DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 09-03354
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: *Pro Se*

February 24, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed one delinquent debt for $25,336. He admitted he borrowed about $3,000 from the creditor; however, he disputed the amount of his debt. He offered $200 to settle the debt. He did not take sufficient actions to address or resolve his SOR debt. Financial considerations concerns are not mitigated, and eligibility for access to classified information is denied.

Statement of the Case

On January 15, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (GE 1). On October 9, 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 Guideline F (financial considerations) (Hearing Exhibit (HE) 2).[1] 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 October 30, 2009, Applicant responded to the SOR (HE 3). On December 22, 2009, Department Counsel indicated she was ready to proceed on his case. On January 4, 2010, DOHA assigned Applicant's case to me. On January 7, 2010, DOHA issued a hearing notice (HE 1). On January 27, 2010, Applicant's hearing was held. At the hearing, Department Counsel offered six exhibits (GE 1-6) (Tr. 25-26), and Applicant offered two exhibits (Tr. 27; AE A-B). There were no objections, and I admitted GE 1-6 (Tr. 26), and AE A-B (Tr. 27-28). Additionally, I admitted the hearing notice, SOR, and response to the SOR as hearing exhibits (HE 1-3). On February 3, 2010, I received the transcript. I held the record open until February 12, 2010, to permit Applicant to provide additional documentation (Tr. 76, 80, 102). On February 12, 2010, I received seven exhibits from Applicant (AE C-I). Department Counsel did not object (HE 4), and AE C-I were admitted into evidence that same day.

Findings of Fact[2]

Applicant's SOR response admitted that he had an account with creditor C, and that he borrowed or charged "approximately $3,000" (HE 3). However, he denied that he owed the creditor anything because he paid the $3,000 he owed. He objected to the charges and interest which increased the debt to over $25,000 (HE 3). He stated:

> [C] had claimed that I owed them about approximately $10,000.00. The correct amount was approximately $3,000.00. [C] never did send me a document showing me where this additional $7K came from. On the advice of [my credit counselor] I stopped paying them in May 2006 after I had paid what I really owed them. Since May 2006 over $20,000.00 has been added by someone to the initial amount [C] had claimed. Your correspondence states $25,336.00 is owed to [P, a collection company]. The collection letter [from N, a successor collector] states $32,694.64 is owed but will take $24,520.98 to close the matter. . . . I am only willing to pay them $200.00 for the sole purpose of immediately expunging my credit report of all negative information so I can have my secret clearance reinstated and obtain a TS clearance.

HE 3.

[1]The SOR was only one page (Transcript (Tr.) 15). The second page of the SOR is missing (Tr. 15).

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

The following admissions from Applicant's SOR response (HE 3) are accepted as findings of fact: (1) Applicant had an account with C (the original creditor); (2) he stopped making payments in May 2006 even though he knew C claimed he owed C thousands of dollars; (3) he received a collection letter from N (a successor collection agent to C) offering to settle the $32,695 debt to C for $24,521; and (4) he is willing to make a $200 counteroffer to settle his debt. Additional findings follow.

Applicant is a 50-year-old information technology contractor (Tr. 5, 8). He has held his current employment since January 2005 (Tr. 8; GE 1). In 1977, he graduated from high school (Tr. 6). He has attended college-level vocational education all of his life, and probably has the equivalent of a bachelors degree (Tr. 6). He married in 1984 and divorced in 1990 (GE 1). He married his spouse in 2004 (GE 1). He does not have any children (GE 1). He has held a Secret security clearance for 10 years (Tr. 8).

Applicant served in the Army from 1984 to 1990 and left active duty as a sergeant (E-5) (Tr. 7-8). He did not serve in any combat zones (Tr. 7). He received an honorable discharge (Tr. 7).

Financial considerations

From October 2003 to December 2004, Applicant was unemployed except for a part-time job in a pizza restaurant during the summer of 2004 (Tr. 28; GE 3). In 2003, Applicant had financial problems when his wife was sick and he lost his business (Tr. 23, 25). His wife had to quit her job with the insurance industry (Tr. 81). From 2005 to 2008, he worked hard and paid all of debts except one (Tr. 23).

In 2002, a credit card was opened in Applicant's name (AE C). Applicant disputed the charges and the disputed account was removed from his credit report (AE C). There is no evidence that any charges were fraudulently added to Applicant's account with C.

Applicant used credit cards to pay business expenses, and he paid three of them (Tr. 54). All three debts were reduced during the settlement process, and they "took off all the exorbitant penalties, and fees" (Tr. 55). He paid a total of about $30,000 to resolve the three credit card accounts (Tr. 55). However, he did not pay one credit card (C) (Tr. 54; SOR ¶ 1.a). His debt to C was his largest credit card debt at the time it became delinquent (Tr. 55).

Applicant opened credit card account C about 14 years ago (Tr. 29-30). After Applicant's hearing he provided two statements from C, dated August 21, 2005, and September 15, 2005, which included the following relevant information: On June 25, 2005, July 6, 2005, July 19, 2005, July 29, 2005, August 2, 2005, and August 15, 2005, Applicant transferred the following sums to a Virginia bank (VB): $1,500; $2,000; $3,000; $4,000; $3,500 and $2,300 (AE E, F).[3]

[3]Applicant wrote some comments on C's statements (AE E, F). He indicated near the payments to VB, "where these charges come from have not been answered??" (AE E) and "This one shows $6,500

Statement Date	Cash Paid to VB	Minimum Payment	Amount Paid	Finance Charges	Balance at Start of Period	Balance at End of Period
Aug. 21, 2005	$6,500	$136	$15.06	$295.77	$15.06	$6,810
Sept. 15, 2005	$9,800	$335	$1,000	$628.36	$6,810	$16,289
Total	$16,300					

In August 2005, the creditor charged a $195 transaction fee on the cash advances (AE F). The annual interest charge was 29.49%; however, the transaction fee pushed the effective annual percentage rate up to 53.82%. In September 2005, the creditor charged a $294 transaction fee on the cash advances (AE E). The annual interest charge was 29.49%; however, the transaction fee pushed the effective annual percentage rate up to 52.84%. Over the 60-day period, he received $16,300 in cash, which was transferred to his VB credit card account. His balance for that 60-day period went from $15.06 to $16,269 (AE E).

Applicant said from October 2003 to May 2006 he made monthly payments to C of about $500 per month (Tr. 68-69). He usually wrote a check for the minimum plus a couple of hundred dollars (Tr. 69). By May 2006, he was paying $1,800 per month (Tr. 68). Applicant's C account was current until May 2006 (Tr. 29, 32-33, 71). Applicant noticed that he owed $16,000 and wondered why he was not making any headway on his debt to C (Tr. 61-62). He telephoned the credit card company, and the person who talked to him was confused and promised to get back to him (Tr. 62). He never received anything in return (Tr. 63). In May 2006, Applicant made his last payment to C based on advice from his credit counselor (Tr. 20, 25, 29, 31, 33; GE 3 at 2).[4] The balance in May 2006 was about $16,000 (Tr. 30). He indicated the current balance was $31,000 (GE 3 at 2). He disputed the amount of the debt (Tr. 20, 25). However, he did not have a copy of the letter disputing the debt (Tr. 39-40). He contended the true debt should be about $3,000 (Tr. 32, 35). He did not offer C $3,000 because, "I paid them way beyond $3,000 I wasn't going to let them – I wasn't going to let them bleed me." (Tr. 45).

Applicant claimed he and his debt resolution company "could not contact them" (Tr. 34). After he stopped making payments, the creditor "just went silent" for three and a half years (Tr. 21, 25, 35). The creditor "went off the radar map" (Tr. 36-37). However, the government's credit reports, dated February 14, 2009, September 14, 2009, and November 24, 2009, all show the identity of the creditor as a well-known collection

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new activity?" (AE F). Another letter from Applicant's debt resolution company, dated November 26, 2007, indicates a settlement agreement from VB for a credit card. It indicates a settlement offer of $6,500 was paid to VB on November 26, 2007, to resolve a $9,100 balance (AE G at 5). At the hearing he said, "Well, apparently there [were] some charges put on there that [weren't mine]" (Tr. 72). Although he did not seek written verification of the charges, he did telephone the creditor two or three times (Tr. 73). Then his credit counselor advised him not to pay C (Tr. 73-74).

[4]Applicant sometimes referred to his credit counselor as his "legal counsel;" however, his credit counselor made it clear that he was not an attorney (Tr. 99; AE G at 8).

company (P), which is the same identity indicated in the SOR ¶ 1.a (Tr. 42; GE 3-5). Applicant contended he and his debt counselor had never heard of P (Tr. 42).

In January 2009, Applicant's debt resolution company informed Applicant the debt was sold to a third party (Tr. 37-38). However, they did not know the identity of the new account holder (Tr. 38). His debt resolution company advised Applicant of changes to his accounts every month (Tr. 38).

On August 31, 2009, Applicant received a letter from N offering to settle the $32,694 debt for $24,520 (Tr. 45; HE 3 at 3).[5] On October 29, 2009, Applicant offered to settle the debt for $200; however, he did not provide the $200 with his settlement offer (Tr. 45; HE 3 at 4).

Applicant first learned that P was the account holder when he received the SOR (Tr. 43). Applicant wrote P, and on November 10, 2009, P responded, stating the current balance was $32,694, the charge off date was December 31, 2006, and the open date was December 21, 1998 (AE A).

In sum, Applicant argued that C's debt was dropped from his credit report (Tr. 21, 25). He did not receive a summons from the creditor (Tr. 21, 25). Applicant sent a letter to the creditor offering to pay $200 if the debt would be removed from his credit report (Tr. 22, 25). The creditor did not respond to the $200 offer (Tr. 22, 25). He accused the creditor of not acting in good faith because his security clearance was at risk (Tr. 23, 25).

Applicant's monthly net income is about $6,500, and his monthly mortgage is $3,000 (Tr. 57). He does not have any credit cards (Tr. 58). His net remainder after paying all expenses is about $2,500 (Tr. 58).

Applicant asserted the three-year Virginia statute of limitations barred the legal enforcement of the debt (Tr. 39). Even if he had a valid debt in 2008, he was not going to pay the creditor now because of the statute of limitations (Tr. 46-50).[6] The reason he offered the creditor $200 was to get his security clearance reinstated (Tr. 47). His limit to resolve the debt to C is $200, and he meant what he said when he made that offer

[5]On November 5, 2009, another creditor, N, stated P passed the account to N on August 26, 2009, for collection, and N returned the account to P (Tr. 44; AE B). N does not provide information to credit reporting companies (AE B). Applicant emphasized that a letter from the creditor said the creditor had ceased all collection activity (Tr. 22, 25, 37). N's letter indicated N had "ceased all collection activity" because N did not own the debt (AE B). The file does not contain any evidence that P ceased all collection activity.

[6]On March 6, 2009, Applicant told an Office of Personnel Management (OPM) investigator that his debt to C became delinquent in 2004 due to unemployment (GE 3 at 5). He said no one from C contacted Applicant since May 2006. The account was transferred in January 2009; however, Applicant has not been contacted by the new debt holder. He emphasized that the statute of limitations expires in June 2009. He said that if he is not contacted by the creditor before June 2009, he does not intend to pay this debt.

(Tr. 58). He refused to pay more than $200 because he considered a larger payment to be an admission that he owed the debt (Tr. 96).[7] Applicant has not received any credit counseling (Tr. 56).

Applicant did not disclose any unpaid judgments, unpaid liens, garnishments, illegal drug use in the last 20 years, alcohol-related offenses, or felonies on his January 15, 2009, security clearance application. He did not disclose any debts currently delinquent over 90 days, or 180 days delinquent in the last seven years.

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), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

[7]The parties agreed that Applicant's opening statement and closing argument could be considered as substantive evidence (Tr. 25, 102).

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 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 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." "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." ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) (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 debt to C, currently totaling

approximately $32,000, became delinquent in May 2006, when it was about $16,000. He has not made any payments since June 2006 to the creditor. 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 any mitigating conditions because he did not act more aggressively and responsibly to resolve his delinquent debt to C. 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)). Applicant does not receive credit under AG ¶ 20(a) because he did not establish that his financial problems "occurred under such circumstances that [they are] unlikely to recur." Applicant has decided that he will not pay more than $200 to resolve his delinquent SOR debt owed to C even though he has the means to begin a payment plan and pay substantially more to settle this debt.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by unemployment, and his spouse's illness, which caused her to leave the labor force. However, he has not provided sufficient evidence to establish that he acted responsibly under the circumstances with respect to his unresolved SOR debt. He has been employed for the last five years. He resolved his other three credit card accounts in 2007. He had sufficient income to set up a payment plan for C after paying the other

three credit cards, and he chose not to do so. He has not maintained contact with C or with P, the collection company for C.[8]

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 paid, started payment plans, disputed, or otherwise resolved his debt to C. There are some initial, positive "indications that the problem is being resolved or is under control." He has admitted his responsibility for his other credit card debts, and he has resolved them. However, he has decided not to make a more substantial settlement offer or to negotiate a payment plan to resolve his debt to C.[9] He also established some mitigation under AG ¶ 20(d) because he showed some good faith[10] in the resolution of his three large credit card debts by settling and payment those debts.

Statute of limitations on credit card debt in Virginia

Virginia Code Ann. §8.01-249(8) provides that the statute of limitations period for open accounts begins, "from the later of the last payment or last charge for goods or services rendered on the account." An "open account" includes credit card accounts such as Applicant's account with C. *See Carillon Medical Center v. Ady*, 77 Va. Cir. 299, Va. Cir. LEXIS 162 (2008) (comparing a written contract with a five-year statute of limitations with an open account initiated with a written contract). Under Virginia Code

[8]"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.

[9] 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)).

[10]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)).

Ann. § 8.01-246(4), a legal action must be brought within three years for any unwritten contract. An "open account" in Virginia has a three-year statute of limitations.[11] Since Appellant signed his contract with C more than ten years ago, and his last payment was made more than three years ago, C will not be able to obtain a deficiency judgment against Applicant if he chooses to oppose the judgment with a statute of limitations defense.

The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

> Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). Under the Appeal Board's jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.[12]

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his debt to C. He admitted he had an account with C, and that when he stopped making payments in June 2006 his account statements showed he owed about $16,000 or about $10,000. He provided two account statements from August and September 2005 that showed he transferred more than $16,000 in those two months alone from his account with C to an account with his bank, BV. After his hearing, he questioned the veracity of those payments in 2005 by writing notes on his account statements. A reasonably prudent person would have verified the transfers in 2005 or 2006 by sending letters to C and BV asking for verification of the fund transfers before

[11]Several internet sites provide helpful information on the statutes of limitations for various categories of debts throughout the United States. *See, e.g.*, http://www.fair-debt-collection.com/SOL-by-State.html#47; http://www.creditinfocenter.com/rebuild/statuteLimitations.shtml; http://www.debtsteps.com/debt-collection-statute-of-limitations.html.

[12]The statute of limitations clearly and unequivocally ends an Applicant's legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). *See* ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008). *See also* n. 10, *supra*.

defaulting on his account. He has not met his burden of showing the charges to his account with C are not legitimate.

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 clearance. Applicant is 50 years old, and he is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for serving in the Army and volunteering to support the Department of Defense as an employee of a defense contractor. He does not have any unpaid judgments, unpaid liens, garnishments, illegal drug use in the last 20 years, alcohol-related offenses, or felonies. There is every indication that he is loyal to the United States, the Department of Defense, and his employer. He has never been fired from a job or left employment under adverse circumstances. His unemployment, and his spouse's illness and inability to work outside their home contributed to his financial woes. He paid three large credit card debts, and all of his debts except one are in current status. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a history of financial problems. He admitted he owed a large debt to C; however, he did not want to pay the charges and interest he owed the creditor. He was unsure about his responsibility for some of the charges to his account with C. He did not establish and maintain communications with his C, BV, or P about his debt. He had ample opportunity to send letters to C and BV and to verify the legitimacy of the charges to his account with C. He did not show good faith in the investigation of

his responsibility for his debt to C. He had sufficient income after he paid off his other credit cards to negotiate a fair settlement with C and make payments. Instead, he waited until the statute of limitations barred collection, and then he sent an offer to settle a debt of more than $30,000 for $200. This is not a good faith offer to pay a debt. He did not make adequate progress in the resolution of his debt to C.

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

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

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

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MARK HARVEY
Administrative Judge