



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



In the matter of:)
)
-----) ISCR Case No. 08-09570
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn Mackinnon, Esquire, Deputy Chief Department Counsel
For Applicant: *Pro Se*

January 8, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed 16 delinquent debts, totaling \$103,387. His \$8,776 federal tax debt is in an established payment plan. Department Counsel withdrew three SOR debts totaling \$15,647. Over the last four years, he paid ten SOR debts and numerous other debts. However, two debts totaling \$67,247 are not adequately addressed or resolved. Financial considerations concerns are not mitigated, and eligibility for access to classified information is denied.

Statement of the Case

On February 28, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF-86) (Government Exhibit (GE) 1). On February 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR (GE 7) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; 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.

The SOR alleged security concerns under Guideline F (financial considerations) (GE 7). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On February 24, 2009, Applicant responded to the SOR (GE 8). He requested a hearing before an administrative judge. On September 1, 2009, Department Counsel indicated she was ready to proceed on his case. On September 9, 2009, DOHA assigned Applicant's case to me. On October 9, 2009, DOHA issued a hearing notice (GE 6). On November 10, 2009, Applicant's hearing was held. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Tr. 20), and Applicant offered 13 exhibits (Tr. 25-28, 33, 39-41; AE A-M). Some of the pages were missing from AE A, Applicant's credit report (Tr. 27-28). There were no objections, and I admitted GE 1-5 (Tr. 20, 29), and AE A-M (Tr. 28-29, 42). Additionally, I admitted the hearing notice, SOR, and response to the SOR (GE 6-8). On November 17, 2009, I received the transcript. Initially, I held the record open until December 1, 2009, to permit Applicant to provide additional documentation (Tr. 49, 118). I granted more time to Applicant to submit documentation, and then closed the record on December 20, 2009. After his hearing, Applicant provided nine exhibits (AE N-V), which were admitted into evidence without objection.

Findings of Fact¹

Applicant's SOR response admitted the debts in SOR ¶¶ 1.c to 1.e, 1.h, 1.i, 1.l, and 1.n (GE 8). He said the debts in SOR ¶¶ 1.i and 1.n duplicated each other (GE 8). He denied the remainder of his SOR debts (GE 8).

Applicant is a 41-year-old employee of a defense contractor (Tr. 7). In 1985, he graduated from high school, and in 2003, he earned a bachelors of science degree in information systems (Tr. 7). He is married (Tr. 104, 118-120; GE 1). His security clearance application does not list any other reportable incidents involving illegal drugs, alcohol, the police, or courts (GE 1).

Financial considerations

The SOR listed 16 delinquent debts, totaling \$103,387 as follows: ¶ 1.a (\$852—medical); ¶ 1.b (\$360—medical); ¶ 1.c (\$2,417—federal tax lien); ¶ 1.d (\$8,776—federal tax lien); ¶ 1.e (\$65,000—student loan); ¶ 1.f (\$164—credit card); ¶ 1.g (\$2,247—credit

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

card); ¶ 1.h (\$704—state taxes); ¶ 1.i (\$2,927—credit card); ¶ 1.j (\$904—credit card); ¶ 1.k (\$2,170—medical debt); ¶ 1.l (\$13,115—medical); ¶ 1.m (\$708—medical); ¶ 1.n (\$2,029—credit card); ¶ 1.o (\$652—credit card); and ¶ 1.p (\$362—credit card).

SOR ¶¶ 1.a (\$852) and 1.b (\$360)—PAID. On March 13, 2009, Applicant paid the medical debt in SOR ¶ 1.a (\$852) (Tr. 33, 85; AE F). The government stipulated that the medical debt in SOR ¶ 1.b (\$360) was paid (Tr. 33-34, 85).

SOR ¶¶ 1.c (\$2,417)—PAID and 1.d (\$8,776)—PAYMENT PLAN. Applicant had two unpaid federal tax liens as indicated in SOR ¶¶ 1.c (\$2,417) and 1.d (\$8,776) (Tr. 34-43). He paid, and the government released the tax lien in SOR ¶ 1.c in April of 2009 (Tr. 38-39, 45, 85; GE 3; AE A; AE G). An October 14, 2009, Internal Revenue Service (IRS) statement shows liabilities for tax years 2003 (\$322), 2006 (\$13,295), and 2007 (\$3,254) (AE H). Applicant has a payment plan with the IRS with a monthly payment of \$300 (Tr. 35, 43-44; AE H). At the time of his hearing he had made one \$323 payment and one \$300 payment in September and October 2009, resolving his delinquent tax debt for 2003 (Tr. 44; AE B). The federal tax debts resulted from the IRS auditing his tax returns and making changes to the information he submitted on his tax returns (Tr. 46). The IRS charged penalties because Applicant took money out of a retirement account (Tr. 47). Applicant provided proof that he made a post-hearing payment to the IRS in November 2009 (Tr. 49-50, 85; AE P, AE Q). Applicant and his spouse file their taxes separately (Tr. 110).

SOR ¶ 1.e (\$65,000)—UNRESOLVED. Applicant borrowed money to assist him in the completion of his bachelors degree in 2000 (Tr. 50, 88; GE 2; GE 3; AE A). He made some payments in 2002 to 2003 (Tr. 88). When he completed his February 28, 2008, security clearance application, he noted he owed \$51,059 in student loan debt. He stated the date incurred was November 2005 (estimated). He also indicated, “payment arrangements have been made with [creditor] to ‘catch up’ on the payments” (GE 1 at 37). He concluded the financial section of his security clearance application stating, “I have made payment arrangements on ALL debts on my financial record and have reached settlement amounts to help pay-off debts” (GE 1 at 41). On December 30, 2008, Applicant responded to DOHA interrogatories and provided documentation resolving numerous debts. His student loans were listed as item 5 totaling \$63,666 (GE 5 at 7). His response to DOHA interrogatories did not address resolution of his student loan debt (GE 5).

At his hearing, Applicant noted that his student loans were sold to collection companies and he lost track of this debt (Tr. 51, 87-88). He called the creditor listed in his credit report, and the creditor notified him of the new creditor holding his student loan debt (Tr. 53). He contacted the new holder of his student loan debt and learned the loans were transferred (Tr. 54). He said he was “trying to figure out who currently owns this account” (Tr. 54). He also said he thought he wrote the creditors letters to establish a paper trail (Tr. 54). He said he would try to obtain information showing he made payments in 2002 to 2003, and his attempts to locate the creditor holding his account (Tr. 54, 85-89). 90-91). He said he would try to find the documentation showing payment arrangements were made with the creditor, as indicated in his 2008 security

clearance application (Tr. 121). He did not provide any post-hearing documentation showing attempts to resolve his student loans.

SOR ¶ 1.f (\$164)—PAID. Applicant settled the credit card account for \$425 and paid this debt (Tr. 54-55, 92; GE 2; GE 3; AE A at 9; AE I).

SOR ¶ 1.g (\$2,247)—UNRESOLVED. Applicant was unable to locate the creditor because he believed the creditor listed in his credit report and SOR transferred the debt as indicated in his October 15, 2009, credit report (Tr. 57-59; GE 2 at 2; GE 3 at 2; GE 4 at 11; AE A at 4). He did not have any documentation showing he contacted the creditor (Tr. 58). I explained how Applicant could determine whether the account was resolved, and gave him time after the hearing to provide documentation (Tr. 64-66, 92). He did not provide any post-hearing evidence concerning this account.

SOR ¶ 1.h (\$704)—PAID. The government conceded this debt was paid (Tr. 67; GE 3). Applicant said the debt was generated when he underpaid his 2005 state taxes (Tr. 67, 92).

SOR ¶¶ 1.i (\$2,927) and 1.n (\$2,029)—PAID. An April 7, 2009, letter from the creditor listed in SOR ¶¶ 1.i and 1.n indicated the debt in SOR ¶ 1.n was settled for \$248 and paid (Tr. 69-70; AE J). The account numbers match on his April 12, 2008, credit bureau report and on the letter from the collection company showing the account in SOR ¶ 1.n is paid (GE 4 at 7; AE J). One of the credit bureau reports for the same collection company lists two amounts, \$2,029 and \$2,927 (GE 2 at 3; GE 3 at 2), and Applicant's contention that they are the same account is reasonable (Tr. 72-75, 82, 92; AE A at 3; AE M).

SOR ¶ 1.j (\$904)—PAID. This credit card debt was paid (Tr. 75-76, 92; AE A at 3, 6).

SOR ¶¶ 1.k (\$2,170), 1.l (\$13,115), and 1.p (\$362)—WITHDRAWN. Department Counsel moved for withdrawal of these three allegations, and I approved her requests (Tr. 79, 81, 84, 92-93).

SOR ¶ 1.m (\$708)—PAID. On January 26, 2009, the creditor indicated this debt was settled in full (Tr. 81-82, 92; AE K).

SOR ¶ 1.o (\$652)—PAID. On December 26, 2008, the creditor indicated the debt was settled for \$500 and paid (Tr. 83, 92; AE L).

The only expensive item Applicant has purchased in the last two years was a Hyundai (Tr. 97). Appellant's vehicle loan for the purchase of the Hyundai shows a balance of \$13,296, and the status is "pays as agreed" (Tr. 96-97; AE A at 11). Applicant's home is in his wife's name, and not Applicant's name (Tr. 97). A mortgage account does not appear on his credit report.

Applicant's personal financial statement (PFS) shows a gross monthly salary of \$8,350, a net monthly salary of \$5,506, monthly expenses of \$2,950, monthly debt payments of \$568, and a net monthly remainder of \$1,988 (Tr. 98-112; GE 5 at 12). His spouse makes about an additional \$4,000 per month (Tr. 99). He and his spouse have separate bank accounts and divide household expenses (Tr. 111). He listed debt payments to Hyundai, and three small debts, totaling \$860 on his PFS (GE 5 at 12).

Applicant said his delinquent debts were generated through overspending (Tr. 93-94). When he opened an account, his intent was to keep his account in good standing (Tr. 94); however, when an unexpected expense would occur, such as a medical bill or a car repair, his payments would fall behind (Tr. 94). He conceded that spending on vacations and cruises in 2000 and 2007 may have adversely affected his financial situation (Tr. 95). He also attributed his financial problems to going from one job to another when his contracts ended; however, he did not describe the length of any periods of unemployment or provide details about how it affected his income (AE O). His February 28, 2008, security clearance application did not list any periods of unemployment after January 1996 (GE 1). He has changed his lifestyle and reduced his expenses (AE O).

Applicant provided letters to SOR creditors dated December 2, 5, 9, 10, 20, 2008, offering to settle accounts or initiate payment plans (GE 5 at 40-44). None of these letters related to the debts in SOR ¶¶ 1.e and 1.g.

Applicant emphasized that he began paying his delinquent debts before he received the SOR (Tr. 113). His goal was to become debt free, except for his car loan and a few small household debts (Tr. 113). He has a budget and uses it to manage his money (Tr. 114-115). He planned to pay his IRS debt and student loans (Tr. 114). I recommended Applicant provide proof of financial counseling (Tr. 122). He had a meeting with a financial planner scheduled for December 16, 2009 (AE O, P).

Resolution of Non-SOR debts

On October 4, 2005, Applicant settled a lawsuit on a civil case (GE 5 at 15). On November 23, 2005, Applicant paid \$170 and \$253 resolving two credit card debts (GE 5 at 20, 21).

On January 15, 2007, Applicant settled and paid \$458, resolving a collection account (GE 5 at 36). On February 22, 2007, he satisfied a collection account (GE 5 at 35). On March 9, 2007, he settled and paid \$644, resolving a collection account (GE 5 at 37). On March 22, 2007, he settled and paid a collection account (GE 5 at 33). On April 17, 2007, he settled and paid a collection company \$289, resolving a debt (GE 5 at 34). On September 20, 2007, he settled a credit card account (GE 5 at 38). On October 5, 2007, he paid a collection account (GE 5 at 32). On December 26, 2007, he settled a credit card account (GE 5 at 31).

On March 25, 2008, he paid a medical debt (GE 5 at 17, 18). On April 16, 2008, he settled and paid a collection account (GE 5 at 14). On August 15, 2008, he paid a

medical debt (GE 5 at 29). On August 15, 2008, he paid \$425 to settle a department store account (GE 5 at 30). On August 29, 2008, he settled and paid a credit card account (GE 5 at 16). Letters dated September 9 and 23, 2008, from a bank and law firm indicate the account was settled in full (GE 5 at 27, 28). An October 1, 2008, letter from a computer company and a September 19, 2008, letter from the computer company's collection agent indicate their accounts show "paid collection" (GE 5 at 25, 26). On October 31, 2008, he settled and paid a credit card account (GE 5 at 19). On November 18, 2008, he settled and paid \$310 resolving a telecommunications debt (GE 5 at 22). On November 26, 2008, he received a letter from a bank creditor indicating the account is closed (GE 5 at 23). On November 26, 2008, he paid a collection company \$935, resolving a school related debt (GE 5 at 24). On December 2, 2008, he settled and paid a telecommunications account (GE 5 at 13).

On January 27, 2009, Applicant paid a medical debt (AE F). On September 23, 2009, he paid \$153, resolving an overdraft debt to a bank (AE E). On November 9, 2009, he paid \$331 resolving a telecommunications account (AE D; AE N; AE R; AE S). On November 9, 2009, he resolved a medical debt (AE C).

Character references

One of Applicant's supervisors has known him for more than eight years and described him as highly qualified and highly motivated (AE T). He is dependable, honest, respectful, and responsible (AE T). He recommends that Applicant receive a security clearance (AE T).

Applicant's minister has known him since 2004 (AE U). Applicant became a licensed minister in 2007 (AE U). Applicant is respectful, humble, professional, compassionate, and trustworthy (AE U). Applicant is pursuing his Masters of Divinity degree (AE U). He recommends that Applicant receive a security clearance (AE U).

Applicant's colleague has known him for 25 years, and in 1996, he worked with Applicant (AE V). He describes Applicant as knowledgeable, helpful, professional, diligent, honest, respectful, and responsible (AE V). He recommends that Applicant receive a security clearance (AE V).

Policies

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

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

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

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

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline F (financial considerations).

Financial Considerations

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

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

AG ¶ 19 provides two conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts"; and "(c) a history of not meeting financial obligations." The Appeal Board has noted, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006). Applicant's history of delinquent debt is documented in his credit reports, his responses to DOHA interrogatories, his SOR response, and his oral statement at his hearing. He failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

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

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

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

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

Applicant's conduct does not warrant full application of AG ¶ 20(a) because he did not act more aggressively and responsibly to resolve two of his delinquent debts. His delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He did not resolve all of his delinquent SOR debts through payment, established payment plans, or disputes. He did not take meaningful steps to address his delinquent student loans, which total approximately \$65,000.

AG ¶¶ 20(b) and 20(c) do not fully apply. Applicant said he had reductions in his income when contracts ended; however, he did not provide specific enough information about reductions in income sufficient to cause the delinquent SOR and non-SOR debts over the last three years. There is insufficient information to show Applicant acted responsibly under the circumstances.

Applicant has a sophisticated understanding of credit reports, budgeting, settling debts, and financial planning. He receives credit for financial counseling, even though he did not provide proof that he received any financial counseling because I am not convinced he would gain any knowledge from financial counseling.

When Applicant completed his February 28, 2008, security clearance application, he disclosed his \$51,059 student loan debt. He stated the date this debt was incurred was November 2005 (estimated), and he indicated, "payment arrangements have been made with [creditor] to 'catch up' on the payments." At his hearing, he admitted this was misleading if not outright false. He said he made some payments on his student loans in 2002 and 2003. He admitted he did not have any payment arrangements with his student loan creditors. At his hearing, I asked him to provide proof of the payments he said he made back in 2002 to 2003 on his student loans; however, he did not provide proof of any payments on his student loans. I also asked him to provide copies of correspondence with his student loan creditors.² He did not provide proof of any letters sent or received from his student loan creditors. Under the circumstances, there are no clear indications that his student loan debts are being resolved or are under control.

Applicant does not receive full mitigation under AG ¶¶ 20(d) or 20(e). He did not act in good-faith³ in the resolution of his SOR debts because he did not adequately

²Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

³The 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

demonstrate his efforts to pay or otherwise resolve his student loan debts. He did not show sufficient adherence to his obligations.

AG ¶ 20(e) does not apply. He provided proof of payment or resolution of numerous debts. The SOR did not list any debts that were resolved through disputes. He received credit for resolution of 14 of 16 SOR debts through payment, withdrawal, or established payment plan.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve two substantial delinquent debts. His delinquent student loan debts of approximately \$65,000 were not connected to any unforeseen problems, such as divorce or unemployment. He did not show or document any effort to arrange payment plans on his student loans, despite having ample income to address these delinquent debts.

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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

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)).

The whole person factors supporting reinstatement of Applicant's clearance are significant; however, they are insufficient to warrant approval of Applicant's security clearance at this time. Applicant is 41 years old. He has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility. Clearly, he could have acted more aggressively to resolve his debts.

Applicant's supervisor and a colleague noted Applicant's excellent work performance. He is diligent, hard working, and dedicated. He provided a large number of letters showing debt resolution from 2005 to 2009. His financial situation was adversely affected by the end of various contracts of employment, and some of his debts were medically related. Applicant is active in his church and has continued his education. His SOR listed 16 delinquent debts, totaling \$103,387. His \$8,776 federal tax debt is in an established payment plan. Department Counsel withdrew three SOR debts totaling \$15,647. The government is well aware of his financial problems, and his financial problems do not render him vulnerable to exploitation, manipulation, and duress.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant had numerous delinquent debts over the last four years, including several years where he failed to fully pay his federal income taxes. From 2005 to 2009, he had ample income and systematically paid numerous delinquent debts. Applicant's February 28, 2008, security clearance application, said his \$51,059 student loan debt was incurred in November 2005 (estimated), and he claimed, "payment arrangements have been made with [creditor] to 'catch up' on the payments." At his hearing, he said he borrowed money for student loans in 2000 and made some payments on his student loans in 2002 and 2003. On February 28, 2008, he did not have any payment arrangements with his student loan creditors. He did not sufficiently mitigate two SOR debts totaling \$67,247. He did not provide proof of any letters sent or received from his student loan creditors. The false information in his security clearance application about the status of his student loans damages his credibility. According to his personal financial statement and his description of his financial situation, he had sufficient income to establish payment plans on his student loans. He has sufficient financial knowledge and sophistication to contact his student loan creditors and establish payment plans. I held the record open after his hearing to allow Applicant to address the debts in SOR ¶¶ 1.e and 1.g; however, he failed to do so. Under the circumstances, there are not clear indications that his student loan debts are being resolved or are under control.

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,"⁴ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not currently eligible for access to classified information.

⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 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: AGAINST APPLICANT

Subparagraphs 1.a to 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h to 1.j:	For Applicant
Subparagraphs 1.k and 1.l:	For Applicant (Withdrawn)
Subparagraphs 1.m to 1.o:	For Applicant
Subparagraph 1.p:	For Applicant (Withdrawn)

Conclusion

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

MARK HARVEY
Administrative Judge