



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03484  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tom Coale and James B. Norman, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 5, 2008

**Decision**

HARVEY, Mark W., Administrative Judge:

Applicant mitigated the personal conduct and financial consideration security concerns. Clearance is granted.

**Statement of the Case**

On October 2, 2007, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP) or Security Clearance Application (SF 86). On May 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,<sup>1</sup> pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified

---

<sup>1</sup>Item 1 (Statement of Reasons (SOR), dated May 12, 2008). Item I is the source for the facts in the remainder of this paragraph unless stated otherwise.

and revised.<sup>2</sup> The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 11, 2008, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated June 18, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>3</sup> Applicant did not provide additional documents within the 30 days. On August 15, 2008, the case was assigned to me. On August 19, 2008, I sent an email to Department Counsel seeking additional information about whether there was “a reasonable basis to dispute the legitimacy of the past due debt” described in SOR ¶ 1.a (Appellate Exhibit (AE) 1). On August 27, 2008, Department Counsel provided additional information (AE 3 at 1-2). On August 28 and September 2, 2008, Applicant’s counsel sent additional documentation (AE 4, 5). Department Counsel did not object (AE 2), and I admitted AEs 4 and 5 (AE 2).

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b with explanations, and denied SOR ¶ 2.a (Item 3). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 36 years old.<sup>4</sup> He has worked for a federal contractor since November 1997 in the area of maintenance. He married in 2002. He was previously married from 1996 until 1998. His four children were born in 1994, 1999, 2004 and 2005. He is in the process of being divorced (AE 3 at 1). He served in the military from 1993 to 1997, and received an honorable discharge. He attended a community college from August 2004 to December 2006. He has no police record, except for a 1995 incident involving driving under the influence of alcohol, which resulted in punishment under Article 15, Uniform Code of Military Justice. He has not used or trafficked in illegal

---

<sup>2</sup>On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant’s case.

<sup>3</sup>Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated June 19, 2008; and Applicant’s receipt is signed and dated June 25, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant’s receipt to submit information.

<sup>4</sup>Item 4 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

drugs in the last seven years, and has never used illegal drugs while in a sensitive position. In the last seven years he has not been fired, quit or left employment under unfavorable circumstances.

## **Financial Considerations**

### **(1) Foreclosed residential dwelling**

Applicant purchased a home in 1999, and subsequently took out a second mortgage at a high interest rate to complete some home improvements (AE 3 at 1). The mortgage was in the amount of \$30,000 (Item 5 at 8). In 2002, Applicant remarried and decided to move to a different residence and rent out the home purchased in 1999 (AE 3 at 1). Tenants damaged the residence (AE 3 at 1). Applicant could not afford the mortgage on the residence, repairs, and payments on his new residence (AE 3 at 1). Applicant sold his motorcycle to raise money to carry the mortgage until the residence was sold (AE 3 at 1). He was unable to sell the residence, and it went into foreclosure (AE 3 at 1). He subsequently went to the residence, discovered the locks were changed, and the house had been seized by the creditors (AE 3 at 1). He stated, "I believed that since they took possession of the house without notice it was a done deal. Time [] passed . . ." Eventually, Applicant received a voicemail from the creditor. He called the creditor and learned the creditor wanted a down payment of \$900 and \$700 per month (AE 3 at 2). He informed the creditor he was unable to afford such payments.

Applicant admitted that he owed a creditor approximately \$28,238 (SOR ¶ 1.a). Applicant explained that when his first residence was foreclosed, he was not aware that a second mortgage debt remained after the foreclosure (Item 3). He did not hear anything from the creditor until interviewed by a Department of Defense investigator sometime after October 2007 (Item 3). Applicant stated, "I have never been through a foreclosure before and knew nothing about what was going to happen. I assumed that losing the house was my punishment and [resulted in] settlement [of] the debt." (Item 3 at 3).

On March 31, 2008, creditor filed a lawsuit to collect the note, Applicant executed on May 5, 2001 (AE 5 at 2). A letter from Applicant's counsel, dated April 14, 2008, states, "This matter is a contested civil action that was recently filed. A trial date for this case has not been set at this time." Applicant's lawyer offered to discuss this matter with security officials (Item 6 at 3). His counsel further indicated his belief that Applicant was unaware of his responsibility for this debt because he did not disclose it in the course of the divorce proceedings when debt and child support responsibilities were allocated (AE 5 at 2).

On September 2, 2008, Applicant's counsel averred he did not receive notice of the collection action on his note, and stated, "Hopefully, [Applicant] will prevail in this litigation. However, should he not prevail, [he] will set up a payment schedule with the creditor in order to curtail this debt." (AE 4 at 2). In the lawsuit, Applicant contests part of

the complaint and asks the court to dismiss the lawsuit and assess costs against the plaintiff (AE 4 at 3, court filing, dated April 10, 2008). His counsel indicates Applicant has already testified candidly in the court hearing (AE. 5 at 2).

## **(2) Credit Report**

Applicant's file contains an 18-page credit report, dated October 16, 2007 (Item 5). It shows approximately 50 creditor entries (Item 5 at 3-17), including multiple obvious duplications (See, e.g., Item 5 at 13-15). This credit report includes comments such as "ACCOUNT PAID SATISFACTORILY," pays "AS AGREED," and "ACCOUNT LEGALLY PAID IN FULL." For example, a real estate mortgage account for \$117,840 was paid satisfactorily in December 2006 (Item 5 at 12). A car loan account for \$31,416 was paid satisfactorily in 2001 (Item 5 at 11). A car loan of \$42,357 in 2004 was paid as agreed and closed in 2006 (Item 5 at 15). There are several indications of late payments on some accounts. As for his foreclosure, it indicates "VETERANS ADMINISTRATION REAL ESTATE MORTGAGE ACCT STATUS: CLOSED FORECLOSURE PROCEEDINGS INITIATED; LAST REPRD DELINQUENCIES: 03/2006=M, 02/2006=M; CREDIT GRANTOR RECLAIMED COLLATERAL TO SETTLE DEFAULTED MORTGAGE" (Item 5 at 12). He has a current car loan for about \$12,000 that is paid as agreed (Item 5 at 10).

## **(3) Personal Financial Statement (PFS) showing negative income**

For SOR ¶ 1.b, when he prepared his PFS he indicated a monthly negative net remainder of \$2,741. In his SOR response, he explained that he did not include overtime pay in his income (Item 3). His PFS has a monthly gross salary of \$5,125 with total monthly deductions \$3,968 (Item 6). He also has \$2,062 in monthly alimony and child support, and about \$890 in other monthly expenses (Item 6). His monthly debt payments are \$943. His PFS includes the comment, "I am currently going through a divorce. I have lawyer's fees of \$200 per hour. I am also being sued by [the creditor in SOR ¶ 1.a] for said amount. I am living pay check to pay check and work as much overtime as I can to make ends meet." (Item 6 at 4).

Applicant attached a photocopy of a weekly pay statement, which indicates weekly gross pay for 40 hours of \$915 and holiday double time pay for 8 hours of \$366. As of April 13, 2008, Applicant had earned \$31,817 or about an average of \$9,000 monthly. This weekly pay statement shows double time payments of more than \$10,000 for the period January 1, 2008, to April 13, 2008. It also shows weekly garnishment of \$105, and a child support payment of \$290.

## **Personal Conduct**

Section 27 of Applicant's SF 86, executed on October 2, 2007, contains answers to two questions that are relevant to the issue of whether Applicant falsified his SF 86:

**Section 27: Your Financial Record . . . b.** In the last 7 years have you had your wages garnished or had any property repossessed for any reason? . . . d. In the last 7 years, have you had any judgments against you that have not been paid?

Applicant answered, “Yes” to both questions and explained that his home was foreclosed in August 2005, and he owed \$45,000 (Item 4 at 26).

The SOR alleged that he falsified his SF 86 when he answered, “No” to Section 28b, which asked “Are you currently over 90 days delinquent on any debt(s)?” Applicant explained in his SOR response that at the time he completed his SF 86 he was not 90 days delinquent on this debt. The first time he learned of the \$28,000 debt’s delinquency, as described above, was when he was interviewed by a Department of Defense investigator after October 2, 2007 (Item 3 at 3). He received the court documentation concerning the debt in SOR ¶ 1.a in May 2008 (Item 3 at 3). There is no evidence in the file to contradict Applicant’s statement that he did not know the \$28,000 debt was delinquent on October 2, 2007.

A credit report dated October 16, 2007, indicates the debt in SOR ¶ 1.a was provided to the credit reporting company in September 2007 (Item 5 at 12). The credit report includes the following information about how long the debt was delinquent, “Last reported delinquencies: 09/2007 = I, 08/2007 = I.” The “LAST ACT” on account is listed as 09/07 (Item 5 at 12). A separate listing shows a “LAST ACT” on account of 05/01 with a reporting date of 09/07.

As to the first trust on the foreclosure, his credit report indicates a last act on account of 04/05 and a comment, “FORECLOSURE PROCEEDINGS INITIATED; LAST REPORTED DELINQUENCIES: 03/06=M, 02/2006=M; CREDIT GRANTOR RECLAIMED COLLATERAL TO SETTLE DEFAULTED MORTGAGE.”

Applicant states he completed his security clearance documentation honestly and to the best of his ability (AE 3 at 1). Applicant noted he is faced with “huge child support” in connection with his divorce (AE 3 at 2). He was unable to provide additional documentation because his papers are stored at his soon to be former spouse’s residence (AE 3 at 2). He is “working and striving straighten out [his] finances,” but he may have to file for bankruptcy as the best remaining option (AE 3 at 2).

## **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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>5</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. 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).<sup>6</sup>

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.

---

<sup>5</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the 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 (4<sup>th</sup> Cir. 1994).

<sup>6</sup> "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (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 Financial Considerations Disqualifying 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.” Applicant’s history of delinquent debt is documented in his credit reports, and his SOR response. As indicated in SOR ¶ 1.a, he had one delinquent debt for about \$28,000. Sometime in 2005 or 2006, he stopped making payments on a rental property and the property went into foreclosure. The creditor has not been paid. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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) or 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debt. The \$28,000 debt is in litigation. A court hearing has been held. If Applicant loses the lawsuit, he promises to set a payment plan. There was also a Veteran's Administration loan on the property for about \$49,450. The foreclosure apparently resulted in the settlement of the defaulted mortgage (Item 5 at 12). Because there are two delinquent debts, the financial problems are not isolated. The ongoing nature of the \$28,000 debt is "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 receives partial credit under AG ¶ 20(a) because the debt "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." This is the only rental property where he had a problem meeting the mortgage payments. That property has been foreclosed, and he no longer owns it. His credit report (Item 5) does not list any other similar financing. Finally, his financial records show he had faithfully paid or resolved numerous debts over the years without any other delinquent accounts. Under AG ¶ 20(b), he receives partial mitigation because his financial situation was damaged through divorce litigation. However, he did not provide sufficient information to establish that he acted responsibly under the circumstances.<sup>7</sup>

AG ¶¶ 20(c) and 20(d) do not fully apply. Applicant did not provide evidence of financial counseling. Moreover, there are not "clear indications that the problem is being resolved or is under control." There is insufficient information to establish that Applicant showed good faith<sup>8</sup> in the resolution of his \$28,000 debt.

---

<sup>7</sup>"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)).

<sup>8</sup>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,



SOR ¶ 1.b alleges that his April 2008 PFS shows Applicant had such a large monthly negative cash flow, he was unable to meet his financial obligations. However, there is insufficient evidence to show he actually had a significant negative cash flow. The pay statement attached to the PFS shows much greater income than Applicant indicated on his PFS. Moreover, it is possible that he duplicated the “Total Deductions \$3,968” and “Alimony/Child Support/Day Care \$2,062” entries. Accordingly, I find the allegation in SOR ¶ 1.b to be unsubstantiated. I will find “For Applicant” for SOR ¶ 1.b in the decretal paragraph of this decision.

AG ¶ 20(e) is not fully applicable to mitigate SOR ¶ 1.a because the Applicant did admitted he owed the \$28,000 debt, and only disputed the notice on the foreclosure. Theoretically, he could have sold the house himself or through a realtor and mitigated the amount of the debt. It is possible the creditor will lose the lawsuit because of the lack of notice. He is credited with providing “documented proof to substantiate the basis of the dispute” with respect to the debt in SOR ¶ 1.a.

Applicant did not provide sufficient correspondence with his creditor for SOR ¶ 1.a to establish he acted responsibly and in good faith from 2005 up to May 2008. He should have been more diligent and made greater efforts to resolve his delinquent debt, especially after receipt of the SOR. It would have been preferable, for example, if he had set aside money every month in the event he loses the lawsuit to fund a payment plan.

I conclude, however, his overall conduct with his creditors does not cast doubt on his current reliability, trustworthiness, and good judgment. His financial problems appear to be limited to one \$28,000 debt, and causation of that debt is sufficiently unique as to be unlikely to recur. He is an honest, hard working employee and a veteran. He is uneducated about financial matters. His inability to complete the PFS, followed by his inability to provide full information about why his PFS was flawed speaks volumes about his lack of financial acumen. He has carried his burden of proving his financial responsibility. Based on my evaluation of the record evidence as a whole, I conclude while no mitigating conditions fully apply, they cumulatively mitigate security concerns pertaining to financial considerations.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

---

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)).

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and,
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

The SOR alleges that Applicant deliberately provided false information or omitted required information on his 2007 SF 86. Applicant's alleged falsification of Section 28b of his SF 86 is not substantiated. AG ¶ 17(f) provides a condition that could mitigate security concerns in this case, stating, "the information was unsubstantiated or from a source of questionable reliability." AG ¶ 17(f) fully applies to SOR ¶ 2.a. Although he admitted preparing his SF 86, and answering incorrectly, he did not know the status of the \$28,000 debt.<sup>9</sup> He thought the debt was released or extinguished through the foreclosure of the house. He disclosed the foreclosure on his SF 86, alerting the government to the issue of his financial problems. There is no evidence of his intent to conceal information. When a Department of Defense investigator asked him about this debt, there is no evidence that he denied responsibility or attempted to evade the issue concerning the \$28,000 delinquent debt. As indicated previously, the PFS he submitted

---

<sup>9</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

- (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

failed to take into account his overtime pay and significantly understated his income. When he responded to interrogatories he again unstated his income. Fortunately, he attached a pay statement to the PFS, which indicated substantial overtime pay. These financial errors show his state of mind and lack of financial sophistication. I conclude he did not knowingly attempt to mislead the government about his financial situation.

### **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). For purposes of the whole person analysis in this case, I will presume that none of the mitigating conditions under AG ¶ 20 apply.

There is evidence against mitigating Applicant's conduct. His PFS includes the comment, "I am currently going through a divorce. I have lawyer's fees of \$200 per hour. I am also being sued by [the creditor in SOR ¶ 1.a] for said amount. I am living pay check to pay check and work as much overtime as I can to make ends meet." (Item 6 at 4). This statement is an indicator of financial stress. He admitted he was aware that he owed the creditor in SOR ¶ 1.a money, and relied on foreclosure to erase that debt, as it apparently erased the other approximately \$45,000 debt he disclosed on his SF 86. Use of foreclosure to eliminate debt shows some financial irresponsibility and lack of judgment. Applicant learned of the security significance of his delinquent debt when he responded to interrogatories, and this knowledge was reinforced when he received the SOR and FORM. His efforts to resolve his delinquent debt raise security concerns.

The mitigating evidence under the whole person concept is more substantial. Applicant's record of good employment weighs in his favor. There is no evidence of any security violation. Aside from the delinquent debt in SOR ¶ 1.a (which is a civil, non-criminal issue), he is a law-abiding citizen. His other debts are current. The overall amount of his debt currently in litigation at about \$28,000 is relatively low. Trial recently occurred, but the court's judgment was not provided. The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

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.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant is a maintenance worker. He attended a community college, but did not graduate. He is not sophisticated in the areas of finance and real estate. He made mistakes, and lost money on an investment property. However, there is simply no reason not to trust his promise to pay the creditor in SOR ¶ 1.a. He said he would set up a payment plan and pay any resulting judgment. His credit report (Item 5) shows that he has paid numerous debts over the years and only the two debts relating to the foreclosure stand out as being delinquent. And of the two, the Veterans Administration mortgage was apparently resolved in the foreclosure. He has established a “meaningful track record” of debt payment sufficient to trust his promise to pay the sole SOR debt. These factors show responsibility, rehabilitation, and mitigation. 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 personal conduct and 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 not mitigated or overcome the government’s case. For the reasons stated, I conclude he is not 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
Subparagraphs 1.a and 1.b:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

---

Mark W. Harvey  
Administrative Judge