



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-05459  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

May 29, 2009

**Decision**

HARVEY, Mark W., Administrative Judge:

Applicant mitigated drug involvement security concerns because his drug use was relatively isolated and not recent. However, he failed to mitigate the financial considerations security concerns. He did not make any payments in 2008 or 2009 towards the debts listed in his statement of reasons (SOR). His clearance is denied.

**Statement of the Case**

On August 29, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86), (Government Exhibit (GE) 1). On December 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR detailing the basis for its preliminary decision to deny Applicant eligibility for access to classified information, citing security concerns under Guidelines H (Drug Involvement) and F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. 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 February 2, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 12, 2009. The case was assigned to me on April 16, 2009. On April 17, 2009, DOHA issued a hearing notice. The hearing was held on May 19, 2009. At the hearing, Department Counsel offered six exhibits (GEs 1-6) (Transcript (Tr.) 16-17), and Applicant did not offer any exhibits. There were no objections, and I admitted GEs 1-6 (Tr. 17). Additionally, I admitted the hearing notice, SOR and response to the SOR (GEs 7-9). I received the transcript on May 27, 2009.

### **Findings of Fact<sup>1</sup>**

In his SOR response, Applicant admitted his responsibility for all of the SOR debts (GE 9). He also admitted the drug offenses listed in the SOR (GE 9). 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 a 48-year-old senior quality assurance analyst employed by a government contractor (Tr. 6, 18, 20). He graduated from high school in 1979, and attended college for about one year (Tr. 6-7; GE 1). He served in the Air Force on active duty for four years and in the reserves for two years (Tr. 7; GE 1). He held a Secret security clearance while on active duty (Tr. 7). He was divorced in November 2007 (Tr. 19). He is considering reconciliation with his former wife (Tr. 36). His three children are ages eight, 20 and 21 years old (Tr. 19).

### **Drug Involvement**

Around the period of 1999 to 2000, Applicant purchased a small amount of cocaine from a friend (Tr. 22). He used cocaine two or three times (Tr. 22-25, 36-37; SOR ¶ 1.a). During this same time period, his employer conducted a urinalysis test and Applicant tested "positive," establishing the presence of the cocaine metabolite in his urine (Tr. 25; SOR ¶ 1.b). He said his cocaine use was for a brief period of time, perhaps a month (Tr. 25). He completed a drug rehabilitation program, lasting about four to six weeks (Tr. 26). The drug rehabilitation involved counseling, group meetings and drug tests (Tr. 26).

In October 2006, Applicant was arrested for possession of an open container of alcohol, driving under the influence of alcohol (DUI), and possession of methamphetamine (SOR ¶ 1.d; GE 9). He also used methamphetamine shortly before he began driving on the trip where he was arrested (Tr. 28-31; SOR ¶ 1.c). It was the

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

first time he ever used methamphetamine (Tr. 38). He had an open can of beer in the car (Tr. 30). He failed a field sobriety test (Tr. 31). He had some methamphetamine on his person (Tr. 32). He was arrested and jailed for about 48 hours (Tr. 32). The charges were dismissed because of procedural issues (Tr. 32-33). He did not receive drug counseling in specific relation to his methamphetamine use.

Applicant denied that he used illegal drugs on other occasions (Tr. 29, 33-34). He asserted his drug use was stress related because he was having problems with his marriage, his daughter and other custody issues (Tr. 34). His daughter had behavioral problems (Tr. 34). He went to stress counseling for his separation and pending divorce, which also addressed his methamphetamine use (Tr. 35). He did not disclose his methamphetamine use to his employer because he was worried about losing his job (Tr. 36). He denied that he used illegal drugs after 2006, and offer to submit to random urinalysis drug testing (Tr. 55).

### **Financial considerations**

Applicant worked for his current employer from January 1986 to January 1994, and from June 2002 to the present (Tr. 20). His current annual salary is \$67,000 (Tr. 21). He does not pay child support for his two oldest children (Tr. 20). He pays \$716 monthly support to his former spouse for his eight year old son (Tr. 51).

Applicant did not make any payments towards the debts in SOR ¶¶ 2.a (\$176), 2.b (\$508), 2.c (\$657), 2.d (\$218), 2.e (\$5,688), 2.f (\$1,098), 2.g (\$888), 2.h (\$700), 2.i (\$400), or 2.j (\$600) (Tr. 40). The sources of his SOR debts included three credit cards (Tr. 42-45; SOR ¶¶ 2.b, 2.d, 2.f), two telecommunications accounts (Tr. 40, 45; SOR ¶¶ 2.a, 2.g), purchase of an air conditioning unit (Tr. 44; SOR ¶ 2.e), a department store account (Tr. 46-47; SOR ¶ 2.j), and three jewelry store accounts (Tr. 43-46; SOR ¶¶ 2.c, 2.h, 2.i). He contacted a debt consolidation company about three weeks before his hearing; however, their proposed plan was too expensive (Tr. 40-42). The debts in SOR ¶¶ 2.b (\$508) and 2.d (\$218) are duplications of each other.

Applicant made some progress on non-SOR listed debts (Tr. 41). In November 2008, he made five mortgage payments of \$974 each to bring his mortgage into current status (GE 3). He has subsequently maintained his mortgage in current status (Tr. 41). He also paid a non-SOR listed medical debt for about \$100 (Tr. 41). At the time of his separation from his spouse in 2006, she made about \$15,000 to \$25,000 per year (Tr. 48). Applicant's monthly salary is about \$5,500, and his monthly deductions total about \$1,338 (Tr. 48). After paying monthly expenses (including child support), about \$820 remains (Tr. 48-52). He also provides money to his children (Tr. 52-53). For example he gave his eldest daughter \$700 in March 2009 (Tr. 53). He has not paid any of his SOR creditors anything in 2008 or 2009 (Tr. 54).

### **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 an Applicant 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 over-arching adjudicative goal is a fair, impartial and common sense 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 [A]pplicant 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 (4<sup>th</sup> 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 Guidelines H (Drug Involvement) and F (Financial Considerations) with respect to the allegations set forth in the SOR.

### Drug Involvement

AG ¶ 24 articulates the security concern concerning drug involvement:

[u]se of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes eight conditions related to drug involvement that could raise a security concern and may be disqualifying. Three drug involvement disqualifying conditions raise a security concern and may be disqualifying in this particular case:

- (a) any drug abuse (see above definition);<sup>2</sup>
- (b) testing positive for illegal drug use; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

AG ¶¶ 25(a), 25(b) and 25(c) apply because Applicant used cocaine in approximately 1999 or 2000 and methamphetamine in about October 2006.<sup>3</sup> He

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<sup>2</sup>AG ¶ 24(b) defines “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

<sup>3</sup>AG ¶ 24(a) defines “drugs” as substances that alter mood and behavior, including:

- (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Cocaine and methamphetamine are Schedule II Controlled Substances. See 21 U.S.C. § 812(c)II(a)(4) (cocaine), and II(c) (methamphetamine); *United States v. McCourty*, 562 F.3d 458 (2<sup>nd</sup> Cir. 2008) (cocaine); *United States v. Wheeler*, 535 F.3d 446 (6<sup>th</sup> Cir. 2008) (methamphetamine). See also

disclosed his methamphetamine use on his security clearance application. He admitted his methamphetamine and cocaine use to an OPM investigator, and at his hearing. He used illegal drugs primarily because of stress. He possessed these illegal drugs before he used them. His cocaine use was detected by his employer's drug test. The other disqualifying conditions listed in AG ¶ 25 are not applicable.

AG ¶ 26 provides four potentially applicable drug involvement mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and
  - (4) a signed statement of intent with automatic revocation of clearance for any violation.
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Concerning AG ¶ 26(a), there are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates

“changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”<sup>4</sup>

AG ¶ 26(a) applies. Applicant’s last drug use was in October 2006, about 31 months prior to his hearing. His overall illegal drug use was relatively brief, and involved two or three cocaine uses and one methamphetamine use. The absence of evidence of more recent or extensive drug use, his offer to submit to random urinalysis testing, and his promise not to use illegal drugs in the future eliminates doubts about his current reliability, trustworthiness, or good judgment with respect to abstaining from illegal drug use.<sup>5</sup>

AG ¶ 26(b) lists four ways Applicant can demonstrate his intent not to abuse illegal drugs in the future. He has disassociated from his drug-using associates and contacts. He has broken or reduced the prevalence of his patterns of drug abuse, and he has changed his own life with respect to illegal drug use. He has abstained from drug abuse for about 31 months. However, he did not provide “a signed statement of intent with automatic revocation of clearance for any violation.” AG ¶ 26(b) partially applies.

AG ¶¶ 26(c) and 26(d) are not applicable because Applicant did not abuse prescription drugs after being prescribed those drugs for an illness or injury. The cocaine and methamphetamines were never prescribed for him. Although he did

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<sup>4</sup> ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

*Compare* ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

<sup>5</sup>In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

satisfactorily complete a prescribed drug treatment program after being caught using cocaine, he subsequently used methamphetamine. Moreover, he did not provide proof of a “favorable prognosis by a duly qualified medical professional” as required in AG ¶ 26(d).

In sum, Applicant ended his relatively isolated drug abuse in October 2006, about 31 months ago.<sup>6</sup> His illegal drug use is not recent. The motivations to stop using illegal drugs are evident. He understands the adverse results from drug abuse.<sup>7</sup> He promised not to use illegal drugs in the future, and offered to submit to random urinalysis tests to verify his abstinence from drug use. Drug involvement security concerns are mitigated.

## 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

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<sup>6</sup>The Appeal Board has reversed decisions granting a clearance because the administrative judge considered individual acts of misconduct one-by-one and determined the isolated acts were mitigated. ISCR Case No. 07-03431 at 4 (App. Bd. June 27, 2008); ISCR Case No. 06-08708 at 3-4 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-07714 at 5-7 (App. Bd. Oct. 19, 2006). Here, Applicant used cocaine in 1999/2000 and methamphetamine in October 2006. His repeated abuse of these particular drugs is relevant in the whole person analysis, but individually, as listed in the SOR, the abuse of two illegal drugs, cocaine about nine years ago, and methamphetamine about 31 months ago is insufficiently aggravating to cause denial of his clearance. In ISCR Case No. 07-03431 at 4 (App. Bd. June 27, 2008), the Appeal Board explained it is the overall conduct that determines whether a clearance should be granted stating:

The Judge's analysis of the numerous acts of misconduct in this record failed to reflect a reasonable interpretation of the record evidence as a whole. By analyzing each category of incidents separately, the Judge failed to consider the significance of the “evidence as a whole” and Applicant’s pattern of conduct. See, e.g., *Raffone v. Adams*, 468 F.2d 860, 866 (2d Cir. 1972)(taken together, separate events may have a significance that is missing when each event is viewed in isolation). Under the whole person concept, a Judge must consider the totality of Applicant’s conduct when deciding whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. See, e.g., ISCR Case No. 98-0350 at 3 (App. Bd. Mar. 31, 1999). The Judge’s piecemeal analysis of Applicant’s overall conduct did not satisfy the requirements of ¶ E2.2 of the Directive.

See also ISCR Case No. 04-07714 at 5-7 (App. Bd. Oct. 19, 2006), see Whole Person Concept at pages 11-12, *infra*.

<sup>7</sup>Approval of a security clearance, potential criminal liability for possession of drugs and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free.



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, in his responses to DOHA interrogatories, in his OPM interview, in his SOR response and at his hearing. His SOR listed 10 delinquent debts totaling about \$10,933. The debts in SOR ¶¶ 2.b and 2.d are duplications of each other, and I find For Applicant with respect to the debt in SOR ¶ 2.d, reducing the delinquent debt total by \$218. His financial difficulties began in 2006 and continue today. 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) to 20(e) because he did not act more aggressively and responsibly to resolve 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)). Applicant receives partial credit under AG ¶ 20(a) because his financial problems “occurred under such circumstances that [they are] unlikely to recur” because of his divorce; however, there is

some residual doubt about whether he is fully committed to resolving his delinquent SOR debts and is making adequate steps to do so.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged due in part to his marital problems, his daughter's behavioral problems and stress. He provided support for his three children. He may have lacked sufficient income to pay some of his debts. He does not receive full credit because many of his SOR debts arose years ago, and he has made very little recent progress on their resolution.<sup>8</sup>

AG ¶ 20(c) partially applies. Applicant understands what he has to do to resolve his delinquent debts without financial counseling. Applicant has taken positive action to bring his mortgage to current status. He also makes his car payments and manages to pay his day-to-day living expenses. There are some positive "indications that the problem is being resolved or is under control." He has also established some mitigation under AG ¶ 20(d) because Applicant showed some good faith<sup>9</sup> in the resolution of his non-SOR mortgage debt and other non-SOR debts and expenses. However, he was unable to resolve his SOR debts. He did not prove that he had agreements or even attempted to reach agreements with his SOR creditors to accept minimal payments to keep his SOR debts in current status. AG ¶ 20(e) does not apply because Applicant did not dispute any SOR debts.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He did not make any payments on any SOR debts in 2008 and 2009, even though most of his SOR debts are less than \$1,000 each. He has not presented sufficient evidence of attempts to generate payment plans

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<sup>8</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)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

<sup>9</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, 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 resolve his SOR debts. His efforts to resolve his SOR debts are simply inadequate to fully mitigate financial considerations security concerns.

### **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 Guidelines H and F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his clearance. Applicant deserves substantial credit for his support to his country and his family. There is every indication that he is loyal to the United States, the Department of Defense, his employer and that he is an honorable person. There were no allegations of security violations. He had only one arrest and it did not result in a conviction. Applicant is a high school graduate, and has about one year of college. He served on active duty in the Air Force for four years and two years in the reserves. Stress from marital problems and problems with his daughter contributed to his financial woes and to his poor decisions to use cocaine and methamphetamine. He received some stress-related counseling. His employer provided some drug therapy after cocaine was found in a urine sample he provided in a drug test. He understands how to avoid future delinquent debts. He paid his mortgage and other expenses of daily living. He is current on many of his financial responsibilities. He is motivated to have a successful career as an employee of a Department of Defense contractor, to pay his delinquent debts and to have his security clearance approved. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a lengthy history of financial problems. His SOR lists nine, valid delinquent debts totaling about \$10,700. His financial difficulties began in 2006

and continue today. He had ample opportunity to contact more of his SOR creditors and to make greater progress in the resolution of his SOR debts. He did not make any payments on these nine delinquent debts in 2008 or 2009. He made insufficient progress over the last 16 months to resolve his delinquent debts, even though he had steady employment and ample opportunity to contact his creditors and provide documentation. He was on clear notice from his OPM interview and receipt of DOHA interrogatories and even more so after he received the SOR that he needed to show substantial progress in the resolution of his delinquent debts; however, he made insufficient effort to accomplish this security responsibility.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not 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 failed to mitigate or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information at this time.

### **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 H:	FOR APPLICANT
Subparagraphs 1.a to 1.d:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e to 1.j:	Against Applicant

### **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.

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MARK W. HARVEY  
Administrative Judge