



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



In the matter of:)
)
-----) ISCR Case No. 10-00975
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

December 21, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s financial problems were caused by his divorce, his former spouse’s unemployment, and her financial irresponsibility. Applicant’s SOR listed 13 debts totaling \$34,632. Approximately \$23,000 of Applicant’s delinquent SOR debt related to a vehicle repossessed shortly after Applicant’s spouse filed for divorce. Applicant paid two debts, one SOR debt was a duplication of another SOR debt, and three debts are in payment plans. Applicant has a viable plan to resolve all delinquent debts. In the last 18 months, Applicant paid more than \$12,000 to his creditors. Financial considerations are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On August 25, 2005, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On July 13, 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).

Applicant responded to the SOR and requested a hearing. (HE 3) On August 12, 2010, Department Counsel indicated she was ready to proceed on Applicant's case. On August 20, 2010, DOHA assigned Applicant's case to me. On September 23, 2010, DOHA issued a hearing notice and on October 21, 2010, Applicant's hearing was held. (HE 1) At the hearing, Department Counsel offered 10 exhibits (GE 1-10) (Tr. 20-21), and Applicant offered three exhibits. (Tr. 22-24; AE A-C) There were no objections, and I admitted GE 1-10 and AE A-C. (Tr. 21, 24) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) I held the record open until November 19, 2010, to permit Applicant to provide additional evidence. (Tr. 91-92) After the hearing, Applicant provided 13 exhibits, which were admitted without objection. (AE D-P) On October 27, 2010, I received the transcript.

Findings of Fact¹

Applicant's SOR response admits responsibility for the debts in SOR ¶¶ 1.b to 1.i, 1.l, and 1.m. (HE 3) He denied that he owed the debts in SOR ¶¶ 1.a, 1.j, and 1.k because the debt in 1.a was paid, his child support debt in 1.j was current, and he was unsure about whether the debt in 1.k was paid. (HE 3) His admissions are accepted as factual findings.

Applicant is a 36-year-old employee of a defense contractor who provides instruction on the operation of a computer system. (Tr. 7-8) He has been employed by the same employer for the last four years. (Tr. 30) Prior to his current employment, he worked in corrections for five years. (Tr. 30) He graduated from high school in 1992, and has completed 3 ½ years of college towards his bachelors degree. (Tr. 7-8) He married in 1997 and he was divorced in 2008. (Tr. 8) His former spouse was unemployed the last several years; however, she recently started employment with a cleaning company. (Tr. 28) From his marriage, he has one daughter age 11, and a five-year-old son. (Tr. 26) His children live with their mother. (Tr. 26) In addition to child support, Applicant provides funds for some of his children's expenses. (Tr. 29)

Applicant was on active duty in the Army from 1992 to 1996, and in the National Guard from 1997 to 2000 and in 2005. (Tr. 31) He had a security clearance while he

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

was in the military. (Tr. 32) He received an honorable discharge. (AE N) His only overseas tour was in South Korea. (AE N)

Financial Considerations

Applicant's SOR listed 13 debts totaling \$34,632. The status of his 13 SOR debts is as follows:

1.a (utility debt—\$38)—PAID. Applicant has service with the same utility company that asserted in a credit report that \$38 was overdue. (HE 3) The debt was paid when service was resumed about two years ago. (Tr. 57-58; HE 3) His October 29, 2010 account statement shows an amount of zero as due. (AE E)

1.b and 1.c (cable television debt—\$349 and \$530)—PAYMENT PLAN. Applicant's former spouse allowed the debt to become delinquent after Applicant moved out of their residence. (Tr. 58-59) Both debts are owed to the same creditor. On November 3, 2010, Applicant reaffirmed responsibility for a \$880 debt with the creditor, and agreed to make an initial payment of \$95 followed by monthly payments of \$55. (AE F) Applicant will receive basic cable service, and if Applicant makes the initial payment, plus six monthly payments, the \$880 debt will be forgiven. (AE F)

1.d and 1.i (department store collection accounts—\$3,751 and \$3,547). Applicant had two credit cards with the same department store. Until his divorce, Applicant was able to make payments on the credit cards. (Tr. 62) On February 4, 2010, the creditor in SOR ¶ 1.i offered to settle the debt of \$3,430 for \$857, and on March 9, 2010, the creditor for the debt in SOR ¶ 1.i offered to settle the debt of \$3,451 for \$1,208. (GE 3 at 11, 14) On July 16, 2010, the creditor, for the debt in SOR ¶ 1.i (\$3,547) filed a garnishment order on Applicant's employer seeking \$5,134 from Applicant. (Tr. 60-61; GE 10 at 8) The monthly payment under the garnishment is \$238. (Tr. 60-62) Pursuant to the garnishment, Applicant has made four or five payments. (AE D) The debt in SOR ¶ 1.d is unresolved. (AE D)

1.e (collection account for credit card—\$609)—UNRESOLVED. On December 19, 2009, the collection agent for this debt offered to settle the debt for \$316, and on January 12, 2010, the collection agent offered to settle the debt for \$321; however, Applicant was unable to make the required payment. (Tr. 63, 64, 72-74; GE 3 at 7, 10, 15)

1.f (department store collection account—\$668)—UNRESOLVED. On July 27, 2009, the collection agent for this debt offered to settle the debt for \$494; however, Applicant was unable to make the required payment. (Tr. 65-66, 72; GE 3 at 8)

1.g (department store collection account—\$421)—UNRESOLVED. (Tr. 65-66) Applicant erroneously believed he settled the debt for \$115 and paid with a money order. (Tr. 80) He has subsequently received some correspondence from the department store's collection agent. (Tr. 65, 66, 72, 79-80; GE 3 at 5, 9) Applicant plans to make an offer to settle this debt in January 2011. (AE D)

1.h (collection debt—\$370)—UNRESOLVED. Applicant plans to make an offer to settle this debt in March 2011. (AE D)

1.j (child support debt—\$138)—PAID. Applicant's child support was current sometime in early 2010. (Tr. 51) Applicant provided a July 28, 2010 letter from the state child support collection agency indicating his account is current. (HE 3) The only time Applicant was ever behind on his child support was in 2005 when he was unemployed. (Tr. 52)

1.k (collection debt—\$1,923)—UNRESOLVED. Applicant and his former spouse co-signed for a loan that his former spouse's sister-in-law used to purchase a vehicle. (Tr. 55) When they were divorced, each party agreed to pay debts incurred in their name, as well as some specified debts. However, this debt was not one of the specified debts. (AE P) On November 4, 2010, Applicant received a letter from the claims department of a GAP automobile insurance company. The GAP statement said a vehicle loss (it was stolen and damaged) on August 2, 2009, involved a balance owed of \$11,363. (AE H, I) Primary insurance paid \$8,825. (AE H) The GAP benefit paid \$1,861. (AE H, I) Applicant, his former spouse, and his former spouse's sister-in-law owe the balance of \$1,924. (Tr. 55-57; AE I) Applicant had not seen the documentation from the GAP benefit before his hearing on October 21, 2010, and erroneously thought the GAP benefit would pay for the vehicle. (Tr. 56-57)

1.l (repossessed vehicle collection debt—\$21,459)—UNRESOLVED. Applicant and his former spouse purchased a vehicle for \$26,000. (Tr. 68) About nine months after they purchased the vehicle his spouse filed for divorce, and the monthly payments of about \$500 became unaffordable. (Tr. 69, 83-84) In 2007, the creditor repossessed the vehicle. (Tr. 47, 68-69, 84) On December 14, 2009, the creditor offered to settle the current balance of \$22,965 for \$11,482, if paid by January 2, 2010. (Tr. 47, 71; GE 3 at 6) The debt is currently delinquent.

1.m (collection account—\$827)—DUPLICATE. The Government provided five credit reports. (GE 4-9) An August 14, 2009, credit report listed the debt in SOR ¶ 1.m in the amount of \$827. (GE 8 at 5) The origin of the debt is not indicated except with the comment "Collection Factoring Company Account." *Id.* The next three credit reports did not list a debt to this collection company or to any creditor in the specific amount of \$827. (GE 5-7) Applicant's SOR response admits the debt and states, "This debt is very likely a duplicate of one of the other card accounts as I am unaware of a specific charge account with this association, I plan to pay off as soon as financial circumstances allow and after final confirmation of which specific debt it is." (HE 3)

Applicant's student loans are not listed on his SOR as delinquent accounts. On July 7, 2009, Applicant's employer received a garnishment order for \$20,000 for outstanding student loans. (Tr. 44-45; GE 4 at 1) The creditor received monthly payments of \$360 for one year, and his federal income tax refund of \$4,254. (Tr. 44-45, 73; GE 3 at 13) On June 1, 2010, Applicant received a letter from his student loan creditor indicating he owed \$16,232. (AE J) The creditor sought six monthly payments as a prerequisite for changing the loan from delinquent to rehabilitated status. (AE J)

Applicant made the payments for six months plus \$50 per month to reduce the debt, and the creditor lifted the garnishment order. (Tr. 43-45; GE 3 at 16-17; AE C) On October 20, 2010, Applicant filed a Repayment Plan Selection form with the Federal Direct Loan Program, which began the process of arranging an affordable repayment plan. (AE A) On November 9, 2010, the student loan creditor wrote the total owed was \$14,980. (AE K) The October 29, 2010 summary of Applicant's student loan account indicates he has made numerous payments over the last 18 months (totaling \$9,219), and brought the student loan out of default status. (Tr. 46-47; AE K) Applicant said he will continue to pay \$160 per month to the student loan creditor through automatic allotment from his paycheck. (Tr. 46-47)

On September 23, 2009, Applicant paid a collection company \$315 to resolve a debt with an original amount of \$108. (AE G) This debt does not appear to be listed on the SOR. In 2005, he paid a non-SOR \$4,000 signature loan owed to a bank. (Tr. 75)

On September 8, 2010, Applicant consulted with a bankruptcy attorney and set the next appointment for September 29, 2010. (Tr. 48; AE B) He did not attend the follow-up meeting because he was overseas on business for the government contractor. (Tr. 48-49) Applicant is unsure whether to seek bankruptcy protection because he feels loyalty to the creditors who have provided funds to him in the past. (Tr. 49-51) He wants to fulfill his responsibilities to his creditors. (Tr. 50-51) He considered seeking protection under Chapter 13 of the Bankruptcy Code. (Tr. 81) Another reason for not seeking bankruptcy protection is it would shift total responsibility for many of the debts to his former wife, who would also have to file for bankruptcy. (Tr. 82-83) He acknowledged that payment of his and his former spouse's debts benefits his children as well as himself. (Tr. 82-83)

Applicant's pay statement for the period ending September 10, 2010, showed his gross earnings so far in 2010 are \$39,996; however, his net pay for the first eight months of 2010 was \$15,157. (AE C) So far this year, he has paid child support of \$4,990; a garnishment of \$652; spousal garnishment of \$2,138; and student loan garnishment of \$2,302. (AE C) The student loan and spousal monthly garnishments were terminated earlier in 2010. (Tr. 26-27; AE C) His child support payment is \$525 per month. (Tr. 29) For the two-week pay period ending September 10, 2010, his net pay was \$936. (Tr. 38; AE C) The car payment on his former spouse's Ford Focus is \$118 every two weeks, and it is paid directly from his paycheck pursuant to his divorce decree. About \$1,500 is still owed on his former spouse's vehicle. (Tr. 27-28; AE C)

Applicant's car note, rent, and utilities are current. (Tr. 53) His former spouse's car note is current because Applicant is paying for it using a garnishment from her spousal support as authorized by the divorce court. (Tr. 53)

Applicant uses the Dave Ramsey approach to debt reduction. (Tr. 33) He pays his small debts first, and as he eliminates a monthly payment, he applies the additional funds to the next debt. (Tr. 33) This is known as the "snowball effect." (Tr. 33-36) He utilizes a budget to assist in planning his debt payments. (Tr. 33, 35-36; GE 2 at 6; GE 3 at 4) The last time he revised his budget was two months before his hearing. (Tr. 33)

Applicant attempted to arrange payment plans with various creditors of \$20 or \$25 per month; however, the creditors were unwilling to accept such low payments. (Tr. 42, 65-67) He also told his creditors about the garnishments and other financial difficulties and told them they would need to wait for him to have a stable financial situation before he could address their debts. (Tr. 66) When the student loan creditor took his 2009 federal income tax refund, his ability to address his smaller SOR debts was vitiated. (Tr. 67) Applicant emphasized that his alimony, child support, and student loan payments over the last 18 months were too high for him to pay more to his creditors. (Tr. 42, 49-51, 65-67)

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 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under 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 disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

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

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his Office of Personnel Management (OPM) Personnel Subject Interview, and his statement at his hearing.

Applicant's debts became delinquent in 2007. Excluding the repossessed vehicle, his SOR lists \$13,163 in delinquent debt. Until recently, his student loans were also delinquent. His pay has been and is being garnished to pay creditors. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), 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.

Applicant's conduct in resolving her debts warrants full application of AG ¶¶ 20(a) and 20(b). Applicant's divorce had a profoundly negative affect on his financial circumstances and caused several debts to become delinquent. He made adjustments to his lifestyle and reduced his expenses, and for the past 18 months has paid about \$12,000 to reduce his delinquent debts. He is currently paying down his student loans, his former spouse's car loan, and \$238 per month to the creditor in SOR ¶ 1.i.² He also plans to pay a small SOR debt in January 2011 and another small SOR debt in

²Of course, Applicant loses some mitigating credit because some debt payments were made through garnishment of his salary even though his opportunity to establish a payment plan was limited because of his other financial commitments. Payment of a debt "through garnishment rather than a voluntary effort diminishes its mitigating force." *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns).

February 2011. He is using the Dave Ramsey plan to pay his debts. His financial problems were generated by circumstances largely beyond his control. There is no evidence that he acted irresponsibly.

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the Applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. She filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The Applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment)” even though that Applicant’s debts were unresolved at the time the Administrative Judge’s decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence³ of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant who had been sporadically unemployed lacked the ability to pay his creditors noting that “it will be a long time at best before he has paid” all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor

³ Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

financial condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.” *Id.*

Partial application of AG ¶ 20(c) is warranted. Although Applicant did not receive formal financial counseling, he received financial advice and counseling through the Dave Ramsey program, which is a program for establishing financial responsibility and eliminating delinquent debt. He also generated a personal financial statement (PFS) as part of his response to DOHA interrogatories. He maintains his own budget. Applicant’s financial situation was damaged by insufficient income as a result of separation and divorce, and somewhat by his former spouse’s financial irresponsibility. After his divorce, his financial circumstances have been stable because he was employed by a government contractor. Applicant established that he acted responsibly under the circumstances. He maintained contact with his creditors.⁴ He attempted to pay or settle, or attempted to establish payment plans with his creditors. He brought his child support to current status, paid off most of his former spouse’s car lien in compliance with his divorce decree, and paid \$9,219 in the last 18 months to his student loan creditor. The debt in SOR ¶ 1.a is paid, and the debts in SOR ¶¶ 1.b, 1.c, and 1.i are in established payment plans. His financial problem is being resolved or is under control. He admitted responsibility for and taking reasonable and responsible actions to resolve his SOR debts, showing some good faith and partial mitigation under AG ¶ 20(d).⁵ AG ¶ 20(e) is not applicable.

In sum, Applicant fell behind on his debts because of marital problems, separation and divorce. It is unlikely that such problems will recur. He paid over \$12,000 over the last 18 months to his creditors. He cannot be fully credited for making such aggressive payments of his debts because most of the debt payments were made

⁴“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.

⁵The 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)).

through garnishment of his pay. Even though the garnishments were taking a large portion of his salary, he managed to make additional payments to some creditors, such as his student loans, and most of the garnishments are now lifted. His former spouse's monthly vehicle payment is \$236 and Applicant will have paid off her car loan in about seven months. Resolution of this debt will permit him to more aggressively address his other debts. Similarly, the \$238 monthly garnishment to the creditor in SOR ¶ 1.i will have paid that debt in about 20 months, freeing up more funds for other debt resolution. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AGs ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

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 Guideline F, but some warrant additional comment.

Applicant is 36 years old. He 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 previously as a soldier on active duty and in the National Guard. There is every indication that he is loyal to the United States and his employer. His security clearance application does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts. There is no evidence that he abuses alcohol or uses illegal drugs. His former spouse's unemployment, their divorce, and problems with his former spouse's handling of their finances contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for 11 of 13 SOR debts. He did not admit two debts in his SOR response because one was paid, and he thought the other was paid, when actually it was not paid. Even though his monthly net income for the first eight months of 2010 was less than \$16,000 he did not accrue more delinquent debts. Instead he made

adjustments in his lifestyle, reduced his expenses, and paid down some of his delinquent debts.

Applicant's car loan, his former spouse's car loan, and his student loans are all current. I am confident he will keep his promise to continue resolving the SOR debts and avoid future delinquent debt. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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

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

Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility. He is using the Dave Ramsey plan to resolve his debts and establish his financial responsibility. There is simply no reason not to trust him. Moreover, he has established a "meaningful track record" of debt re-payment. He is an asset to his employer or he would not have retained his employment during process of deciding whether his security clearance should be reinstated.

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 fully mitigated, and eligibility for access to classified information is granted.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.n: For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge