



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-02499  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

May 4, 2011

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists 18 delinquent debts totaling \$168,493. In August 2006, Applicant filed his federal and state income tax returns for 2000, 2001, 2002, 2003, 2004, and 2005. He owes the Internal Revenue Service (IRS) about \$100,000 and the state tax authorities about \$40,000. He paid six SOR debts; however, he did not make sufficient progress resolving his other SOR debts. Financial considerations security concerns are not mitigated, and eligibility for access to classified information is denied.

**Statement of the Case**

On October 18, 2005, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86). (GE 1) On November 30, 2010, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (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 December 22, 2010, Applicant responded to the SOR and requested a hearing. (HE 3) On February 11, 2011, Department Counsel indicated she was ready to proceed on Applicant's case. On February 2, 2011, DOHA assigned Applicant's case to me. On March 10, 2011, Applicant's hearing was held. At the hearing, Department Counsel offered 11 exhibits (GE 1-11 and HE 4, a demonstrative exhibit) (Tr. 18), and Applicant offered 61 pages of documentation. (Tr. 20; pg. 1-61) There were no objections, and I admitted GE 1-11 and pg. 1-61. (Tr. 18-20) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) After the hearing, Applicant provided 17 additional pages of documents, which were admitted without objection. (pg. 62-79) On April 11, 2011, I received the transcript. I attached tax information to the record from the IRS and Applicant's state of residence. (HE 5, 6)

### **Procedural Ruling**

Department Counsel made a motion to withdraw SOR ¶ 1.j because it was encompassed or included in SOR ¶ 1.f. (Tr. 15) Applicant did not object, and I granted Department Counsel's motion. (Tr. 15-16)

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted the debts in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.g, 1.k, 1.m, 1.n, and 1.r. He denied several debts because they were paid, duplications, or disputed. He also provided extenuating or mitigating information about his financial situation and all of his SOR debts. His admissions are accepted as factual findings.

Applicant is a 51-year-old employee of a defense contractor. (Tr. 6) He earned a high school diploma in 1977. (Tr. 6-7) He completed 62 college credits towards a bachelor's degree, majoring in information systems management. (Tr. 7) He served in the Air Force from 1977 to 1999 and honorably retired as a master sergeant (E-7). (Tr. 8, 21) He married in 1984, and he was divorced in 1990. (GE 1 at 14) He is not married. (Tr. 66) Although he did not list any children on his 2005 SF 86, he is paying \$500 per month child support for his seven-year-old son. (Tr. 65-67; GE 1)

Applicant held two full time jobs from 1997 until 2002. (Tr. 22) In 2002, he was laid off from one job. (Tr. 23) In 2003, He was rehired, and laid off from the other job.

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

(Tr. 23) In 2004, he was laid off again. (Tr. 23) He was unemployed from June 2004 to January 2005. (Tr. 23) From August 2005 to the present, he has been employed by the same major defense contractor in computer repair. (Tr. 24) From about December 2006 to January 2008, he had a full-time job as a security guard. (Tr. 25-26) His current annual salary is approximately \$51,500. (Tr. 25) He also receives \$1,280 retirement pay for his Air Force active duty service, after \$400 is deducted for his former spouse. (Tr. 25)

## Financial Considerations

On his October 18, 2005 SF 86, Applicant disclosed garnishment of his wages or repossession of his property and one judgment in 2003 for a delinquent credit card in the amount of \$3,000. (GE 1 at 21-23) He also disclosed a delinquent loan for \$2,500, which he said he satisfied in July 2005. (GE 1 at 23-24) He said, “[t]he financial debts incurred because my ex-wife and I agreed to pay certain debts and when we divorced, she did not pay her portion[; however,] I was the person who was the primary on the accounts.” (GE 1 at 25)

Applicant’s SOR listed 18 debts totaling \$168,493 as follows: (a) IRS debt (\$100,436); (b) 2010 state tax lien (\$2,685); (c) 2008 state tax lien (\$2,679); (d) 2007 state tax lien (\$35,057); (e) telephone debt (\$350); (f) judgment for credit card (\$7,001); (g) garnishment for bank debt (\$2,349); (h) collection debt (\$1,502); (i) 2005 state tax lien (\$1,727); (j) collection account for bank debt in 1.f (\$5,109) (withdrawn by Department Counsel); (k) telecommunications debt (\$605); (l) automobile collection debt (\$7,151); (m) collection debt (\$510); (n) collection debt (\$350); (o) telecommunications collection debt (\$99); (p) medical collection debt (\$50); (q) medical collection debt (\$50); and (r) collection debt (\$783).

**SOR ¶ 1.a is an IRS debt for \$100,436—Inadequate Payment Plan.** On August 21, 2006, Applicant filed his tax returns for 2000, 2001, 2002, 2003, 2004, and 2005. (pg. 2-7) All of his tax returns are filed. (Tr. 36) He blamed his “tax guy” for not filing his taxes, and for advising him to keep his exemptions high so that a minimal amount of money was withheld from his salary from one of his jobs. (Tr. 29-31) Without including interest and penalties, his total tax underpayment for those six years was \$43,616. (Tr. 68-70; pg. 2-7)

Tax Year	Adjusted Gross Income	Tax Withheld	Tax Due	Amount Owed
2000	\$97,168	\$7,974	\$20,558	\$13,213
2001	\$81,495	\$4,049	\$17,230	\$13,685
2002	\$65,173	\$3,796	\$13,640	\$10,159
2003	\$65,615	\$4,697	\$8,526	\$3,914
2004	\$54,665	\$3,279	\$5,331	\$2,100
2005	\$53,338	\$4,276	\$4,821	\$545
<b>TOTAL</b>	<b>\$417,454</b>	<b>\$28,071</b>	<b>\$70,106</b>	<b>\$43,616</b>

On March 7, 2010, the IRS rejected Applicant's offer of \$2,400 to settle a total balance due of \$100,437. (Tr. 32-35; GE 10 at 15-16) Applicant appealed the IRS' denial of his compromise offer. (Tr. 34-37) In June 2010, a federal tax lien was filed against him for \$74,000. (Tr. 26-28) He provided 16 money orders payable to the U.S. Treasury as follows: September 18, 2009 (\$100); September 18, 2009 (\$150); November 20, 2009 (\$120); December 18, 2009 (\$120); February 19, 2010 (\$120); March 19, 2010 (\$120); March 19, 2010; April 30, 2010 (\$120); May 28, 2010 (\$120); June 18, 2010 (\$120); July 16, 2010 (\$120); August 27, 2010 (\$120); September 20, 2010 (\$120); October 19, 2010 (\$120); November 20, 2010 (\$120); and January 1, 2011 (\$120) (GE 10 at 17-20; pg. 28, 29, 30, 33).<sup>2</sup> He is consistently paying the IRS \$120 per month, and he believes this is satisfactory to the IRS. (Tr. 37-39) He paid his 2009 federal tax debt in July 2010. (pg. 18, 31, 32) However, he is paying less than two percent of the amount he owes to the IRS, and his payment is insufficient to reduce the principal owes. He is only paying part of the statutory interest on his debt.<sup>3</sup>

**SOR ¶¶ 1.b 2010 state tax lien for \$2,685; 1.c 2008 state tax lien for \$2,679; 1.d 2007 state tax lien for \$35,057; and 1.i 2005 state tax lien for \$1,727—Inadequate Payment Plan.** In 2006, Applicant filed his state tax returns for 2000 to 2006. (Tr. 42) On October 9, 2008, Applicant's state tax authority wrote that his tax liability for 2000 to 2005 and 2007 totals \$43,210. (Tr. 40-41; GE 10 at 22) For 2006, he owes about \$2,600. (Tr. 41; GE 6) Applicant believes the true amount he owes is about \$38,000 because that is the amount of the lien that the state filed. (Tr. 40) He did not owe the state anything for tax years 2008 and 2009, and he had refunds that were due. (Tr. 41-42) The refunds for those years were applied to reduce his tax delinquency. (Tr. 45) In November 2008, he started making \$100 monthly payments. (Tr. 44; pg. 15) He provided 21 money orders for \$100 each dated from November 21, 2008, to November 20, 2010. (pg. 19-25; GE 10 at 23-28) The state accepted Applicant's payments; however, he did not receive any correspondence indicating whether or not his payment plan was acceptable. (Tr. 45) However, he is paying less than four percent of the amount he owes to the state tax authority, and his payment is insufficient to reduce the principal owes. He is only paying part of the statutory interest on his debt.<sup>4</sup>

**SOR ¶ 1.e telephone debt for \$350—Paid.** On December 29, 2010, the creditor wrote and offered to settle the \$350 debt for \$263. On February 18, 2011, Applicant paid this debt using a money order. (Tr. 46-47; pg. 49-50)

**SOR ¶¶ 1.f judgment for credit card for \$7,001 and 1.j collection account for bank debt in 1.f for \$5,109—Unresolved.** The debt in 1.j was included in the judgment

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<sup>2</sup> Several of the amounts or dates on the money orders Applicant provided in response to DOHA interrogatories are not legible. (GE 10)

<sup>3</sup> The IRS charged four percent interest throughout 2010, three percent from January 1, 2011 to March 31, 2011, and will charge four percent from April 1, 2011 to June 30, 2011. Rev. Rul. 2011-5 at 11, available at <http://www.irs.gov/pub/irs-drop/rr-11-05.pdf>. (HE 5)

<sup>4</sup> The state charged 13 percent interest throughout 2010, and will charge percent for 2011. (State Administrative Release No. 14, revised September 2010 (HE 6))

entered in June 2002 for \$7,001. (Tr. 48, 52; GE 3, 8) On May 14, 2008, the creditor wrote Applicant seeking \$5,109. (Tr. 49; pg. 10-11) On June 1, 2008, Applicant wrote the creditor that his name was incorrect in the correspondence from the collection company. He said he believed it was a sign that the debt was not established because the creditor did not garnish his wages. (Tr. 49-50; pg. 11) Applicant did not contact the original creditor about the debt. (Tr. 51) The debt was on his March 2009 credit report and did not appear on his February 24, 2011 credit report. (Tr. 52) Applicant indicated the debt fell off the credit report, and he had not done anything to resolve it. (Tr. 52)

**SOR ¶ 1.g garnishment for bank debt for \$2,349—Paid.** In 2002, this debt became delinquent. (GE 11 at 4) On December 28, 2010, he satisfied the judgment. (Tr. 53; pg. 9)

**SOR ¶ 1.h collection debt for \$1,502—Disputed.** Applicant disputed this debt, and on June 5, 2008, it was removed from his Equifax credit report. (Tr. 53-54; GE 4 at 9, 11; pg. 34)

**SOR ¶ 1.k telecommunications debt for \$605—Unresolved.** On March 1, 2011, Applicant wrote the creditor and asked the creditor to establish the authenticity of the debt. He has not received a response from the creditor. (Tr. 55; pg. 35) He promised to pay the debt, if the creditor could validate his responsibility for it. (Tr. 55)

**SOR ¶ 1.l automobile collection debt for \$7,151—Disputed.** In 2002, Applicant's BMW was repossessed; however, the vehicle was damaged. (Tr. 55-56) He owed \$4,180 on the debt. (Tr. 57; pg. 40; GE 4, 9) A law firm took over the collection of the debt, and Applicant asked the law firm for proof of the sale at auction. (Tr. 56) On February 1, 2011, the law firm ceased collection efforts; however, the law firm indicated another collection company may contact Applicant. (Tr. 56-58; pg. 39, 40)

**SOR ¶¶ 1.m collection debt for \$510 and 1.n collection debt for \$350 resulted from payday loans—Unresolved.** Applicant admitted borrowing the money, which resulted in these two debts. He plans to pay these two debts next. (Tr. 58-59) On February 23, 2011, he wrote the creditor that he was willing to pay the debts, if the collection company was still collecting them. (pg. 46)

**SOR ¶ 1.o telecommunications collection debt for \$99—Paid.** On June 26, 2009, Applicant paid the debt with a money order. (Tr. 59-60; pg. 53)

**SOR ¶¶ 1.p 1.q two medical collection debts for \$50 each—Paid.** On April 2010, Applicant paid the creditor. (Tr. 60-61; pg. 54-57)

**SOR ¶ 1.r collection debt for \$783—Paid.** Around 2001 to 2003, the debt became delinquent. (Tr. 62) On February 11, 2011, Applicant paid \$195 to the creditor and resolved the debt. (Tr. 61-62; pg. 44)

Applicant's personal financial statement (PFS) shows net monthly income of \$4,344, monthly expenses of \$3,141, monthly debt payments of \$1,053, and a monthly

remainder of \$150. (Tr. 62-66; GE 10 at 12) His remainder is now increased by \$75 because he has paid off one of his debts. (Tr. 62-66; GE 10 at 12) However, his child support is indicated on his PFS to be \$500, and a court order shows it may be \$981 per month. (pg. 41; GE 10 at 12)

According to an August 11, 2005 court order, Applicant's child support for his son was \$639 per month, and an arrearage of \$1,078 was assessed. (pg. 42, 43) According to a March 14, 2008 court order, Applicant's child monthly support for his son was \$981, and an arrearage of \$827 was assessed. (pg. 41) He said his child support and car payments are current. (Tr. 64-65; pg. 41-43)

Applicant satisfied a 2002 non-SOR judgment owed to a department store on June 17, 2010. (pg. 8, 28) The \$9,412 non-SOR debt was paid through a garnishment. (GE 11 at 28) He paid a non-SOR collection debt in April 2008. (pg. 47, 48) On April 29, 2009, he settled a non-SOR telecommunications debt for \$353 by paying \$124. (pg. 51-52)

In sum, Applicant's tax debts resulted from his failure to timely file his taxes, and not withholding sufficient funds to pay his taxes when due. He currently owes about \$140,000 to state and federal tax authorities. (SOR ¶¶ 1.a-1d, 1.i) His payments to the tax authorities are insufficient to fully address the statutory interest on the principal of his tax debts. He provided insufficient evidence to show a dispute or payment plan for four debts. (SOR ¶¶ 1.f, 1.k, 1.m, and 1.n) He paid six debts. (SOR ¶¶ 1.e, 1.g, 1.o, 1.p, 1.q, and 1.r) He disputed two debts. (SOR ¶¶ 1.h and 1.l) One debt was a duplication of the debt in SOR ¶ 1.f. (SOR ¶ 1.j)

## **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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 about 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 (4<sup>th</sup> 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).

### **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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts”; “(c) a history of not meeting financial obligations”; and “(g) failure to file annual Federal, state, or local income tax returns as required . . . .” 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, SOR response, and his statement at his hearing. Applicant’s SOR lists 18 delinquent debts totaling \$168,493. In August 2006, Applicant filed his federal and state income tax returns for 2000, 2001, 2002, 2003, 2004, and 2005. He owes the IRS about \$100,000 and the state tax authority about \$40,000. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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.



None of the mitigating conditions fully apply. Applicant has a good understanding of how to resolve his debts. However, he did not establish “there are clear indications that the problem is being resolved or is under control.” He acted in good faith with respect to the six SOR debts that he paid: 1.e (\$350); 1.g (\$2,349 through garnishment of part of his salary);<sup>5</sup> 1.o (\$99); 1.p (\$50); 1.q (\$50); and 1.r (\$783). He also paid several other non-SOR debts, and his child support and car payments are current. However, he did not establish that he acted in good faith<sup>6</sup> in regard to his state and federal tax debts, which are approximately \$140,000 and several other unresolved debts. He is making monthly payments of \$100 to the state and \$120 to the IRS. Applicant has not established that he is paying the interest on the tax debts as his annual payment of \$2,640 is less than two percent of \$140,000. Applicant had some periods of unemployment until he received his current employment in 2005, and underemployment when he lost his second job. Unemployment and underemployment are conditions largely beyond his control; however, he did not prove that he acted responsibly under the circumstances. His failure to file his tax returns and to withhold sufficient funds from his monthly paychecks to pay his taxes was irresponsible, and it caused most of his delinquent debt. He failed to take action to resolve several other SOR debts.

Applicant did not make sufficient effort to maintain contact with the IRS and state tax authorities from 2000 to 2006, and he has not adequately addressed several large debts.<sup>7</sup> As to the debts in SOR ¶¶ 1.f (\$7,001), 1.k (\$605), 1.m (\$510), and 1.n (\$350), there is insufficient evidence to establish Applicant is engaged in an ongoing effort to maintain contact with these creditors and resolve these four debts. Applicant is credited under AG ¶ 20(e) with disputing the allegations in SOR ¶¶ 1.h (\$1,502) and 1.l (\$7,151).

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<sup>5</sup>See ISCR Case No. 08-06059 at 6 (App. Bd. Sept. 21, 2009) (indicating involuntary payment of debts through garnishment is not necessarily mitigating).

<sup>6</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) 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)).

<sup>7</sup>“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.

Although it is possible the debt in SOR ¶ 1.I will resurface with a different collection agent, at this time the debtor holding the debt is unknown.

Applicant has not provided enough evidence to establish that his delinquent debt is unlikely to recur. His track record of financial responsibility shows insufficient effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations concerns.

### **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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his access to classified information. Applicant is a 51-year-old employee of a defense contractor. He completed 62 college credits towards a bachelor's degree, majoring in information systems management. He served in the Air Force from 1977 to 1999 and honorably retired as a master sergeant. He is not married. He is making monthly \$500 child support payments for his seven-year-old son, and his child support is current.

Applicant held two full time jobs from 1997 until 2002. From 2002 to 2005, he was laid off from one job or the other or both. He was unemployed from June 2004 to January 2005. From August 2005 to the present, he has been employed by the same major defense contractor in computer repair, and from about December 2006 to January 2008, he had a full-time job as a security guard. His unemployment and underemployment from 2002 to present adversely affected his financial circumstances.

Applicant is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor and during his years of active duty Air Force service. There is every indication that he is loyal to the United States and his employer. There is no evidence that he abuses alcohol or uses illegal drugs. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial. His SOR lists 18 delinquent debts totaling \$168,493. In August 2006, he filed his federal and state income tax returns for 2000, 2001, 2002, 2003, 2004, and 2005. He did not provide a credible explanation for his failure to timely file tax returns and his under withholding of his tax payments from 2000 to 2005. He owes the IRS about \$100,000 and state tax authorities about \$40,000. He is paying the tax authorities \$220 per month, which is unlikely to fully address interest requirements on these two large tax debts. He cannot be fully credited with paying the debt in SOR ¶ 1.g (\$2,349) because it was paid through garnishment. He paid five other SOR debts; however, the total resolved is only \$1,332. He paid some non-SOR debts; however, he failed to make sufficient progress resolving his SOR debts. Financial considerations security concerns are not fully mitigated at this time.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are not mitigated. Eligibility for access to classified information 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
Subparagraphs 1.a to 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant (withdrawn-duplication)
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m and 1.n:	Against Applicant
Subparagraphs 1.o to 1.r:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

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MARK HARVEY  
Administrative Judge