DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-03024
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

April 28, 2009

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 October 1, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On August 29, 2008, 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 an unspecified date. In a sworn, written statement, dated October 13, 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 February 5, 2009, and the case was assigned to me on February 6, 2009. A Notice of Hearing was issued on March 5, 2009, and I convened the hearing, as scheduled, on March 25, 2009.

During the hearing, four Government exhibits and eight Applicant exhibits were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on April 2, 2009.

The record was kept open until April 6, 2009, to enable the parties to supplement the record. Department Counsel chose not to make any further submissions, but Applicant took advantage of that opportunity and, on that date, submitted two additional documents (marked as Applicant Exhibits I and J) which were admitted into evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted a majority of the factual allegations in the SOR (¶¶ 1.a. through 1.d.). He denied the one remaining allegation.

Applicant is a 62-year-old employee of a defense contractor, and he is seeking to retain a SECRET security clearance. He has held a variety of security clearances, including SECRET and TOP SECRET, since about March 1967.[1] His marriage to his first wife ended with her accidental death in 1979.[2] He and his current wife have been married nearly 30 years, and they have seven living children.[3] He served on active duty with the U.S. Army from 1967 through 1970, and was assigned to communications support at the White House.[4] Applicant has been gainfully employed by the same

[1] Government Exhibit 1 (e-QIP, dated October 1, 2007), at 38-40.

[2] *Id.* at 16-17. Applicant's wife and two children were killed when struck by an automobile.

[3] Tr. at 31.

[4] *Id.* at 103-04.

defense contractor since April 1997, and currently serves as a Senior Principal Software Engineer.[5] He is also the founder/president/investor of a duly chartered corporation holding exclusive rights to certain intellectual property.[6]

In 1997, in conjunction with his new employment, Applicant relocated his family and household from one state to another, putting his old house on the market and renting at his new location.[7] Because of the financial strain of not selling his residence for about one year, he started to fall behind in routine payments. One creditor sued him and obtained a judgment, causing additional financial strain.[8] In April 1999, upon the advice of an attorney, Applicant sought relief and filed for voluntary bankruptcy under Chapter 7.[9] In August 1999, with assets of only $10,870, Applicant's liabilities of $59,165 were discharged.[10] Although he has not subsequently affirmed any of his discharged debts, Applicant felt remorse over the bankruptcy and hopes to pay back those creditors when he is able to do so.[11]

Following his bankruptcy, Applicant created spreadsheets and paid close attention to his finances.[12] Additionally, because of early successes involving his part-time technology development activities, in August 2007, he established two corporations to formalize those business activities.[13] His objective was to "provide an avenue of work" when he retires in 2014.[14] The two corporations obtained financing from investors, including Applicant, and conducted legitimate business activities.

Applicant established an account with one creditor, in his own name, but in reality, it was a business account. The creditor's product was used for testing his corporate products.[15] Periodic payments, totaling about $3,000, were routinely made until early 2008, when they ceased.[16] In May 2008, the account, with an outstanding

[5] Applicant Exhibit F (Leave and Earnings Statement, dated March 12, 2009).

[6] Applicant Exhibit D (Letters of Reference, dated March 17-18, 2009); *See also* Applicant Exhibit E (Corporate Charters, dated August 2, 2007 and August 15, 2007).

[7] Tr. at 33.

[8] *Id.*

[9] *Id.* at 34; *See also* SOR ¶ 1.a.

[10] Government Exhibit 3 (Bankruptcy Record [LexisNexis web search, dated August 8, 2008]), at 1.

[11] Tr. at 34.

[12] *Id.* at 35.

[13] Government Exhibit 2 (Interrogatories and Answers to Interrogatories, dated May 19, 2008), at 4.

[14] *Id.*

[15] Tr. at 36.

[16] *Id.* at 37.

balance of $1,039, was sent to collection.[17] On March 23, 2009, following negotiations with the creditor, Applicant was offered a settlement opportunity.[18] The following day, he paid the creditor $870, and the account was considered "settled in full."[19]

In about 2003, prior to the onset of his most recent financial difficulties, Applicant opened a credit card account and used it for normal personal expenses.[20] He maintained the account in a current status until sometime in 2007.[21] However, the financial demands of his family, described further below, and his growing business became overwhelming and he was unable to continue making timely payments.[22] As a result, the account was closed by the creditor, placed for collection, and eventually charged off in July 2008.[23] The unpaid balance at that time was $2,973.[24] In May 2008, Applicant had made a $416 payment.[25] Despite the account having been charged off, in November 2008, the creditor obtained a $3,067.85 judgment against Applicant.[26] Applicant made a $1,000 payment in December 2008.[27] On March 4, 2009, Applicant was offered a discounted settlement offer, and he accepted it.[28] On March 24, 2009, he paid the agreed balance of $2,168,[29] and the account was "settled in full."[30]

Applicant opened a credit card account with Visa in 2004, and used it for normal personal expenses.[31] He maintained the account in a current status until sometime in 2007.[32] As with his other accounts, his financial condition made it difficult to continue

[17] Government Exhibit 4 (Equifax Credit Report, dated July 17, 2008), at 1; *See also* SOR ¶ 1.b.

[18] Applicant Exhibit A (Creditor Settlement Opportunity Letter, dated March 23, 2009), at 1.

[19] *Id.* (Cashier's Check, dated March 24, 2009), at 2.

[20] Tr. at 39.

[21] *Id.* at 40.

[22] *Id.*

[23] Government Exhibit 4, *supra* note 17, at 1.

[24] *Id.*

[25] Applicant Exhibit B (Cashier's Check, dated May 19, 2008), at 2.

[26] *Id.* (Collection Letter, dated March 4, 2009), at 1.

[27] *Id.* (Cashier's Check, dated December 19, 2008), at 2.

[28] *Id.* Collection Letter, *supra* note 26, at 1.

[29] *Id.* (Cashier's Check, dated March 24, 2009), at 2.

[30] Applicant Exhibit I (Collection Letter, dated March 27, 2009).

[31] Tr. at 43.

[32] *Id.* at 44.

making timely payments.[33] The account was first sold by the issuing bank to another bank, and then charged off.[34] Applicant ignored correspondence, including bills, from the second bank, believing them to be advertisements since he did not knowingly have an account with the second bank.[35] As a result, he simply threw them away, unopened.[36] In about September 2007, the second bank called Applicant's residence and advised his wife of the situation.[37] She negotiated a payoff arrangement with the creditor, agreeing to make $600 monthly payments towards the $3,750 balance.[38] However, instead of abiding by the agreement, the bank withdrew the entire balance at one time rather than only the monthly payment.[39] Applicant filed an appeal, which was rejected, and then a dispute, which he won after the authorities listened to the telephone tape of the agreement.[40] Although Applicant had the funds returned to his account, he remained livid over the bank's actions, and when he was offered a settlement of $2,200, he rejected it.[41] The account, with a reported balance of $5,765, was eventually placed for collection.[42]

On March 17, 2009, a representative for the creditor made a demand for payment on the account, with a reported balance of $5,454.50, but indicated he was willing to accept three monthly payments of $1,820.[43] Applicant was reluctant to agree to that amount unless he had the means to do so.[44] On March 30, 2009, Applicant agreed to make monthly payments of $1,092.39 until the balance, now $5,464.21, was paid in full.[45] That same day, he paid the creditor $1,100.[46]

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[33] *Id.*

[34] Government Exhibit 4, *supra* note 17, at 1.

[35] Tr. at 44.

[36] *Id.*

[37] *Id.* at 45-46.

[38] *Id.* at 46; Government Exhibit 4, *supra* note 17, at 1.

[39] Tr. at 46.

[40] *Id.* at 46-47.

[41] *Id.* at 47-48.

[42] Government Exhibit 4, *supra* note 17, at 2; *See also* SOR ¶ 1.d.

[43] Applicant Exhibit C (Collection Letter, dated March 17, 2009).

[44] Tr. at 49-50.

[45] Applicant Exhibit J (Collection Letter, dated March 30, 2009), at 1.

[46] *Id.* (Cashier's Check, dated March 30, 2009), at 2.

Applicant purchased a residence in April 2004, financing the entire $350,000 purchase price.[47] His monthly payments of $2,785 far exceeded the amount set forth in his "verbal agreements" with the loan officer prior to closing.[48] His efforts to rectify the disparity were ignored by the bank and he was forced to live with the terms of the written loan agreement.[49] Applicant and his family resided in the residence until January 2007.[50] During that period, the value of the residence first increased to about $520,000, and then plummeted downward.[51] In May 2006, Applicant placed the residence on the market, initially listing it at $485,000, but subsequently reducing the asking price in increments down to about $400,000.[52] Despite his best efforts to sell the residence, and with the competing efforts of neighbors' whose homes were also on the market, he never received an offer.[53]

In January 2007, Applicant's family relocated to a rental home in a larger metropolitan city within the same state where his corporations were located so they could perform necessary and timely work for those corporations and their clients.[54] He remained at home during the workweek, near his employer, commuting to the new family residence on weekends.[55] Unable to handle two house payments, in about June 2007, he stopped making his mortgage payments.[56] In November 2007, the property was foreclosed and scheduled to be sold in February 2009 at a trustee's sale.[57] Since the foreclosure, Applicant has never received any notice from the bank indicating a deficiency.[58] He denied the SOR allegation and contends that the account is closed, and that there is no balance owing.[59] Department Counsel was offered the opportunity to supplement the record regarding state law pertaining to deficiencies in such a situation to determine if there is an Anti-Deficiency Statute in the state, but no such submission was made. In the absence of evidence indicating an actual legal deficiency,

[47] Tr. at 52.

[48] Government Exhibit 2, *supra* note 13, at 3.

[49] *Id.*

[50] Tr. at 53.

[51] *Id.* at 59.

[52] *Id.*

[53] *Id.* at 55.

[54] *Id.* at 53.

[55] *Id.* at 56-57.

[56] *Id.* at 60.

[57] Government Exhibit 2 (Notice of Trustee's Sale Under Deed of Trust, dated November 8, 2007).

[58] Tr. at 98.

[59] Government Exhibit 2, *supra* note 13, at 3.

or contradicting Applicant's contentions, I find insufficient evidence to establish the existence of a deficiency balance.

With the exception of his one delinquent Visa debt, on which he is currently making payments under an agreement, and his recent home foreclosure, Applicant's finances are otherwise unremarkable, and there is no evidence of other financial issues or difficulties. According to his most recent Personal Financial Statement, completed in May 2008, Applicant had a monthly sum of $340 for discretionary expenses.[60] That amount should have increased now that he has paid off the one debt listed as a monthly payment. He currently earns a biweekly $5,192.[61] Applicant's corporations owe him approximately $280,000 in back wages and reimbursable expenses, which he expects to start drawing once an anticipated contract with an investor is signed in April 2009.[62]

The financial demands of Applicant's growing business have been a factor in his financial difficulties, but also prominent was the issue of the demands of Applicant's family. One 24-year-old unemployed son has resided with Applicant since April 2007; a 28-year-old son, whose wife deserted him, has resided with his three young children, in Applicant's residence since March 2008; a 22-year-old daughter and her unemployed husband rely on Applicant for financial assistance; and his 73-year-old mother-in-law has resided with Applicant since December 2007. Some of them contribute money.[63] Despite his financial problems, Applicant's work performance has apparently not suffered for he recently earned a bonus of $5,091.51.[64]

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[65] 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."[66]

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[60] Government Exhibit 2 (Personal Financial Statement, dated May 18, 2008, attached to Interrogatories), *supra* note 13.

[61] Applicant Exhibit F, *supra* note 5.

[62] Tr. at 50-52.

[63] Applicant Exhibit G (Family Support Statement, undated).

[64] Applicant Exhibit F, *supra* note 5.

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

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

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 sense 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."[67] 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.[68]

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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[69]

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."[70] Thus, nothing

[67] "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).

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

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

[70] *See* Exec. Or. 10865 § 7.

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 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. Applicant's history of delinquent debt is documented in his credit reports, answer to the SOR, his answers to interrogatories, and the evidence, including his testimony, presented during the hearing. The Government has established AG ¶¶ 19(a) and 19(c).

The guidelines also include examples of conditions that could mitigate security concerns arising from financial considerations. 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." In addition, when "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," AG ¶ 20(b) may apply. 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."[71] Also, AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue" may apply.

As noted above, the normal overriding concern pertaining to financial considerations in the security clearance context is that "[f]ailure 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. . . ." (emphasis supplied). But these are not "normal" times, for the world in general, and the United States in particular, is faced with economic chaos, plummeting real estate values, tightened credit, corporate layoffs and bankruptcies, diminished savings and retirement accounts, financial institution failures and takeovers, and soaring unemployment.

We no longer think in terms of millions or even billions of dollars when describing the U.S. national debt, for in this new world order, trillions of dollars have become the new standard. We are in economic turmoil, with posturing and corporate greed becoming increasingly common; where credit is largely unavailable; where thousands, if not hundreds of thousands, of otherwise innocent bystanders have lost their homes to foreclosure and their jobs to these uncertain times; and where the popular responses are to point the fingers of blame and invest unprecedented amounts of money to restart the economy and reverse the recession.

This economic catastrophe appears to be the "perfect storm" where the confluence of greed, irresponsible risk-taking, regulatory failure and inadequate oversight, malfeasance, misfeasance, and nonfeasance on the part of some segments of corporate America, our financial institutions, some creditors, and political institutions, have resulted in unintentional consequences or "collateral damage" to the innocents – millions of Americans, especially the American taxpayer. In the past, these unconscionable actions were overlooked in the race for enrichment.

[71] 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].

(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)).

To determine if an applicant is such an unintentional victim or a willing participant and complicit, in an otherwise unwise or irresponsible monetary scheme, or a person with poor self-control or lack of judgment, an analysis of the individual's original intentions and actions is essential. In this instance, since his 1999 bankruptcy, Applicant's financial history and actions reveal no evidence of poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations. To the contrary, his goals were to insure the success of his corporation; to protect his family; and pay his creditors. He originally obtained a mortgage with an affordable monthly payment, and when the mortgage payments adjusted upward, he set out to sell the residence. This same strategy was employed by thousands of Americans. His efforts were responsible and disciplined. Applicant's current situation was caused by other factors, including a possible error by his mortgage lender.

In January 2007, Applicant's family relocated to a rental home near his corporations so they could perform necessary work for those corporations. He remained at home during the workweek, near his employer, commuting to the new family residence on weekends. Unable to handle two house payments, in about June 2007, he stopped making his mortgage payments, and in November 2007, the property was foreclosed and scheduled to be sold in February 2009 at a trustee's sale. Since that projected foreclosure sale, Applicant has received no deficiency notices, and there is no evidence of a deficiency. This situation presents an interesting conundrum, for after the foreclosure, the sale ensued, under state law, Applicant may not be liable for either the unpaid mortgage or the deficiency, if there was one, and the lien holder would be limited to the property. Under Arizona law, there is a provision called the Anti-Deficiency Statute,[72] which states in relevant part:

> If trust property of two and one-half acres or less which is limited to and utilized for either a single one-family or a single two-family dwelling is sold pursuant to the trustee's power of sale, no action may be maintained to recover any difference between the amount obtained by sale and the amount of the indebtedness and any interest, costs and expenses.

Considering the unusual circumstances of today's economy in general, and the series of events involving Applicant's mortgage loan and subsequent inability to sell his residence, in particular, Applicant's actions and his otherwise generally average, unremarkable, financial status, there are clear indications that Applicant's financial issues have been resolved and are now largely under control.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) or 20(e) because he did not act more aggressively, timely, and responsibly to resolve his delinquent debts. Those delinquent debts were "a continuing course of conduct" under

[72] Ariz. Rev. Stat. § 33-814 (G) (2001); *See also*, *Baker v. Gardner*, 160 Ariz. 98, 770 P.2d 766 (Ariz. 1988). Arizona's anti-deficiency statutes prohibit a secured lender from suing a homeowner who borrowed money on those types of loans protected by the anti-deficiency statutes for damages beyond recovery of the secured property.

the Appeal Board's jurisprudence.[73] Applicant receives partial credit under AG ¶ 20(a) because his financial problems "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 attempted to balance the needs of family and business with those of timely payment of creditors, and he was, at least for a time, unsuccessful. He has now paid off two creditors and commenced payments to a third. AG ¶ 20(e) applies because he disputed one of the SOR debts and there is no evidence of a continuing deficiency obligation.

AG ¶ 20(b) applies because Applicant's financial situation was exacerbated by the downward spiral of the global economy; his inability to sell his residence because of an unexpectedly poor housing market; the desertion of his son and grandchildren by his daughter-in-law; the needs of his growing business; one of the debts was business-related; and the lack of employment experienced by two sons. Initially, he lacked the income to keep his business afloat, his family secure, and pay some of his debts, but he eventually commenced negotiations with creditors and started paying his SOR debts. While it may have taken some time, Applicant eventually established that he acted responsibly under the circumstances.[74]

AG ¶ 20(c) applies because he started addressing those delinquencies when he received his annual bonus. There are now "clear indications that the problem is being resolved or is under control." He understands the security implications of his earlier inaction pertaining to delinquent debt and intends to scrupulously avoid future delinquent debt.

He has also established mitigation under AG ¶ 20(d) because Applicant showed good faith in his efforts to resolve his SOR debts. He has established a reasonable plan to continue to do so, and has already taken care of all but one of them, and that one is currently being addressed under an agreement with the creditor.

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

[73] *See* ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

[74] "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

> 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. I have incorporated my comments under Guideline F in my analysis below.

There is some evidence against mitigating Applicant's conduct. As noted above, part of his financial difficulties arose from diverting assets to his business. Applicant also apparently ignored his debts, and, as a result, several accounts became delinquent and were either "charged off" or placed for collection.

The mitigating evidence under the whole person concept is more substantial. Applicant attempted to balance the needs of family and business with those of timely payment of creditors, and he was, at least for a time, unsuccessful. When he had sufficient money to do both, he directed his efforts to paying off his delinquent debts. There is no evidence of any security violation, and to the contrary, he is apparently considered a valued employee, justifying a substantial bonus. He is a law-abiding citizen. He intends to satisfy the one remaining debt in the near future. His personal payment plan is in place and being followed, and he has no new delinquent debts.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:[75]

> 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 simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no

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

requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. Moreover, he has established a "meaningful track record" of debt payments by actually paying most of his delinquent SOR debts, setting up arrangements with the one remaining creditor, and setting up his personal plan to resolve that remaining debt. These factors show responsibility, rehabilitation, and mitigation. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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

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.

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ROBERT ROBINSON GALES
Chief Administrative Judge