



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



In the matter of:)
)
-----) ISCR Case No. 08-06506
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Eric J. McNeilus, Esquire

May 7, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On June 6, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing version of a Security Clearance Application (e-QIP).¹ On a subsequent unspecified date in 2008, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on December 6, 2008.² On June 4, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial*

¹ Government Exhibit 1 (e-QIP), dated June 6, 2007. For reasons unexplained, Applicant recertified that his answers were true on March 30, 2009.

² Government Exhibit 3 (Applicant's Answers to Interrogatories, dated December 6, 2008).

Personnel Security Clearance Review Program (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (hereinafter AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on June 16, 2009. In a sworn, written statement, dated July 13, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on September 4, 2009, and the case was assigned to Administrative Judge Noreen A. Lynch on September 10, 2009. A notice of Hearing was issued on November 10, 2009, scheduling the hearing for December 10, 2009. Due to a family emergency, the hearing was cancelled on December 3, 2009. On December 15, 2009, it was reassigned to Administrative Judge Marc E. Curry due to caseload considerations, and on January 11, 2010, it was reassigned to Administrative Judge Edward W. Loughran, again due to caseload considerations. On February 12, 2010, it was again reassigned, this time to me. A Notice of Hearing was issued on March 12, 2010, and I convened the hearing, as scheduled, on March 31, 2010.

During the hearing, nine Government exhibits and seven Applicant exhibits were admitted into evidence, without objection. Applicant and one other witness testified. The transcript (Tr.) was received on April 8, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations (¶¶ 1.a. through 1.j.) of the SOR.

Applicant is a 37-year-old employee of a defense contractor, currently serving as an avionics technician IV,³ and he is seeking to obtain a security clearance. He had previously held a security clearance during 1996 – 2006, while assigned to the state Air National Guard (ANG).⁴ Following graduation from high school, for varying periods, he attended a local community college, a state university, and an aeronautical college, before receiving his associate degree in applied science in avionics from another community college in 2000.⁵

³ Applicant Exhibit B (Employee Continuous Improvement Process, dated March 19, 2010), at 1.

⁴ Government Exhibit 1, *supra* note 1, at 31.

⁵ *Id.* 11-13.

From 1990 until 1995, while attending classes, Applicant also held a part-time job with a local company where he was eventually promoted to the position of shipping manager.⁶ In April 1995, Applicant left his job and enlisted in the state ANG.⁷ His initial assignments were essentially part-time, working one week every month as well as a two week period every year,⁸ but in June 1997, he was able to secure a full-time position as an electronic warfare technician.⁹ He subsequently applied for a position in the pilot training program, and in September 2001, was commissioned as a second lieutenant.¹⁰ As a commissioned officer, he was no longer eligible to hold his full-time enlisted position, and he was required to resign from it.¹¹ During the period September 2001 until February 2006, Applicant chose not to seek other permanent employment because he hoped to obtain a permanent position with the ANG and believed a permanent position elsewhere would interfere with his eligibility.¹² Applicant attempted to complete his pilot training requirements, but in the post “9/11” environment was unable to do so.¹³ He was denied the opportunity to continue with another class because he had already reached the mandatory age ceiling.¹⁴ Although he was promoted to first lieutenant, he was informed that, without his bachelor’s degree, he was ineligible for further ANG promotions, and in February 2006, was released from active duty.¹⁵ Several months before his release from the ANG, Applicant returned to his original employer, working in inventory control.¹⁶ Applicant was hired by his current employer in April 2007.¹⁷

Applicant was married in April 2000, and he and his wife have four sons.¹⁸ He also has one stepson.¹⁹

⁶ Tr. at 33-34.

⁷ *Id.* at 34.

⁸ *Id.* at 35-36, 65.

⁹ *Id.* at 36, 65.

¹⁰ *Id.* at 37.

¹¹ *Id.* at 37, 65.

¹² *Id.* at 101-102.

¹³ *Id.* at 37-38.

¹⁴ *Id.* at 38.

¹⁵ National Guard Bureau Report of Separation and Record of Service, dated February 10, 2006, attached to Government Exhibit 3, *supra* note 2; Tr. at 40. However, Applicant erroneously referred to Applicant Exhibit A (Certificate of Release or Discharge from Active Duty (DD Form 214), dated August 2, 2004) as evidence of his 2006 release, but that document does not support his contention.

¹⁶ Government Exhibit 1, *supra* note 1, at 15. Applicant contends he did not resume a position with his employer until after his discharge, but that information differs from information he provided in his e-QIP. Tr. at 40-41.

¹⁷ Tr. at 13-14.

¹⁸ *Id.* at 28. Applicant neglected to list his children in his e-QIP, *supra* note 1, at 21-24.

¹⁹ *Id.*

Financial Considerations

There was nothing unusual about Applicant's finances until about September 2001. Prior to his commission in 2001, Applicant's salary was \$24 per hour with full benefits and insurance.²⁰ From September 2001 until February 2006, his salary was based only on part-time work. From his return to his initial employer until April 2007, his salary was \$10 per hour with no benefits or insurance.²¹ With his current employer, Applicant's salary is \$30 per hour with full benefits.²² At various times between 2001 and 2007, all of the SOR accounts, as well as others, became delinquent because of Applicant's inability to keep up with his monthly payments. Some of the accounts were placed for collection with a variety of collection agents, and some of the accounts were charged off. During his September 2007 OPM interview, he declared an intention to contact his creditors and attempt to settle his delinquent accounts.²³ He repeated his intention during his October 2007 OPM interview,²⁴ and again in his answer to interrogatories in December 2008.²⁵

The SOR identified 10 purportedly continuing delinquencies as reflected by credit reports from 2007, 2008, 2009, or 2010, totaling approximately \$18,241. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in different credit reports, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

Three of the accounts (SOR ¶¶ 1.a. through 1.c.), totaling \$680, were with Bank of America. Applicant initially admitted the allegations, but now contends all three accounts were actually one account that was split up and sold to different debt collectors, each of which added fees to their respective accounts.²⁶ The account set forth in SOR ¶ 1.a. is a collection account for \$257, listed in Applicant's credit reports of April 2009,²⁷ and September 2009.²⁸ An account with the same account number or in

²⁰ *Id.* at 41.

²¹ *Id.*

²² *Id.* at 44.

²³ Applicant Exhibit G (Personal Subject Interview, dated September 4, 2007), at 1-2.

²⁴ Applicant Exhibit G (Personal Subject Interview, dated October 16, 2007), at 1-2.

²⁵ Government Exhibit 3, *supra* note 2, at 1-2.

²⁶ Tr. at 50-51.

²⁷ Government Exhibit 6 (Equifax Credit Report, dated April 28, 2009), at 1.

²⁸ Government Exhibit 5 (Equifax Credit Report, dated September 1, 2009), at 1.

that amount is not listed in credit reports of July 2007,²⁹ October 2008,³⁰ or March 2010.³¹ During his interview with an investigator from the Office of Personnel Management (OPM) in September 2007, Applicant claimed that a Bank of America (BOA) account in the charged off amount of \$2,500, was actually for an America On-Line (AOL) account that he had previously closed.³² In his answer to interrogatories in December 2008, he acknowledged the account, but contended the charges were in error, and he would dispute it with BOA.³³ The only reference to that account is found in the July 2007 credit report with the note that it had been purchased by, or transferred to, another unidentified lender.³⁴ During the hearing, Applicant claimed that a BOA representative stated that the original account was the one identified in SOR ¶ 1.c., discussed further below.³⁵ The September 2009 credit report lists this account as unpaid,³⁶ but the account is no longer reflected on the March 2010 credit report. The current status of this account remains unresolved.

The account set forth in SOR ¶ 1.b. is a collection account now held by NCO Financial Systems, Inc., for BOA, in the amount of \$238, with a different BOA account number in Applicant's credit reports of October 2008,³⁷ April 2009,³⁸ September 2009,³⁹ and March 2010.⁴⁰ An account with that account number or in that amount is not listed in the July 2007 credit report. During his September 2007 interview with the OPM investigator, the account was not mentioned. In his December 2008 answer to interrogatories, Applicant indicated the account was being disputed.⁴¹ Although he has offered testimony as to the dispute, he has offered no documentary evidence to support his assertion. The most recent credit reports (September 2009⁴² and March 2010)⁴³ still list the account as unpaid.

²⁹ Government Exhibit 8 (Combined Experian, Trans Union, and Equifax Credit Report, dated July 12, 2007).

³⁰ Government Exhibit 7 (Equifax Credit Report, dated October 2, 2008).

³¹ Government Exhibit 4 (Equifax Credit Report, dated March 26, 2010).

³² Applicant Exhibit G, *supra* note 23, at 1.

³³ Government Exhibit 3, *supra* note 2, at 1.

³⁴ Government Exhibit 8, *supra* note 29, at 17.

³⁵ Tr. at 50-51.

³⁶ Government Exhibit 5, *supra* note 28, at 1.

³⁷ Government Exhibit 7, *supra* note 30, at 1.

³⁸ Government Exhibit 6, *supra* note 27, at 1.

³⁹ Government Exhibit 5, *supra* note 28, at 1.

⁴⁰ Government Exhibit 4, *supra* note 31, at 1.

⁴¹ Government Exhibit 3, *supra* note 2, at 1.

⁴² Government Exhibit 5, *supra* note 28, at 1.

The account set forth in SOR ¶ 1.c. is a collection account now held by NCO Financial Systems, Inc., for BOA, in the amount of \$185, with a different BOA account number in Applicant's credit reports of July 2007,⁴⁴ October 2008,⁴⁵ April 2009,⁴⁶ September 2009,⁴⁷ and March 2010.⁴⁸ During his September 2007 interview with the OPM investigator, Applicant stated he would contact the creditor and settle the account.⁴⁹ In his December 2008 answer to interrogatories, Applicant indicated the account was being disputed.⁵⁰ In November 2009, he submitted an inquiry to BOA regarding a delinquent account, in the amount of \$184.73. The creditor informed Applicant that the status of the account was accurate.⁵¹ On November 20, 2009, Applicant sent the designated payment agent a personal money order in the amount of \$184.73.⁵² The account number listed on the money order differed from this as well as all other BOA accounts purportedly held by Applicant. The March 2010 credit report still lists the account as unpaid.⁵³

The account set forth in SOR ¶ 1.d. is a collection account now held by NCO Financial Systems, Inc., for AT & T Wireless, in the amount of \$992, in Applicant's credit reports of July 2007,⁵⁴ April 2009,⁵⁵ September 2009,⁵⁶ and March 2010.⁵⁷ It does not appear in his October 2008 credit report. Applicant initially admitted the allegation. During his September 2007 interview with the OPM investigator, Applicant acknowledged having had two cell phone accounts with AT & T, and stated he would contact the creditor and settle the account.⁵⁸ In his December 2008 answer to

⁴³ Government Exhibit 4, *supra* note 31, at 1.

⁴⁴ Government Exhibit 8, *supra* note 29, at 11.

⁴⁵ Government Exhibit 7, *supra* note 30, at 1.

⁴⁶ Government Exhibit 6, *supra* note 27, at 1.

⁴⁷ Government Exhibit 5, *supra* note 28, at 1.

⁴⁸ Government Exhibit 4, *supra* note 31, at 1.

⁴⁹ Applicant Exhibit G, *supra* note 23, at 1.

⁵⁰ Government Exhibit 3, *supra* note 2, at 1.

⁵¹ Applicant Exhibit C (Letter from Bank of America, dated November 12, 2009).

⁵² Personal Money Order, dated November 20, 2009, attached to Applicant Exhibit C.

⁵³ Government Exhibit 4, *supra* note 31, at 1.

⁵⁴ Government Exhibit 8, *supra* note 29, at 6.

⁵⁵ Government Exhibit 6, *supra* note 27, at 1.

⁵⁶ Government Exhibit 5, *supra* note 28, at 1.

⁵⁷ Government Exhibit 4, *supra* note 31, at 1.

⁵⁸ Applicant Exhibit G, *supra* note 23, at 1.

interrogatories, Applicant indicated the account was being disputed because the reception was poor and he had not used the phones.⁵⁹ During the hearing, he denied having an AT & T Wireless account, but discussed the possibility that his wife may have had one.⁶⁰ He claimed he spoke to NCO Financial Systems, Inc., “and they can’t prove that that was my AT & T Wireless.”⁶¹ Furthermore, he stated he had “never had an AT & T wireless account with them,”⁶² and has “no idea what that debt could be from.”⁶³ Applicant now contends the account is in dispute and his credit report reflects that fact.⁶⁴ The March 2010 credit report does not support his contention, and still lists the account as unpaid.⁶⁵ Applicant admits he has not made any payments on the account.⁶⁶

The account set forth in SOR ¶ 1.e. is a mortgage account held by Midland Mortgage Company, with \$3,000 past due on a total balance of \$127,000. As of July 2007, he was \$2,052 in arrears and seriously delinquent.⁶⁷ During his September 2007 and October 2007 interviews with the OPM investigator, Applicant acknowledged the delinquency and indicated he would obtain a second mortgage on his home by December 2007 to pay off all of his delinquencies, including the one on his first mortgage.⁶⁸ No action was taken. In his December 2008 answer to interrogatories, Applicant indicated he had made arrangements to pay off the delinquency by December 5, 2008.⁶⁹ No action was taken. Finally, on December 11, 2009, Applicant and the creditor’s delinquency assistance center executed an FHA Partial Claim, in the amount of \$10,818.41, including past due payments of \$9,870.57 and attorney fees and costs of \$947.84, creating a subordinate note secured by a deed of trust,⁷⁰ something akin to an interest-free second mortgage. Nevertheless, in his hearing brief, Applicant’s attorney states that Applicant “has never refinanced his mortgage or taken out a home equity line of credit secured by the home. There are no second mortgages against the home.”⁷¹

⁵⁹ Government Exhibit 3, *supra* note 2, at 1.

⁶⁰ Tr. at 77.

⁶¹ *Id.* at 52.

⁶² *Id.* at 53.

⁶³ *Id.*

⁶⁴ *Id.* at 52-53.

⁶⁵ Government Exhibit 4, *supra* note 31, at 1.

⁶⁶ Tr. at 79.

⁶⁷ Government Exhibit 8, *supra* note 29, at 10.

⁶⁸ Applicant Exhibit G, *supra* note 23, at 2; Applicant Exhibit G, *supra* note 24, at 2.

⁶⁹ Government Exhibit 3, *supra* note 2, at 1.

⁷⁰ Applicant Exhibit D (FHA Partial Claim documents, dated December 11, 2009).

⁷¹ Hearing Brief, dated November 19, 2009, at 9.

Following execution of the FHA Partial Claim, Applicant's next payment was due on January 1, 2010. Applicant contends he is making his monthly \$1,183 payments and is current on the mortgages,⁷² but has offered no documentary evidence to support his contention.

The account set forth in SOR ¶ 1.f. is a collection account with a credit union on an unsecured personal loan⁷³ that became delinquent and \$818 was charged off.⁷⁴ During his September 2007 interview with the OPM investigator, Applicant acknowledged having had the account but stated he had paid it off.⁷⁵ That belief was apparently not accurate, for in his December 2008 answer to interrogatories, Applicant indicated he had made arrangements to settle the account for \$500, and that once he received confirmation from the creditor, that amount would be paid and the account would be satisfied.⁷⁶ No payment was made. Instead, "recently," the creditor purportedly chose to refuse payment and, instead, decided to furnish Applicant with a Form 1099-C, reflecting a cancellation of debt.⁷⁷ Applicant has made no payments on the account⁷⁸ and has not submitted a Form 1099-C or any other documentation to support his contention.

The account set forth in SOR ¶ 1.g. is a collection account with another credit union on a secured automobile loan⁷⁹ that became delinquent and was sold or transferred to a collection agency.⁸⁰ The vehicle was repossessed and \$5,416 was charged off. During his September 2007 interview with the OPM investigator, Applicant acknowledged having had the account but stated he was not aware that there was an outstanding balance.⁸¹ That belief was apparently not accurate, for in his October 2007 interview with the OPM investigator, Applicant acknowledged that he planned to pay off the balance from the second mortgage he anticipated obtaining.⁸² In his e-QIP, Applicant indicated the debt would be paid in July or August 2007.⁸³ No payment was

⁷² Tr. at 55, 82.

⁷³ *Id.* at 82-83.

⁷⁴ Government Exhibit 8, *supra* note 29, at 12-14.

⁷⁵ Applicant Exhibit G, *supra* note 23, at 1.

⁷⁶ Government Exhibit 3, *supra* note 2, at 1.

⁷⁷ Tr. at 55-56, 84.

⁷⁸ *Id.* at 85.

⁷⁹ *Id.* at 82-83.

⁸⁰ Government Exhibit 8, *supra* note 29, at 10, 12.

⁸¹ Applicant Exhibit G, *supra* note 23, at 1.

⁸² Applicant Exhibit G, *supra* note 24, at 2.

⁸³ Government Exhibit 1, *supra* note 1, at 33.

made. In his December 2008 answer to interrogatories, Applicant indicated he had made arrangements to settle the account for \$4,000, and that amount would be paid and the account would be satisfied.⁸⁴ No payment was made. Instead, on December 31, 2009, the creditor furnished Applicant with a Form 1099-C, reflecting a cancellation of debt.⁸⁵ Applicant has made no payments on the delinquent balance of the account.⁸⁶ The account is now closed.

The account set forth in SOR ¶ 1.h. is a collection account with Anderson Financial Network/Bloom (Afni), for Cingular, in the amount of \$220.⁸⁷ Applicant initially admitted the allegation, but then disputed the account, claiming he never had a telephone with Cingular.⁸⁸ In his December 2008 answer to interrogatories, Applicant indicated he had been offered a settlement of the account for \$126.71,⁸⁹ but he chose to ignore the offer. On December 10, 2009, Equifax responded that they had researched the account and the disputed information had been verified.⁹⁰ The account remains on his March 2010 credit report as disputed.⁹¹ At the hearing, Applicant claimed that he knew nothing about the account.⁹² There is no evidence that any payments were ever made.

The account set forth in SOR ¶ 1.i. is a collection account with CitiFinancial on an unsecured personal loan taken out to pay for his son's medical and dental work.⁹³ The delinquent balance was \$6,970, and it was eventually charged off.⁹⁴ During his September 2007 interview with the OPM investigator, Applicant acknowledged having had the account and stated he had been offered a \$4,389 settlement to pay it off.⁹⁵ In his October 2007 interview with the OPM investigator, Applicant acknowledged that he planned to pay off the balance from the second mortgage he anticipated obtaining.⁹⁶ That belief was apparently not accurate, for in his December 2008 answer to

⁸⁴ Government Exhibit 3, *supra* note 2, at 1.

⁸⁵ Tr. at 58, 86; Applicant Exhibit E (Form 1099-C, Cancellation of Debt, dated December 31, 2004).

⁸⁶ *Id.* at 85.

⁸⁷ Government Exhibit 3, *supra* note 2, at 1.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Applicant Exhibit F (Equifax Credit File Reinvestigation Report, dated December 10, 2009), at 2.

⁹¹ Government Exhibit 4, *supra* note 31, at 2.

⁹² Tr. at 58-59.

⁹³ Applicant Exhibit G, *supra* note 23, at 1.

⁹⁴ Government Exhibit 8, *supra* note 29, at 8.

⁹⁵ Applicant Exhibit G, *supra* note 23, at 1.

⁹⁶ Applicant Exhibit G, *supra* note 24, at 2.

interrogatories, Applicant indicated that while he had made arrangements to settle the account, no payments had yet been made.⁹⁷ Applicant subsequently disputed the account, and on December 10, 2009, Equifax responded that they had researched the account and the disputed information had been verified.⁹⁸ During the hearing, Applicant contended he had made one \$1,500 payment in August 2009,⁹⁹ and the creditor offered him another settlement, this time for a payment of \$2,500.¹⁰⁰ He did not accept the offer for he did not have sufficient funds to make the lump sum payment.¹⁰¹ There is no evidence of payments made on this account since August 2009.

The account set forth in SOR ¶ 1.j. is a collection account with Medical Data Systems for an unspecified medical provider in the amount of \$145.¹⁰² The account was sent to collection in July 2005.¹⁰³ Applicant initially admitted the allegation, and during his September 2007 OPM interview, indicated he would call the creditor and settle the account.¹⁰⁴ During the hearing, Applicant stated the creditor was unable to verify the account because they had no record of it,¹⁰⁵ and he did not know what the account covered.¹⁰⁶ There is no evidence that any payments were ever made.

In December 2008, Applicant submitted a personal financial statement indicating monthly net income of \$3,168.18, monthly expenses of \$2,774, monthly debt payments of \$350, and a net remainder of \$44.18 available for discretionary spending.¹⁰⁷ Among the debts purportedly being paid were \$1,179 for his mortgage (SOR ¶ 1.e), \$200 for his automobile loan (SOR ¶ 1.g.), and \$150 for his son's medical and dental charges (SOR ¶ 1.i.). He did not list any other delinquent accounts as financial obligations. He listed \$1,500 in savings and \$9,200 in stocks or bonds. Applicant's financial picture has improved since December 2008. He now has a monthly net income of over \$3,300.¹⁰⁸

⁹⁷ Government Exhibit 3, *supra* note 2, at 1.

⁹⁸ Applicant Exhibit F, *supra* note 91, at 1.

⁹⁹ Tr. at 88-89.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 90.

¹⁰² Applicant Exhibit G, *supra* note 23, at 1.

¹⁰³ Government Exhibit 8, *supra* note 29, at 10.

¹⁰⁴ Applicant Exhibit G, *supra* note 23, at 1.

¹⁰⁵ Tr. at 60.

¹⁰⁶ *Id.* at 90. In his Hearing Brief, Applicant's attorney stated the account was "likely a medical bill related to some medical tests that [Applicant's] wife received." Hearing Brief, *supra* note 72, at 10.

¹⁰⁷ Applicant's Personal Financial Statement, dated December 1, 2008, attached to Government Exhibit 3, *supra* note 2.

¹⁰⁸ Tr. at 92-93.

His normal monthly expenses have been estimated to run as high as \$3,632.¹⁰⁹ He has a 401(k) worth about \$10,000 and a checking account with \$1,000.¹¹⁰

Applicant intends to review his credit report and examine each delinquent debt with the creditors and to require justification before assuming responsibility for those debts. Once satisfied, he states he will either pay the debt or work out payment arrangements.¹¹¹

Despite his financial delinquencies, Applicant's performance has apparently not suffered. His most recent performance evaluation, issued in April 2010, reflects an individual whose overall performance is rated between "exceeds standard" (the highest rating possible) and "at standard" (the middle rating).¹¹² He received a merit salary increase.¹¹³ The site field engineer lead, an employee of the prime contractor for whom Applicant's employer is a subcontractor, has known Applicant for just under three years and characterizes him as "the best guy that's worked for me all my time in the military and within the company."¹¹⁴ With his promotion out of the area, he has recommended that Applicant be promoted to assume his soon¹¹⁵ to be vacant position.

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."¹¹⁶ 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. 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."¹¹⁷

¹⁰⁹ *Id.* at 93-96. Applicant's estimates are: mortgage - \$1,800; gasoline - \$200 to \$400; automobile insurance: \$52; cell phone - \$200; cable - \$100; utilities - \$150 to \$200; trash - \$30; food - \$800 to \$850.

¹¹⁰ *Id.* at 97.

¹¹¹ *Id.* at 98.

¹¹² Applicant Exhibit B, *supra* note 3, at 1.

¹¹³ *Id.* at 3.

¹¹⁴ Tr. at 104.

¹¹⁵ *Id.* at 105.

¹¹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."¹¹⁸ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.¹¹⁹

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 as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."¹²⁰

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."¹²¹ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole

¹¹⁸ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹¹⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹²⁰ *Egan*, 484 U.S. at 531

¹²¹ See Exec. Or. 10865 § 7.

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. 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.

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. As noted above, there was nothing unusual about Applicant's finances until about September 2001. He had a permanent position, was making a good income, and was living within his means. However, following a childhood dream of becoming a member of the ANG and a pilot, he chose to accept a part-time position in the hopes of achieving his dream. His hopes were dashed. Nevertheless, still clinging to the possibility of success, he intentionally ignored other non-ANG permanent job possibilities until April 2007. His salary plunged from \$24 per hour to \$10 per hour until his decision to join the permanent work force once again, where he now makes over \$30 per hour. With part-time employment came reduced income, and he tried to keep his bills current but was unable to do so. Bills became delinquent and either went to collection or were charged off.

Applicant repeatedly declared his intentions to contact his creditors and either pay off the debts or work out payment arrangements. He did so in September 2007, October 2007, December 2008, July 2009, and at the hearing in March 2010. At times he claimed he had already paid off several creditors. Those claims were subsequently determined to be false. Although he admitted all of his delinquent SOR debts, he chose to dispute several of them and claimed he had no memory of others. Of the 10 SOR identified delinquencies, he submitted documentary evidence of one debt payment, allegedly for one of the SOR debts, one modification of a mortgage, and the cancellation of one debt. Despite claiming he had made payments on several of the

remaining debts, Applicant has offered no documentary evidence to support his claims. AG ¶¶ 19(a) and 19(c) apply.

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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated 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.” 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). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹²² Also, AG ¶ 20(e) may apply where “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 financial problems commenced when he accepted a commission in the ANG in September 2001, and was required to relinquish his full-time job. His inability to complete pilot training before reaching his mandatory age ceiling only exacerbated an already difficult situation. Those factors, which were initially beyond his control, occurred long ago and are unlikely to recur. However, his actions during the period September 2001 until February 2006, when he intentionally chose not to seek other permanent employment, do cast doubt on his current reliability, trustworthiness, or good judgment. Rather than seeking full-time employment elsewhere, and attempting to keep his finances current, he held out for the remote possibility of being permitted to rejoin the ANG, and when the delinquencies increased, he ignored them. Applicant failed to establish that he acted responsibly under the circumstances.¹²³ Applicant’s conduct does not warrant full application of AG ¶¶ 20(a) or 20(b).

¹²² 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)).

¹²³ “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

Applicant did not act aggressively, timely, or responsibly to resolve his delinquent debts. Instead, he repeatedly declared his intentions to contact his creditors and either pay off the debts or work out payment arrangements. At times he claimed he had already paid off several creditors. Those claims were subsequently determined to be false. Although he admitted all of his delinquent SOR debts, he chose to dispute several of them and claimed he had no memory of others. The evidence fails to reflect any reasonable basis to dispute the legitimacy of any of his debts. To the contrary, of the disputed debts for which Applicant has furnished documentary evidence related to the disputes, the credit reporting agency has, upon reexamination, verified the validity of the debts. Of the 10 SOR identified delinquencies, he submitted documentary evidence of one debt payment, allegedly for one of the SOR debts, one modification of a mortgage, and the cancellation of one debt. Despite claiming he had made payments on several of the remaining debts, or had another one cancelled, Applicant has offered no documentary evidence to support his claims. His revised versions of facts pertaining to the debts themselves, or his actions regarding actual or promised payments, reflect poorly on his reliability and judgment.

Applicant's delinquent debts were "a continuing course of conduct" under the Appeal Board's jurisprudence.¹²⁴ Applicant receives very little credit under AG ¶ 20(d) because while he initially showed some good faith in his promised efforts to resolve his SOR debts, he ultimately abandoned even those efforts, with three possible exceptions. With the exception of the debts in SOR ¶ 1.e., and possibly SOR ¶¶ 1.c. and 1.i., he failed to establish any type of repayment plan, much less a reasonable one, with any of his creditors, even the smallest ones when he could have done so. Instead, he delayed and disputed. Moreover, since 2007, he has done nothing to address the satisfaction of most of his delinquent debts.¹²⁵ AG ¶ 20(d) has very limited application. AG ¶¶ 20(c) and 20(e) do not apply.

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

dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

¹²⁴ See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

¹²⁵ The Appeal Board has previously held that "[A] applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim" he or she initiated a good-faith effort to repay creditors or otherwise resolve debts. ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence in favor of mitigating Applicant's conduct. When these problems first began, Applicant was following a childhood dream of becoming a member of the ANG and a pilot, and he chose to accept a part-time position in the hopes of achieving his dream. His hopes were dashed. With reduced income from a part-time job he was unable to generate enough money to pay his delinquent debts. Nevertheless, he told OPM and DOHA that he was initiating efforts to contact his creditors and setting up payment arrangements, as well as disputing some debts that he believed were not his responsibility.

The disqualifying evidence under the whole-person concept is more substantial. While the part-time employment and reduced salary were initially circumstances beyond his control, Applicant continued to obtain services and goods from a wide variety of creditors, but either had no ability or intention to pay for them. As a result, he continued to accumulate delinquent debt and did not pay his older debts. During the period September 2001 until February 2006, Applicant chose not to seek other permanent employment because he hoped to obtain a permanent position with the ANG and believed a permanent position elsewhere would interfere with his eligibility. Applicant has been gainfully employed since April 2007. Nevertheless, since that time, with some exceptions described above, he did not make any good-faith efforts to pay a variety of delinquent debts. He established no repayment plans. Instead, he made a number of promises, claimed to have paid several creditors, and disputed several debts without providing documentation showing a reasonable basis to do so. Now, once again, he intends to review his credit report and examine each delinquent debt with the creditors and to require justification before assuming responsibility for those debts. Once satisfied, he states he will either pay the debt or work out payment arrangements. Applicant's promises are no longer sufficient. His failure to repay creditors or to arrange payment plans reflects traits which raise concerns about his fitness to hold a security clearance.

Of course, the issue is not simply whether all his debts are resolved or at least under repayment arrangements; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence

and have not merely performed a piecemeal analysis.¹²⁶ The insufficient good-faith efforts or evidence to reflect actual payments are sufficient to raise continuing security concerns. (See AG ¶ 2(a)(1), AG ¶ 2(a)(2), AG ¶ 2(a)(3), AG ¶ 2(a)(4), AG ¶ 2(a)(5), AG ¶ 2(a)(6), AG ¶ 2(a)(7), and AG ¶ 2(a)(9).)

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:¹²⁷

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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “ . . . established a plan to resolve his [or her] 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 [or her] 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.

Although there are some positive signs, some efforts to take corrective actions, and maintenance of some of his payments on his daily living expenses, these steps are simply insufficient to show he can “live within [his] means, satisfy debts, and meet financial obligations.” See AG ¶ 18. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations.

Formal Findings

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

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraph 1.a: **Against Applicant**

¹²⁶ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

¹²⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge