facts in this paragraph is a December 27, 2013 letter from Applicant's attorney, which was attached to his SOR response. (Item 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

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

Analysis

Financial Considerations

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

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

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

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

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports and SOR response. Applicant's SOR alleges five delinquent or collection accounts totaling $50,654. He explained in his SOR response that four of the five debts actually exceed $60,000, and two debts involve real estate repossessed by his and his former spouse's banks. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;[7] and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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

> Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

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

[7]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)).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts. He did not provide sufficient information about his finances to establish his inability to make greater progress paying his creditors. His divorce damaged his family finances and is a circumstance largely beyond his control; however, he did not act responsibly under the circumstances. He did not provide documentation showing his income and expenses over the last three years. He did not provide his budget. He presented insufficient evidence about what he has done over the last three years to pay his SOR debts or his other debts.

Applicant did not provide any of the following documentation relating to the SOR creditors: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact with the creditor;[8] (3) a credible debt dispute; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of his SOR debts.

The possibility that his debts will be uncollectible as presented by the evidence of record is too speculative to establish his financial responsibility. He did not establish what state or states' statutes of limitations applied or how or when they applied. His failure to prove that he has made more substantial steps to resolve his debts shows a lack of judgment and responsibility that weighs against approval of his security clearance. There is insufficient evidence that he was unable to make greater progress resolving his delinquent debts, or that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial consideration concerns are mitigated.

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

[8]"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.

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

There is some evidence supporting approval of Applicant's clearance. Applicant is a 51-year-old network and system security analyst, who has worked for his current employer since July 2010. He has been continuously employed for the previous 15 years. He received an associate's degree in 1986. His October 2010 divorce is a circumstance beyond his control that contributed to his financial problems. There is no evidence of security employer-rule violations or use of illegal drugs. He disclosed some of his financial problems on his August 8, 2012 SF 86.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. His SOR alleges five delinquent or collection accounts totaling $50,654. His SOR response indicates he had two real estate properties repossessed, and his delinquent SOR debts exceed $60,000. He failed to provide sufficient documentation of progress to resolve his financial problems. His failure to provide more corroborating documentation shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. *See* AG ¶ 18. More information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. Based on the facts before me and the adjudicative guidelines that I am required to apply, I conclude that it is not clearly consistent with national security to grant Applicant security clearance eligibility at this time.

I have carefully applied the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not mitigated.

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
Subparagraphs 1.a-1.e:	Against Applicant

Conclusion

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

_____
Mark Harvey
Administrative Judge