



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-10757
	)	
Applicant for Security Clearance	)	

**Appearances**

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

June 29, 2011

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

On March 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an April 15, 2010, response, Applicant admitted seven of the nine allegations raised under Guideline F and two of the three allegations raised under Guideline E. Applicant requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on September 1, 2010. The parties proposed a hearing date of October 5, 2010. A notice setting that date for the hearing was issued on September 8, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented 18 documents for consideration, which were accepted without objection as exhibits (Exs.) A-R. Department Counsel offered 32 documents, which were admitted as exhibits (Exs.) 1-32 without objection.

During the hearing, it was noted that Applicant had not filed federal tax returns for tax years 2006 through 2009, and federal tax returns for his business for tax years 2006 through 2008. Consequently, the SOR was amended to include his admissions as allegations 1.j and 1.k under Guideline F to conform the allegations with the evidence.<sup>1</sup> Applicant was given until November 11, 2010, to submit any additional documents for consideration. The transcript (Tr.) of the proceeding was received on October 22, 2010. Additional documents were submitted by Applicant between October 14, 2010, and November 7, 2010. They were forwarded to me without objection on November 16, 2010, and accepted as Exs. S-V. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating financial considerations security concerns. Clearance is denied.

### **Findings of Fact**

Applicant is a 73-year-old businessman with over 40 years of advanced experience in naval aviation, surveillance, and entrepreneurship. He has worked for his current employer for about five years, although his current professional focus is on a small, non-defense related business he recently founded.<sup>2</sup> He has served as president of multiple companies and is currently a consultant on DOD issues. Applicant earned a bachelor's degree and completed extensive graduate coursework. Honorably discharged from the U.S. Navy in 1970, he is currently single and the father of five adult children. He is civically active in various conservation and preservation initiatives.

In early 1990, Applicant filed for Chapter 13 bankruptcy. Because of the "substantial assets" held by himself and his consulting firm, the court converted the filing to a Chapter 11 proceeding.<sup>3</sup> Bankruptcy protection had been sought due to a "very nasty" 1988 divorce and a division of property that excluded his estranged wife's considerable out-of-state investments, which made the "mathematics completely unbalanced."<sup>4</sup> He eventually met his divorce decree obligations through a conservation easement on property owned in-state. Substantial legal problems in making the conveyance, however, delayed his receipt of funds to meet the decree's mandates, forcing him to seek bankruptcy protection.

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<sup>1</sup> Admissions to the additional allegations were noted at Tr. 174. See also Tr. 160-173. In addition, the Government provided a copy of the precise wording of the additional allegations on October 18, 2010, to Applicant and myself. No objections were timely submitted and that wording is adopted herein.

<sup>2</sup> Applicant last worked for his current employer in about October 2009. See Tr. 131-132.

<sup>3</sup> Tr. 21. SOR allegation ¶ 1.a incorrectly notes the filing as a Chapter 7 petition.

<sup>4</sup> Tr. 22.

Aside from the 1990 bankruptcy petition noted above (SOR allegation ¶ 1.a) and the tax issues discussed below (¶¶ 1.j-1.k), the SOR sets forth eight debts (¶¶ 1.b-1.i). Applicant has not addressed those debts he characterizes as “uncollateralized.”<sup>5</sup>

1.b – **Delinquent account** 120 days or more past due in the approximate amount of \$341 with a balance of about \$1,300. *Unpaid*. The issuer cut off Applicant’s access to the credit card. Applicant does not intend to pay this obligation because of a dispute he has with the issuer over another credit card suspended or closed by this same issuer.<sup>6</sup>

1.c – **Charged-off account** for a balance of approximately \$21,984. *Unpaid*. Applicant does not dispute that he owes the balance at issue, but has a separate dispute with the issuer. He claims the issuer released information about him to a collection agency improperly. He may sue the issuer for this disclosure in the future, but has yet to do so.<sup>7</sup>

1.d – **Past-due equity account** in the approximate amount of \$22,988 on an account in foreclosure status with a total loan balance of about \$227,000. *Sold; recourse against Applicant waived for any balances owed*. Applicant provided evidence that this property was sold to a bank through auction on September 9, 2010.<sup>8</sup> There is no evidence as to whether there was any balance owed on the underlying loan, nor was a 1099 form for the sale offered. However, a notice of settlement agreement was introduced showing that the creditor waived its right to pursue a deficiency against Applicant.<sup>9</sup>

1.e – **Charged-off account** in the approximate amount of \$25,000. *Unpaid*. This acknowledged debt was ultimately secured in a judgment in about 2009 and is deemed by him to be uncollateralized.<sup>10</sup>

1.f – **Charged-off auto account** for approximately \$8,047. *Unpaid*. Applicant acknowledges this debt. He deems this debt to be uncollateralized and, therefore, not an immediate priority in terms of his overall debt.<sup>11</sup>

1.g – **Past-due mortgage account** in the approximate amount of \$80,755 on an account in foreclosure status with a total loan balance of about \$370,000. *Resolved or*

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<sup>5</sup> Tr. 72-73, 106-108, 135, 139. Such debts, usually related to credit cards, are distinguished by Applicant from those debts which are collateralized or collateralized with recourse. Collateralized debts are referenced as “meaning automobile loans.” See Tr. 72.

<sup>6</sup> Tr. 103.

<sup>7</sup> Tr. 103-104.

<sup>8</sup> Tr. 105-106; Ex. S (Circuit Court order, dated Sep. 21, 2010). See also Ex. Q (Settlement agreement) for comparison of addresses of property at issue.

<sup>9</sup> *Id.*; see also Ex. T (Notice of Settlement Agreement, dated May 20, 2009) at 2.

<sup>10</sup> Tr. 106.

<sup>11</sup> *Id.*

*being resolved.* This property is the same as the one noted above at 1.d. Applicant provided credible evidence that the property at issue was sold by the lender after he attempted to sell it through short sale. It auctioned for about \$290,000, but the lender had difficulty obtaining legal title to the property<sup>12</sup> No final certificate of title was produced. However, the evidence provided indicates that Applicant has and is actively working on the final resolution of this debt and the debt noted at 1.d.

1.h – **Charged-off account** for approximately \$21,374. *Unpaid.* Applicant acknowledges this debt and categorizes it with other uncollateralized debts owed.

1.i – **Mortgage account that went into foreclosure** with a deficiency of approximately \$117,000. *Loan modified, but account delinquent.* Applicant testified that this property was subject to a June 2009 home mortgage modification shown as signed by him, but not by the lender.<sup>13</sup> As evidence that the loan was modified, he showed payments on the loan at the modified rate through December 2009.<sup>14</sup> He then ceased making payments on the modified loan because the lender was “refusing to sign the loan mod [sic] and they are refusing to give [him] a [comprehensive] 1099 for the interest and taxes paid.”<sup>15</sup> There is no evidence that he has tried to remedy this issue.

1.j/1.k – **Failure to file federal income tax returns**, as required, for tax years 2006, 2007, 2008, and 2009, and failure to file federal tax returns for his business, as required, for at least tax years 2006, 2007, and 2008.<sup>16</sup> *No evidence of filings.* The question of whether these filings were made was raised at the hearing.<sup>17</sup> Applicant conceded that filings were not made for some, if not all, of the years at issue.<sup>18</sup> He was given 37 days to submit evidence showing that any filings were made, but no evidence was submitted.<sup>19</sup> He explained that filings were not made due to his difficult tax situation and because he believed he could take his “jolly time” in filing, when no taxes were due.<sup>20</sup>

Applicant was again divorced in April 2007. He described that divorce as “very amicable” and did not prove that any of his current debts were the direct result of that divorce, although he noted that his available resources began “drying up between 2007

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<sup>12</sup> Tr. 110-114.

<sup>13</sup> Ex. O (Modification, dated Jun. 1, 2009); Tr. 117-118.

<sup>14</sup> Ex. V (Payment schedule, Jun.-Dec. 2009).

<sup>15</sup> Tr. 118-119.

<sup>16</sup> Issues regarding Applicant’s filing of state business taxes are addressed under SOR allegation ¶ 2.c.

<sup>17</sup> Tr. 169-176.

<sup>18</sup> *Id.*; Tr. 160-161.

<sup>19</sup> *Id.*

<sup>20</sup> Tr. 49.

and 2008.”<sup>21</sup> No medical issues have adversely impacted his finances.<sup>22</sup> He has mortgaged rental properties that basically pay for themselves through seasonal tenants.<sup>23</sup> He receives \$1,377 per month in Social Security payments. He was earning approximately \$3,000 a month from his current employer, but voluntarily ceased taking assignments and earning income from that entity in about October 2009.<sup>24</sup> His small business venture earns him approximately \$2,000 a month.<sup>25</sup> He hopes to make this small business more successful and profitable.<sup>26</sup> His monthly living expenses are about \$3,213.<sup>27</sup> Consequently, through around October 2009, he had a net monthly remainder in excess of \$3,100, which was more recently reduced by the subtraction of about \$3,000 in current income generated from his present employer.<sup>28</sup> Currently, his income from the small business and Social Security barely exceeds his monthly living expenses by approximately \$164, but he hopes his small business will soon flourish.<sup>29</sup> He previously co-signed on a vehicular loan for his brother who later defaulted on the loan. The vehicle was then repossessed.<sup>30</sup> Applicant was making payments on his obligation to this lender, but has since stopped.<sup>31</sup> In describing his current financial situation as a “dynamic situation,” he noted: “I’m clawing for survival and as far as I can figure out I’m on the uphill part of the slope, not the downhill part of the slope.”<sup>32</sup>

Also at issue are certain business practices involving Applicant. In 2005, Applicant had an agreement to do consulting work for one entity while he was serving as president of another company. He testified that he gave notice of his arrangement to

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<sup>21</sup> Tr. 71-72. During that same time frame, Applicant’s consulting business was administratively dissolved, as discussed below.

<sup>22</sup> Tr. 162-163.

<sup>23</sup> Tr. 125.

<sup>24</sup> Tr. 131.

<sup>25</sup> Tr. 132. Applicant reinvests much of the company’s earning into building the business.

<sup>26</sup> Tr. 140.

<sup>27</sup> Tr. 134.

<sup>28</sup> Tr. 135.

<sup>29</sup> The \$164 figure, based on the sums noted during Applicant’s testimony, is calculated with the expectation that no profits are reinvested into the business and are, instead, applied to Applicant’s personal income. He did not note any other holdings that he intended to use to supplement this figure or to devote toward his debts.

<sup>30</sup> Tr. 141-142.

<sup>31</sup> *Id.* Applicant negotiated a 50-month plan of \$100 monthly payments, but he withdrew from the plan after about a year when the creditor demanded full payment of the balance on the \$4,000-\$4,500 debt. Applicant provided no evidence showing that this debt is the same as the one at ¶ 1.f.

<sup>32</sup> Tr. 140.

his company.<sup>33</sup> His relationship with the firm for which he provided consulting became an issue in 2006 with his company. At a board meeting, he tried to explain his relationship with the entity and his attempts to partition himself, but his explanations were not accepted. The meeting's atmosphere was hostile, and he felt at least one of the officers had a grudge against him and his management.<sup>34</sup> To "get away from the whole mess," he offered his resignation.<sup>35</sup>

In addition, Applicant last filed corporate papers for his consulting firm in about 2005. It was administratively dissolved by the state on August 29, 2008.<sup>36</sup> Under state law, the entity continued its corporate existence, but could not conduct any business except with regard to matters winding up the entity's existence.<sup>37</sup> There "were a couple of weeks difference between" the time the business was administratively dissolved and the time it terminated its contract with one of its clients.<sup>38</sup> There is no evidence that this overlap was intentional or that all parties had receipt of the dissolution at the time. Moreover, Applicant has until August 29, 2011, to reinstate the corporate charter. In the interim, the entity is in "limbo" for the wrap-up of business. There is also an alternative procedure for reinstating beyond August 29, 2011. Either process permits a reinstated charter to effectively date back to the date of dissolution, permitting the entity to carry forward as if the dissolution had never occurred.<sup>39</sup>

Finally, Applicant did not report earnings for the consulting firm to the state for tax years 2007 and 2008, the year of the corporation's dissolution and the year prior to its dissolution by the state. Applicant initially asserted that this was because there were no earnings, but the evidence shows that the entity was issued a 1099 from one client, which suggests earnings may have been accrued. He admits this allegation, as found at SOR allegation ¶ 2.c. At the hearing, He testified that his representatives have been working on this issue for the past few years. They had only received the final documents necessary to comprise the filings in the past couple of weeks. To date, that entity is still in the "limbo" status described above. Applicant testified that extensions were filed for the years in question, but no evidence to that effect was submitted.<sup>40</sup>

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<sup>33</sup> Tr. 146-152.

<sup>34</sup> Tr. 156-157.

<sup>35</sup> Tr. 156. The SOR (¶ 2.a) alleges that he resigned as President due to a potential conflict of interest. There is no evidence that an actual conflict of interest resulted or that successful action was subsequently taken against Applicant. His current financial issues predated his departure. See Tr. 101.

<sup>36</sup> Tr. 159; Ex. H (Memorandum regarding reinstatement, dated Sep. 24, 2009).

<sup>37</sup> *Id.* See also Ex. H, in general.

<sup>38</sup> Tr. 159-160. See SOR allegation ¶ 2.b.

<sup>39</sup> Ex. H (State Business Corporation Act excerpt, eff. Sep. 4, 1999, at subsection c). At the time of the hearing, reinstatement had not been initiated in an effort to preserve financial resources. Tr. 160. However, correspondence by counsel with the state shows that inquiry was been made as to how the reinstatement could be effectuated. See Ex. H (Law firm, letter of Sep. 29, 2009).

<sup>40</sup> Tr. 161-162.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>41</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>42</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>43</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive

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<sup>41</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>42</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>43</sup> *Id.*

information.<sup>44</sup> Based upon consideration of the evidence, Guideline F (Financial Considerations) and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, “failure or an 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.”<sup>45</sup> It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>46</sup>

Aside from the 21-year-old bankruptcy, Applicant admits to over \$77,700 in unpaid debts (SOR allegations ¶¶ 1.b, 1.c, 1.e, 1.f, 1.h), default status since December 2009 on one mortgage with a total loan amount of approximately \$117,000 (SOR allegation ¶ 1.i), a comparatively minor balance on a repossessed vehicle, and a failure to file personal and business taxes for multiple years over the past decade. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations), and FC DC AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The delinquent debts at issue are multiple in number. The majority of those debts remain unpaid and amount to over \$77,700. Applicant’s reason for failing to address these debts stems from their being “uncollateralized.” The AG, however, makes no distinctions between the types of one’s admitted delinquent obligations. Moreover, there is no evidence that he has formally disputed the facts underlying his refusal to honor his modified loan and continue making payments on one mortgage. Furthermore, Applicant’s argument that he could take his “jolly time” in filing his taxes is incompatible with the expectations of one seeking a security clearance. The standard to which one seeking access to sensitive material is held requires a higher degree of compliance in terms of one’s obligations to the IRS and general business conduct. Applicant’s footloose and cavalier attitude does not rise to that standard. Finally, there is no evidence he has tried to resolve any of his disagreements with his creditors through formal dispute or legal action. Financial Considerations Mitigating Condition

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<sup>44</sup> *Id.*

<sup>45</sup> AG ¶ 18.

<sup>46</sup> *Id.*



(FC MC) AG ¶ 20(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) does not apply.

Although Applicant's 1988 divorce may have contributed to his 1990 bankruptcy, those incidents occurred over two decades ago. There is no evidence that his amicable 2007 divorce adversely affected his finances. There is no evidence that significant debt was acquired due to essential medical services. Moreover, Applicant voluntarily left his position as president of his former company and, on his own volition, temporarily ceased taking on work and generating income with his present employer. Given these and other facts presented, FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) only applies to any residual debts related to the 1988 divorce, if any.

There is no evidence Applicant has received financial counseling, only that he has relied on accountants and other professionals. To date, significant debt remains unaddressed. Attempts to address some of those debts have been sporadic, at best. Such facts obviate application of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Applicant initiated efforts to repay the debts at SOR allegation ¶1.i and his brother's vehicular repossession, but he later quit making payments on those debts. Lacking evidence of formal disputes with those creditors, FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. That mitigating condition only has application to the debts at ¶¶ 1.d and 1.g. Taken collectively in terms of all of Applicant's debts at issue, this mitigating condition has limited application. No other mitigating conditions apply.

## **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because “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.”<sup>47</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>48</sup>

Here, Applicant admits that his consulting company continued to conduct business with a client a few weeks after the company had been administratively dissolved and that his business failed to file state tax returns for 2007 and 2008, despite having been issued a 1099 form. Such facts, if true, could be sufficient to raise PC DC

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<sup>47</sup> AG ¶ 15.

<sup>48</sup> *Id.*

AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information). . . (3) a pattern of dishonesty or rule violations).<sup>49</sup> With a disqualifying condition raised, the burden shifts to Applicant to mitigate security concerns.

As a preliminary matter, SOR allegation ¶ 2.a alleges that Applicant resigned as president of his company in 2006 due to a *potential* conflict of interest between his company and an entity with which he had an active consulting agreement. Although Applicant denies the allegation as written, he credibly stated that his company knew of his consulting arrangement. He concedes that when disagreements and personality conflicts emerged in the boardroom about the arrangement, he chose to quit rather than further defend his position. Despite semantic differences, the result is the same. There is no conclusive evidence, however, that an *actual* conflict of interest ever arose or that any business irregularities occurred that necessitated any form of adverse action. Indeed, under these facts, Applicant demonstrated good judgment in appropriately severing his connection with one of the two entities when the appearance of a potential conflict came to the fore. Therefore, none of the disqualifying conditions apply to this allegation.

The overlap between the time of Applicant's business's administrative dissolution and the cessation of client-oriented work was a matter of "a couple of weeks." The exact dates of this overlap are imprecise, and the period is significantly brief. there is no evidence that work was intentionally done with knowledge of the state's action, and the state has not interceded to penalize Applicant or the business for this residual conduct. At best, this overlap is an oversight; at worst, these facts represent a *de minimis* violation that occurred four years ago through the conduct of the corporate entity, not Applicant. Therefore, AG ¶ 17 (c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) applies.

Although the burden in these proceedings is placed squarely on the Applicant, Applicant testified that his accountants have been working on his corporation's taxes on an ongoing basis, that they only recently received all the necessary information to complete the filings, and that extensions for the years at issue were filed. While administratively dissolved, the entity is currently in "limbo" pending a grace period to

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<sup>49</sup> It is noted that this disqualifying condition is a catch-all category for personal conduct unrelated to conduct covered by other guidelines. The conduct at issue in SOR allegations ¶¶ 2.a-2.c concern three distinctly different acts whose only nexus is that they take place in a business context.

revive the business prior to a deadline at the end of August 2011. This limbo period is provided by the state to afford an entity the opportunity to reconnoiter, renew its licensure, or to wrap up its business. There is also an alternative procedure for reinstating beyond the three-year period. Either process permits a reinstated charter to effectively date back to the date of dissolution, permitting the entity to carry forward as if the dissolution had never occurred.

While no evidence of the accountants' efforts was introduced for the years leading up to, and including, the year of dissolution, there is also no evidence that the windup of the entity's business is required by the state to be completed before August 29, 2011. Moreover, the entity still has until that time to seek reinstatement of the corporate charter, an act that would effectively bless any questionable actions that took place within the a few weeks after the dissolution. It seems, therefore, premature to conclude that this delay has been inappropriate. AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) substantially applies.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a 73-year-old businessman with over four decades of experience in defense-related issues and entrepreneurship. He is a veteran and is well educated. While his career has been filled with financial and business successes, he has balanced his time with family-life and an impressive degree of community involvement.

Applicant's business interests and experiences are extensive and have, at times, overlapped. He has relied on legal and accounting professionals in the conduct of his business. Given his decades of professional business experience and the enormity of both his business interests and interactions, the three cited examples of dubious business practices are relatively insignificant. This is especially true given the tentative nature of administrative corporate dissolutions in the state at issue, a factor directly making two of the allegations unripe for definitive analysis and most likely explaining why the state government has not questioned or cited him for the alleged infractions noted in SOR allegations ¶¶ 2.b and 2.c. As to the situation in which it was debated whether his business dealing could pose a *potential* conflict of interest for one of his businesses (¶ 2.a), Applicant acted appropriately under the circumstances by simply leaving the company, rather than to proceed working for both entities under a cloud. Whether any bona fide or actionable conflicts transpired is unclear. Applicant's lengthy

track record with regard to his business dealings, however, helps support the conclusion that any transgressions were unintentional or *de minimis*.

Less clear is Applicant's currently precarious financial situation. While a bitter divorce precipitated his 1990 bankruptcy, that event occurred over two decades ago. Since that time, he has not been plagued by medical issues he could not afford. There is insufficient evidence showing business downturns so overextended his financial resources as to mitigate his acquisition of delinquent debt. His departure from the presidency of one company to avoid the appearance of a conflict was voluntary. He also voluntarily ceased working, albeit temporarily, for his present employer. Despite considerable testimony, the origin of his financial difficulties remains as vague as his purported plan for comprehensively addressing his delinquent debts.

Moreover, there is a minor thread woven through some of Applicant's debts indicating a reluctance to meet his financial obligations on his lenders' terms (*i.e.* SOR allegations 1.b, 1.c, and his brother's car repossession). This is particularly true in cases where he felt aggrieved by the lender. Such reluctance is worrisome, especially since he failed to produce evidence that he has pursued any recourse against those lenders. Meanwhile, he failed to file both professional and personal income taxes on the theory that he could take his "jolly time" when there were no taxes due. As previously noted, such footloose practices are incompatible with one seeking a security clearance.

In sum, while this process does not demand that all delinquent debts be paid, it does require a showing that there is a reasonable plan in place to address such debts and evidence of a demonstrated effort to execute that plan. Here, although progress was made on two of the mortgage accounts, Applicant's approach to the remainder of his debts has been haphazard and inconsistent. While his delinquent accounts may be prioritized in terms of collateralization, there is no apparent plan to satisfy the uncollateralized accounts at some specified point. Nor is there an explanation as to why, if such credit card debts are being deferred because they are viewed as being of a lesser priority, some of them (*i.e.* ¶¶ 1.b and 1.c) were initially addressed, but then abandoned – not because of re-prioritization, but because of disputes with the creditors. There is no indication of any progress toward seeking resolution with those lenders he refuses to pay.

Assuming there is no remaining liability owed on the two main mortgage accounts at issue, there remains an outstanding delinquent debt balance of over \$77,000. There is also a third mortgage (SOR allegation ¶ 1.i concerning an original balance of about \$117,000) on which Applicant chose to stop making payments in December 2009. Such delinquent debt, independently or taken in conjunction with his unfiled tax situation, is significant. Given his present net monthly remainder of significantly less than \$200, there are scant additional funds to make any significant progress on these delinquent debts. Consequently, based on his presentation and materials, I find that Applicant failed to carry his burden in mitigating security concerns. Clearance is denied.

## 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:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.c:	For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge