



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



In the matter of:)
)
-----) ISCR Case No. 08-08012
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

August 31, 2009

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 24 debts totaling about \$706,000. He received releases from liability for most of his delinquent mortgage debts. He paid six non-mortgage debts. One non-mortgage debt is in a payment plan. However, six large delinquent mortgage debts totaling about \$262,592 are unresolved. Applicant failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 22, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Security Clearance Application (SF-86) (Government Exhibit (GE) 1). On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant (GE 8), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The revised adjudicative guidelines (AG) promulgated

by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On April 22, 2009, Applicant responded to the SOR (GE 9). On June 3, 2009, Department Counsel was prepared to proceed. On June 3, 2009, the case was assigned to me. On June 4, 2009, DOHA issued a hearing notice (GE 7). Applicant waived the 15-day notice requirement in the Directive (Transcript (Tr.) 18), and requested that his hearing occur on June 11, 2009 (Tr. 18-19). Department Counsel offered six exhibits (Tr. 24; GE 1-6), and Applicant offered 24 exhibits (Tr. 26-36; AE A1-A14; AE B-L). Applicant did not object to my consideration of GE 1-6, and I admitted GE 1-6 into evidence (Tr. 24). Department Counsel did not object to my consideration of AE A1-A14 and AE B-L, and I admitted AE A1-A14 and AE B-L (Tr. 26-36). Additionally, I admitted the Notice of Hearing, SOR, and response to the SOR (GE 7-9). On June 13, 2009, I received AE M-AM. On June 19, 2009, I received the transcript. On July 16, 2009, I received AE AN-AQ. I admitted AE M-AQ after consideration of Department Counsel's clarifying comments, which went to the weight of the evidence, rather than to their admissibility.

On July 22, 2009, I emailed a request for clarification through Department Counsel to Applicant with three attachments (AE AR). I sought an explanation for Applicant's comment, "see attached paperwork," after subparagraphs on page 2 of Applicant's letter (AE M), because there was no documentation supporting his statements about the amounts received on resale of his mortgaged properties. I also attached an electronic check of the county records to assist Applicant and possibly Department Counsel in locating potentially relevant property records. I offered both parties an opportunity to submit additional evidence concerning whether Applicant owed or had the potential to owe additional funds on his foreclosed properties, and asked Applicant to provide information on the amounts he received, and when his mortgages were financed or refinanced (AE AR). On August 3, 2009, Applicant responded to my email (AE AS). On August 13, 2009, Department Counsel submitted his rebuttal (AE AU). On August 20, 2009, I closed the record (AE AV).

Findings of Fact¹

Applicant is a 44-year-old employee of a defense contractor (Tr. 6, 38). He is a computer analyst (Tr. 40). His current employer has employed him from December 2005 until April 30, 2009 (Tr. 41). He received his bachelors degree in June 2008 (Tr. 6,

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

39). He is taking courses towards his masters degree (Tr. 6). He majored in information technology (Tr. 6). He served on active duty for 20 years in the Air Force and retired as an E-6 in January 2005 (Tr. 7, 44). His specialty on active duty was in data administration (Tr. 8, 43). He received a Top Secret clearance in 1986 and currently holds a Top Secret clearance (Tr. 7, 42). He has been on a leave of absence from his employment since April 30, 2009 without pay because of the security issue (Tr. 40, 41, 116).

Applicant married in 1987 and divorced in 1997 (Tr. 46). His first wife receives 25% of his retirement check, or about \$150 a month (Tr. 47-48). His first wife automatically receives her share of his retirement directly from the Defense Finance and Accounting Service (Tr. 48). He married in 2000 and divorced in March 2005 (Tr. 44). His second wife is in a branch of the U.S. armed services, and she is currently on active duty (Tr. 55). His children from his second marriage are eight and six years of age (Tr. 45). His children live with his second wife who is employed in a European country (Tr. 45). He does not pay his second wife alimony; however, he does pay her \$600 monthly in child support (Tr. 46). His child support payments are made through automatic deductions and are current (Tr. 46). His annual salary is \$73,122 (Tr. 42).

Applicant started a real estate investment company in 1989 (Tr. 49). He purchased properties that were foreclosed or at tax sales in a particular Midwest city (Tr. 49-40). He chose a particular city because that is where his mother lived (Tr. 50). He was not a real estate agent or broker (Tr. 52). Around 2000 to 2001, he owned as many as 15 properties (Tr. 53).

Around 2000, Applicant had a series of problems with his properties. In 2000, a repair man left the water running in a tub, which caused extensive water damage (Tr. 54). He had paid the man \$10,000 to work on several properties, and he eventually sued the repairman for \$30,000 because of the repairman's damage to his property (Tr. 54, 59). His mother was managing his properties, and she passed away in 2000 (Tr. 54). He also had to evict some tenants (Tr. 54).

In 2003, Applicant's wife was having an extramarital affair (Tr. 55). Applicant found out about it and hit her (Tr. 55, 56). He was charged in state court with a misdemeanor-level assault (Tr. 57).² The court ordered one-year of probation and 16 weeks of domestic violence awareness classes (Tr. 112). He had to move out of their house (Tr. 55). Expenses increased because of the necessity to maintain two households (Tr. 55). A furnace went out, resulting in additional repair expenses (Tr. 56).

Applicant paid the mortgages on some of the properties and used the income from others to pay his living expenses (Tr. 62). The next month, he would pay other mortgages (Tr. 62). He decided to sell some properties; however, he was unable to find

² Applicant's SF-86 in Section 23f asked Applicant to disclose any such charges in the last seven years (GE 1). He denied that he had been charged with any such charges (GE 1). However, there are no SOR allegations against Applicant under Guidelines E or J. Accordingly, I draw no adverse inference from this incident itself, or from his failure to disclose this incident on his SF-86.

buyers, who would pay the prices he wanted (Tr. 63). When the divorce started, his wife wanted her share of the properties (Tr. 64).

Financial Considerations

Applicant's employer pays \$5,000 per year towards his education expenses, and he receives \$300 a quarter from the GI Bill (Tr. 39). His annual income before he became unemployed in April 2009 was \$73,100 (Tr. 91). His monthly net income was about \$3,000 (Tr. 91). His current monthly expenses are as follows: rent (\$600) and food (\$150). His car is paid off (Tr. 92). He does not have any credit cards (Tr. 92). He reduced his expenses substantially when he moved to a place with lower rent (rent was reduced from \$1,500 a month to \$600 a month) (Tr. 93). He has about \$1,200 in his checking account and \$200 in his savings account (Tr. 93). He has about \$25,000 in his 401K account (Tr. 94). He is current on his taxes, and is not delinquent on any non-SOR debts (Tr. 95).

Applicant owns one property and it does not have a mortgage (Tr. 96). The property is not occupied (Tr. 97).

Non-mortgage SOR debts

Applicant has seven unsecured (non-mortgage) SOR debts, totaling about \$28,500. Six are paid and the seventh debt cannot be resolved at this time because Applicant has insufficient income. Further details are provided in the next seven paragraphs.

SOR ¶ 1.b (\$4,726)—Paid. This debt to a credit card company was settled for \$2,600 and paid on April 20, 2009 (Tr. 70; GE 9 at 8-9; AE A2).

SOR ¶ 1.c (\$8,145)—Payment Plan. Applicant's debt to a credit card company was transferred to the creditor's collection branch (Tr. 71). Applicant paid \$2,209 in March 2009 (Tr. 71-73; AE A3; AE A4). He subsequently agreed to settle the debt for \$5,000 (Tr. 73-75). However, he was unable to pay \$5,000 because the creditor wanted the whole amount in a single payment (Tr. 75).

SOR ¶ 1.d (\$3,125)—Paid. Applicant's debt to a collection company was settled for \$1,400 and paid in September 2008 (Tr. 75-76; GE 9 at 12-13; AE A5; AE A11; AE A15).

SOR ¶ 1.p (\$7,477)—Paid. Applicant's debt to a collection company was settled for \$2,700 and paid on October 6, 2008 (Tr. 85-86; GE 2 at 8; AE A11; AE 15).

SOR ¶ 1.q (\$1,750)—Paid. Applicant's debt to a store was settled for \$1,703 and paid on September 12, 2008 (Tr. 87; AE A12).

SOR ¶ 1.u (\$991)—Paid. Applicant's SOR indicated this was a medical debt. Actually, it was owed to a utility company (Tr. 88; GE 2 at 16). A letter from the creditor

dated September 16, 2008, indicates Applicant paid this debt on September 12, 2008 (GE 9 at 36-37; AE A13).

SOR ¶ 1.x (\$2,357)—Paid. Applicant's debt to a credit card company was settled and paid on October 6, 2008 (Tr. 90; AE A15).

Mortgage-related SOR debts

The SOR alleged Applicant owed 17 foreclosure-related debts to mortgage companies, totaling \$677,691 as follows: (1) ¶ 1.a (\$48,872); (2) ¶ 1.e (\$30,430); (3) ¶ 1.f (\$35,069); (4) ¶ 1.g (\$35,052); (5) ¶ 1.h (\$61,584); (6) ¶ 1.i (\$34,728); (7) ¶ 1.j (\$20,533); (8) ¶ 1.k (\$40,417); (9) ¶ 1.l (\$71,724); (10) ¶ 1.m (\$34,695); (11) ¶ 1.n (\$49,112); (12) ¶ 1.o (\$25,200); (13) ¶ 1.r (\$27,450); (14) ¶ 1.s (\$35,550); (15) ¶ 1.t (\$26,680); (16) ¶ 1.v (\$52,000); and (17) ¶ 1.w (\$47,595).

Applicant said he called his mortgage lenders and told them he could not make his payments (Tr. 63). They suggested he attempt a "short sale to get rid of these properties" (Tr. 63). He advertised in the newspaper; however, the buyers "were really trying to take them for, you know, pennies. And—and I put too much time and too much money in them to let them go for, you know, pennies on the dollar" (Tr. 64). Eventually, he called the lenders and suggested they take the properties through foreclosure (Tr. 64).

When he learned he needed additional information about the status of his mortgage or foreclosure accounts, he sent letters to the addresses in his credit reports asking for the status of his mortgage debts. He provided copies of letters sent in September and October 2008 (GE 9 at 14-20, 25-30, 35). He also provided the letters he sent in April 20, 2009, April 27, 2009, and June 13, 2009 to his mortgage creditors (AE: A1, A7, A8, A9, A10, O, P, Q, R, S, T, U, W, V). Several creditors wrote Applicant asking for additional information, such as copies of his credit report, social security number, or his loan number to facilitate locating his account (GE 9 at 31; AE A14; AE AO). Another creditor wrote Applicant that the foreclosure would not be removed from his credit report (GE 9 at 21-24). Applicant is waiting for the creditors to contact him and at that point he will attempt to negotiate a settlement of his debts (AE AT). He did not provide information about what he paid to purchase the properties, except he indicated he purchased one of them in 2000 for \$7,000 (AE AT).

SOR ¶ 1.a (\$49,872)—Not resolved. Applicant's July 4, 2007, credit report indicated a closed account, last activity on account in October 2001, high credit at the SOR amount with the description, "ACCOUNT PAID SATISFACTORILY" and a zero balance (GE 2 at 19). However, the same credit report has a judgment filed in September 2004 from the same creditor for \$49,872 (GE 2 at 3). Applicant's March 23, 2009, credit report shows a "second mortgage" description, high credit (\$47,595) with nothing in the past due column (GE 6 at 4). Applicant provided a September 10, 2008, Equifax credit report showing a judgment on September 1, 2004, in the amount of \$49,872 (AE L at 7). He also provided a September 10, 2008, Experian credit report, showing a secured loan to this creditor, opened (April 1, 2001) with a "Paid

satisfactorily” description (AE L at 50). Applicant sent letters to the creditor asking for information about the status of his debt (AE A1; AE R; Tr. 66-67). He provided a reference number on the credit report and not the account number or case number (compare GE 2 at 3, AE L at 7 and AE L at 50). He did not send the letters to the address listed in his September 10, 2008, credit report (AE L at 50). He did not receive a reply. Applicant opined that the property was sold for the amount he owed the lender (Tr. 70). He did not provide documentation showing the amount paid at the foreclosure sale, or the amount the lender received. After the hearing, I explained in an email to Applicant why I believed this debt was unresolved and asked Applicant to provide additional information about the status of this debt (AE AR). On August 3, 2009, Applicant replied to my email; however, his response did not include any significant new information or describe any additional actions to obtain additional information about this debt’s status (AE AT).

SOR ¶¶ 1.e (\$30,430), 1.f (\$35,069) and 1.g (\$35,052)—Resolved. Applicant owed these three mortgage debts to the same creditor (Tr. 76-77). The creditor explained that four of Applicant’s properties went to foreclosure sales and were sold in 2005 (AE AG) and stated, “This resulted in a zero balance owed on [these accounts] and ended the business relationship between [Applicant and the creditor].” (AE AG).

SOR ¶ 1.h (\$61,584)—Resolved. Applicant’s July 4, 2007, credit report showed a last activity on account in August 2005, indicating a balance of \$61,584, a past due amount of \$8,139 and “FORECLOSURE REDEEMED . . . GRANTOR RECLAIMED COLLATERAL TO SETTLE DEFAULTED MORTGAGE” (GE 2 at 6). Applicant wrote letters to the lender asking for additional information on April 20, 2009, and June 13, 2009 (Tr. 77-78; AE A7; AE Q). The creditor did not respond to Applicant’s request for information (Tr. 78).

SOR ¶¶ 1.i (\$34,728) and 1.j (\$20,533)—Not resolved. Applicant owed these two mortgage debts to the same creditor (Tr. 79-80). His July 4, 2007, credit report showed foreclosure filings on the two accounts in the SOR amounts, occurring in August and September 2004 with an “UNKNOWN” disposition (GE 2 at 50). He wrote letters to the lender asking for additional information on April 20, 2009, and June 13, 2009 (Tr. 79-81; AE A8; AE W). The creditor did not respond to Applicant’s request for information (Tr. 78). On June 13, 2009, he submitted a letter stating the SOR ¶ 1.i property was sold without listing the sales price and the second property was sold for \$73,900 (AE M at 2); however, he did not provide documentation to corroborate his contention. After the hearing, I explained in an email to Applicant why I believed this debt was unresolved and asked Applicant to provide additional information about the status of this debt (AE AR). On August 3, 2009, Applicant replied to my email; however, his response did not include any significant new information or describe any additional actions to obtain additional information about this debt’s status (AE AT).

SOR ¶ 1.k (\$40,417)—Not resolved. Applicant’s July 4, 2007, credit report showed the most recent information on his account as being filed in November 2004 with the account being in foreclosure status (GE 2 at 3). In November 2004, he owed \$40,417 (GE 2 at 3). Applicant wrote letters to the lender asking for additional

information on April 20, 2009, and June 13, 2009 (Tr. 82-83; AE U). He did not receive a reply from the creditor. On June 13, 2009, he submitted a letter stating the SOR ¶ 1.k property was sold for \$62,000 (AE M at 2); however, he did not provide documentation to corroborate his contention. After the hearing, I explained in an email to Applicant why I believed this debt was unresolved and asked Applicant to provide additional information about the status and planned resolution of this debt (AE AR). On August 3, 2009, Applicant replied to my email; however, his response did not include any significant new information or describe any additional actions to obtain additional information about this debt's status (AE AT).

SOR ¶ 1.i (\$71,724)—Not resolved. Applicant's July 4, 2007, credit report showed the most recent information on his account as being filed in March 2005 with the account being in foreclosure status (GE 2 at 3, 16). In November 2004, he owed \$71,724 (GE 2 at 3, 16). It also showed a zero balance and account transferred, paid or sold (Tr. 82; GE 2 at 16). His September 10, 2008, credit report also showed a foreclosure on March 28, 2005, filed in the county court (AE L at 6). Applicant wrote letters to the lender asking for additional information on April 20, 2009, and June 13, 2009 (Tr. 82-83; AE A9; AE V). The post office returned the letter he sent to the creditor with a notation from the post office indicating he used an incorrect address (Tr. 83; AE A9). On June 13, 2009, he submitted a letter stating the SOR ¶ 1.i property was sold for an unknown price (AE M at 2); however, he did not provide documentation to corroborate his contention. After the hearing, I explained in an email to Applicant why I believed this debt was unresolved and asked Applicant to provide additional information about the status and planned resolution of this debt (AE AR). On August 3, 2009, Applicant replied to my email, indicating he had not taken any additional action to determine the status of this debt (AE AT). He said that the property was sold on March 15, 2002, and cited to a tax record (AE AR at attachment L). See AE AT. The tax record indicated the owner on December 12, 2008, is the same owner that acquired the property on March 15, 2002 (AE AR at attachment L). Applicant did not provide documentation showing the property described in AE AR at attachment L was the same property encumbered by the debt in SOR ¶ 1.i. Applicant stated he still owned the property encumbered by the SOR ¶ 1.i debt in the 2004 to 2005 timeframe (AE AR). As such, there are too many unanswered questions to determine that this debt is resolved.

SOR ¶¶ 1.m (\$34,695), 1.n (\$49,112) and 1.o (\$25,200)—Resolved. Applicant owed these three mortgage debts to the same creditor (Tr. 83). Applicant's July 4, 2007, credit report showed a last activity on account in March 2005, indicating the SOR amounts in the HIGH CREDIT column, a zero amount in the BALANCE column, and "FORECLOSURE PROCEEDINGS INITIATED . . . CREDIT GRANTOR RECLAIMED COLLATERAL TO SETTLE DEFAULTED MORTGAGE" (GE 2 at 6-7). In September 2008, Applicant wrote the creditor requesting information on the mortgage and on September 30, 2008, Applicant received a letter from the creditor (Tr. 84; GE 9 at 31). The letter is unclear about the status of Applicant's accounts (GE 9 at 31). Applicant did not believe he owed anything to the creditor (Tr. 85). On June 13, 2009, he submitted a letter stating the SOR ¶¶ 1.m, 1.n and 1.o properties were sold for: price unknown (1.m); \$51,400 (1.n); and \$32,760 (1.o). However, he did not provide any documentation to corroborate his contention. I conclude his March 2005 credit report,

indicating the creditor reclaimed the property to settle these debts, relieves Applicant of liability for these debts. I find “For Applicant” in the Formal Findings section of this decision.

SOR ¶¶ 1.r (\$27,450), 1.s (\$35,550) and 1.t (\$26,680)—Resolved. Applicant owed these three mortgage debts to the same creditor (Tr. 87). Applicant’s July 4, 2007, credit report showed a last activity on account in October 2004, indicating the SOR amounts in the HIGH CREDIT column (except for SOR ¶ 1.t the credit report indicates \$22,680 instead of \$26,680), a zero amount in the BALANCE column, and “FORECLOSURE REDEEMED . . . CREDIT GRANTOR RECLAIMED COLLATERAL TO SETTLE DEFAULTED MORTGAGE” (GE 2 at 11-12). Applicant wrote the creditor several times requesting information on the status of these debts without receiving any information (Tr. 87). On June 13, 2009, he submitted a letter stating the SOR ¶¶ 1.r, 1.s and 1.t properties were sold for prices unknown; however, he did not provide documentation to corroborate his contention. I conclude his July 2007 credit report, indicating the creditor reclaimed the property to settle these debts, relieves Applicant of liability for these debts. I find “For Applicant” in the Formal Findings section of this decision.

SOR ¶ 1.v (\$52,000)—Resolved. Applicant’s July 4, 2007, credit report showed a last activity on account in May 2005, indicating the SOR amount in the HIGH CREDIT column, a zero amount in the BALANCE column, and “FORECLOSURE PROCEEDINGS INITIATED . . . CREDIT GRANTOR RECLAIMED COLLATERAL TO SETTLE DEFAULTED MORTGAGE” (GE 2 at 19). Applicant did not contact the creditor until June 13, 2009, when he sought information on the status of this debt (Tr. 89; AE S). He did not provide additional information about this account. I conclude his July 2007 credit report, indicating the creditor reclaimed the property to settle this debt, relieves Applicant of liability for this debt. I find “For Applicant” in the Formal Findings section of this decision.

SOR ¶ 1.w (\$47,595)—Not Resolved. Applicant’s July 4, 2007, credit report showed a last activity on account in May 2004, indicating the SOR amount in the HIGH CREDIT column, and a zero amount in the BALANCE column. This credit report indicated the account pertained to a real estate mortgage that was now closed because the account was transferred (GE 2 at 19). Applicant contacted the creditor on June 13, 2009, to request information on the status of this debt (Tr. 90; AE T). On July 18, 2009, the creditor responded with a request for a valid mortgage number (AE AO). After the hearing, I explained in an email to Applicant why I believed this debt was unresolved and asked Applicant to provide additional information about the status and planned resolution of this debt (AE AR). On August 3, 2009, Applicant replied to my email; however, his response did not include any significant new information or describe additional actions to obtain additional information about this debt’s status (AE AT). Applicant states he still owned the property encumbered by the SOR ¶ 1.w debt in the 2004 to 2005 timeframe (AE AR). As such, there are too many unanswered questions to determine that this debt is resolved.

Applicant promised to pay his creditors if he owed them anything (Tr. 79). He does not intend to invest in real estate in the future (Tr. 97). He said he did not file for bankruptcy because he believed he was responsible for repaying his creditors (Tr. 97). His second divorce and the real estate downturn caused his financial problems (Tr. 98). I held the record open after the hearing because Applicant promised to check real estate records to determine whether he owed any additional money to his creditors (Tr. 99-110). I also suggested he obtain some documentation from character references or his employers (Tr. 99). He completed an electronic check of the property records (AE X; AE Y; AE Z). After August 1, 2009, he did not provide any additional property records or character references.

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 overarching adjudicative goal is a fair, impartial and commonsense 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 (4th 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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts”; and “(c) a history of not meeting financial obligations.” 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 also documented in his SOR response, his oral statement at his hearing, and the documentation he submitted. He failed to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶¶ 20(a)-20(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) 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)). He receives partial credit because his delinquent debts "occurred under such circumstances that [they are] unlikely to recur." However, the problem of six large delinquent mortgage debts totaling about \$262,592 is unresolved. Applicant admitted he borrowed the money on those six mortgages; however, he failed to provide sufficient documentation to establish the status or resolution of these six accounts. Applicant has about \$262,592 in unresolved, delinquent debt, and this substantial unresolved debt continues to "cast doubt on [his] current reliability, trustworthiness, or good judgment."

Applicant receives partial credit under AG ¶ 20(b) because his financial problems initially resulted from the real estate downturn. Damage to his property from a handyman, the death of his mother (who was acting as his agent on his real estate investments), problems with his tenants, maintenance issues, and his second divorce contributed to his financial woes. In April 2009, he became unemployed. Despite these issues, he does not receive full mitigating credit because he did not establish that he acted responsibly under the circumstances.³

³"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.

AG ¶ 20(c) partially applies. Applicant received financial counseling as part of his self-education in real estate and financial matters. It is clear from his statements that he is intelligent and has an above average understanding of budgeting and financial issues. Additional financial counseling is unnecessary because of Applicant's background and experience. However, there are not "clear indications that the problem is being resolved or is under control" because six debts totaling about \$262,592 remain unresolved. He has also established some, but not full mitigation under AG ¶ 20(d), because he showed some good faith⁴ in the payment of his six non-mortgage related SOR debts and by contacting some mortgage-related SOR creditors and obtaining releases of his liability. Applicant did not provide documentation contesting the validity of any debts, and AG ¶ 20(e) does not apply.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. In the last year, his efforts have been insufficient in regard to six delinquent mortgage debts, totaling about \$262,592. I gave Applicant additional time after his hearing to obtain more information about these six mortgage debts. Moreover, I asked him to provide information about the price to purchase these properties because that information would provide an indication about whether he was acting responsibly when he refinanced or obtained second mortgages and whether he borrowed excessively. His response on August 3, 2009, did not provide additional, meaningful assistance in resolving the status of his six delinquent mortgage debts, totaling about \$262,592. He did not provide sufficient information about what he paid for the properties and the amounts financed on his properties. He indicated he used some of the funds from his real estate investments for living expenses; however, he did not provide sufficient information about his finances to establish his financial responsibility.

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.

⁴The 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)).

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 relevant 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.

Applicant provided some important mitigating evidence under the whole person concept. There is no evidence of any security violation(s). He is generally a law-abiding citizen. His current financial problems were partially caused by some factors somewhat beyond his control: (1) the real estate downturn; (2) damage to his property from a handyman; (3) the death of his mother (who was acting as his agent on his real estate investments); (4) problems with tenants; (5) maintenance issues on his properties; (6) his divorce; and (7) his unemployment beginning in April 2009. He paid or adequately resolved 18 of 24 SOR debts.

Applicant has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He graduated from high school. He has a bachelors degree and earned some credits towards his masters degree. He honorably retired in the grade of E-6 after 20 years of service. His employment history and contributions to a defense contractor speak well for his character. He understands how to budget and what he needs to do to establish his financial responsibility. Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service to the Department of Defense as a contractor and on active duty. These factors, especially his past government service, show substantial responsibility.

The evidence under the whole person concept against mitigating Applicant's financial conduct is more substantial. Applicant's six mortgage debts have been delinquent for a substantial period of time. He did not meet his evidentiary burden when he failed to establish the status of six of his delinquent mortgage debts. He currently has a total of six delinquent mortgage debts, totaling about \$262,592. He has not paid

anything to these six creditors in the past several years. He noted that he had a \$25,000 retirement account, has used his real estate investments to fund his living expenses, and had one real estate property that was mortgage free. It is possible that the creditors accepted a deed in lieu of foreclosure on several of the six unresolved mortgages and his liability was released. Ultimately, he did not establish that he acted with sufficient effort and self-discipline to resolve his six delinquent mortgage debts and to better document his remedial efforts. All the factors considered together show too much financial irresponsibility and lack of judgment. His history of delinquent debt raises unmitigated security concerns.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has not sufficiently mitigated financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not fully mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

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

PARAGRAPH 1, GUIDELINE F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b to 1.h:	For Applicant
Subparagraphs 1.i to 1.l:	Against Applicant
Subparagraphs 1.m to 1.v:	For Applicant
Subparagraphs 1.w and 1.x:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

MARK HARVEY
Administrative Judge