



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-06058
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 29, 2009

**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted his Security Clearance Application (SF 86), on August 25, 2004. On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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.

Applicant acknowledged receipt of the SOR on December 16, 2008. He answered the SOR in writing on January 10, 2009, and requested a hearing before an

administrative judge. DOHA received the request on January 12, 2009. Department Counsel was prepared to proceed on February 12, 2009, and I received the case assignment on February 17, 2009. DOHA issued a notice of hearing on February 23, 2009, and I convened the hearing as scheduled on March 24, 2009. The government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He did not submit any exhibits. I, however, held the record open for 30 days for Applicant to submit additional evidence. DOHA received the transcript of the hearing (Tr.) on March 31, 2009. On April 24, 2009, Applicant timely submitted nine exhibits, AE A through AE I, without objection. These exhibits have been marked and admitted into the record. The record closed on April 24, 2009.

### **Procedural and Evidentiary Rulings**

#### **Notice**

At the hearing, Applicant indicated he received the hearing notice on March 6, 2009, which is more than 15 days prior to the hearing date as required under ¶ E3.1.8 of the Directive. (Tr. 8.)

#### **Motion to Amend SOR**

Department Counsel advised that the government was not moving forward with SOR ¶ 2.b, which alleges Applicant falsified his response to question 37 on his SF 86 by denying that he had any unpaid judgments within the preceding seven years. Department Counsel indicated that the issue raised in allegation 2.b occurred one year after Applicant completed and signed his SF 86. (Tr. 20.) Applicant did not object. SOR allegation 2.b is withdrawn.

### **Findings of Fact**

In his Answer to the SOR, dated January 10, 2009, Applicant admitted the factual allegation in ¶ 1.a of the SOR. He denied the factual allegations in ¶¶ 1.b through 1.n and 2.a through 2.d of the SOR.<sup>1</sup>

Applicant, who is 52 years old, works for a Department of State contractor as a Senior Production Control Technician in the Data Processing Center. He has worked in his Department of State contractor job since 1989, with the exception of one year

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<sup>1</sup>When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part).

between 1994 and 1995 and two months in late 1997 and early 1998. He holds a top secret clearance.<sup>2</sup>

Applicant graduated from high school, then attended a technical school for data processing training. He recently attended a bartender school and is certified as a bartender. He worked a second full-time job from 2000 until 2004, when his employer laid him off. As a result of the lay off, his income decreased from \$108,000 a year to approximately \$60,000 a year. He has not worked a second job since 2004, but he is now seeking part-time employment as a bartender.<sup>3</sup>

Applicant married in 1989. He and his wife separated in 2001, but have not divorced. For several years after his separation, Applicant continued to pay the car insurance and car payment on his wife's car. He stopped making these payments when he lost his second job in 2004. He has a 25 year-old son, who lives independently and is a diabetic. He regularly provides his son with money to pay for insulin, as his son is often short on cash.<sup>4</sup>

Applicant's father died in 1994. For several years prior to his father's death, Applicant regularly travel between his home and his father's home, about 150 miles away, to help care for his father. He also helped his father pay for medications and has helped other family members with expenses. He used his credit cards to pay for these expenses. By 1998, his debt overwhelmed him. He enrolled in a credit management program. From October 1998 through August 2005, he paid approximately \$550 a month to this company, which then paid his creditors. Through this program, he resolved many of his outstanding debts.<sup>5</sup>

In 2003, the Internal Revenue Service (IRS) filed a tax lien against him personally. IRS collected the moneys due through a bi-monthly garnishment on his wages. From May 2003 until approximately November 2004, Applicant paid the IRS \$1,166 twice a month for a total payment of more than \$44,000.<sup>6</sup>

The SOR lists numerous debts, which are listed at least once on each credit report and sometimes more than once because the debt is under other creditor's names. After reviewing the credit reports dated November 4, 2004, May 25, 2006, August 12, 2008, October 16, 2008, and the SOR, I have compiled a list of the total

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<sup>2</sup>GE 1 (Applicant's security clearance application); Tr. 23, 70, 73-74.

<sup>3</sup>Tr. 75, 79-80, 84-85.

<sup>4</sup>GE 1, *supra* note 2; Tr. 25, 70-72, 85-86, 89.

<sup>5</sup>AE A; Tr. 96-98, 117.

<sup>6</sup>AE E (Leave and earnings statement showing garnishment); AE F (Leave and earnings statements showing garnishment), total at 21; Tr. 29-31, 67-68.

debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:<sup>7</sup>

<b>SOR ¶</b>	<b>CREDITOR</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
1.a	Judgment	\$ 4,810	Unpaid	GE 2 - GE 5; Tr. 27-29, 83
1.b	Federal Tax Lien	\$24,701	Paid \$44,000 by November 2004	AE E; AE F; Tr. 29-31, 68, 91
1.c	Unknown creditor	\$ 1,377	Denies, unpaid	GE 2; GE 3; Tr. 31-39
1.d	Telephone	\$ 401	Paid	AE G
1.e	Credit card <sup>8</sup>	\$ 4,660	Disputed	GE 3 at 4
1.f	Store account	\$ 5,699	Settlement offer accepted, Paid 5/1/09	AE H
1. g	Jewelry store	\$ 541	Paid	AE B
1.h	Store account	\$ 3,463	Paid; same as 1.f	Tr. 48-50
1.i	Retail creditor unknown	\$ 1,525	Denies, unpaid	Tr. 54, 99
1.j	Cell phone	\$ 866	Denies, unpaid	Tr. 57-60
1.k	Credit card	\$ 1,941	Paid	GE 3 at 3; Tr. 60-61
1.l	Jewelry store	\$ 340	Paid, same as 1.g	AE B
1.m	Store account	\$ 1,017	Paid	GE 3 at 3; Tr. 62-63
1.n	Cable bill	\$ 750	Denies, unpaid	Tr. 63-67, 106-109

<sup>7</sup>GE 2 (Applicant's response to Interrogatories, including credit report, dated August 12, 2008); GE 3 (Credit report, dated October 16, 2008); GE 4 (Credit report, dated May 25, 2006); GE 5 (Credit report, dated November 4, 2004).

<sup>8</sup>Applicant believed this account had been paid in his payment plan developed in 1998, but the account number is different. See AE A. The credit reports show conflicting information on the status of this debt (all the same account number), including paid, a zero balance and transferred or sold. See GE 2, *supra* note 7, at 11; GE 3, *supra* note 7, at 3; GE 4, *supra* note 7; GE 5, *supra* note 7.

In 2004, after he lost his second job, Appellant fell behind in paying his apartment rent and other expenses because of the IRS garnishment.<sup>9</sup> At this time, he paid not only his car payment and insurance, but also the car payment and insurance for his wife for a total of \$1,300 a month (which he no longer pays). He acknowledges that his former landlord obtained a judgment for unpaid rent in 2005 and that he has not paid this debt. He contacted this creditor sometime ago, but has not resolved the debt as the creditor demanded full payment and refused to accept a monthly payment.<sup>10</sup>

Two debts listed in the SOR ¶¶ 1.c and 1.i are unknown to Applicant as he does not recognize the listed creditor. Applicant's credible denial of knowledge of these two debts is sufficient to refute the allegations of delinquent debts. The pertinent credit report did not have sufficient information for Applicant to locate the account.<sup>11</sup>

Appellant denied owing a debt to the cable company listed in SOR allegation 1.n. In the past, he received cable service from another cable company and two satellite companies. Although he acknowledged at the hearing that he returned a cable box for his girlfriend who had service with this cable company, he strongly denies any service in his name. Subsequent to the hearing, he filed an identity theft claim on this debt.<sup>12</sup>

Applicant also credibly denied owing the unpaid cell phone listed in allegation 1.j. He previously had a cell phone with three other cell phone companies, but not this company. Several years ago, he asked this creditor to provide him with evidence that he owed them money. At that point, the creditor sent him a bill.<sup>13</sup>

Applicant currently earns \$5,915 in gross income each month and \$4,214 a month in net income. His monthly expenses total approximately \$4,000 and include rent, utilities, a car payment, gasoline, credit cards, food, and a time share. He uses his remaining income to help his son with medicine and occasionally other family members.<sup>14</sup>

Applicant completed his SF 86 on August 25, 2004. He answered "no" to the following questions:

#### Question 36 Your Financial Record- Tax Lien

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<sup>9</sup>Appellant skipped his car payment one month and the creditor repossessed his car. He immediately made the payment and regained possession of his car. Tr. 86.

<sup>10</sup>Tr. 26-29, 84-88.

<sup>11</sup>See generally ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006).

<sup>12</sup>Tr. 63-67, 106-109. At the conclusion of the hearing, I requested Applicant get a statement from this creditor showing he did not owe any debt. Tr. 156. Instead, Applicant provided AE I, which disputes the debt.

<sup>13</sup>Tr. 57-60, 103-105.

<sup>14</sup>GE 2, *supra* note 7, at 4, 35-37; AE D; Tr. 118-136.

In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?

Question 38. Your Financial Delinquencies - 180 days

In the last 7 years, have you been over 180 days delinquent on any debt(s)?

Question 39: Your Financial Delinquencies - 90 days

Are you currently over 90 days delinquent on any debts?

Applicant denies that he intentionally falsified these answers. He answered “no” to the tax lien question because he did not own property and because he paid the tax lien through a wage garnishment, which he listed when he completed his SF 86. At the time he completed his SF 86, he did not believe he had any debts more than 180 days delinquent and his current bills were not 90 days overdue. He completed the SF 86 on his computer in May or June 2004 and forwarded it to his office for review. The office returned it to him in paper form in August 2004 for signature.<sup>15</sup>

### **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.

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<sup>15</sup>Tr. 67-69, 115-116.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.<sup>16</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

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<sup>16</sup>After any decision, the losing party has a right to appeal the case to the Defense Office of Hearings and Appeals Appeal Board. The Appeal Board’s review authority is limited to determining whether three tests are met:

E3.1.32.1. The Administrative Judge’s findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge:

E3.a.32.2. The Administrative Judge adhered to the procedures required by E.O. 10865 (enclosure 1) and this Directive: or

E3.1.32.3. The Administrative Judge’s rulings or conclusions are arbitrary, capricious, or contrary to law.

The Appeal Board does not conduct a “*de novo* determination”, recognizing that its members have no opportunity to observe witnesses and make credibility determinations. The Supreme Court in *United States v. Raddatz*, 447 U.S. 667, 690 (1980) succinctly defined the phrase “*de novo* determination”:

[This legal term] has an accepted meaning in the law. It means an independent determination of a controversy that accords no deference to any prior resolution of the same controversy. Thus, in *Renegotiation Board v. Bannerkraft Clothing Co.*, 415 U.S. 1, 23 [(1974)], the Court had occasion to define “*de novo* proceeding” as a review that was “unfettered by any prejudice from the [prior] agency proceeding and free from any claim that the [agency’s] determination is supported by substantial evidence.” In *United States v. First City National Bank*, 386 U.S. 361,368 [(1967)], this Court observed that “review *de novo*” means “that the court should make an independent determination of the issues” and should not give any special weight to the [prior] determination of the administrative agency.

(Internal footnotes omitted). See ISCR Case No. 07-10396 (App. Bd., Oct. 2, 2008) and ISCR Case No. 07-07144 (App. Bd., Oct. 7, 2008). In ISCR Case No. 05-01820 (App. Bd. Dec 14, 2006), the Appeal Board criticized the administrative judge’s analysis, supporting grant of a clearance for a PRC-related Applicant, and then decided the case itself. Judge White’s dissenting opinion cogently explains why credibility determinations and ultimately the decision whether to grant or deny a clearance should be left to the judge who makes witness credibility determinations. *Id.* at 5-7. See also ISCR Case No. 04-06386 at 10-11 (App. Bd. Aug. 25, 2006)(Harvey, J., dissenting) (discussing limitations on Appeal Board’s authority to reverse hearing-level judicial decisions and recommending remand of cases to resolve material, prejudicial error) and ISCR Case No. 07-03307 (App. Bd. Sept. 29, 2008). Compliance with the Agency’s rules and regulations is required. See *United States ex. rel. Acardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Lopez v. FAA*, 318 F.3d 242, 247-248 (D.C. Cir 2003); *Nickelson v. United States*, 284 F. Supp.2d 387, 390 (E.D. Va. 2003)(explaining standard of review).

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.

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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debt, including federal tax debt, and a judgment for unpaid debt, which he was unable to pay for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The government has not established a *prima facie* case as to the debts identified in SOR allegations 1.c and 1.i. because the government has not provided evidence which shows the creditor for these debts. The government has not plead these allegations with enough specificity to give Applicant notice as to whom he owes these debts. Concerning the telephone debt identified in SOR allegation 1.j., without evidence that Applicant signed a contract to retain the services of this company, I find that the mere mailing of a bill is not enough to show a contractual obligation which would give rise to the debt as a bill can be created simply and easily. SOR allegation 1.j is found in favor of Applicant.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition



may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” While some of his debts occurred some time ago, he did not present evidence which shows that his debts occurred under unusual circumstances which are not likely to reoccur in the future. This mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s initial financial problems arose when his father became ill. He not only traveled frequently, a round trip distance of approximately 300 miles to care for his father, he also provided financial help to assist in his father’s care. He paid for many of these costs with credit cards. By 1998, his debt overwhelmed him and he sought consumer credit counseling. He also obtained a second full-time job in 2000 to help pay his expenses. He and his wife separated in 2001. As part of their informal separation agreement, he continued to pay her car payment and car insurance until he lost his second job in 2004. I find this mitigating condition applies as he acted reasonably under past circumstances and shows he acted responsibly then and has since.

Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). As discussed above, Applicant became overwhelmed with his debts in 1998 and retained a credit counseling agency to help him resolve his debt issues. He developed a payment plan with this agency and complied with the terms of the plan. He paid his debts in full by 2005. Given that the debts listed in the SOR are not included in this debt repayment plan, this mitigating condition does not apply.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has resolved many of the delinquent debts listed in the SOR, either by payment or settlement. He completely paid his federal tax debt in 2004 through garnishment of his wages. He has also resolved many of the debts listed in the SOR. Although the judgment is not paid, he attempted to pay the debt through monthly payments, which the creditor refused. The creditor’s unwillingness to accept monthly payments is not Applicant’s fault and impedes his ability to resolve this debt. He did not ignore the debt. He denies the two remaining unpaid debts, which total approximately \$1,600. These two unpaid debts and the unpaid judgment constitute about 15% of the debts alleged in the SOR. His finances are sound and he acts responsibly in regards to his finances. I conclude this mitigating condition applies.

Finally, an Applicant may mitigated security concerns under AG ¶ 20 (e) if “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 disputed the debt listed in SOR allegation 1.e as believes this debt had been paid through his earlier payment plan. While the evidence indicates his belief may not be true, his decision to dispute this debt is reasonable based on his knowledge of the debts included in his consolidation plan. The credit reporting agency has not responded to his notice of dispute nor resolved the conflict in information about this debt. This mitigating condition has some applicability to this one debt.

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

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

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(a) describes conditions that could raise a security concern and may be disqualifying:

(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.

For AG ¶ 16(a) to apply, Applicant's falsification must be deliberate. The government established that Applicant omitted a material fact from his SF-86 when he answered “no” to Questions 36, 38 and 39 about his past due debts and tax lien. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. In his response, he denies, however, that he had an intent to hide information about his finances. When a falsification allegation is controverted, the government has the burden of proving the omission was deliberate. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>17</sup>

Applicant denied intentionally leaving out information about his overdue debts and tax lien. Because he did not own property, the IRS filed its tax lien against him personally, then garnished his wages for payment. He disclosed the garnishment on his

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<sup>17</sup>See ISCR Case No. 07-08925 (App. Bd. Sept. 15, 2008); ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

SF 86. In light of this information, the government acknowledged he did not falsify his answer to the Question 36.<sup>18</sup> Applicant's finances began to deteriorate around the time he completed his SF-86 because he lost his second job. At the time, he completed his SF-86, none of his current debts were more than 90 days past due. He did not falsify his answer to Question 39. Concerning his "no" answer to Question 38, Applicant's failure to answer "yes" about his past debts is not proof that he intentionally falsified his SF 86. The government has not established that Applicant intended to hide his financial situation from the government. Applicant had paid and continued to pay outstanding debts under his debt consolidation payment plan. Thus, he did not believe these debts were past due. His belief, although mistaken, does not reflect intentional conduct on his part. His testimony reflects that he sought to provide honest and correct information. He provided other negative information in his SF 86 about the IRS garnishment of his wages, which supports his position that he did not act intentionally. Guideline E is found in favor of Applicant.<sup>19</sup>

### **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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct,

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<sup>18</sup>Tr. 145.

<sup>19</sup>Even if I were to find the government had established disqualifying condition AG ¶ 16(a), mitigating condition AG 18(f), *the information was unsubstantiated or from a source of questionable reliability* would apply as the allegation of intentional falsification was unsubstantiated.

but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began about 15 years ago and continued until very recently. His financial problems are the result, in part, of poor choices made about spending money. Even though his financial problems began many years ago, the mitigating evidence under the whole person concept is more substantial. Applicant's financial problems began when his father became ill. Recognizing his responsibility as a son, he traveled, at his own expense, to his father's home and cared for him. He also provided financial assistance to his father for medication and other necessary expenses. For four years after his father died, he unsuccessfully attempted to pay his debts. In 1998, he sought and received financial counseling through debt consolidation. For the next seven years, he routinely paid the counseling service, when then paid his creditors until the bills were paid. His decision to seek help with his finances and his compliance with the program shows that he not only acted in a responsible manner, but that he is willing to accept responsibility for his debts. He also worked two jobs full-time in an effort to pay his debts, certain expenses for his estranged wife, and his living expenses. For four years, he managed his expenses, including a substantial monthly payment to the IRS. Through these efforts, he resolved much of his debt. His financial problems began anew when he lost one of his full-time jobs in 2004. Over the last five years, he has worked slowly to resolve his new financial issues. His one major unpaid debt is not resolved or being resolved because the creditor is uncooperative, not for lack of effort on Applicant's part. Because of his long history of debt resolution, his statement that he tried to resolve the judgment debt is credible.

Applicant has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) He has not paid two small debts listed in the SOR because these debts are not his. He is taking action on one of these debts. Even though he has had financial problems, he has demonstrated a meaningful track record of debt repayment. He is not required to be debt free to hold a security clearance. Rather, he must manage his finances and live within his financial means. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns, particularly since he has resolved the majority of his debts. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial

considerations. In reaching this conclusion, I have considered all the evidence of record even if not specifically discussed.<sup>20</sup>

### Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Withdrawn
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

### Conclusion

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

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MARY E. HENRY  
Administrative Judge

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<sup>20</sup>In many decisions, the Appeal Board has presumed that an administrative judge considered all the evidence of record unless the Judge specifically states otherwise. ISCR Case No. 01-19879 (App. Bd. Oct. 29, 2002) and ISCR Case No. 01-10301 (App. Bd. Dec. 31, 2002).