



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 08-01122
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: Pro Se

October 21, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted his Security Clearance Application (SF 86), on March 14, 2007. On May 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 5, 2008. He answered the SOR in writing on June 20, 2008, and requested a hearing before an administrative judge. DOHA received the request on June 23, 2008. Department Counsel was

prepared to proceed on July 21, 2008, and I received the case assignment on July 25, 2008. DOHA issued a notice of hearing on August 4, 2008, and I convened the hearing as scheduled on September 3, 2008. The government offered three exhibits (GE), 1 through 3, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted 13 exhibits (AE), A through M, which were received and admitted into evidence without objection. The record closed at the conclusion of the hearing. DOHA received the transcript of the hearing (Tr.) on September 11, 2008.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, 1. f, and 1.g of the SOR, with limitations. He denied the factual allegations in ¶¶ 1.b, 1.c and 1.e of the SOR. He also provided additional information to support his request for eligibility for a security clearance.¹

Applicant, who is 35 years old, works as a business operations manager for a Department of Defense contractor. He began work for this company three years ago after graduating from law school. Applicant lives with his longtime girl friend.²

Ten years ago, in 1998, after completing his undergraduate and graduate school programs, Applicant, at age 24, accepted a position with a major credit and financial company. At the time of his interview, he understood that he would counsel individuals (clients) on financial investments and that the company would help him develop the necessary client base. The company required him to take several licensing examinations over a period of six months at his own expense. When he completed these examinations, he began working for the company. He soon learned that his job was not as a financial and investment counselor, but more like that of an insurance salesman. He received a small salary. Most of his income was to come from commissions. Thus, he received little income during his first 12 months of employment. During this time, he used credit cards to pay his living expenses and the cost of licensing examinations.³

For six to eight months, Applicant worked for the company trying to develop a client base from lists of names provided to him by the company at a cost of \$7.50 per name. A list of 100 "leads" or potential clients cost \$750 and might yield one client. Applicant used his credit cards to purchase the lists in an effort to develop his clients. By the summer of 1999, Applicant realized that he was not earning any income and would not earn a living from this job. He evaluated the debt he had incurred and

¹Response to SOR and attachments.

²GE 1 (Applicant's security clearance application) at 6, 12, 13; Tr. 27, 98.

³Response to SOR at 2-3; Tr. 22, 41-43, 87-94.

resigned his position. He continued to use credit cards to pay his living expenses until he started a position with an information technology (IT) company in September 1999.⁴

For the next 16 months, Applicant worked for the IT company. He paid his expenses, including his credit card debts, monthly. In late December 2000, the IT company laid him off. In March 2001, he started working as a temporary worker for a federal agency. This job lasted one month. In April 2001, he accepted another IT position in another city. He moved and started his new position. Shortly after he began his employment, he realized the company had problems and his job would not last. This company laid him off at the end of August 2001. Following September 11, 2001, he started looking for work on the West coast without success. He returned home to the East coast to continue his job search, again without success. Eventually, he decided to apply for law school. He started law school in August 2002 and graduated three years later. During law school, he worked during the summer.⁵

Following his first job loss, Applicant realized he would have difficulties paying all his bills, particularly his credit card debt. Initially, he contacted the credit card companies to develop a manageable repayment plan, but the credit card companies refused to work with him. In March 2001, he contacted a debt management and credit counseling company about debt consolidation. He completed an application form and listed his debts, including his current monthly payments. This company developed a plan which required him to pay \$800 a month, the same as his then monthly payments on his credit cards. Because his employment was temporary and he did not have a steady salary, he declined to sign a contract with this company. He decided not to make his credit card payments until his employment situation stabilized. He made his last payments on the five credit card debts alleged in the SOR around March 2001.⁶ He has not sought any additional credit counseling.

Applicant incurred education debt as an undergraduate and in graduate school. When he returned to law school, these debts were placed in deferment status. He borrowed money to pay for law school. After law school, he consolidated most of his school loans into one loan of approximately \$70,000. He currently pays \$185 a month on this loan, which will be paid in full in about 25 years. He has two private loans, one for \$10,000 and one for \$36,000, and one school loan for \$2,500. His two private loans are tied to market interest rates, which impacts the amount of his monthly payment and particularly, the reduction of the principle. He pays approximately \$600 a month on these two loans and \$40 a month on the small school loan. As of the hearing date, he owed \$1,382 on the small loan and \$6,220 on the \$10,000 private loan. His father co-signed for the \$36,000 debt and maintains the papers connected with this debt. He,

⁴*Id.*

⁵Tr. 23-24, 44-45, 83-86, 95.

⁶AE L (Credit counseling application); Tr. 25-26, 44-47, 87, 114.

however, pays the monthly payment. His total monthly payment on his school loans is approximately \$800. He timely makes his payments every month.⁷

Applicant currently earns \$70,000 a year. His net monthly income is \$3,620. His monthly expenses, in addition to his school loan debt, includes rent of \$750, utilities of \$90, car insurance of \$100, \$400 for food, \$80 for public transportation, \$100 in gasoline for a car, cell phone of \$70, and miscellaneous expenses around \$200. His monthly expenses total approximately \$2,600, including school loans. He has one credit card. He pays the bill in full each month when there are charges. He uses his extra money to pay additional money towards his school loan debt. He lives with his girlfriend who shares household expenses with him.⁸

The credit report dated May 5, 2007 shows the seven unpaid debts listed in the SOR. It also reflects that Applicant disputed the \$13,124 debt listed in SOR allegation 1.a.; that the debts listed in SOR allegations 1.c and 1.g were sold to another lender; and that the debt listed in SOR allegation 1.d is closed after being charged off.⁹

Applicant submitted two credit reports. The first credit report in February 2008 identifies accounts opened as early as 1992 and reported to the credit reporting agencies beginning in 1999. This report lists two unpaid debts, one for \$334 (SOR allegation 1.b) and another for \$54 (SOR allegation 1.e). The remaining debts listed in the SOR are not listed in this credit report. The second credit report in March 2008 shows that Applicant challenged the \$334 debt and that this debt is now a zero balance.¹⁰ It also shows that Applicant challenged the \$54 debt, which remains unpaid. All the remaining debts listed in the SOR are not listed in this credit report, which shows accounts with no activity since 1998. Even though the remaining SOR debts are no longer listed on this credit, Applicant acknowledges the debts are his and unpaid. He also admitted that he had a contract with the credit card companies.¹¹

Applicant's division manager recommends him for a security clearance. Applicant has proven to be an honest and trustworthy person. Applicant handled confidential corporate and business-sensitive information honestly and with candor. Applicant is a diligent and conscientious worker who can be trusted. His supervisor wants him to assume more leadership responsibilities. Applicant's girlfriend, with whom he lives,

⁷AE B (Bank statement); AE E (Documents for \$10,000 school loan papers); AE F (Documents for \$2,500 school loan debt); Tr. 68-81.

⁸Tr. 98-105.

⁹GE 3 (Credit report dated May 5, 2007).

¹⁰In November 2001, Applicant requested this creditor to cancel its service and send him a final bill. See AE A. He does not recall any additional bills from this creditor.

¹¹GE 2 (Interrogatories and answers with attachments including March 5, 2008 credit report) at 8-15; AE C (Credit report, dated February 6, 2008); AE K (letter, dated March 31, 2008).

testified that they live within their financial means. She describes their lifestyle as normal to conservative. Applicant also presented documentation that indicates he has invested some money in an effort to earn money to pay his school debts.¹²

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised 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.

These guidelines are not inflexible rules of law. Instead, recognizing 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 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 decision.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.¹³

¹²AE G (Letter, dated September 2, 2008); AE H (Performance goals); AE I (Performance evaluation for October 1, 2006 through September 30, 2007); AE M (Investment account); Tr. 118-122.

¹³After any decision, the losing party has a right to appeal the case to the Defense Office of Hearings and Appeals Appeal Board, which under its decisional law does not review a case *de novo*. See ISCR Case No. 07-10396 (App. Bd., Oct. 2, 2008) and ISCR Case No. 07-07144 (App. Bd., Oct. 7, 2008). The Supreme Court in *United States v. Raddatz*, 447 U.S. 667.m 690 (198) succinctly defined the phrase "*de novo* determination":

[This legal term] has an accepted meaning in the law. It means an independent determination of a controversy that accords no deference to any prior resolution of the same controversy. Thus, in *Renegotiation Board v. Bannerkraft Clothing Co.*, 415 U.S. 1, 23 (1974), the Court had occasion to define "*de novo* proceeding" as a review that was "unfettered by any prejudice from the [prior] agency proceeding and free from any claim that the [agency's]

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. The Government reposes a high degree of trust and confidence in 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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. Applicant accumulated significant credit card debt between 1998 and 2001. He stopped paying this debt in early 2001 and it remains unpaid. The evidence is

determination is supported by substantial evidence.” And, in *United States v. First City National Bank*, this Court observed that “review *de novo*” means “that the court should make an independent determination of the issues” and should “not . . . give any special weight to the [prior] determination of” the administrative agency.

(internal footnotes omitted). In ISCR Case No. 05-01820 (App. Bd. Dec 14, 2007), the Appeal Board criticized the administrative judge’s analysis, supporting grant of a clearance for a PRC-related Applicant, and then decided the case itself. Judge White’s dissenting opinion cogently explains why credibility determinations and ultimately the decision whether to grant or deny a clearance should be left to the judge who makes witness credibility determinations. *Id.* at 5-7. See *also* ISCR Case No. 04-06386 at 10-11(App. Bd. Aug. 25, 2006)(Harvey, J., dissenting) (discussing limitations on Appeal Board’s authority to reverse hearing-level judicial decisions and recommends remanding cases to resolve material, prejudicial error) and ISCR Case No. 07-03307 (App. Bd. Sept. 29, 2008).

sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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 financial problems arose in early 2001 when he lost his job. He had accumulated significant credit card debt with his first job after college, in part based on misrepresentations made to him about his earning potential by his employer. When he realized the financial problems being created by this job, he quit. There is very little likelihood he will ever take a job under these circumstances in the future. I find that some of his debt problems occurred under such unusual circumstances which are unlikely to recur, and concerns about his current reliability, trustworthiness, or good judgment are not raised. This mitigating condition partially applies.

Under AG ¶ 20(b), it may be mitigating 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.” As noted above, some of the financial problems began with his first job after college. After quitting this job, he found other employment. His second job provided sufficient income for him to pay his monthly bills, including his credit cards. However, this employer laid him off at the end of 2000. When he lost this job, he contacted a credit counseling agency about consolidating his debts into a smaller monthly payment. This company presented him with an unworkable plan. He also contacted the credit card companies, which refused to work with him. Between January 2001 and August 31, 2001, he worked six months at two different jobs. His third job lasted about five months before he was again laid off in August 2001, just prior to the events of September 11, 2001. Over the next year, he unsuccessfully sought employment in the IT industry. The loss of two jobs in less than one year is a circumstance beyond Applicant’s control. He tried to consolidate his debt into a manageable monthly payment through the credit card company and a credit counseling agency, without success. The refusal of the credit card companies and the credit counseling company to work with him is also beyond his control. He acted responsibly under these circumstances in 2001. I find this mitigating condition applicable.

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). This mitigating condition has some applicability because Applicant sought credit counseling when his problems began in 2001, although he has not sought recent credit counseling for these old debts. Similarly, AG ¶ 20(d) may apply where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” This mitigating condition is partially applicable because Applicant pays his current debts.

Finally, if “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”, he could mitigate the government’s security concerns un AG ¶ 20(e). Applicant challenged the two small debts and the debt in SOR allegation 1.a. As a result of his challenges, the \$334 debt is shown as a zero balance and thus, resolved. The large credit card debt no longer appears on his credit report, and from this, I draw the inference that he successfully challenged this debt. The \$54 remains unpaid. Since the record contains no documentation which reflects that Applicant challenged the remaining debts listed in the SOR, the absence of these debts from the 2008 credit reports does not establish that he challenged the debts and his challenge resulted in the removal of the debts from his credit reports. This mitigating condition is applicable to SOR allegations 1.a, 1.b, and 1.e.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

In reaching a conclusion in this case, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When these problems first began, Applicant was a young man, just out of college. He had little experience with long-term financial matters and job instability. (See AG ¶ 2(a)(4).) He accumulated significant debt for a variety of reasons, including two job losses, a poor job market, and misrepresentation about the source of his income and his earning capacity by his first employer in 1998. These circumstances were largely beyond his control. (See AG ¶ 2(a)(2).) After he lost his job in late 2000, he tried to work with the credit companies to develop a reasonable repayment plan. When the credit card companies refused, he sought help from a debt counseling company. This effort also proved fruitless. After he received no help from these sources, he decided to stop paying his credit card debt because he lacked sufficient financial resources due to

unreliable employment. He acted reasonably under these circumstances in 2001. Since defaulting on these debts, Applicant has acted responsibly towards his finances. From August 2001 through August 2005, Applicant lived within his limited resources, managing his monthly expenses without incurring any new credit card debt. During this time, he lacked extra funds to pay his old, overdue credit card debts. He did incur additional educational debt while in law school, which he now timely pays. He has changed both his attitude and behavior about his finances. He does not accumulate unnecessary debt; rather, he pays his bills every month, including his significant educational debt. He lives conservatively and has developed financial goals for himself.¹⁴

The four large, unpaid credit card debts in SOR allegations 1.c, 1.d, 1.f, and 1.g are barred by the Statute of Limitations under state law.¹⁵ When Applicant contracted with the credit card companies, he agreed to repay the monies paid to his creditors by the credit card companies. He acknowledged this contract at the hearing. When he stopped making the monthly payments on his credit cards, he breached his contract with the credit card companies. At this point, the credit card companies had the right to file a civil suit for breach of contract for monies due and owing and seek a judgment against him for the monies due and owing. None of the credit card companies exercised its right to file a civil action and obtain a judgment, which is good for many years in most jurisdictions. In so choosing, the credit card companies allowed their legal rights to expire under the applicable Statute of Limitations.

The Appeal Board has held that debts eliminated by the Statute of Limitations or bankruptcy do not reflect a good faith effort to pay past due debts.¹⁶ I agree. The Appeal Board has also held that absent an explicit act of Congress, the government is not

¹⁴Applicant has placed money in an investment fund with a goal of earning more money to pay his debt. While it is his choice on how to repay his debt, this money would pay his two small education loans immediately, which would then allow him more money monthly to pay his other loans.

¹⁵It appears that Applicant defaulted on these debts while living in jurisdiction A, which has a three-year Statute of Limitations for contract actions. However, since he moved twice to two different jurisdictions shortly after losing his first IT position in late 2000, the four-year Statute of Limitations for contract actions in these jurisdictions may apply to his default.

¹⁶In ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006) at 4, the Appeal Board addressed the meaning of "good faith effort" in the following manner:

In order to qualify for application of [this 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 show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [this mitigating condition]. (internal citations omitted).

bound by state law in carrying out its functions and responsibilities.¹⁷ Thus, concerning the use of Statutes of Limitations or bankruptcy to show good faith effort, the Appeal Board has said:

The fact that Applicant may be insulated from collection actions with respect to a number of her debts due to the running of her state's statute of limitations is of little mitigative value. The Board has previously noted that reliance on a statute of limitations does not constitute a good faith effort to resolve financial difficulties. *See, e.g.*, ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005); *See* ISCR Case No. 01-09691 at 2-3 (App. Bd. March 27, 2003).

In light of this view, the Appeal Board considers legally unenforceable, unpaid debt as "continuing and ongoing" even after a creditor is barred by a Statute of Limitations from collecting the unpaid debt. *See* ISCR Case No. 07-11814 (App. Bd. Aug. 29, 2008). I respectfully disagree with the Appeal Board's characterization of legally unenforceable, unpaid debt.

The United States Congress and all 50 state legislatures have enacted statutes of limitations for various civil claims and even criminal actions.¹⁸ By so doing, Congress and the state legislature made an active determination that the government, individuals and corporations must exercise their legal rights within a specific period of time. If not, each waives its right to seek recovery of their losses or claims. A State 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

¹⁷The Appeal Board has cited several cases indicating federal agencies need not give full faith and credit to state legislatures and court decisions as required by 28 U.S.C. § 1738. *See* ISCR Case No. 04-05712 at 8-10 (App. Bd. Oct. 31, 2006). The cases cited in this case are distinguished in a separate opinion. *Id.* at 18-20.

¹⁸For example, Congress has determined that the Internal Revenue Service (IRS) must collect unpaid taxes within a specific period of time. Under federal law, the IRS must prepare and file an assessment of income tax it believes due within three years after the tax return is filed. *See* 26 U.S.C. § 6501(a). Once an assessment is complete, it has 60 days to give notice to the person liable and a demand for payment of the tax due. *See* 26 U.S.C. § 6303(a). Once the notice and demand are made, a lien in favor of the United States automatically arises. *See* 26 U.S.C. § 6321. The IRS must file a levy or institute court proceedings within 10 years after the tax assessment to collect the tax lien. *See* 26 U.S.C. § 2602(a)(1); *United States v. Galletti*, 541 U.S. 114, 119 (2004). The running of the statute of limitations is tolled during a bankruptcy proceeding, *see United States v. Doe*, 438 F.Supp.2d (S.D. Ohio 2006), by agreements (made before Dec. 20, 2000), *see United States v. Ryals*, 480 F.3d 1101, 1106(11th Cir. 2007), or while an offer in compromise (made on or after Dec. 31, 1999) is pending. 26 U.S.C. § 6404(a) provides for abatement of an assessment when it is uncollectible. This is just one of many federal statutes which provide a specific time for parties to file an action for claims.

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[led] 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.¹⁹

Carolina Marine Handling, Inc. v. Lasch, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted). By operation of law, Applicant's creditors cannot seek to recover any of his unpaid debts as the debts are no longer due and owing.

Applicant did not file for bankruptcy in 2001, a legal method to eliminate unpaid debt, whether it is current or old. Had he filed for bankruptcy in 2001 and the court discharged these debts, the SOR debts would be less significant because the debts would have been eliminated through a different legally acceptable method. The issue of his security worthiness would focus on how he had managed his income and expenses after the bankruptcy court discharged his debts. Applicant decided not to pay his debts, initially intending to pay his credit cards when he returned to full-time stable employment. Over the next four years, Applicant did not work full-time either because he could not find a job or because he was in school full-time. As a student, he worked in the summers, which limited his earnings in a year. During these four years, he managed his limited resources and lived within his monthly income. He did not incur new unpaid credit card debt, nor did he make payments on his outstanding debts as he lacked sufficient income. When he returned to full-time, steady work in 2005, his creditors were barred from collecting his unpaid debts under the applicable Statute of Limitations, another legally acceptable method for eliminating old, unpaid debt.²⁰ The legal effect of a bankruptcy discharge or the Statute of Limitations is the same - legal liability for payment of old, unpaid debts is gone.

Under relevant state law, all the creditors for the debts listed in the SOR are barred from collecting these unpaid debts. Thus, Applicant does not legally owe this money and the creditors know this. Applicant's collection barred, unpaid debts are significant. The issue in this case is whether these old, unpaid debts create a security

¹⁹The Appeal Board gives little weight to the Statute of Limitations, a fundamental part of the American Legal system.

²⁰Applicant did not argue that he was waiting for the Statute of Limitations to run on these debts, although by the time he graduated from law school, he clearly understood the debts would be barred by these statutes at some point in time. He did indicate that he was waiting for the old debts to drop from his credit report, a factor which helps improves his credit worthiness, but has no impact on his security worthiness or the ability of the creditors to collect these debts under state law.

I note that had the creditors timely sought obtain a judgment against, the creditor had the burden of proving the actual debts owed. If it could not produce reliable and accurate documentation of the debts owed by Applicant, the courts would dismiss the action for lack of sufficient evidence to establish the actual debt owed as listed on the credit report. A state court would not view a listing of a debt on a credit report as conclusive proof that a debt is owed.

risk, not whether the debts are collectible or not. For purposes of security worthiness, Applicant cannot be pressured, coerced, or exploited to reveal classified information because of his old, unpaid and past due debts. However, his past conduct concerning the resolution of these debts is relevant. When he decided to stop paying the credit card debts in 2001, Applicant intended to start paying his debts once he obtained steady employment. He did not anticipate it would be more than four years before he would again work full-time. For most new law school graduates, full-time employment does not equal a high paying salary. He currently earns a reasonable income, but not excessive income given the high cost of where he lives. He is not employed in a high paying legal job and must prioritize the payment of his expenses. His income pays his current school debts and living expenses, which are his top priorities. He does not want to fall behind in his financial obligations as in the past.

Since defaulting on his debts seven years ago, Applicant has not incurred any new and unpaid credit card debt. He has accrued significant educational debt, which he timely pays each month and has for several years. He has a seven-year track record for living within his monthly income. He does not live extravagantly and manages his income responsibly. I recognize that he has not made any effort to pay these old debts, which are no longer listed on his credit reports and are not legally collectible because the debts are barred by the Statute of Limitations. Given his fiscal management for the last seven years and the lack of new, unpaid credit card debts, the legal effect of the Statute of Limitations is a factor I must consider in making my decision, although it is not the only or deciding factor in my decision.²¹ His failure to pay these time barred debts, which occurred as a result of circumstances beyond his control seven years ago, does not reflect on his current reliability and trustworthiness because he has demonstrated fiscal responsibility for the last seven years and did prior to losing two jobs in less than a year. Except for his lack of ability to pay these debts in the past, Applicant has acted in a fiscally responsible manner with his income and payment of his expenses. Based on a review of all the facts in this case, his old, unpaid credit card debts are not sufficient to raise a security concern. I find that he has mitigated the government's security concerns under Guideline F.²² (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.

²¹In any other legal venue, these debts can not be used to harm an individual.

²²If Applicant has stopped using drugs or consuming alcohol to excess seven years ago, and he had established a track record for responsible behavior in his daily life, he would have mitigated any security concerns the government would have about his past use of drugs and alcohol, particularly if this conduct occurred when he was young and foolish. In alcohol and drug cases, an Applicant may mitigate his young and foolish conduct by demonstrating he has matured and is acting as a responsible adult. The same maturity and change in behavior should be a relevant factor in financial cases.

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

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.

MARY E. HENRY
Administrative Judge