



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-03236  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

May 12, 2010

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On December 22, 2008, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing version of a Security Clearance Application (e-QIP).<sup>1</sup> On July 14, 2009, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on August 27, 2009.<sup>2</sup> On November 25, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and

<sup>1</sup> Government Exhibit 1 (e-QIP), dated December 22, 2008.

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated August 27, 2009).

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

Applicant acknowledged receipt of the SOR on December 14, 2009. In a sworn, written statement, dated January 13, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 24, 2010, and the case was assigned to me on March 9, 2010. A Notice of Hearing was issued on March 18, 2010, and I convened the hearing, as scheduled, on April 20, 2010.

During the hearing, four Government exhibits and eight Applicant exhibits were admitted into evidence, without objection. Applicant and one other witness testified. On April 27, 2010, despite the fact that the record had previously closed, Applicant submitted two additional exhibits that were also admitted into evidence, without objection. The transcript (Tr.) was received on April 29, 2010.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted two of the factual allegations (¶¶ 1.d. and 1.e.) of the SOR, and denied the remaining allegations (¶¶ 1.a. through 1.c., and 1.f.).

Applicant is a 55-year-old employee of a defense contractor, currently serving as a communications technician,<sup>3</sup> and he is seeking to obtain a security clearance. He had previously held a security clearance during 1974 – 1977, while serving on active duty with the U.S. Army.<sup>4</sup>

Applicant has been married four times. He married his first wife in August 1974, and they were divorced in January 1984. He married his second wife in March 1984, and they were divorced in March 1990. He married his third wife in November 1991, and they were divorced in March 2000. He married his fourth and current wife in November 2001.<sup>5</sup> He has a number of children and step-children.<sup>6</sup>

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<sup>3</sup> Tr. at 24.

<sup>4</sup> *Id.* at 22; Government Exhibit 1, *supra* note 1, at 35-36; Applicant Exhibit A (Report of Separation From Active Duty (DD Form 214), dated February 28, 1977).

<sup>5</sup> Government Exhibit 1, *supra* note 1, at 21-25.

<sup>6</sup> *Id.*

## Financial Considerations

Applicant was initially a senior systems engineer (at one point earning \$75,000 per year)<sup>7</sup> and subsequently a safety engineer with a large international automotive manufacturing company from June 1988 until March 2002.<sup>8</sup> In 2001, he sustained a shoulder injury in a non-work related accident which necessitated two surgeries.<sup>9</sup> When his car was rear-ended in another accident, he sustained additional shoulder damage, necessitating two more surgeries.<sup>10</sup> Because of the extensive time lost during recovery from his surgeries and anticipated surgeries, Applicant's employer terminated him.<sup>11</sup> Although he was unemployed from March 2002 until December 2004,<sup>12</sup> he continued to receive \$40,000 per year - a significant percentage of his former salary - as part of his long-term disability benefits.<sup>13</sup>

In October 2002, Applicant relocated from an upper Midwestern state to a Southeastern state.<sup>14</sup> In 2003, his wife got homesick, and they returned to their original home state where they purchased a residence for \$178,000, with \$15,000 down and the remainder financed, with a monthly mortgage payment of \$1,100 to \$1,200.<sup>15</sup> Two years later, she again became homesick, and they relocated again to the Southeastern state where they purchased a residence for \$300,000, with a monthly mortgage payment of \$1,400.<sup>16</sup> A little over a year before the hearing, Applicant was unable to maintain his monthly payments on his home in the Southeastern state, and, threatened with foreclosure, he sold it at a short sale, sustaining an unspecified loss described as "huge."<sup>17</sup>

Applicant returned to the workforce in December 2004, and held a variety of positions with several different employers, and went through a two-month period of unemployment during November-December 2008,<sup>18</sup> before accepting a position with his

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<sup>7</sup> Tr. at 38.

<sup>8</sup> Government Exhibit 1, *supra* note 1, at 19.

<sup>9</sup> Government Exhibit 2 (Applicant's Response to Interrogatories, dated August 27, 2009), at 1.

<sup>10</sup> *Id.*

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

<sup>12</sup> Government Exhibit 1, *supra* note 1, at 18.

<sup>13</sup> Tr. at 30-31.

<sup>14</sup> Government Exhibit 1, *supra* note 1, at 11.

<sup>15</sup> Tr. at 82-83.

<sup>16</sup> *Id.* at 83-85.

<sup>17</sup> *Id.* at 87-88.

<sup>18</sup> Government Exhibit 1, *supra* note 1, at 14.

current employer as an electronics technician in December 2008.<sup>19</sup> In 2009, he earned \$57,300.<sup>20</sup>

There was nothing unusual about Applicant's finances until he was first injured in 2001.<sup>21</sup> According to Applicant, until that time, his credit history was excellent.<sup>22</sup> When he was injured, "things started to snowball out of control, . . . [a]nd it has just steadily [went] downhill from there. . . [a] little bit at a time, but it happened all the same."<sup>23</sup> In March 2008, Applicant's wife starting having serious health-related problems, leading to several surgical procedures.<sup>24</sup> Their combined medical problems depleted their savings.<sup>25</sup>

The SOR identified six purportedly continuing delinquencies as reflected by credit reports from 2008 and 2009, totaling approximately \$55,794. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agent name or under a different creditor or collection agent name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

The account set forth in SOR ¶ 1.a. is a 2004 judgment in the amount reported to be \$4,826,<sup>26</sup> stemming from unpaid rent on a lot upon which Applicant's home stood.<sup>27</sup> Applicant rented the lot in 2000 when he purchased his "manufactured" home.<sup>28</sup> His rent payments were current when he relocated, and for a period thereafter, but on occasion he did not send in the full payment.<sup>29</sup> He tried to balance out his payments, and sometimes paid \$300 and other times paid \$500.<sup>30</sup> Applicant claims he voluntarily

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<sup>19</sup> *Id.* at 13-18.

<sup>20</sup> Tr. at 26.

<sup>21</sup> *Id.* at 129.

<sup>22</sup> Government Exhibit 2, *supra* note 9, at 1.

<sup>23</sup> Tr. at 129.

<sup>24</sup> Government Exhibit 2, *supra* note 9, at 1-2.

<sup>25</sup> Tr. at 129.

<sup>26</sup> Government Exhibit 3 (Combined Experian, Trans Union, and Equifax Credit Report, dated December 31, 2008), at 5. Contrary information as to the date of the action and the amount owed also appears in Government Exhibit 4 (Equifax Credit Report, dated November 6, 2009), at 1, wherein it appears that the original unpaid balance may have been \$1,308, and an increased balance as of September 2009, was \$2,878.

<sup>27</sup> Government Exhibit 2 (Applicant's Personal Interview, dated February 17, 2009), at 2.

<sup>28</sup> *Id.*

<sup>29</sup> Tr. at 44.

<sup>30</sup> *Id.* at 45.

returned the home to the lender, and was advised that the rent would be paid until the home was sold.<sup>31</sup> It apparently was not, and the unpaid balance grew. In 2004, long after Applicant and his wife had relocated, the creditor filed a complaint against Applicant in a local county circuit court, and obtained a judgment in the amount of about \$3,500.<sup>32</sup> Upon learning of the judgment, on February 2, 2004, Applicant paid the creditor \$3,519,<sup>33</sup> and Applicant claims he was told by the manager at the creditor that the judgment had been dismissed.<sup>34</sup> A receipt of that payment was subsequently acknowledged by a debt collector for the creditor with a note that the account was considered “paid in full.”<sup>35</sup>

The account set forth in SOR ¶ 1.b. is purportedly a delinquent account with the same creditor as in SOR ¶ 1.a., in the amount of \$2,878.<sup>36</sup> The account, with an initial amount of \$2,628, was listed in the credit report in August 2003, and reported in September 2009.<sup>37</sup> The debt collector is the same one as in SOR ¶ 1.a., and the file number is identical.<sup>38</sup> It appears that the “account” listed separately in the credit report is actually an intermediate report for the account reflected in SOR ¶ 1.a. As noted above, a receipt of the February 2004 payment was subsequently acknowledged by the debt collector for the creditor with a note that the account was considered “paid in full.”<sup>39</sup>

The account set forth in SOR ¶ 1.c. is purportedly a delinquent account with the same creditor as in SOR ¶¶ 1.a. and 1.b., in the amount of \$2,628.<sup>40</sup> The account, with an initial amount of \$1,308, was listed in the credit report in August 2003, and reported in February 2004.<sup>41</sup> The debt collector is not the same one as in SOR ¶¶ 1.a. and 1.b., but the file number is identical.<sup>42</sup> It appears that the “account” listed separately in the credit report is actually another intermediate report for the account reflected in SOR ¶¶ 1.a. and 1.b. As noted above, a receipt for the February 2004 payment was

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<sup>31</sup> *Id.* at 47, 62.

<sup>32</sup> Government Exhibit 2, *supra* note 27, at 1; Government Exhibit 1, *supra* note 1, at 44.

<sup>33</sup> Government Exhibit 2 (Official Check, dated February 2, 2004).

<sup>34</sup> Tr. at 103.

<sup>35</sup> Applicant Exhibit J (Facsimile from Debt Collector, dated April 21, 2010).

<sup>36</sup> Government Exhibit 4 (Equifax Credit Report, dated November 6, 2009), at 1.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Applicant Exhibit J, *supra* note 35.

<sup>40</sup> Government Exhibit 4, *supra* note 36, at 1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

subsequently acknowledged by the debt collector for the creditor with a note that the account was considered “paid in full.”<sup>43</sup>

The account set forth in SOR ¶ 1.d. is a collection account with Discover Financial Services on a Discover Card account opened in 1994.<sup>44</sup> Applicant used the card primarily for emergencies and food.<sup>45</sup> The credit limit was \$1,500,<sup>46</sup> In November 2009, the account balance had risen to \$2,139, with a past due balance of \$133.<sup>47</sup> Applicant initially admitted the allegation, and explained the delinquency was caused because he was unable to make the payments due to his wife's medical costs.<sup>48</sup> He claimed to have made the required monthly payments each month until he called the creditor to inform them of a “hardship” situation, at which time his monthly payments were reduced to about \$44.<sup>49</sup> He contends he made his reduced monthly payments for about one year before stopping them four months prior to the hearing.<sup>50</sup> He has not submitted any documentation to support his contentions regarding payments.

Applicant also stated the card number was fraudulently used by someone, and he was advised that the account had been closed by the creditor.<sup>51</sup> He has not submitted any documentation to support the allegation of fraudulent use. He claimed he no longer receives monthly statements, and has no idea what his unpaid balance might be,<sup>52</sup> but acknowledged that the creditor had offered to reduce the outstanding balance if Applicant made an immediate \$500 payment.<sup>53</sup> The offer was declined. Applicant plans to resolve this delinquent account some time in the future by filing for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.<sup>54</sup>

The account set forth in SOR ¶ 1.e. is a collection account through CitiBank South Dakota (CBSD), the issuer of a Sears Card account opened in 1996.<sup>55</sup> Applicant

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<sup>43</sup> Applicant Exhibit J (Facsimile from Debt Collector, dated April 21, 2010).

<sup>44</sup> Government Exhibit 3, *supra* note 26, at 12.

<sup>45</sup> Tr. at 65-66.

<sup>46</sup> Government Exhibit 3, *supra* note 26, at 12; Government Exhibit 4, *supra* note 36, at 1.

<sup>47</sup> *Id.*

<sup>48</sup> Applicant's Answer to SOR, dated January 13, 2010, at 1.

<sup>49</sup> Tr. at 66-68.

<sup>50</sup> *Id.* at 68-69.

<sup>51</sup> *Id.* at 66.

<sup>52</sup> *Id.* at 67.

<sup>53</sup> *Id.* at 68.

<sup>54</sup> *Id.* at 64, 69.

<sup>55</sup> Government Exhibit 4, *supra* note 36, at 2.

used the card to purchase a range and refrigerator.<sup>56</sup> The credit limit was \$3,320.<sup>57</sup> In November 2009, the account balance had risen to \$3,782, and it was charged off.<sup>58</sup> Applicant initially admitted the allegation, and explained the delinquency was caused because he was unable to make the payments due to his wife's medical costs.<sup>59</sup> As with his Discover Card, he claimed to have made the required monthly payments each month until he called the creditor to inform them of a "hardship" situation, at which time his monthly payments were reduced to about \$33.<sup>60</sup> He contends he made his reduced monthly payments for about one year before stopping them five or six months prior to the hearing.<sup>61</sup> He has not submitted any documentation to support his contentions regarding payments. Applicant plans to resolve this delinquent account some time in the future by filing for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.<sup>62</sup>

The account set forth in SOR ¶ 1.f. is a collection account obtained from the original creditor by Green Tree Servicing, LLC (Green Tree), on a home mortgage loan for a "manufactured" home that Applicant purchased some time in 2000.<sup>63</sup> The original purchase price was \$60,000 to \$62,000.<sup>64</sup> Applicant estimated he paid the original mortgage holder between \$750 and \$800 per month before the account became delinquent after he relocated.<sup>65</sup> Applicant claims that when he relocated in October 2002, he enlisted the services of an agent to sell his manufactured home. He received three offers, but the original mortgage holder rejected them. He contacted the original mortgage holder directly and was purportedly advised to voluntarily relinquish the home to them because of better avenues to sell the property. In return, he was advised that once it was sold, he would not be responsible for any deficiency. He accepted the offer and voluntarily returned the home to the lender.<sup>66</sup>

In about 2003 or 2004, Applicant claims he was contacted by Green Tree and informed the original mortgage holder had gone bankrupt and Green Tree had taken

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<sup>56</sup> Tr. at 70.

<sup>57</sup> Government Exhibit 3, *supra* note 26, at 18; Government Exhibit 4, *supra* note 36, at 2.

<sup>58</sup> *Id.*

<sup>59</sup> Applicant's Answer to SOR, *supra* note 48, at 1.

<sup>60</sup> Tr. at 70-71.

<sup>61</sup> *Id.* at 71-72.

<sup>62</sup> *Id.* at 64.

<sup>63</sup> *Id.* at 41.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 56-59.

<sup>66</sup> Government Exhibit 2, *supra* note 27, at 1-2; Applicant's Answer to SOR, *supra* note 48, at 1; Tr. at 57, 59-62.

over the account.<sup>67</sup> Green Tree reviewed the arrangement and disavowed it, telling Applicant the arrangement was no longer valid. Green Tree demanded the difference between the balance of the original lien note of the home and the selling price.<sup>68</sup> Green Tree reported the deficiency to be \$42,867, and that amount was eventually charged off to profit and loss.<sup>69</sup> Applicant spoke to a representative of Green Tree only one time and found him “extremely rude.”<sup>70</sup> He subsequently disputed the characterization of the transaction as “involuntary,” but was apparently unsuccessful as that characterization remains in his most recent credit report.<sup>71</sup> Applicant no longer possesses any documentation related to the entire transaction,<sup>72</sup> and was unable to furnish any documentation to support his contentions. He has had no contact with Green Tree since approximately 2004.<sup>73</sup> Applicant plans to resolve this delinquent account some time in the future by filing for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.<sup>74</sup>

In August 2009, Applicant submitted a personal financial statement indicating monthly net income of \$2,496, monthly expenses of \$1,989, no monthly debt payments on any delinquent accounts, and a net remainder of \$507 available for discretionary spending.<sup>75</sup> Applicant’s wife does not work outside their home, but she does receive child support payments on an irregular, periodic basis.<sup>76</sup> She received \$200 two weeks prior to the hearing.<sup>77</sup> Applicant acknowledged he never received financial counseling or debt consolidation guidance.<sup>78</sup> He also contended he was current on all financial obligations and would not have any delinquencies in the future.<sup>79</sup> Nevertheless, during the hearing, he admitted that in addition to the SOR delinquencies, his J.C. Penney account, several medical accounts, and two of his wife’s credit cards are delinquent.<sup>80</sup>

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<sup>67</sup> *Id.* Government Exhibit 2, at 2 (“in approximately 2003”); *Id.* Applicant’s Answer to SOR, at 1 (“two years later”).

<sup>68</sup> *Id.* Applicant’s Answer to SOR.

<sup>69</sup> Government Exhibit 3, *supra* note 26, at 15; Government Exhibit 4, *supra* note 36, at 3.

<sup>70</sup> Tr. at 61.

<sup>71</sup> *Id.* at 60-61; Government Exhibit 4, *supra* note 36, at 3.

<sup>72</sup> Government Exhibit 2, *supra* note 27, at 2.

<sup>73</sup> *Id.*

<sup>74</sup> Tr. at 63-64.

<sup>75</sup> Applicant’s Personal Financial Statement, dated August 28, 2009, attached to Government Exhibit 2, *supra* note 2.

<sup>76</sup> Tr. at 72, 89.

<sup>77</sup> *Id.* 74.

<sup>78</sup> Government Exhibit 2, *supra* note 27, at 3.

<sup>79</sup> *Id.*

<sup>80</sup> Tr. at 92, 104-105, 110-111.



Applicant has already paid his bankruptcy attorney \$275, and as soon as he accumulates the remainder of the \$1,000 retainer, he and his wife intend to file for joint bankruptcy.<sup>81</sup>

## Character and Employment References

Despite his financial delinquencies, Applicant's performance has apparently not suffered. His immediate supervisor states Applicant is a "great asset to the operations here, is always on time, has a great attitude, and fits in well with his coworkers."<sup>82</sup> The site manager for the prime contractor characterized him as "intelligent and motivated," as well as "reliable and dependable."<sup>83</sup> Other coworkers refer to him in the following terms: dependable, reliable, trustworthy, honest, and forthright. In July 2009, Applicant was elected to the position of shop steward for his union's local.<sup>84</sup>

## 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."<sup>85</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>86</sup>

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The

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<sup>81</sup> *Id.* at 72, 112.

<sup>82</sup> Applicant Exhibit E (Letter from immediate supervisor, undated).

<sup>83</sup> Applicant Exhibit C (Letter from site manager for the prime contractor, dated March 4, 2010).

<sup>84</sup> Applicant Exhibit D (Letter from union president and directing business representative, dated April 14, 2010).

<sup>85</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>86</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>87</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>88</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>89</sup>

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."<sup>90</sup> 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. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>87</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>88</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>89</sup> *Egan*, 484 U.S. at 531

<sup>90</sup> See Exec. Or. 10865 § 7.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Also, under AG ¶ 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis," is potentially disqualifying. As noted above, there was nothing unusual about Applicant's finances until about 2001, when he sustained his initial injury. Prior to that injury, he had a great job, earning up to \$75,000 per year, and his credit history was excellent. After the injury, his finances went steadily down hill and out of control. Additional injuries eventually resulted in a job loss and unemployment from March 2002 until December 2004. Thereafter, accounts became delinquent and were sent to collection, some were charged off, and one went to judgment. He relocated several times between two geographically distant states, each time incurring relocation expenses and associated costs. Despite promises to pay certain accounts,<sup>91</sup> and claims to have paid others, with the exception of one creditor, he has failed to keep his bills current. Except for the allegation pertaining to the judgment, he has not submitted any documentation to support his contentions regarding payments supposedly made or accounts supposedly disputed. As soon as he accumulates the remainder of the attorney retainer, Applicant and his wife intend to file for joint bankruptcy and seek discharge of his financial delinquencies. AG ¶¶ 19(a), 19(c), and 19(e) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of

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<sup>91</sup> 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)).

employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”<sup>92</sup> Also, AG ¶ 20(e) may apply where “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

Applicant’s financial problems commenced when he was initially injured in 2001, eventually reinjured, and terminated by his employer in March 2002. His injuries, along with his wife’s medical problems, led to his financial problems which were, in turn, exacerbated by his two periods of unemployment (March 2002 to December 2004, and November to December 2008), and the expenses associated with his multiple relocations. Because the financial situation is continuing in nature, despite having initially commenced in 2001, he receives minimal application of AG ¶ 20(a). His physical limitations were eliminated long ago, and his wife’s health issues were a major focus of attention in the past, but a lesser consideration now. While the health issues are unlikely to recur, Applicant’s handling of his finances, under the circumstances, does cast doubt on his current reliability, trustworthiness, or good judgment.

Likewise, he receives minimal application of AG ¶ 20(b), for while the conditions that resulted in the financial problem were largely initially beyond Applicant’s control (e.g., loss of his employment and his and his wife’s unexpected medical emergencies), Applicant failed to act responsibly under the circumstances. While unemployed from March 2002 until December 2004, Applicant continued to earn \$40,000 per year as part of his long-term disability benefits. And, rather than consolidating and minimizing expenses, he relocated from the upper Midwest to the Southeast, back to the upper Midwest, and eventually back to the Southeast. Relocation expenses and purchasing ever more expensive residences simply increased his expenditures and did little to reduce his delinquencies.<sup>93</sup> AG ¶ 20(c) does not apply because Applicant has never

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<sup>92</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 [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>93</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

received financial counseling or debt consolidation guidance, but it is anticipated that his bankruptcy will include counseling.

AG ¶ 20(d) only partially applies because Applicant initiated a good-faith effort to repay the one judgment-creditor in February 2004, well before the SOR was issued. By paying off that judgment, Applicant effectively resolved three duplicate SOR allegations (SOR ¶¶ 1.a. through 1.c.). Thereafter, he abandoned all such efforts. Applicant did not act aggressively, timely, or responsibly to resolve his remaining delinquent debts. Instead, he declared his intentions to contact his creditors and eliminate his debts or work out payment arrangements. At times he claimed he had already made payments to several creditors, but he was unable to furnish any documentary evidence to support his contentions. Although he denied other delinquent debts, in reality, there are other delinquent non-SOR debts. He chose to dispute the Discover Card and Green Tree debts, and he failed to provide documentation establishing any reasonable basis to dispute the legitimacy of those debts. Applicant failed to establish any type of repayment plan when he could have done so. Instead, he delayed and disputed. Moreover, since 2004, it appears he has taken no significant actions to address the satisfaction of his delinquent debts.<sup>94</sup> AG ¶ 20(d) has very limited application. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

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

<sup>94</sup> The Appeal Board has previously held that "[A] applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim" he or she initiated a good-faith effort to repay creditors or otherwise resolve debts. ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

There is some evidence in favor of mitigating Applicant's conduct. When these problems first began, Applicant had a great job, earning up to \$75,000 per year, and his credit history was excellent. After his initial injury, his finances went steadily down hill and out of control. Additional injuries eventually resulted in a job loss and unemployment from March 2002 until December 2004. And his wife experienced severe health issues. He initiated a good-faith effort to repay the one judgment-creditor in February 2004, well before the SOR was issued. By paying off that judgment, Applicant effectively resolved three duplicative SOR allegations.

The disqualifying evidence under the whole-person concept is more substantial. While the unemployment and reduced earnings were initially circumstances beyond his control, Applicant continued to obtain services and goods from a variety of creditors, but either had no ability or intention to pay for them. As a result, he continued to accumulate delinquent debt and did not pay his older debts. Even while unemployed, Applicant continued to receive \$40,000 per year as part of his long-term disability benefits. He has been gainfully employed since December 2004 (with the brief exception of two months in 2008). Nevertheless, since February 2004, with the exceptions described above, he did not make significant good-faith efforts to pay a variety of delinquent debts. He established no repayment plans. Instead, he made a number of promises, claimed to have paid several creditors, and disputed several debts. Now, rather than paying off his debts or working out payment arrangements, he has decided to seek bankruptcy discharge of his debts. His failure to repay creditors or to arrange payment plans, while creating new debts, reflects traits which raise concerns about his fitness to hold a security clearance.

Of course, the issue is not simply whether all his debts are resolved or at least under repayment arrangements; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>95</sup> The insufficient good-faith efforts or evidence to reflect actual payments are sufficient to raise continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>96</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has " . . . established a plan to

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<sup>95</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>96</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

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

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge