DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 07-12260
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

June 3, 2008

Decision

GALES, Robert Robinson, Chief 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 March 28, 2006, Applicant applied for a security clearance and submitted an EPSQ version of a Security Clearance Application (hereinafter SF 86). On November 29, 2007, the Defense Office of Hearings and Appeals (DOHA) 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; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 21, 2007. In a sworn, written statement, dated January 3, 2008, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on January 23, 2008, and the case was assigned to Administrative Judge Henry Lazzaro on January 25, 2008. It was reassigned to me on February 14, 2008, due to caseload considerations. A Notice of Hearing was issued on February 19, 2008, and I convened the hearing, as scheduled, on March 19, 2008.

During the hearing, five Government exhibits were received without objection. Applicant testified, but offered no exhibits. The transcript of the hearing (Tr.) was received on March 28, 2008. The record remained open until April 8, 2008, to enable Applicant to furnish documents to support his contentions, and eight documents were timely submitted and received without objection.

Findings of Fact

In his Answers to the SOR, Applicant admitted three of the factual allegations in ¶¶ 1.j., 1.i., and 1.n. of the SOR. He denied all other allegations.

Applicant is a 43-year-old employee of a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been divulged. He was previously granted a SECRET clearance in July 2002.[1] He was married to his first wife from 1987 until 2002, and married his current spouse in 2004. His wife has two children, and he has one daughter, not with his first wife, born in November 1992.

From May 1999 until the present, Applicant has been gainfully employed by defense contractors as either an electrician or industrial electrician.[2] Applicant's finances were apparently unremarkable until about 1991. From the Government's viewpoint, thereafter, he apparently periodically experienced financial difficulties which resulted in accounts becoming delinquent and being "charged off" and/or placed for collection. Federal tax liens were placed against his property on several occasions, and his wages were garnished because of child support arrearage.

[1] Government Exhibit 2 (Letter to Defense Industrial Security Clearance Office (DISCO) from Facility Security Officer, dated Oct. 6, 2005).

[2] Government Exhibit 1 (Security Clearance Application, dated Mar. 3, 2006), at 2.

The SOR identified fourteen purportedly continuing delinquencies, but Applicant contends several of the allegations are duplicates of others; several have been satisfied or otherwise resolved; and some were not his responsibility. His contentions have merit. The evidence and information offered by the Government consists of two credit reports and written and oral statements made by Applicant. The same statements, along with official court records, were offered in support of Applicant's case. The fourteen debts listed in the SOR, and their respective purported current status, according to the Credit Reports, dated November 20, 2007 (the most current one in evidence), and November 15, 2006, as well as Applicant's comments regarding same, are described below:

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.a.	auto loan reassigned Sep 2005	$13,515.00	voluntary repossession to original creditor - 1st payment ($150.00 per month) Mar 2008
1.b.	medical (original creditor unknown) (possibly for his daughter)	$562.00	collection 2005 -unpaid
1.c.	medical (original creditor unknown) (possibly for his daughter)	$109.00	collection May 2004 – unpaid debt of ex-wife
1.d.	medical (original creditor unknown)	$133.00	collection Oct 2006 - unpaid
1.e.	medical (original creditor unknown)	$37.00	collection Dec 2005 - unpaid
1.f.	medical (original creditor of acct referred to in SOR ¶ 1.c.)	$109.00	collection Oct 2003 – unpaid debt of ex-wife
1.g.	IRS tax lien	$1,135.96	lien filed Aug 1991 & released Aug 1992
1.h.	IRS tax lien	$1,049.63	lien filed Feb 1992 & released Apr 1992
1.i.	IRS tax lien	$1,532.69	lien filed Feb 1991 & released May 1991
1.j.	auto loan from original creditor (acct transferred to creditor in SOR ¶ 1.a.)	$14,419.00	voluntary repossession – acct transferred
1.k.	credit card	$1,178.00	charged off $1,178.00 on acct with credit limit of $511.00 – $1,200.00 paid off 2000-01
1.l.	checking account and credit card	$520.00	collection Sep 2003 – zero balance, but Applicant failed to dispute within time frame required
1.m.	auto insurance	$368.00	collection Apr 2002 – initial creditor has no record of deficiency
1.n.	wage garnishment for child support & child support arrearage	$334.00 & $50.00 biweekly	voluntary garnishment – arrearage satisfied

SOR ¶¶ 1.a. and 1.j. refer to both the original creditor and the subsequently assigned collection agent, as conceded by Department Counsel.[3] A cursory review of the November 2006 Credit Report leaves no doubt as to that conclusion,[4] and including both credit report entries as separate allegations in the SOR provides some notice of where the account was transferred, but also tends to inflate the perception of financial irresponsibility. The account(s) pertain to a used automobile for which Applicant could not maintain payments,[5] so he voluntarily relinquished the vehicle to the creditor.[6] While he did not make payments for a substantial period, he eventually entered into a payment plan with the collection agent and, as of February 2008, agreed to make monthly payments of $150.00, with the first payment in March 2008.[7]

SOR ¶¶ 1.b. through 1.f. refer to medical charges from largely unidentified (referred to in the November 2006 Credit Report as "unknown") creditors.[8] Applicant denied they were incurred by him or any member of his immediate family, and surmised they might have been incurred by his ex-wife on behalf of their daughter.[9] In that event, they are not his responsibility but that of his ex-wife who was the custodial parent.[10] One of the potential creditors, a medical provider not fully identified in SOR ¶ 1.f., was approached by Applicant, and Applicant was informed that the balance of $109.00 was not his account but that of his daughter.[11] The account referred to in SOR ¶ 1.d. is alleged to have been placed for collection in October 2006, and it appears in the November 2007 Credit Report,[12] but not in the November 2006 Credit Report. There are no statements of account or other evidence supporting the allegations.

SOR ¶¶ 1.g. through 1.i. refer to delinquent balances owed, as of November 2006, on federal tax liens filed against Applicant by the IRS, without further information pertaining to dates or reasons. The information upon which the SOR allegations was based was derived from the November 2006 Credit Report.[13] The credit report does not identify the dates the liens were placed, or the current status of each such lien. The

[3] Tr. at 16.

[4] Government Exhibit 5 (Combined Equifax, TransUnion, and Experian Credit Report, dated Nov. 15, 2006), at 6, 8.

[5] Tr. at 31.

[6] *Id*. at 32.

[7] *Id*. at 33-34.

[8] Government Exhibit 5, *supra* note 4, at 8-9.

[9] Tr. at 37-38.

[10] Applicant's Answer to SOR, dated Jan. 3, 2008 at 1.

[11] Tr. at 35-36.

[12] Government Exhibit 4 (Equifax Credit Report, dated Nov. 20, 2007), at 1.

[13] Government Exhibit 5, *supra* note 4, at 5.

November 2007 Credit Report does not mention any IRS liens. Applicant denied being indebted to the IRS and contended he has always paid his federal income tax.[14] In his Answer to the SOR, he indicated that he was told by the IRS that no such liens existed.[15]

Pertaining to SOR ¶ 1.g., a notice of federal tax lien was issued in August 1991, based on an unpaid balance of assessment totaling $1,135.96.[16] However, that lien was released by the IRS in August 1992,[17] well before the credit reports were created or the SOR was written. Pertaining to SOR ¶ 1.h., a notice of federal tax lien was issued in February 1992, based on an unpaid balance of assessment totaling $1,049.63.[18] However, that lien was released by the IRS in April 1992,[19] also well before the credit reports were created or the SOR was written. Pertaining to SOR ¶ 1.i., a notice of federal tax lien was issued in February 1991, based on an unpaid balance of assessment totaling $1,532.69.[20] However, that lien was released by the IRS in May 1991,[21] also well before the credit reports were created or the SOR was written. In fact, none of those federal tax liens should have still remained in the November 2006 Credit Report as they antedate the credit report by more than seven years.[22] A thorough investigation and review of the public records, as well as more accurate and reliable credit information gathering and reporting would have established those facts.

SOR ¶ 1.k. refers to a credit card account, opened in September 2000, which purportedly had a credit limit of $500.00, resulting in a "charge-off" of $1,178.00. The November 2006 Credit Report lists the account twice. One reference is to the credit limit of $500.00, the high credit of $511.00, and a zero balance. That account was supposedly "transferred or sold", with the balance charged-off in July 2001.[23] Substantially the same information appears in the November 2007 Credit Report.[24] The second reference is to an account opened in September 2000, with a credit limit of

[14] Tr. at 24-25, 38-41.

[15] Applicant's Answer to SOR, *supra* note 10, at 1.

[16] Applicant Exhibit A (Notice of Federal Tax Lien Under Internal Revenue Laws, dated Aug. 19, 1991).

[17] Applicant Exhibit B (Certificate of Release of Federal Tax Lien, dated Aug. 14, 1992).

[18] Applicant Exhibit E (Notice of Federal Tax Lien Under Internal Revenue Laws, dated Feb. 20, 1992).

[19] Applicant Exhibit F (Certificate of Release of Federal Tax Lien, dated Apr. 2, 1992).

[20] Applicant Exhibit C (Notice of Federal Tax Lien Under Internal Revenue Laws, dated Feb. 7, 1991).

[21] Applicant Exhibit D (Certificate of Release of Federal Tax Lien, dated May. 16, 1991).

[22] Fair Credit Reporting Act (FCRA), § 605(a)(3), 15 USC §1681c.

[23] Government Exhibit 5, *supra* note 4, at 7.

[24] Government Exhibit 4, *supra* note 12, at 2.

$511.00, and a zero balance.[25] The November 2006 Credit Report reflects $1,178.00 being charged-off in March 2002.[26] There is no mention of the larger amount in the more recent credit report.

Applicant disputed the existence of any outstanding balance and contends he put money in his sister's account every month and, pursuant to an agreement with a collection attorney, she made the payments by check, in the amount of $207.00, until the account was paid off during 2000-01.[27] He attempted to locate the checks but was unable to do so, and sought to confirm the current zero status of the account with the original creditor, but the creditor could find no information regarding the account.[28]

SOR ¶ 1.l. refers to a credit card affiliated with a checking account, opened in the late 1990s, which was placed for collection in September 2003. The November 2006 Credit Report refers to the account,[29] but the November 2007 Credit Report does not mention it. Applicant disputed the existence of an outstanding balance and contends there had been a dispute over the balance several years ago, but the dispute was supposedly resolved (when the creditor's computer system was down) and he was notified of a zero balance.[30] He thought nothing further about the account until he was informed by DOHA that it was still a current issue. He followed up on the matter and spoke with the original creditor who informed him that there was no record that his initial dispute was made within the allowed timeframe, so at the time he was informed of the zero balance the account had already been forwarded for collection.[31] He attempted to settle the account with the original creditor but was told nothing could be done with it and that he would have to deal with the unspecified and unidentified collection agent.[32]

SOR ¶ 1.m. refers to an automobile insurance account purportedly placed for collection in April 2002. The November 2006 Credit Report refers to the account, and indicates the $368.00 balance was placed for collection in April 2002,[33] but the November 2007 Credit Report does not mention it. Applicant accepted the possibility of having such an account with that company,[34] but disputed the existence of an

[25] Government Exhibit 5, *supra* note 4, at 7.

[26] *Id.*

[27] Tr. at 41-42.

[28] *Id.* at 43; Government Exhibit 3 (Answers to Interrogatories, dated Oct. 16, 2007), at 8.

[29] Government Exhibit 5, *supra* note 4, at 8.

[30] Tr. at 43-44, 46-47.

[31] *Id.* at 46-49.

[32] *Id*. at 48-49; Applicant's Answer to SOR, *supra* note 10, at 1; Government Exhibit 3, *supra* note 28, at 6.

[33] Government Exhibit 5, *supra* note 4, at 8.

[34] Tr. at 49-50.

outstanding balance. He contends that his efforts to determine the validity of the delinquency resulted in the creditor advising him they could find no account in his name and no balance owed.[35]

SOR ¶ 1.n. refers to the wage garnishment for child support and child support arrearage. As written, the allegation infers an involuntary garnishment of wages in the biweekly amounts of $334.00 (for child support) and $50.00 (for child support arrearage). In fact, the garnishment was the result of a "Voluntary Income Deduction Agreement" as reported to DISCO in October 2005.[36] Prior to that action, Applicant had been making "informal" monthly child support payments to the child's mother in the amount of $300.00, plus extras as needed.[37] He contends the arrangement worked satisfactorily until the child's mother found out about his pending relationship with his new wife-to-be.[38] At that point she went to court. As a result, Applicant was determined to be in arrears in the amount of $2,640.00 and the support payments were formalized.[39] His child support arrearage has been paid in full, and his child support account is current.[40]

Applicant borrowed money from his 401(k) to pay off the majority of his bills, and is now current in all other obligations. He remains within a budget,[41] and generally has a monthly balance of about $1,694.68 in discretionary funds available for his use.[42]

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common

[35] *Id.* at 50.

[36] Government Exhibit 2, *supra* note 1.

[37] Tr. at 52.

[38] *Id.* at 52-53.

[39] Applicant Exhibit G (Final Judgment, dated Sep. 15, 2005).

[40] Applicant's Answer to SOR, *supra* note 10, at 2.

[41] Government Exhibit 3 (Personal Financial Statement, undated, attached to Answers to Interrogatories *supra* note 28; Tr. at 56.

[42] *Id.*

sense decision. According to AG ¶ 2(c), 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.

Since the protection of the national security is the paramount consideration, AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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.

In the decision-making process, facts must be established by "substantial evidence."[43] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. 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.

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 protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Accordingly, 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.

Analysis

Guideline F, Financial Considerations

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

[43] "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).

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Also, AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of same" may raise security concerns as well. Applicant's admissions and submissions establish evidence to substantiate SOR ¶¶ 1.a. (and the corresponding 1.j.), 1.l., and 1.n., as well as 1.g. through 1.i., 1.k., 1.l., and 1.n. The Government evidence, along with Applicant's denials, fails to establish sufficient evidence to substantiate the debts in SOR ¶¶ 1.b. through 1.f., or 1.m. as Applicant's delinquent debts.

The Government attributes substantial importance and credibility to entries in the two credit reports in evidence. I have reviewed them, and even with extensive experience in deciphering the entries, found them to be garbled and internally inconsistent, with minimum indicia of reliability. There is no indication as to the source(s) of the information appearing therein, for as the Equifax Credit Report states, the entries are derived from "public records or other information" without identifying the "other information."[44] It provides even less information about the sources of the derogatory financial information. The combined report does not disclose even that much information.

As noted, the credit reports contain duplicate entries seemingly reflecting one account opened by a creditor and another by a collection agent; information which is not verified as accurate; information which may not apply to Applicant; information which is incomplete or not current; and information which appears in one report but not in the other. Thus, the factual or legal accuracy, currency, or reliability of the information is left to mere speculation. Accordingly, I find they are unreliable and untrustworthy, and in this particular instance, inaccurate as well. In the absence of creditor statements of account or other more reliable, accurate, and trustworthy evidence, including Applicant's admissions, I decline to accept as accurate and trustworthy allegations in credit reports challenged or contradicted by Applicant's denials.

Applicant did experience an inability to keep up with the payments on his automobile and, in 2005, offered it back to the creditor as a voluntary repossession. His delay until 2008 in commencing to make payments on the remaining balance constitutes a history of not meeting financial obligations. The disputes regarding child

[44] Government Exhibit 4, *supra* note 12, at 1.

support arrearage and the "untimely" disputed checking account, both fall within a purported history of not meeting financial obligations. The above actions are sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

However, the issue pertaining to the federal tax liens is a different matter. The federal tax liens were filed against Applicant by the IRS in 1991-92, but there is no described basis for those filings, and with Applicant's denials to the allegations and contentions that he had filed his income tax returns, there is no evidence to establish a failure by Applicant to file annual income tax returns as required in AG ¶ 19(g). Moreover, two of those liens were released within three months of being filed, and the remaining lien was released within 12 months. There is no evidence to substantiate the allegations that delinquent balances remain as of November 2006 as a result of these liens. Furthermore, legally, they should not currently appear in his credit report.

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." Applicant's 2005 inability to make his monthly automobile payments, and the absence of repayment arrangements until 2008, is the single most potentially troublesome issue. The child support arrearage, when considering the circumstances at the time, with Applicant informally paying child support but disappointing the mother of his child, and the ensuing court action, is not as troublesome. Neither of these circumstances currently exists. I find the behavior is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. I find AG ¶ 20(a) applies in this case.

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). In this instance, the first section of AG ¶ 20(c) is not in issue for there is no evidence of Applicant having received counseling for financial issues. However, there are clear indications that his financial issues have been resolved or are under control. Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[45] Applicant generally has a monthly balance of about $1,694.68 in

[45] 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].

discretionary funds available for his use. He previously satisfied the child support arrearage and is now current in his child support payments. He previously voluntarily relinquished his automobile to the creditor and has now entered into a payment arrangement to satisfy the remaining balance. His actions in addressing his debts indicate good-faith efforts on his part as well as showing clear indications the problem is now largely under control. I find AG ¶¶ 20(c) and 20(d) apply in this case.

Under AG ¶ 20(e), financial security concerns may be mitigated where "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 taken to resolve the issue." As noted above, Applicant followed up on the remaining accounts set forth in the SOR allegations and determined there were zero balances, or the accounts were not his, or he could not identify the creditors. He has provided written statements and testimony describing his actions and the result of those actions. I have considered his oral and written statements and examined his demeanor, and consider him to be candid, truthful, and credible. He acted responsibly in identifying and eventually resolving his debts. I find AG ¶ 20(e) applies in this case.

The Government appears concerned that Applicant purportedly permitted his credit card (SOR ¶ 1.k.), checking account (SOR ¶ 1.l.), and auto insurance account (SOR ¶ 1.m.) to be either "charged-off"[46] or sent to collection. Applicant has disputed or explained those actions. It appears the debts were never reduced to judgments. In each case, the creditors located in Florida, merely charged the delinquent balances off or sent the accounts to collection in 2000-03. While the credit reports may reflect the balances as delinquent, as of the date of the hearing in March 2008, it appears the debts are barred by Florida's 5-year statute of limitations,[47] making them legally uncollectible.[48] Applicant is financially sound and prepared for future contingencies.

(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)).

[46] It is commonly acknowledged that a "charge off" is a practice where the creditor gives up on collection efforts, takes a tax write-off on the debt, and/or sells the debt to a third party. The debt still exists, but the creditor has received a tax benefit and possibly sold the debt to the third party. The debt may or may not be legally collectible.

[47] *See* Fla. Stat. § 95.11(2)(b) (2007) (written obligation; five years).

[48] The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

> Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has taken affirmative action and made substantial good-faith efforts to pay off or resolve his legitimate delinquent debts, including those raising security concerns. (*See* AG ¶ 2(a)(6).) While it is the Government's contentions that he still has outstanding debts identified in the SOR, those debts were never reduced to judgments and the Statute of Limitations for each of the debts has expired, making them uncollectible. (*See* AG ¶ 2(a)(8).) Thus, these debts cannot be sources of improper pressure or duress.

Of course, the issue is not simply whether all his debts are resolved; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[49] Considering his continuing good-faith efforts, the circumstances behind some of the debts, the nature of some of the legitimate debts, and the inappropriateness of some of the debts listed in the credit reports, his past financial situation is insufficient to raise continuing security concerns. (*See* AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

[49] *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)

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
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant

Conclusion

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

_____
ROBERT ROBINSON GALES
Chief Administrative Judge