



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



In the matter of:)
)
-----) ISCR Case No. 09-03760
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Barry W. Rorex, Esquire

May 17, 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 February 24, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing version of a Security Clearance Application (e-QIP).¹ On June 8, 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 July 15, 2009.² On November 3, 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

¹ Government Exhibit 1 (e-QIP), dated February 24, 2009.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated July 15, 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 November 9, 2009. In a sworn, written statement, notarized on November 24, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 31, 2009, and the case was assigned to Administrative Judge Edward W. Loughran on January 12, 2010. It was reassigned to me on February 12, 2010, due to caseload considerations. A Notice of Hearing was issued on March 12, 2010, and I convened the hearing, as scheduled, on March 30, 2010.

During the hearing, seven Government exhibits were admitted into evidence, without objection. Although Applicant did not submit any exhibits, it was noted that he had attached a number of documents to his Answer to the SOR, and those documents were considered, though not given specific exhibit designations. Applicant testified. The record remained open to afford Applicant the opportunity to supplement it, and on April 12, 2010, he submitted three additional exhibits that were also admitted into evidence, without objection. The transcript (Tr.) was received on April 7, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted (many with explanations) all of the factual allegations (¶¶ 1.a. through 1.r.) of the SOR.

Applicant is a 53-year-old employee of a defense contractor, currently serving as a supply technician,³ and he is seeking to obtain a security clearance. He had previously been granted a security clearance in August 1989.⁴ He served on active duty with the U.S. Army from May 1975 until June 1995, when he retired with an honorable discharge.⁵ Following his retirement, Applicant was employed by a number of employers in a variety of positions, including correctional officer, warehouse manager, senior buyer, facilities support manager, parts specialist, senior food buyer, and senior field buyer. He also went through periodic periods of unemployment, sometimes as few

³ Tr. at 15; Government Exhibit 1, *supra* note 1, at 15.

⁴ *Id.* at 48-49.

⁵ *Id.* at 30-31.

as 20 days, and once as long as 11 months.⁶ He has been with his current employer since February 2009.⁷

Applicant has been married since January 1978.⁸ He and his wife have two children, born in 1979 and 1986, respectively.⁹ His son is currently on active duty with the U.S. Navy.¹⁰

Financial Considerations

There was nothing unusual about Applicant's finances until about 1996. At some point prior to April 1996, Applicant's consumer debt reached a certain level, and he and his wife decided to file for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code.¹¹ On March 31, 1997, the petition was amended and converted to Chapter 7 of the U.S. Bankruptcy Code.¹² An unspecified amount of consumer debt was discharged on July 28, 1997.¹³

On March 3, 2000, Applicant and his wife again filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code.¹⁴ The petition was dismissed on April 12, 2000,¹⁵ refiled on April 19, 2000,¹⁶ and eventually dismissed on January 9, 2002.¹⁷

Because of his failure to pay income tax, two tax liens were placed against his residence in October 1997 (a non-SOR lien - \$1,588) and December 1998 (SOR ¶ 1.a. - \$281), respectively.¹⁸ Applicant contends he paid the December 1998 lien but could not

⁶ Government Exhibit 1, *supra* note 1, at 15-27.

⁷ *Id.* at 15.

⁸ *Id.* at 34.

⁹ *Id.* at 37-38.

¹⁰ Tr. at 32; Government Exhibit 1, *supra* note 1, at 38.

¹¹ Applicant's Answer to SOR, dated November 24, 2009 (notes section), at 3; Government Exhibit 6 (Case Summary, dated September 9, 2009), at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ Applicant's Answer to SOR, *supra* note 11 (notes section), at 3; Government Exhibit 6 (Case Summary, dated September 9, 2009), at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ Government Exhibit 5 (Combined Experian, Trans Union, and Equifax Credit Report, dated March 6, 2009), at 5; Government Exhibit 2 (Personal Subject Interview, dated March 23, 2009), at 1.

recall the details surrounding the payments.¹⁹ During the hearing, he contended he had paid off the lien²⁰ and would submit evidence to support his contention.²¹ No such submission was made.

Despite the presence of financial issues from 1996 through 2002, according to Applicant, his financial difficulties did not occur until about March 2008:²²

In 2007 I was employed overseas and made my payments in a timely manner. Upon my return to the United States in March of 2008 expecting to find top quality employment with my new experience, I was quickly plagued with the status of the U.S. Economy/job market. I was unemployed for 11 months. I struggled for months to make my mortgage and credit card payments, and was also hit with expenses that I did not expect (death of a granddaughter, care for my daughter's illness/emotional state, home repair expenses, etc.).

In November 2009, he added: "All my financial problems were mainly caused by problems beyond my control, unexplained, and untimely loss of employment."²³

In addition to the allegations pertaining to Applicant's 1998 lien and the two (alleged in the SOR as three) bankruptcies, the SOR identified 14 purportedly continuing delinquencies as reflected by four credit reports from 2009,²⁴ totaling approximately \$20,743. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the 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. Those debts listed in the SOR, all of which Applicant admitted, and their respective current status, according to the credit reports, documents submitted by Applicant, and Applicant's written and testimonial comments relative thereto, are described below:

¹⁹ *Id.*

²⁰ Tr. at 17, 21.

²¹ *Id.* at 21.

²² Letter from Applicant, dated July 14, 2009, attached to Government Exhibit 2, *supra* note 2.

²³ Letter from Applicant, dated November 24, 2009, attached to Applicant's Answer to SOR, *supra* note 11.

²⁴ Government Exhibit 5, *supra* note 18; Government Exhibit 4 (Equifax Credit Report, dated August 4, 2009); Government Exhibit 3 (Equifax Credit Report, dated December 31, 2009). *Also*, see Government Exhibit 2, *supra* note 2, wherein Applicant furnished an Experian Credit Report, dated February 21, 2009.

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.a.	Income tax	\$281	Dec. 1998 lien. Purportedly paid. No documentary support.
1.b.	Mortgage	\$4,000	2008 delinquency purportedly eliminated by loan modification agreement, dated Sep. 15, 2009. ²⁵ \$1,926 remains delinquent.
1.c.	Credit card	\$3,461	Collection. Charged off. Unpaid. ²⁶
1.d.	Student loan	\$1,208	Delinquent in 2006. ²⁷ Charged off. As of hearing, paid \$175 at \$25 per month. Last payment on Sep. 30, 2009. ²⁸
1.e.	Furniture loan	\$1,661 ²⁹	Collection. Charged off. As of hearing, paid \$325 at \$25 per month. Last payment on Oct. 16, 2009. ³⁰
1.f.	Credit card	\$3,096	Collection. Charged off. Unpaid. ³¹
1.g.	Credit card	\$251	Collection. Charged off. Unpaid. ³²
1.h.	Mobile phone service	\$706	Collection. Charged off. As of hearing, paid \$175, with last \$25 payment on Oct. 3, 2009. ³³
1.i.	Credit card	\$1,833	Collection. Unpaid. ³⁴
1.j.	Unspecified loan	\$806	Collection. Applicant does not recall creditor or account. ³⁵ Unpaid. ³⁶

²⁵ Applicant's Answer to SOR, *supra* note 11 (Proposed Modification Agreement, dated September 15, 2009). In March 2009, Applicant stated that once he was placed under a federal hardship payment plan, his monthly payment was reduced to \$850. Government Exhibit 2, *supra* note 18, at 5. During the hearing he testified his monthly payment was \$937, "off the top of [his] head," and the account was current. Tr. at 22-23. However, Applicant Exhibit C (Chapter 13 Plan and Application for Payment of Administrative Expenses, filed April 2, 2010), at 3, states the mortgage payment is \$963. Additionally, it was estimated that the remaining arrearage is \$1,926, indicating the delinquency has not been eliminated.

²⁶ Tr. at 23.

²⁷ Government Exhibit 2, *supra* note 18, at 3.

²⁸ Tr. at 24-25; Applicant Exhibit A (Payee Spending Report, dated March 30, 2010), at 1.

²⁹ Although the SOR alleges the unpaid balance as \$1,661 (SOR ¶ 1.e.), it appears that the correct balance is \$1,586. See Government Exhibit 3, *supra* note 24, at 2; Government Exhibit 5, *supra* note 18, at 7, 12.

³⁰ Applicant Exhibit A, *supra* note 28, at 1; Payee Detail Record, dated November 11, 2009, attached to Applicant's Answer to SOR, *supra* note 11.

³¹ Tr. at 39.

³² *Id.*; Government Exhibit 2, *supra* note 18, at 2.

³³ Tr. at 28, 39; Payee Detail Record, dated November 11, 2009, attached to Applicant's Answer to SOR, *supra* note 11.

³⁴ Tr. at 40. Although Applicant stated he had not made any payments on the account, it appears that he may have made one \$10 payment on March 10, 2008. See Applicant Exhibit A, *supra* note 28, at 1.

³⁵ Government Exhibit 2, *supra* note 18, at 3.

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.k.	Medical service	\$238	Collection. Paid \$75 during 2009, with most recent \$50 payment on Sep. 3, 2009. ³⁷ Purportedly paid off, but no documentary support. ³⁸
1.l.	Credit card	\$442	Collection. Unpaid. ³⁹
1.m.	Gym membership & personal trainer	\$353	Collection. Paid \$100 during 2009, with most recent \$25 payment on Oct. 23, 2009. ⁴⁰
1.n.	Unspecified account ⁴¹	\$1,200	Charged off. Unpaid. ⁴²
1.o.	Community association dues	\$1,488	Past due. Judgment. ⁴³ Unpaid. ⁴⁴
1.p.	Ch. 13 bankruptcy		Dismissed Apr. 2000.
1.q.	Ch. 13 bankruptcy		Dismissed Jan. 2002.
1.r.	Ch. 13 to 7 bankruptcy		Unsecured consumer debt discharged Jul. 1997.

On March 12, 2009, Applicant entered into an agreement with a for-profit credit counselor, under which he made a non-refundable one-time payment of \$383, and continuing monthly payments of \$69, to assist him by furnishing financial analysis, guidance, and debt resolution services. In addition, effective April 6, 2009, he started making monthly payments to a debt pool of creditors, through his credit counselor, of \$343.⁴⁵ Although the relationship was originally anticipated to continue for 30 months, Applicant subsequently determined that the relationship was not beneficial to him, and he terminated it after about two months.⁴⁶ On November 3, 2009, he completed on-line credit counseling briefing.⁴⁷

³⁶ Tr. at 40.

³⁷ Payee Detail Record, dated November 11, 2009, attached to Applicant's Answer to SOR, *supra* note 11.

³⁸ Tr. at 40.

³⁹ *Id.*

⁴⁰ *Id.*; Payee Detail Record, dated November 11, 2009, attached to Applicant's Answer to SOR, *supra* note 11.

⁴¹ Although SOR ¶ 1.n. alleges a charged off account, in the amount of \$1,200, with a particular collection agency, and Applicant has admitted the allegation, I can find no listing of, or references to, the account in any of the credit reports in evidence.

⁴² Tr. at 40.

⁴³ Government Exhibit 2, *supra* note 18, at 6.

⁴⁴ Tr. at 40.

⁴⁵ Credit counselor file, various dates, attached to Government Exhibit 2, *supra* note 2.

⁴⁶ Tr. at 54-55.

⁴⁷ Certificate of Counseling, dated November 3, 2009, attached to Government Exhibit 2, *supra* note 2.

During 2007-2008, when Applicant was working overseas in the war zone, he earned \$105,000 per year, of which the first 88 per cent was not taxed.⁴⁸ He applied some of his salary and savings to other debts.⁴⁹ While he was unemployed, he collected an unspecified amount of unemployment compensation.⁵⁰

On July 15, 2009, Applicant submitted a personal financial statement indicating monthly net income of \$7,273, including \$1,300 military retirement and \$710 for his wife's disability income,⁵¹ monthly expenses of \$870, scheduled monthly debt payments of \$1,345, and a net remainder of \$3,058 available for discretionary spending.⁵² Among his listed assets were three vehicles with an estimated value of \$30,000.

Not listed among the delinquent accounts in the SOR are a number of student loans, in the amount of about \$44,000, which are currently in a deferred status, which Applicant intends to include in his bankruptcy.⁵³ In addition, in about September 2009, Applicant's wages were garnished, based on an earlier judgment for \$7,000, and \$700 was removed from his salary each month.⁵⁴ While the name of the collection agency is known, the identity of the original creditor or the specific account, is unknown. He no longer has any current credit cards.⁵⁵

On April 2, 2010, Applicant and his wife filed a joint Voluntary Petition for Bankruptcy under Chapter 13 of the U.S. Bankruptcy Code.⁵⁶ The anticipated total of plan payments is \$87,000, including \$6,000 to the county treasurer's office for taxes and "certain other debts."⁵⁷ He filed his petition because he assumes full responsibility for his debts and ". . . I've never tried to avoid my debts and I do intend to pay each one of them as quick as possible and move on with my life."⁵⁸

⁴⁸ Tr. at 35.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 30-31.

⁵² Applicant's Personal Financial Statement, undated, attached to Government Exhibit 2, *supra* note 2.

⁵³ Tr. at 44-45.

⁵⁴ *Id.* at 42-44, 47-50.

⁵⁵ *Id.* at 33.

⁵⁶ Applicant Exhibit B (Electronic bankruptcy case filing, dated April 2, 2010).

⁵⁷ Applicant Exhibit C, *supra* note 25, at 3.

⁵⁸ Tr. at 27.

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.”⁵⁹ 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.”⁶⁰

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 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.”⁶¹ 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.⁶²

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship

⁵⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁰ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁶¹ “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 (4th Cir. 1994).

⁶² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.”⁶³

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.”⁶⁴ 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.

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 1996, when he and his wife filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. The petition was amended and converted to Chapter 7. An unspecified amount of unsecured debt was discharged in July 1997, and his financial problems were

⁶³ *Egan*, 484 U.S. at 531

⁶⁴ See Exec. Or. 10865 § 7.

eliminated. But not for long, for in March 2000, they again filed for bankruptcy under Chapter 13, and subsequently refiled it again in April 2000. It was eventually dismissed in January 2002. Two tax liens were filed against his residence. Despite promises to pay certain accounts, and claims to have paid others, with few exceptions, he has failed to keep his bills current. Accounts became delinquent and sent for collection, some were charged off, and he was successfully sued on others. And he continued to spend, purchasing furniture, acquiring a gym membership with a personal trainer, and having three motor vehicles. Events occurred after the issuance of the SOR and now there are additional delinquent non-SOR accounts. While he has submitted some documentation to support his contentions regarding payments supposedly made or accounts supposedly disputed (SOR ¶¶ 1.b., 1.d., 1.e., 1.h., 1.k., and 1.m.), he has not done so for the remaining delinquent accounts. 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 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.”⁶⁵ 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 in 1996, were resolved by Chapter 7 bankruptcy discharge of his debts in 1997, and eventually re-emerged. He has

⁶⁵ 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)).

attributed his financial difficulties to his 2008 11-month period of unemployment, the loss of a granddaughter, and his daughter's health issues; however, these circumstances were not the primary cause of his financial problems. He earned a substantial salary, mostly tax free, during 2007-2008, and should have been able to resolve his long-standing delinquent debts, but was unable to do so. Because the financial situation is frequent and continuing in nature, despite having initially commenced in 1996, as opposed to 2008, he receives minimal application of AG ¶ 20(a). 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 at some point were largely initially beyond Applicant's control (e.g., loss of his employment, his granddaughter's death, and daughter's unexpected medical problems), Applicant failed to act responsibly under the circumstances. He failed to explain the circumstances regarding his financial problems between 1997 and 2008. Furthermore, while unemployed for 11 months, Applicant continued to receive his military retirement and unemployment compensation. And, rather than consolidating and minimizing expenses, he continued to spend unwisely, purchasing new furniture, joining a gym and securing the services of a personal trainer. He increased his expenditures and failed to reduce his delinquencies.⁶⁶

AG ¶ 20(c) applies because Applicant has received financial counseling and debt consolidation guidance from a for-profit credit counselor in March 2009, and subsequently completed an on-line credit counseling briefing.

AG ¶ 20(d) only partially applies because Applicant initiated a good-faith effort to repay several creditors, well before the SOR was issued. Unfortunately, his relationship with the for-profit credit counselor did not continue and over a period of several months, Applicant made no further efforts to address his debts. He made several minor payments in September and October 2009, but in anticipation of his bankruptcy filing, ceased all such voluntary action. He arranged for a modification of his delinquent mortgage, and contended that he had brought it to a current status, but in reality, \$1,926 remains delinquent. Over the years, Applicant did not act aggressively, timely, or responsibly to resolve his remaining delinquent debts. Instead, he declared his intentions to file for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. Applicant has been down this path several times in the past, and while there is some positive action, since 2002, when his last Chapter 13 bankruptcy was dismissed, it appears he has taken no significant actions to address the satisfaction of his delinquent debts.⁶⁷

⁶⁶ "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. 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)).

⁶⁷ 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).

AG ¶ 20(e) does not apply because, while he might have a legitimate reason to dispute the unknown account set forth in SOR ¶ 1.j., he has not provided “documented proof to substantiate the basis of the dispute.”

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.

There is some evidence in favor of mitigating Applicant’s conduct. When these problems mushroomed with his unemployment, his finances continued to go steadily down hill and out of control. He initiated some good-faith efforts to pay a tax lien and apply for a mortgage home loan modification agreement, well before the SOR was issued. And for a brief period, he made some minor payments to some creditors either by himself or with the assistance of the for-profit credit counselor. And then, all his efforts ceased while he awaited his anticipated filing for bankruptcy.

The disqualifying evidence under the whole-person concept is more substantial. While the unemployment and reduced earnings were, at times, 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 his military retirement and unemployment compensation. While he was serving overseas he made a good salary that was largely untaxed, and he has been employed since February 2009. Nevertheless, since that time, with the exceptions described above, he did not make significant good-faith efforts to pay a variety of delinquent debts. He established one repayment plan through the mortgage loan modification agreement, and actually made some small payments to a few creditors. But, he ignored the creditors in SOR ¶¶ 1.c., 1.f., 1.g., 1.i., 1.j., 1.l., 1.n., and 1.o. Instead, he made a number of promises and claimed to have paid several creditors. Yet, there is no documentation to support his contentions that he had fully

satisfied some of the creditors (SOR ¶¶ 1.a. and 1.k.). Now, 13 years after his debts were discharged under a Chapter 7 bankruptcy, and 8 years after his last Chapter 13 bankruptcy was dismissed, he is again applying for relief under Chapter 13 of the U.S. Bankruptcy Code. His long-standing failure to repay creditors, at least in reasonable amounts, 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.

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.⁶⁸ His insufficient good-faith efforts or evidence to reflect actual payments to his SOR creditors 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:⁶⁹

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 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

⁶⁸ 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).

⁶⁹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge