



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



In the matter of:)
)
-----) ISCR Case No. 08-12162
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Eric S. Montalvo, Esquire

March 11, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 18 debts totaling \$29,075. Three student loans and his child support are in established payment plans. Three debts are disputed. Eleven debts are paid. Applicant disclosed one delinquent debt on his security clearance application, and he was not aware of his other delinquent accounts. Financial considerations and personal conduct security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On July 24, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On August 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guidelines F (financial considerations) and E (personal conduct) (Hearing Exhibit (HE) 2). 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. The SOR recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked (HE 2).

On September 11, 2009, Applicant responded to the SOR (HE 3). On October 21, 2009, Department Counsel indicated she was ready to proceed on his case. On November 3, 2009, DOHA assigned Applicant's case to me. On December 3, 2009, DOHA issued a hearing notice (HE 1). On January 4, 2010, Applicant's hearing was held. At the hearing, Department Counsel offered seven exhibits (GE 1-7) (Tr. 13-14), and Applicant offered 17 exhibits (Tr. 14-17; AE A-Q). There were no objections, and I admitted GE 1-7 (Tr. 14) and AE A-Q (Tr. 17). Additionally, I admitted the hearing notice, SOR, and response to the SOR as hearing exhibits (HE 1-3). On January 7, 2010, I received the transcript. I held the record open until January 25, 2010, to permit Applicant to provide additional documentation (Tr. 66). I granted an extension until February 18, 2010 (HE 4, 5). After the hearing, I received two exhibits from Applicant (AE R (32 pages) and AE S (108 pages). Department Counsel did not object (HE 6), and AE R and S were admitted into evidence that same day.

Findings of Fact¹

Applicant's SOR response admitted that he owed the creditors in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, 1.g, 1.p, and 1.q (HE 3). He said some the debts he admitted were settled (HE 3). He denied some of the other SOR debts because they were paid, and denied other debts without explanation (HE 3). His admissions are accepted as findings of fact.

Applicant is 36 years old (Tr. 35). He is not married (Tr. 35). He has an eight-year-old child (Tr. 35). He served on active duty in the U.S. Army from February 1993 to August 1995 (Tr. 26, 60). He left the Army early because of the drawdown (Tr. 60). He received an honorable discharge under reduction-in-force criteria (Tr. 26; AE E). When he was discharged from the Army, he was an E-4 (Tr. 26). He has also served in the Army Reserve (Tr. 26). He attended college from 2000 to 2005, with a brief break in 2001 (Tr. 37). He is currently working for a contractor in Afghanistan (Tr. 37).

Financial Considerations

Applicant fell behind on his debts while he was attending college (Tr. 19). His debts resulted from brief periods of unemployment and underemployment. In 2007, Applicant attempted to purchase a vehicle and discovered that he had some delinquent debt (Tr. 20). He used his credit report to contact the creditors holding his delinquent debts (Tr. 54-55). Some of the creditors on his credit report had transferred his accounts to different creditors (Tr. 55). Once he learned the creditor holding the account and the

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

amount owed, he began paying his debts (Tr. 54-55). On February 5, 2008, he paid a law firm that specializes in clearing delinquent debts and correcting credit reports \$2,500 to assist with his financial issues (Tr. 55-56; AE R at 9).

Applicant's monthly gross income is \$14,166, and his net income is \$12,200 (Tr. 24; AE D). His monthly expenses total about \$3,200 and his monthly debt payments total about \$1,400 (AE D). His net remainder is about \$7,600 (AE D). He currently has \$10,000 in his checking account and \$5,000 in his saving account (Tr. 23). He does not have any credit cards, and his vehicle is in storage (Tr. 39). He does not have any utilities because the government provides utilities and many other expenses while he is deployed overseas (Tr. 39).

The SOR lists 18 debts totaling \$29,075 with the following status:

a. \$65—DISPUTED; Applicant was aware that this debt was owed on a medical account (Tr. 27). He thought it was held by the creditor in SOR ¶ 1.b (Tr. 27). He was unable to locate the creditor and the credit reporting company was not able to give him any additional information on the creditor (Tr. 28, 40).

b. \$1,123—PAID. A December 24, 2009, letter from the creditor indicates this medical account has been paid in full (AE H).

c. \$3,157; d. \$1,759; and e. \$5,373—PAYMENT PLAN. The creditor for three of his student loan debts agreed on September 10, 2009, to accept a \$9,310 lump sum payment to resolve these three debts (Tr. 28-29, 40-41; AE I). His checking account statement showed a \$5,000 student loan payment on January 21, 2010 (AE R at 4) and a \$3,000 payment on February 4, 2010 (AE S at 11). I was unable to locate documentation showing the remaining \$1,310 was paid in the post-hearing documentation Applicant submitted. On December 23, 2009, Applicant sent a letter disputing the continued listing of his student loans as delinquent accounts on his credit report (AE S at 12). Applicant also has some non-SOR student loans totaling about \$30,000, which are current (Tr. 41; AE D).

f. \$823—DISPUTED. Applicant disputed this debt and it was removed from his credit report (Tr. 42; AE F).

g. \$6,037—PAID. On September 30, 2009, Applicant paid the creditor \$3,938.90 to resolve this debt (Tr. 27, 42-43; AE G).

h. \$650; and q. \$1,820—PAID. The debt in SOR ¶ 1.h resulted from a late rent payment on his apartment (Tr. 51). The debt in SOR ¶ 1.q resulted when Applicant broke his lease on the same apartment (Tr. 52). In March 2004, the creditor in SOR ¶¶ 1.h and 1.q obtained two judgments (Tr. 51-52). On November 9, 2009, Applicant paid \$2,000, and on November 16, 2009, Applicant paid \$800, resolving these two debts (Tr. 43; AE J).

i. **\$1,158—PAID.** At his hearing, Applicant said the debt was paid (Tr. 43-44). The debt was removed from his credit report (Tr. 43).

j. **\$365; and l. \$614—PAID.** A February 14, 2009, letter from the creditor indicates the creditor was paid in full (Tr. 44-46; AE L). The debt has been removed from his credit report (Tr. 46).

k. **\$236—PAID.** Applicant said he paid the debt (Tr. 45). A July 3, 2008, letter from TransUnion indicates the disputed debt does not appear on a current TransUnion credit report (Tr. 44-45; AE M).

m. **\$255—PAID.** Applicant said the debt was paid, and it does not appear on his current credit report (Tr. 46-47).

n. **\$266—DISPUTED.** Applicant disputed the debt, and it was removed from his credit report (Tr. 47).

o. **\$610—PAID.** An April 2, 2008, letter from the creditor indicates the debt was settled in full and paid on March 31, 2008 (Tr. 47-48; AE P).

p. **\$764—PAID.** Applicant said the debt was paid; however, he did not have corroborating documentation showing payment (Tr. 48).

r. **\$4,000—CURRENT.** A court ordered Applicant to pay child support while he was overseas, and he was unaware of the requirement (Tr. 35-36). His monthly child support payments are \$385 (Tr. 36). Applicant's child support is current (Tr. 23, 35-37; AE Q).

From February 2008 to December 2009, Applicant sent numerous letters to his creditors (AE S at 12-108). On some accounts he sent similar letters month after month asking for more information on accounts or objecting to continued listing of the negative credit information in his credit reports (AE S at 12-108).

In sum, the government's most recent credit report was dated July 13, 2009 (GE 6). It shows two delinquent medical accounts (SOR ¶ 1.a (\$65) and 1.b (\$1,123)) (GE 6). It also lists the three delinquent student loans (SOR ¶¶ 1.c (\$3,157), 1.d (\$1,759), and 1.e (\$5,373)). He disputed SOR ¶ 1.a, and established that SOR ¶ 1.b was paid. He provided corroboration that he paid \$5,000 and \$3,000, in January and February 2010, respectively, to address his student loan account. Applicant paid 11 debts. Four debts (student loans and child support) are in an established payment plan, and he disputed three debts.

Failure to disclose delinquent debts on his security clearance application

On July 24, 2007, Applicant completed his security clearance application and indicated he did not have any unpaid judgments in the last seven years (SOR ¶ 2.a; GE 1). However, he disclosed he did have a debt currently over 90 days delinquent, and a

debt delinquent over 180 days in the last seven years (SOR ¶¶ 2.b and 2.c; GE 1). He listed his child support obligation in the comments section of his security clearance application (SOR ¶ 1.r; GE 1).

Applicant explained that he did not list several delinquent debts and two unpaid judgments when he completed his security clearance application because the creditors did not notify him about the debts (Tr. 51-52). From January 2000 to September 2005, Applicant moved eight times (AE R at 1-2). From September 2005 to January 2007, Applicant was deployed to Iraq (Tr. 56; GE 1; AE R at 2). From August 2007 to November 2007, Applicant was deployed to Egypt (AE R at 2). From November 2007 to present, Applicant was deployed to Afghanistan (AE R at 2).

Applicant did not receive notice of the two judgments in SOR ¶¶ 1.h and 1.q (Tr. 51-52). In 2004, Applicant was late on his rent, and broke his lease, and the two judgments were served on the apartment he had vacated (Tr. 57-58; GE 7).

On January 11, 2008, Applicant ran his credit report because he was purchasing a vehicle and learned about his delinquent debts and the two judgments (Tr. 49-56, 66; GE 2 at 7). On January 31, 2008, an Office of Personnel Management (OPM) investigator interviewed Applicant, and Applicant discussed his credit report and delinquent debt (Tr. 49-56, 66). He believes he brought the credit report to his OPM interview (Tr. 66).

Whole person evidence

The vice president of Applicant's company described Applicant's performance in a combat zone as excellent (AE B). He is a lead supervisor on a highly demanding program in Afghanistan (AE B). He is diligent, has integrity, and is very responsible (AE B).

Applicant's general operations manager described Applicant's performance as spectacular (AE C). He has very strong attributes of integrity and honesty (AE C). He is a highly valued employee with superb judgment, and dedication (AE C).

Applicant has served in Iraq and Afghanistan as a contractor for more than four years (AE R at 3). He often served in the field with troops and was exposed to enemy improvised explosive devices (IED) and mines (AE R at 3). He provided force protection and support to troops in a combat zone (AE R at 3). He risked injury or death on behalf of the United States (AE R at 3).

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 applicant’s 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 applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 concerns are under Guidelines F (financial considerations) and E (personal conduct).

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 Financial Considerations 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." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his SOR response, and his statement at his hearing.

Applicant's SOR lists 18 debts totaling \$29,075. His landlord obtained two judgments against Applicant in 2004. Three student loans and his child support became delinquent several years ago. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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). 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 did not pay some of his delinquent debts until recently, and his student loans were not brought to current status until February 2010.

AG ¶ 20(b) applies. Applicant's financial situation was damaged by brief periods of unemployment and underemployment before he obtained his current employment. He has established that he acted responsibly under the circumstances. He has been employed for the last four years overseas with a government contractor. Three student loans and his child support are in established payment plans. Three debts are disputed. Eleven debts are paid. When Applicant became aware of his delinquent debts, he hired a law firm to take care of them because he was deployed. He has gradually resolved his delinquent debts. He maintained contact with his creditors as indicated by the numerous letters he sent to the creditors.²

AG ¶ 20(c) partially applies. Although Applicant did not receive financial counseling, he has otherwise learned about financial issues. Applicant cannot receive full credit under AG ¶ 20(c) because he has not received financial counseling. He does receive some credit because there are some initial, positive "indications that the problem is being resolved or is under control." He has admitted his responsibility for his

²"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

debts, and he has resolved them.³ He also established some mitigation under AG ¶ 20(d) because he showed some good faith⁴ in the resolution of his debts by settling and paying 11 debts. Three student loans and his child support are in established payment plans. AG ¶ 20(e) applies to the three disputed debts. He wrote numerous letters to the creditors and credit reporting companies to verify and then dispute debts. Two of the three disputed debts were removed from his credit reports. He is unable to locate the third creditor, a medical debt for \$65. I am confident that if there was a basis for the three disputed debts, Applicant would have paid them.

In sum, Applicant started paying his delinquent debts as soon as he could verify them. He paid 11 debts, and established payment plans on four debts. He promised to pay his debts and show financial responsibility.⁵ He has met his burden of mitigating his delinquent debts.

Personal Conduct

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

³ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

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) 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)).

⁵Of course, the government can re-validate Applicant’s financial status at any time through credit reports, investigation and/or additional interrogatories. Approval of a clearance now does not bar the government from subsequently revoking it, if warranted. A security clearance hearing premised on delinquent debts highlights to Applicant the security concerns raised by delinquent debts. Violation of a promise made in a security context to pay legitimate debts and maintain financial responsibility also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have authority to grant a conditional clearance or to order additional investigation. ISCR Case No. 08-07540 at 2 (App. Bd. Jan. 8, 2010); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [him or] her the opportunity to have a security clearance while [he or she] works on [his or] her financial problems.” and citing ISCR Case No. 03-07418 at 3 (App. Bd. Oct. 13, 2004)). Applicant’s clearance is not conditional and this footnote does not imply that this Applicant’s clearance is conditional.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying with respect to the alleged falsifications of documents used to process the adjudication of Applicant's security clearance in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.⁶

On July 24, 2007, Applicant completed his security clearance application. He indicated he did not have any unpaid judgments in the last seven years. However, he disclosed he did have a debt currently over 90 days delinquent, and a debt delinquent over 180 days in the last seven years. He listed his child support obligation in the comments section of his security clearance application.

In 2004, Applicant had two judgments against him which were not paid. He also had 11 debts over 90 days delinquent listed on his August 30, 2007, credit report. AG ¶¶ 16(a) and 16(b) apply.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

⁶The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶ 17(f) applies. Applicant disclosed his delinquent child support debt on his security clearance application. He was not aware of the two judgments. The two judgments were served on an address he had already vacated. From 2000 to his deployment to Iraq in 2005, Applicant changed addresses eight times, and letters from creditors were not forwarded to him. He did not disclose his other delinquent debts because he was not aware of them. The allegation that he deliberately and intentionally failed to disclose his delinquent debts and two judgments to the Department of Defense is not substantiated.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The whole person factors against reinstatement of Applicant's clearance are significant; however, they do not warrant revocation of his security clearance. Applicant's failure to pay or resolve his just debts in accordance with contracts he signed was not prudent or responsible. He has a history of financial problems. His credit reports listed 18 delinquent debts including two judgments.

The rationale for granting or reinstating Applicant's clearance is more substantial. He was forthright and candid during the investigative and adjudicative process, including completion of his security clearance application, his responses to DOHA interrogatories, his responses to an OPM investigator, and at his hearing about his financial problems. Several problems beyond his control adversely affected his financial status including unemployment and underemployment. He paid 11 debts. Three of the SOR debts related to student loans and one SOR debt related to his child support, which are now in current payment plans. Three debts are disputed. I am confident he will keep his promise to pay his delinquent debts and maintain his financial responsibility. The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable

plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

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

Applicant is 36 years old. He has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. His financial problems were caused by unemployment or underemployment, rather than by misconduct or irresponsible spending. Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain a stable financial situation. Clearly, he could have acted more aggressively to resolve his debts after receiving employment with a government contractor in September 2007. There is, however, simply no reason not to trust him. Moreover, he has established a “meaningful track record” of debt re-payment.

Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service to the Department of Defense as a contractor and when he was on active duty in the Army. He has served more than four years in combat zones in Iraq and Afghanistan as a contractor. He has risked his own life to support Department of Defense missions in those countries. Character witnesses described Applicant as highly professional and diligent. Their evaluations document his solid work performance and good character. He is an important asset to his corporation. His security clearance application does not list any other reportable incidents involving illegal drugs, alcohol, the police, or courts.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the financial considerations and personal conduct security concerns. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a to 1.r:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a to 2.c:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge