DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 14-01909
	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

03/20/2015

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On January 20, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On July 17, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September

[1] GE 1 (e-QIP, dated January 20, 2014).

1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD adjudicators could not make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on August 3, 2014. In a sworn statement, dated August 14, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On November 13, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on November 17, 2014. A Notice of Hearing was issued on December 1, 2014. I convened the hearing, as scheduled, on December 16, 2014.

During the hearing, five Government exhibits (GE 1 through GE 5) and nine Applicant exhibits (AE A through AE I) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on January 5, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as AE J through AE L and admitted into evidence without objection. The record closed on December 24, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted six of the factual allegations in the SOR under financial considerations (¶¶ 1.a., 1.b., and 1.d. through 1.g.) as well as the factual allegation pertaining to personal conduct (¶ 2.a.). Applicant's admissions 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 58-year-old employee of a defense contractor. He has been serving as a tool/part attendant since August 2005.[2] He was briefly unemployed from July 2005 until August 2005.[3] Applicant served in an enlisted capacity with the U.S. Navy on active duty from September 1973 until October 1993.[4] He retired with an honorable discharge and was transferred to the Fleet Reserve.[5] He received a General Educational Development (GED) diploma in 1975 while deployed at sea,[6] and took

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

[3] GE 1, *supra* note 1, at 13.

[4] GE 1, *supra* note 1, at 12, 17-18; AE A (Certificate of Release or Discharge from Active Duty (DD Form 214), dated October 31, 1993).

[5] AE A, *supra* note 4.

[6] GE 1, *supra* note 1, at 11-12; Tr. at 6.

some subsequent college courses.[7] Applicant was granted a secret security clearance in 1981 while on active duty,[8] but that clearance apparently expired, for Applicant does not currently hold a security clearance.[9] Applicant was married in 1975.[10] He and his wife have two children: a son born in 1974 and a daughter born in 1976.[11]

Military Service

During his military service, Applicant was awarded the Navy Commendation Medal, the Navy Achievement Medal, the Meritorious Unit Commendation (with one device), the National Defense Service Medal (with one device), the Sea Service Deployment Ribbon (with two devices), the Navy and Marine Corps Overseas Service Ribbon (with two devices), and the Good Conduct Medal (with four devices).[12]

Financial Considerations and Personal Conduct

Applicant was one of ten children, and although his father was retired from the U.S. Army, the family was very poor. Applicant started working when he was 11 years old, and he enlisted in the U.S. Navy when he was 17 years old. There was nothing unusual about Applicant's finances until 1992.

(SOR ¶ 1.c.): Because he was brought up poor, Applicant was very naïve about financial matters, never having had financial counseling or guidance. In his younger years, he never had anything, but later on, if he saw something he wanted, he would use a credit card to purchase it. He never realized the consequences of purchasing something he could not afford. As a result, he became overextended financially and was unable to continue paying his mounting bills.[13] In June 1992, Applicant and his wife voluntarily jointly filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.[14] The specific nature of the accounts (*i.e.*, credit cards, vehicles, mortgages, retail accounts, lines of credit, etc.) was not furnished. In October 1992, their unsecured nonpriority debts, worth an unspecified amount, were discharged.[15] Applicant's delinquent accounts were eliminated, and he was given a renewed fresh start financially.

[7] Tr. at 4.

[8] GE 1, *supra* note 1, at 38-39.

[9] Tr. at 4.

[10] GE 1, *supra* note 1, at 20.

[11] GE 1, *supra* note 1, at 23.

[12] AE A, *supra* note 4.

[13] Tr. at 27-29.

[14] GE 5 (Bankruptcy Party Search, dated October 31, 2013), 2.

[15] GE 5, *supra* note 14, at 3

(SOR ¶ 1.d.): Applicant's financial situation during the early years following the discharge of his debts is unclear. Unfortunately, his irresponsible spending habits eventually returned. As a result, he again became overextended financially and was unable to continue paying his mounting bills.[16] In June 2001, Applicant and his wife again voluntarily jointly filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.[17] The specific nature of the accounts was not furnished. In October 2001, their unsecured nonpriority debts, worth an unspecified amount, were discharged.[18] Nevertheless, Applicant did reaffirm three of the debts.[19] With the exception of the reaffirmed debts, Applicant's delinquent accounts were eliminated, and he was again given a renewed fresh start financially.

(SOR ¶ 1.e.): Applicant contends that for a number of years following his 2001 bankruptcy discharge he was "doing excellent" financially.[20] In September 2004, things changed dramatically when Hurricane Ivan, a Category 3 hurricane with 120 mph winds made landfall on the U.S. mainland, causing extensive damage to the entire area. At the time, Applicant was temporarily saving money by residing with his son, while his permanent home, which was serving as a rental property, was damaged. The house was repainted; the air conditioner was repaired; the roof was repaired; and siding was repaired. Applicant's insurance was insufficient to cover all of the repairs, and he had to pay the repair costs using out-of-pocket funds.[21] At the time, Applicant was earning $9 per hour.[22]

In July 2005, less than a year after Hurricane Ivan struck the area, Hurricane Dennis, another Category 3 hurricane with 125 mph winds made landfall on the U.S. mainland, also causing extensive damage to his permanent residence in which he was now residing, as well as the entire area. The insurance did not cover flooding damage to his den or the roof damage. Applicant's nephew repaired the roof, and Applicant's son helped him with other repairs. The expenses put an extensive strain on Applicant's ability to maintain his accounts current.[23] At the time, Applicant was earning $16 per hour.[24] Unbeknownst to Applicant, both hurricanes enabled termites to infest his residence. When he learned of the infestation, he used the rest of his savings ($1,800) to seek professional help in treating the problem. Unfortunately for Applicant, several

[16] Tr. at 29.

[17] GE 5, *supra* note 14, at 5.

[18] GE 5, *supra* note 14, at 6.

[19] GE 5, *supra* note 14, at 6.

[20] Tr. at 30.

[21] Tr. at 30-34.

[22] Tr. at 35.

[23] Tr. at 39-42.

[24] Tr. at 39.

months later, a portion of the ceiling collapsed. While attempting to make repairs, the wood in the rafters crumbled due to termite rot.[25] At that point, without funds to make additional repairs, Applicant simply "gave up."[26]

In December 2009, Applicant and his wife again voluntarily and jointly filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.[27] Applicant listed $182,679.07 in liabilities, with 9 creditors holding secured claims worth $96,678, and 88 creditors holding unsecured nonpriority claims, totaling $86,001.07. In April 2010, their unsecured nonpriority debts were discharged.[28] Among the discharged accounts were mortgages, credit card accounts, bank loans, insurance accounts, and automobile loans.[29] Applicant's delinquent accounts were eliminated, and he was again given a renewed fresh start financially.

(SOR ¶ 1.a.): At the times Applicant filed his federal income tax returns for the tax years 2008, 2009, 2010, 2011, and 2012, he failed to make any of the tax payments associated with those respective tax returns. He owed the following approximate amounts for the designated years: $2,700 (2008), $2,800 (2009), $2,800 (2010), $1,300 (2011), and $3,000 (2012), totaling $12,600.[30] Applicant acknowledged that he owed the taxes, but he was in no position to pay them because his financial assets were exhausted and he simply did not have sufficient funds to pay his routine bills and his taxes.[31] Furthermore, during their 39 years of marriage, Applicant's wife worked outside the home for only four months, and that occurred in 1978.[32]

After several unsuccessful attempts to contact the Internal Revenue Service (IRS), in early 2013, the IRS and Applicant agreed to an installment agreement under which Applicant would pay approximately $200 per month. He made an unspecified number of payments, but suddenly stopped when his wife's health deteriorated.[33] Without insurance to cover her necessary surgeries, Applicant withdrew $8,000 from his 401(k) to pay for them. He also withdrew an additional $2,000 to pay other bills.[34]

[25] Applicant's Answer to the SOR, dated August 14, 2014, at 1; Tr. at 41-43.

[26] Applicant's Answer to the SOR, *supra* note 25, at 1.

[27] GE 5, *supra* note 14, at 8-9.

[28] GE 5, *supra* note 14, at 11-27.

[29] GE 5, *supra* note 14, at 13-27.

[30] Applicant's Answer to the SOR, *supra* note 25, at 1; GE 2 (Personal Subject Interview, dated February 4, 2014), at 1-2; Tr. at 42-43.

[31] GE 2, *supra* note 30, at 2; Tr. at 43.

[32] Tr. at 48.

[33] Tr. at 49-50.

[34] Tr. at 50-51.

In August 2014, Applicant engaged the professional services of an attorney to represent him with respect to his federal income tax liability. He paid the attorney at least $362.50 for the service.[35] Applicant entered into a 72-month installment agreement, commencing in November 2014.[36] The terms of the installment agreement, covering the tax years 2008 through 2013, initially called for a payment of $220 per month,[37] but because a creditor filed a Form 1099, the monthly payment is expected to increase to $235 per month.[38] Applicant's documentation reflects monthly payments of $220 in October 2014, November 2014, and December 2014.[39] Applicant also pays a monthly "convenience fee" of either $2.49 or $2.79 for making the payments through an authorized payment service.[40] In order to reduce his eventual end-of-the-year income tax burden, Applicant maximized his monthly withholding.[41] Applicant's federal income tax liability for the tax years 2008 through 2012 is in the process of being resolved.

(SOR ¶ 1.b.): In addition to the professional services of his attorney representing him with respect to his federal income tax liability for those past tax years, the attorney assisted him in filing his federal income tax return for tax year 2013. That tax return has been filed,[42] and any tax liability for that particular tax year is in the process of being resolved.

The SOR also identified two purportedly continuing delinquencies as reflected by credit reports from January 2014[43] and October 2014,[44] totaling approximately $10,766. Those debts listed in the SOR and their respective current status, according to the credit reports, other evidence in the case file, and Applicant's admissions regarding the same, are described below.

(SOR ¶ 1.f.): There is an automobile loan account with a high credit of $24,540, a balance of $22,986, and a past-due balance of $1,051 that was placed for collection.[45] When he purchased the used vehicle in June 2012, Applicant agreed to make monthly

[35] AE G (Transaction History, dated November 17, 2014), at 1.

[36] AE H (Letter, dated August 18, 2014); AE B (Letter, dated November 12, 2014).

[37] AE K (IRS Letter, dated September 8, 2014), at 1.

[38] Tr. at 53, 55-56.

[39] AE F (Receipt, dated December 12, 2014); AE G, *supra* note 35, at 2; AE I (Transaction History, dated November 30, 2014), at 1.

[40] AE F, *supra* note 39, at 1; AE I, *supra* note 39, at 1.

[41] Tr. at 56.

[42] Tr. at 52-53, 55.

[43] GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 24, 2014).

[44] GE 4 (Equifax Credit Report, dated October 29, 2014).

[45] GE 3, *supra* note 43, at 11.

payments of $546.[46] He made his required monthly payments for several months, but in September 2013, he started falling behind in his payments. When he had fallen behind for three straight months, the creditor contacted him. Applicant contended he made larger-than-required payments starting in January 2014 to bring the account current, but by September 2014, the past-due balance had risen to $1,638.[47] In November 2014, the vehicle was involuntarily repossessed from Applicant.[48] He attempted to contact the creditor to resolve the issue, but he has not yet received any information or documents confirming either the repossession or the issue of any continuing financial liability.[49] The account has not been resolved.

(SOR ¶ 1.g.): There is another automobile loan account with a high credit of $10,266 and a past-due balance of $9,715 that was placed for collection and charged off in December 2013.[50] When he purchased the used vehicle in September 2010, he traded in a truck. He made his required monthly payments of approximately $500 for several months, but in May 2012, he started falling behind in his payments.[51] The vehicle was repossessed that same year.[52] At some point in 2013, Applicant and the creditor agreed to a temporary repayment arrangement under which, commencing in August 2013, Applicant would make monthly payments of $75 for approximately six months, at which time a permanent arrangement would be made. He made the required payments for four months.[53] The creditor apparently sold the account to another company, and Applicant was subsequently offered a settlement for $4,000, to be made in two payments. Applicant was unable to make those payments so he declined the offer.[54] Applicant stopped making his monthly payments, but intends to resume making them.[55] Applicant was also confused about the account because his credit report reflected the account as charged off, and he interpreted that as meaning he no longer owed any money on the account.[56] The account has not been resolved.

Applicant obtained financial counseling in December 2014, and he subsequently submitted a Household Budget and Financial Planning Worksheet that reflected a net monthly income of $4,324.74, total monthly living expenses of $2,997, and $690.01 in

[46] Tr. at 57-58; GE 3, *supra* note 43, at 11.

[47] GE 4, *supra* note 44, at 2; GE 2, *supra* note 30, at 4.

[48] Tr. at 59.

[49] Tr. at 59-60.

[50] GE 3, *supra* note 43, at 12, 17.

[51] GE 3, *supra* note 43, at 12, 17.

[52] Tr. at 62-63; GE 2, *supra* note 30, at 3.

[53] Tr. at 63-64.

[54] Tr. at 64-65; AE J (Letter, dated December 10, 2014).

[55] Tr. at 65-66.

[56] AE J, *supra* note 54.

monthly debt payments. He also set aside $320.26 each month for savings and investments, leaving an additional $317.47 for discretionary savings or spending.[57] Included in his monthly debt payments are three credit cards (balances of $600, $200, and $941.25), two signature loans (balances of $963.97 and $1,204.07), a government debt (his IRS liability of $12,800), and a furniture debt ($1,800), totaling $18,509.29.[58] He has approximately $10,000 in his retirement 401(k) account.[59]

Applicant purchased a new car in July 2014 for approximately $25,000, for which he makes a monthly payment of $578.[60] His 38-year-old disabled daughter resides in the family residence.[61] When asked about his intentions with regard to his delinquent debts, Applicant stated that he planned to continue making his income tax payments and his delinquent car payment, and to resume his payment for his other delinquent car loan. He also intends to look for ways to reduce his expenses.[62]

Character References

A retired navy chief petty officer, and current federal contractor, has known Applicant for nine years. They are friends and attend the same church. He has characterized Applicant as very ethical, extremely trustworthy, highly respected, and a person with high standards and high morals. Applicant is very active in his church, both as a greeter and a Sunday school teacher.[63] Another friend has known Applicant for over 30 years, and her husband has known him for 15 years. They have referred to him as honest, trustworthy, an "overall wonderful person," and would trust him with all they own as well as their respective lives.[64] A coworker, who has known Applicant for about 13 years while she worked in the business office as a manager and he has worked in another department, has come to know him more personally over the years. She has characterized him as reliable, honest, and hardworking, and she indicated he has admirable values and ethics.[65]

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

[57] AE L (Household Budget and Financial Planning Worksheet, undated).

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

[59] Tr. at 67.

[60] Tr. at 68.

[61] Tr. at 74, 86-87.

[62] Tr. at 78-79.

[63] AE D (Character Reference, dated November 10, 2014).

[64] AE E (Character Reference, undated).

[65] AE C (Character Reference, dated November 14, 2014).

emphasizing, "no one has a 'right' to a security clearance."[66] 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."[67]

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

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

In the decision-making process, facts must be established by "substantial evidence."[68] 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.[69]

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

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

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

[68] "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).

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

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."[70]

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."[71] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts*"* is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations*"* may raise security concerns. "Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis" may also be potentially disqualifying under AG ¶ 19(e). In addition, a "failure to file annual Federal, state, or local income tax returns as required. . ." may raise security concerns under AG ¶ 19(g). Applicant filed Chapter 7 bankruptcies in 1992, 2001, and 2009; he failed to timely file his 2013 federal income tax return; he failed to timely pay his federal income tax for the tax years 2008 through 2012; and he lost two vehicles to repossession. AG ¶¶ 19(a), 19(c), 19(e), and 19(g) apply.

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

[71] *See* Exec. Or. 10865 § 7.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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."[72]

AG ¶¶ 20(b), 20(c), and 20(d) all partially apply. Applicant's earlier financial problems were caused by frivolous or irresponsible spending, and he did spend beyond his means. But his spending conduct eventually evolved into a more responsible form. After finally doing well financially, his new significant financial problems started in late 2004 and carried over past mid-2005 when two destructive hurricanes struck within months of each other badly damaged the residence which was initially serving as a rental property and then as his primary residence. For a substantial period thereafter, he was overwhelmed with hurricane-related priorities such as repairing the extensive damage to the residence after each hurricane, providing for his family, shelter, and keeping his job. Applicant exhausted his savings when the insurance was insufficient to cover the repairs. When the termite infestation destroyed his residence, Applicant simply gave up.

Several years later, with his continuing financial difficulties, and $182,679.07 in liabilities, Applicant was again forced into bankruptcy. During the ensuing years, although he filed his federal income tax returns for 2008 through 2012, he simply did not have the total of $12,600 to pay his actual taxes covering those years. His wife's medical condition caused him to withdraw $8,000 from his 401(k) to cover the uninsured costs. He also withdrew another $2,000 to pay other bills. Applicant did not ignore his creditors. He engaged the professional services of an attorney to assist him with his income tax problems, and he entered into an installment agreement covering his income tax deficiencies. He is currently making his routine monthly payments. One of his two automobile loans was addressed for a period of time, and he intends to resume his payments. The status of the other automobile loan is unclear, and Applicant is

[72] The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

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

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

awaiting information from the creditor to determine if there is a continuing financial liability.

Applicant finally received counseling from a financial counselor, and he now has a budget. He sets aside $320.26 each month for savings and investments, and has $317.47 available each month for discretionary savings or spending. He has started rebuilding his credit by opening up some credit cards with small balances and making routine monthly payments. Applicant's newer accounts are current. There are clear indications that Applicant's financial problems are finally under control. Applicant's actions under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.[73]

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(d), it is potentially disqualifying if there is

> credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations. . . .

Under AG ¶ 16(e), it is also potentially disqualifying if there is

> personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

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

Applicant failed to timely file his federal income tax return for 2013, and he failed to timely pay his federal income tax for 2008 through 2012. AG ¶¶ 16(a) and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply 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." Also, AG ¶ 17(e) may apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

AG ¶¶ 17(c) and 17(e) apply. In late 2004, and carrying over to mid-2005, two devastating hurricanes struck within months of each other badly damaging Applicant's residence which was initially serving as a rental property and then as his primary residence. Those two hurricanes were extraordinarily unique circumstances. Devastation was everywhere. For substantial periods during and thereafter, he was overwhelmed with hurricane-related priorities. While he managed to file his federal income tax returns for 2008 through 2012, he simply did not have the total of $12,600 to pay his actual taxes covering those years. His attorney assisted him in filing his 2013 federal income tax return. Applicant entered into an installment agreement covering his income tax deficiencies, and he is currently making his routine monthly payments. Applicant has taken positive steps to eliminate or avoid similar circumstances.

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 relevant 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.

There is some evidence against mitigating Applicant's conduct. Applicant's earlier financial problems were caused by frivolous or irresponsible spending, and he did spend beyond his means. As a result, he filed for bankruptcy and had his debts discharged in

1992 and 2001. He lost two automobiles to repossession after falling behind in his payments. He failed to timely pay his federal income tax liabilities during the period 2008 through 2012. He failed to timely file his federal income tax return for 2013.

The mitigating evidence under the whole-person concept is more substantial than the disqualifying evidence. Applicant served honorably with the U.S. Navy for 20 years before retiring. He previously held a secret security clearance while on active duty, and there is no evidence of any security violations. Persons who have known him for many years have characterized him as very ethical, extremely trustworthy, highly respected, and honest. Applicant was very naïve about financial matters, never having had financial counseling or guidance when he was growing up. While his earlier financial problems were caused by frivolous or irresponsible spending, and he did spend beyond his means, his spending conduct eventually evolved into a more responsible form.

After finally doing well financially, his new significant financial problems started in late 2004 and carried over past mid-2005 when two devastating hurricanes struck within months of each other and badly damaged the residence which was initially serving as a rental property and then as his primary residence. Overwhelmed with hurricane-related priorities, such as repairing the extensive damage to the residence after each hurricane, providing for his family, shelter, and keeping his job, Applicant exhausted his savings as the insurance was insufficient to cover the repairs. When the termite infestation destroyed his residence, Applicant simply gave up. Nevertheless, Applicant obtained the assistance of an attorney to assist him with his federal income tax problems. He has been enrolled in an installment agreement with the IRS and is routinely making his monthly payments. There are clear indications that Applicant's financial problems and associated personal conduct are under control. His actions under the circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[74]

> 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

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

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.[75] Overall, the record evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and personal conduct. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

Paragraph 1, Guideline F:	For APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

[75] 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