



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-05640  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Kathleen E. Voelker, Esquire

May 7, 2009

**Decision**

HARVEY, Mark W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. He has demonstrated a meaningful track record of debt repayment. He paid nine of 14 statement of reason (SOR) debts. His two student loan debts were merged. Three of the remaining debts are in payment plans, and Applicant is negotiating a payment plan for his student loan debt. He credibly promised to pay the four unpaid SOR debts and one large state tax debt. Access to classified information is granted.

**Statement of the Case**

On June 6, 2008, Applicant submitted an Electronic Questionnaire for National Security Positions (SF 86) (Government Exhibit (GE) 1). On November 20, 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 Guideline 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 his security clearance, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked.

On December 11, 2008, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 6, 2009. The case was assigned to me on March 9, 2009. On March 20 and April 7, 2009, DOHA issued hearing notices. The hearing was held on April 22, 2009. At the hearing, Department Counsel offered seven exhibits (GE 1-7) (Transcript (Tr.) 18), and Applicant offered 26 exhibits (Tr. 29; AE A-Z). There were no objections, and I admitted GEs 1-7 (Tr. 18-19), and AE A-Z (Tr. 30). Additionally, I admitted the SOR, response to the SOR and the hearing notice (GEs 7-9). I received the transcript on April 29, 2009.

### **SOR Amendment**

Department Counsel made a motion to amend the SOR, asking for deletion of parenthetical citations to documents supporting the allegations (Tr. 14-15). Applicant did not object, and I granted the motion (Tr. 15).

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

In his SOR response, Applicant admitted a Chapter 7 bankruptcy discharged his unsecured debts in 1998 (GE 11). He also admitted the debts in SOR ¶¶ 1.a, 1.c to 1.f, 1.h, 1.i, 1.l, and 1.m (GE 11). He denied the remaining debts. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 38 years old (Tr. 58). He formed a small corporation in May 2008, which obtained a contract with a government contractor in July 2008 (Tr. 62, 63). Applicant is the only employee of his corporation (Tr. 62). He provides services in the field of information technology (Tr. 61-62). His corporation receives \$85 per hour, and he works 40 hours per week (Tr. 63). Prior to starting his own corporation, he earned about \$85,000 each year for the previous two years working for a different government contractor (Tr. 64, 158-159; AE C).

Applicant served in the U.S. Marines from September 1989 to March 1997 (Tr. 59, 135). When he left active duty he was a Sergeant (E-5) (Tr. 59). He served in Saudi Arabia during the first Gulf War (Tr. 60). He received the National Defense Service Medal, Combat Action Ribbon, Kuwait Liberation Medal, Sea Service Deployment Ribbon with one Oak Leaf Cluster (OLC), Navy Unit Commendation Medal, Good

---

<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.

Conduct Medal with one OLC, Southwest Asia Service Medal with three OLCs, and Kuwait Liberation Medal (AE A). He completed various education and training courses (AE A). He received an Honorable Discharge from the Marine Corps (AE A). He had a security clearance while he was on active duty.

In 1998, Applicant completed two years of college and a nine-month program at a university, earning a certificate for computer information systems (Tr. 60-61). After leaving active duty, he worked for government contractors and received a Top Secret clearance (Tr. 65). He has held a clearance for about 20 years, including access to Sensitive Compartmented Information (SCI) (Tr. 65, 134). He seeks retention of his Top Secret clearance (Tr. 134).

Applicant married in 1993 and his divorce was final in January 2008 (Tr. 67). He paid his attorney fees relating to his divorce, which were approximately \$8,000 (Tr. 75). His two children are ages 8 and 12 (Tr. 68). Applicant and his spouse were separated in June or July 2006 (Tr. 67). His spouse had an extra-marital affair and became pregnant with another man's baby (Tr. 67, 68). He discovered the baby was not his using a blood test after the baby was born (Tr. 68). Applicant received sole custody of his children, and is not required to pay child support or alimony (Tr. 69). His former spouse is supposed to pay Applicant \$1,233 monthly, and she currently owes Applicant about \$17,000 in back child support (Tr. 72-74; GE 7 at 10-12, 36, 40; AE D). Applicant is a single parent; however, his niece who is a senior in high school lives in Applicant's home and provides some child care assistance (Tr. 69-70).

## **Financial Considerations**

On June 6, 2008, Applicant disclosed his financial problems on his 2008 SF 86, noting he had delinquent debts, liens, judgments and tax problems (GE 1). He noted on the SF 86 that he learned about some debts during the process of obtaining a divorce, and he was working with the IRS on developing a repayment plan (GE 1 at 9). He promised to generate repayment plans for all of his delinquent debts (GE 1 at 9).

The SOR lists a 1998 Chapter 7 bankruptcy (Tr. 87, 135) and 14 delinquent debts, totaling \$76,216 (SOR ¶¶ 1.a to 1.o; AE 10). Two debts are consolidated into his education debt, nine debts were paid, three debts are in payment plans, and one payment plan for his education debt is under negotiation.

Applicant and his wife's Chapter 7 bankruptcy was caused when his wife became unemployed (Tr. 88). Just prior to his bankruptcy filing, Applicant was making about \$33,000 annually and his spouse was making \$44,000 annually (Tr. 88). The loss of his spouse's income resulted in delinquent debts, which were eventually discharged using the 1998 Chapter 7 bankruptcy (Tr. 88, 135).

After the bankruptcy, Applicant fell behind on his debts when his former spouse failed to pay their mortgage, student loans, car payments and taxes (Tr. 80). After she moved out of their home, he received phone calls or correspondence and discovered

numerous debts (Tr. 81). He also found old, unpaid bills tucked “in a bin” (Tr. 81). The source, status, and amount of his individual SOR debts are more specifically described as follows:

(1) The debt in SOR ¶ 1.b (\$1,945) is a judgment. It was paid on November 14, 2003 (Tr. 114-115; Ex. N).

(2) The debt in SOR ¶ 1.c (\$17,468) is a federal tax lien. This debt is in a payment plan. Beginning in August 2008, and continuing on a monthly basis thereafter, he pays the IRS \$3,093 monthly (Tr. 102, 103; AE I, J). More details about a much larger federal tax debt and his repayment plan follow on pages 5-6 of this decision.

(3) The debt in SOR ¶ 1.d (\$206) is a medical debt. This debt is paid (Tr. 115; Ex. O).

(4) The debt in SOR ¶ 1.e (\$1,855) is a collection account from a credit bill. This debt is paid (Tr. 115-116; Ex. P).

(5) The debt in SOR ¶ 1.f (\$10,825) is a student loan. He was paying \$175 monthly until July of 2008 (Tr. 118-119, 164). He stopped making payments after being informed the accounts were being consolidated and transferred (Tr. 119). He was also under some financial stress because he was paying about \$1,000 monthly for child care (Tr. 164). Four student loans totaling about \$26,000 were consolidated and transferred to a new collection company (Tr. 118). His most recent correspondence with the new collection company is dated March 31, 2009 (Tr. 118). This debt is in the process of being placed into a payment plan, and his payments will be about \$250 per month (Tr. 116-120, 163-164; Ex. Q, R).

(6) The debt in SOR ¶ 1.g (\$321) is a telecommunications account. This debt was paid on October 7, 2008 (Tr. 120-121; Ex. S).

(7) The debt in SOR ¶ 1.h (\$428) is a collection account. This debt was paid on February 26, 2009 (Tr. 121-122; Ex. T).

(8) The debt in SOR ¶ 1.i (\$3,391) is an automobile loan. This debt is in a payment plan with the first \$400 payment being made on April 6, 2009 (Tr. 122-124, 165-166; Ex. U). The creditor advised him that after three monthly payments are made, a settlement for the balance owed is possible (Tr. 122).

(9) The debt in SOR ¶ 1.j (\$633) is a judgment from a homeowner’s association. This debt was paid on January 11, 2006 (Tr. 124-125; Ex. V).

(10) The debt in SOR ¶ 1.k (\$949) is a collection account. This debt is part of the student loan consolidation discussed above in SOR ¶ 1.f (Tr. 125-126).

(11) The debt in SOR ¶ 1.l (\$4,131) is a home mortgage loan account. Applicant purchased a home in 2002 for \$415,000 (Tr. 75-76). He is currently about \$5,000 behind on his mortgage (Tr. 76). He has made arrangements to pay his monthly payment plus some extra through a direct, automatic payment from his checking account (Tr. 76, 126; AE E). His next payment will be \$3,700 on April 22, 2009 (Tr. 77, 166). The mortgage balance is now \$419,000 and his current monthly payments are \$3,064 (Tr. 78; AE W). He is working with the mortgage company to reduce the monthly payments, possibly by lowering the interest rate and adding onto the principal of the loan (Tr. 77-78, 127). On a previous occasion, Applicant's former spouse failed to make their mortgage payments (Tr. 79-80). In August 2008, Applicant and his former spouse signed a quitclaim deed and attempted to end their mortgage payments (Tr. 82; GE 7 at 13-15). Applicant received estimates on the sale price ranging from \$430,000 to \$460,000; however, he decided not to list the house for sale because he wanted his children to have more stability and he thought the value of the house would increase (Tr. 83-85; GE 7 at 9; GE F). He rents out the basement for \$1,000 per month (Tr. 86-87; AE G).

(12) The debt in SOR ¶ 1.m (\$589) is a bank loan. This debt was paid on December 11, 2008 (Ex. W).

(13) The debt in SOR ¶ 1.n (\$32,518) is a truck loan account. The truck was sold at auction, and the remaining balance owed on the debt was paid on January 7, 2006 (Tr. 127-128, 165; Ex. X).

(14) The debt in SOR ¶ 1.o (\$957) is a credit union account. This debt was paid on March 10, 2009 (Tr. 128-129; Ex. Y).

Applicant's spouse had difficulty retaining employment (Tr. 91). She was fired several times (Tr. 91). In 1999, Applicant started his own information technology, Subchapter S Corporation (Tr. 91-92). Applicant was the Chief Executive Officer, and his wife was the Corporate Financial Officer and Office Manager (Tr. 92). At most, the corporation employed four employees (Tr. 92). Applicant thought a payroll service was paying the employees and sending payments to the government for taxes (Tr. 94, 141-144). Applicant's wife was responsible for completing the tax documents (Tr. 95). Applicant signed tax documents for a joint income tax filing, and provided them to his former spouse; however, they apparently were not filed (Tr. 150-153, 171-173).

Sometime around 2003 to 2005, Applicant discovered the payroll service was not paying the corporation's taxes (Tr. 96, 138). When he confronted his wife about the taxes, she acted like she did not know anything was wrong or inappropriate (Tr. 97). He wanted to file tax returns; however, his wife would not sign them as joint filings (Tr. 98-99, 172). Around 2005, he contacted the IRS about the tax problem (Tr. 144). In April 2007, Applicant filed the missing tax returns for tax years 2000 to 2007, using married filing separate status (Tr. 98-99, 103, 146-150, 172; AE J). He paid a CPA about \$1,500 to file the returns (Tr. 105). He reached an agreement with the IRS and is making payments on his back taxes (Tr. 97). He initially paid \$2,000 to a company to work with

the IRS on his behalf (Tr. 101; AE Z), and then he paid the company \$600 monthly thereafter (Tr. 104). Eventually he paid the company about \$12,000 (Tr. 101; AE Z). The SOR indicates Applicant owes the IRS \$17,468 (SOR ¶ 1.c); however, he actually owes the IRS about \$275,000 (Tr. 102). He believes the \$275,000 IRS debt encompasses both his personal (social security, federal income, and Medicare) liability as well as the business' liability (Tr. 175-177). He began making monthly payments beginning in August 2008 of \$3,093 to the IRS (Tr. 102, 103, 146-150; AE I, J). He believed that once he had established a track record of good faith repayment the IRS would make a better arrangement to settle his IRS debt (Tr. 104). He provided a 33-page, IRS-generated account transcript to corroborate his description of his tax calculations, filings, payments, and other efforts to ameliorate his federal tax debt (AE J).

In 2007, Applicant also corrected his state tax returns for 2000 to 2007 when he corrected his federal returns (Tr. 154-155). He now owes the state \$62,000 for back taxes (Tr. 105, 153). He disclosed this debt as part of his response to DOHA interrogatories (Tr. 106; GE 7 at 6). In August 2008, he made an initial payment of \$5,000 and thereafter pays \$600 monthly, with his most recent payment being on April 20, 2009 (Tr. 106-108, 155; AE K).

Applicant's former spouse was charged with a felony for writing bad checks in 2003 or 2004 (Tr. 109). She now has approximately nine pending felonies for fraud-related crimes (Tr. 109; Ex. L). She has a court date pending on June 10, 2009 (Tr. 110).

Applicant's personal financial statement (PFS), dated April 6, 2009, shows a monthly gross income of \$14,000 and monthly current net monthly income of about \$10,000 (Tr. 169; AE M). His monthly expenses are \$1,910 (AE M). His monthly debt payments are \$6,933 (includes \$3,004 monthly for his mortgage, \$3,093 monthly for the IRS, \$600 monthly for his state tax debt, \$176 monthly for his student loan, and notes a probable monthly payment for his repossessed car debt) (AE M). His remaining monthly income after paying expenses and debts is \$2,157 (AE M). His only listed assets are his cars (AE M). His PFS is unchanged, except he now has the \$1,000 additional monthly rental income from renting out his basement (Tr. 111-112; AE M). Applicant does not currently use a credit card (Tr. 130, 167). He did not borrow the money that he used to pay his SOR debts (Tr. 161). His checking and savings accounts are down virtually to a zero balance because of his efforts to pay his delinquent debts (Tr. 168). Applicant promised to resolve his debts (Tr. 130-131).

Applicant has not taken a vacation in years, and is very frugal (Tr. 112-113). Applicant has two older cars (a 1998 and a 2000 model) (Tr. 70). Both of his cars are paid off (Tr. 167). His niece, who assists him with his child care responsibilities, drives the 2000 model car (Tr. 70).

Applicant does not drink alcohol (Tr. 112-113). He has never been charged with or convicted of any felony offense (GE 1). He has never been charged with or convicted of any firearms offense, explosives offense, drug offense or alcohol offense (GE 1). His

SF 86 indicates he has not been arrested, or charged with any misdemeanor offenses in the last seven years (GE 1).

### **Character Evidence**

Applicant's former wife's sister (S) has known Applicant since 1993 (Tr. 45, 47). Applicant and his wife separated in 2007 (Tr. 47). S sees Applicant at least twice a week when they go to church (Tr. 48). S also sees him when they go to each other's houses (Tr. 48). S babysits for Applicant's children (Tr. 49). S said her sister, Applicant's former wife, was responsible for the problematic family finances (Tr. 50). Applicant is frugal with the family finances (Tr. 50). For example, he has not gone on a vacation trip for years (Tr. 51). Applicant's former wife was not paying her share of the family debts (Tr. 52-53). Applicant's former wife has a 3-year-old son, whose father is not Applicant (Tr. 53). Applicant's former wife drives a late-model Mercedes (Tr. 53). Applicant's former wife has legal problems relating to bad checks, a probation violation and a fraudulent real estate transaction (Tr. 54). S was surprised at the depth of her sister's deviousness (Tr. 56). Applicant is honest and very religious (Tr. 54). Applicant is a responsible family man, who keeps his promises (Tr. 54, 55).

An Army program manager and senior analyst, who retired from active duty as a colonel, has held a top secret clearance with access to SCI for more 25 years (Tr. 33). He has known Applicant since 1997 (Tr. 34, 41). He attends Applicant's church, has served on church committees with Applicant (Tr. 35). They are social friends (Tr. 35). They see each other 2-3 times a week (Tr. 36). He also knows Applicant's former wife and two children (Tr. 36-37). He described Applicant as a role model, who is extremely trustworthy and reliable (Tr. 36, 39). Applicant would keep a promise to pay off his debts (Tr. 40). Applicant is a very frugal person, who carefully lives within his means (Tr. 38, 39). For example, Applicant drives a car that is over ten years old (Tr. 38). He recommended that Applicant retain his security clearance (Tr. 40-41). He would not give anyone a "stronger recommendation" for a clearance than Applicant (Tr. 42).

### **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 Applicants 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 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 three Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," "(c) a history of not meeting financial obligations," and "(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same." ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "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." Applicant's history of delinquent debt is documented in his SF 86, his responses to DOHA interrogatories, his SOR response and at his hearing. Applicant's 1998 Chapter 7 bankruptcy, and 14 delinquent debts, totaling \$76,216, were listed in the SOR. In 2007, he discovered he actually owed the IRS \$275,000 (probably reduced somewhat now due to \$3,000 monthly payments) and he owed state taxes of \$66,000 (now down to about \$62,000). He failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a), 19(c) and 19(g) and further inquiry about the applicability of mitigating conditions is required.

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), 20(b) or 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) and 20(b) because his financial problems initially resulted because of his spouse's unemployment and those debts were resolved through bankruptcy in 1998. His subsequent delinquent debts were caused by divorce and his spouse's fraudulent activities. His wife lied to him about filing their tax returns from 2000 to 2005. He established her misconduct through divorce documentation and her charges. He receives substantial mitigating credit because his delinquent debts "occurred under such circumstances that it is unlikely to recur and does not cast doubt on [his] current reliability, trustworthiness, or good judgment." Because of his experience of his spouse betraying his trust, it is unlikely he would trust anyone to pay his bills, especially his taxes, without verifying the payment. He established that two SOR debts were consolidated into one student loan SOR debt, nine SOR debts were paid, three SOR debts are in payment plans, and one payment plan for the SOR student loan debt is under negotiation. The resolution of nine of his 14 delinquent SOR debts shows he acted responsibly under the circumstances for those nine debts.<sup>2</sup> AG ¶ 20(e) does not apply because he did not dispute any of his SOR debts.

AG ¶ 20(c) partially applies. Applicant did not receive financial counseling and therefore this mitigating condition cannot be fully applied. However, there are "clear indications that the problem is being resolved or is under control" for the reasons stated in the preceding paragraph. He understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt. He has also established some, but not full mitigation under AG ¶ 20(d) because he showed substantial good faith<sup>3</sup> in the resolution of his SOR debts.

---

<sup>2</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 the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

<sup>3</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

Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. His actions to date are insufficient to fully apply any of the mitigating conditions. However, security concerns are fully mitigated under the “Whole Person Concept,” *infra* at pages 11-13.

### **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.

There is evidence against mitigating Applicant’s conduct. About eleven years ago, several of Applicant’s debts became delinquent because more than half of the family income was lost when his spouse became unemployed. His debts were resolved through his Chapter 7 bankruptcy in 1998. Applicant and his spouse subsequently generated 14 delinquent SOR debts, totaling \$76,216. He admitted responsibility for the bankruptcy and all of the delinquent SOR debts. In 2007, he discovered he actually owed the IRS \$275,000 and he owed state taxes of \$66,000. He discovered his wife had not filed their federal and state tax returns from 2000 to 2005. He failed to obtain financial counselling. He showed some effort over the years to resolve his delinquent debts, but could have acted more aggressively to avoid delinquent debt, to seek debt

---

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)).

repayment or resolution, and to better document his remedial efforts. These factors show some financial irresponsibility and lack of judgment. His history of delinquent debt and failure to file and pay taxes raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is more substantial. There is no evidence of any security violation. He is a law-abiding citizen. His current financial problems were caused by three factors beyond his control: (1) his divorce, (2) the necessity to support his two children as a single father, and (3) most importantly, he was a victim of his spouse's fraudulent actions. Applicant's spouse was handling their debt payments and she did not pay their debts. Even though he signed his tax returns, she did not file them or pay their taxes from 2000 to 2005. Applicant discovered his spouse was engaged in an adulterous affair, and filed for divorce. The family court granted Applicant custody and ordered her to pay child support. Applicant's former spouse was subsequently charged with a felony for writing bad checks in 2003 or 2004. She now has approximately nine pending felonies for fraud-related crimes. Ultimately, he paid or settled and paid all delinquent accounts except for four debts and his non-SOR state tax debt. He provided receipts showing that all except four of his delinquent SOR debts and his non-SOR state tax debt were resolved through payment of his creditors.

The IRS and state authorities seem to be satisfied with Applicant's payment plan of about \$3,600 per month (since August 2008). He stopped paying his student loan while it was being consolidated; however, he has maintained communications with the creditor and promised to make the likely payments of about \$250 per month as soon as the creditor is prepared to accept payments. He started making payments on a debt of about \$4,000 that he owed for a repossessed vehicle. He worked diligently since 2007 to pay his delinquent federal and state taxes. He has ample income to pay his debts. 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." 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. 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.' 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. 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) (internal citations omitted).

Applicant is 38 years old. He has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He has held a security clearance for about 20 years. He defended his country in peace and war as a U.S. Marine and then supported the Department of Defense as a contractor. He understands how to budget and what he needs to do to establish his financial responsibility. Years ago, he made mistakes, and his debts became delinquent. His primary mistake was to trust his spouse, when there were signs during their marriage that her honesty and integrity were suspect. He compounded those mistakes by failing to act more aggressively to resolve his debts especially his state and federal tax problems. There is, however, simply no reason not to trust him. Moreover, he has established a "meaningful track record" of debt payments by actually paying all except four of his SOR delinquent debts and a substantial delinquent non-SOR state tax debt. Most importantly, he is paying his mortgage, his federal tax debt, his state tax debt, one car loan and will soon continue making payments on his student loan. He credibly promised to continue with payments on his debts. I found his statement to be candid, forthright and credible. These factors, especially his past government service, show responsibility, rehabilitation, and mitigation.

Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service to the Department of Defense as a contractor and to the U.S. Marines. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

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

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a to 1.o:	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