



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-04052  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole L. Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

April 22, 2010

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists 35 delinquent debts for \$22,916. After crediting him for paying one debt for \$413 and filing bankruptcy, there is insufficient information to fully mitigate financial considerations because of his history of financial problems. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 7, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (GE 1). On October 6, 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). 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 November 2, 2009, Applicant responded to the SOR (HE 3). On January 8, 2010, Department Counsel indicated she was ready to proceed on his case. On January 19, 2010, DOHA assigned Applicant's case to me. On February 16, 2010, DOHA issued a hearing notice (HE 1). On March 2, 2010, Applicant's hearing was held. At the hearing, Department Counsel offered five exhibits (GE 1-5) (Tr. 17), and Applicant offered one exhibit (Tr. 19; AE A). There were no objections, and I admitted GE 1-5 (Tr. 17), and AE A (Tr. 19). Additionally, I admitted the hearing notice, SOR, and response to the SOR as hearing exhibits (HE 1-3). On March 16, 2010, I received the transcript.

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

Applicant admitted responsibility for all of the SOR debts in his SOR response (HE 3). He said he was unemployed and could not pay any of his debts (HE 3). His admissions are accepted as findings of fact.

Applicant is a 32-year-old field installer and information technology contractor (Tr. 5, 20). He was employed as a field installer starting in January 2008 (GE 1). He graduated from high school in 1996 (Tr. 5). He served in the Air Force from 1996 to 1998 (Tr. 8, 20-21). While in the Air Force, he received nonjudicial punishment for writing a bad check (Tr. 8). He was subsequently discharged for financial problems (Tr. 8). He received a general discharge under honorable conditions (Tr. 7). He attended college from 2003 to 2006, a period of about 42 months, where he emphasized business management, human resources, information technology, network security and culinary arts (Tr. 5-6; GE 1). He is single and does not have any children (Tr. 20; GE 1).

### **Financial considerations**

Applicant's October 6, 2009, SOR alleged 35 delinquent debts totaling \$22,916 as follows: 1.a (\$230); 1.b (\$99); 1.c (\$421); 1.d (\$135); 1.e (\$94); 1.f (\$94); 1.g (\$94); 1.h (\$165); 1.i (\$504); 1.j (\$39); 1.k (\$31); 1.l (\$30); 1.m (\$413); 1.n (\$945); 1.o (\$138); 1.p (\$800); 1.q (\$84); 1.r (\$180); 1.s (\$420); 1.t (\$84); 1.u (\$686); 1.v (\$2,400); 1.w (\$8,477); 1.x (\$57); 1.y (\$430); 1.z (\$145); 1.aa (\$140); 1.bb (\$2,399); 1.cc (\$437); 1.dd (\$64); 1.ee (\$53); 1.ff (\$153); 1.gg (\$1,814); 1.hh (\$482); and 1.ii (\$179). When Applicant completed his security clearance application on March 7, 2008, he disclosed he had 12 debts currently delinquent more than 90 days, or delinquent over 180 days during the last seven years (GE 1). Eight of the 12 debts were subsequently listed on his SOR. Applicant listed the following debts, with date incurred and explanation:

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<sup>1</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

(1) telecommunications bill for \$424 (disputing the charge) (March 2007) (possibly SOR ¶ 1.y for \$430) (he checked the block indicating the debt was satisfied; however, he did not provide a date of satisfaction);

(2) medical debt for \$504 (not able to determine creditor from credit report; planning on paying off this year) (January 2006) (SOR ¶ 1.i);

(3) bad check for \$165 (paying now that he knows about it) (September 2005);

(4) bad check for \$39 (paying now that he knows about it) (October 2003) (SOR ¶ 1.j);

(5) bad check for \$31 (paying now that he knows about it) (September 2003) (SOR ¶ 1.k);

(6) bad check for \$30 (paying now that he knows about it) (August 2003) (SOR ¶ 1.l);

(7) collection debt for \$300 (incurred in November 2002 and paid in February 2005);

(8) bad check for \$66 (paying now that he knows about it) (June 2002) (SOR ¶ 1.dd);

(9) bad check for \$48 (paying now that he knows about it) (March 2002);

(10) bad check for \$53 (paying now that he knows about it) (March 2002);

(11) bad check for \$179 (paying now that he knows about it) (March 2002) (SOR ¶ 1.ii); and

(12) personal loan for \$8,000 (paying now that he knows about it) (October 2001) (SOR ¶ 1.w).

Applicant disclosed one judgment to a county, which he said was paid (GE 1). He did not disclose any unpaid liens, garnishments, illegal drug use, or alcohol-related offenses on his March 7, 2008, security clearance application (GE 1).

On June 30, 2009, Applicant responded to DOHA interrogatories (GE 2). DOHA asked him to explain the status and payments on 25 debts. DOHA asked him to provide documentation from creditors, including payment history (GE 2). He admitted 13 of the debts, and stated the debts were incurred due to "lack of judgment" (GE 2). He denied responsibility for eight debts and indicated he would pay them if he found he was responsible for them, after he had obtained employment (GE 2). In regard to the debts in SOR ¶¶ 1.w for \$8,477 and 1.bb for \$2,399, he said he "was not on th[ese] loan[s];" however, he admitted he had a joint account with the person who took out the loan and then declared bankruptcy (GE 2). He concluded, "I have no intentions of paying" these

two debts. He thought his student loans were in deferment status (GE 2). He did not provide any documentation from his creditors.

Applicant lived with a girlfriend from 2002 to 2006, and during that time they had a joint checking account (Tr. 39-42; HE 3). She would occasionally write bad checks, and then she convinced Applicant that she would take care of them (Tr. 59-61). She wrote 17 checks totaling \$1,941, which were returned for insufficient funds. The dishonored checks resulted in debts owed to following SOR creditors: 1.a (\$230); 1.b (\$99); 1.d (\$135); 1.e (\$94); 1.f (\$94); 1.g (\$94); 1.j (\$39); 1.k (\$31); 1.l (\$30); 1.q (\$84); 1.r (\$180); 1.s (\$420); 1.t (\$84); 1.x (\$57); 1.dd (\$64); 1.ee (\$53); and 1.ff (\$153) (HE 3). She is now his former girlfriend (HE 3). He repaid some of the other bad checks she wrote that were returned for insufficient funds; however, he did not provide a list of the checks paid and when they were paid (Tr. 44). He is credited for paying the bad checks listed on his security clearance application that are not listed on his SOR.

In 2003, Applicant was evicted from an apartment and incurred the debt in SOR ¶ 1.c (\$421) (Tr. 45; HE 3). He was unemployed for two or three months, and he decided not to pay his rent for six weeks because the landlord would not repair the door (Tr. 46, 54). The rent was \$500 per month (Tr. 54-55). The landlord then obtained the judgment in SOR ¶ 1.v for \$2,400 (Tr. 54). Applicant received notice of the judgment about 18 months ago (Tr. 74).

The debt in SOR ¶ 1.m (\$413) resulted from a judgment (Tr. 49). Applicant said he paid the telecommunications debt in SOR ¶ 1.m in October 2005 with cash; however, he did not have a receipt (Tr. 49). He said he refused to pay the debt in SOR ¶ 1.m again (Tr. 49).

Applicant admitted responsibility for the debts in SOR ¶¶ 1.h (medical debt—\$165) (Tr. 47); 1.i (medical debt—\$504) (Tr. 48); 1.n (collection account—\$945) (Tr. 50); 1.o (collection account for a two-year-old debt—\$138) (Tr. 50-52); 1.p (collection account for a ten-year-old debt—\$800) (Tr. 52); 1.u (telecommunications collection account unpaid for at least two years—\$686) (Tr. 53); 1.y (telecommunications debt—\$430); 1.z (medical debt—\$145); 1.aa (video rental debt—\$140); 1.cc (disputed telecommunications debt—\$437) (Tr. 57-58); 1.gg (insurance debt—\$1,814) (Tr. 58-59); 1.hh (collection debt from credit card account—\$482) (Tr. 59); and 1.ii (collection debt from glass company—\$179) in his SOR response (HE 3).

The debts in SOR ¶¶ 1.w (collection account—\$8,477) and 1.bb (collection account—\$2,399) related to loans Applicant and a colleague obtained to start a business in 2001 (Tr. 55-56). His partner filed bankruptcy, and Applicant did not want to pay the loans because his partner kept the money (Tr. 56-57).

In late 2005 or early 2006, Applicant co-signed a vehicle loan with his girlfriend, and a month or so later the vehicle was repossessed (Tr. 43). It is unclear whether a currently delinquent debt resulted from this transaction.

## Employment

When Applicant was in the Air Force, he was unhappy with military service (Tr. 21). He joined the Air Force to please his father (Tr. 21). Between 1996 and 1998, he opened about seven credit card accounts and spent more than he could afford (Tr. 22, 24). He used payday loans (Tr. 24-25). He borrowed \$3,000 from his father to pay off the payday loans (Tr. 25). When he was discharged from the Air Force he owed about \$20,000 in credit card debt (Tr. 22). About a year after he left the Air Force, his vehicle was repossessed (Tr. 23). He subsequently repaid the credit card debt (Tr. 38).

After leaving the Air Force, he worked in a casino emptying slot machines. He also worked in the areas of security, assembled computers, and performed various other part-time jobs at \$9 to \$10 per hour (Tr. 26-27). In 2004, he was earning \$15 per hour as a day shift supervisor on a computer assembly line (Tr. 29).

Applicant was unemployed or had part-time employment from April 2004 to November 2006 (Tr. 30-33). During that time, he attended a community college and utilized benefits of about \$700 per month from the Veterans Administration (Tr. 30-34). From November 2006 to June 2007, he earned from \$12 to \$14.50 an hour working at a computer company (Tr. 34). From July 2007 to January 2008, he earned about \$10 to \$15 working on personal computers (Tr. 35). In January 2008 until February 2009, he worked with another computer company and earned \$40,000 per year (Tr. 36). He worked from August to October 2009 for a computer company (Tr. 37). He is currently working part-time from his home (Tr. 36). He has a Windows administrator position waiting for him if he can obtain a security clearance (Tr. 36-37; GE 2). His income in 2009 was about \$9,500 (Tr. 38).

In October 2009, Applicant decided to file bankruptcy under Chapter 7 of the Bankruptcy Code (Tr. 63). He filed bankruptcy in December 2009 (Tr. 63). In regard to his bankruptcy, Applicant listed assets of \$5,490, and liabilities of \$43,399 (AE A at 6). He listed a \$1,100 debt owed to the Internal Revenue Service (IRS) for tax year 2007 and a student loan debt of \$3,806 (Tr. 72; AE A at 7, 15, 25). He received notification of the IRS debt in 2008 (Tr. 72). He included non-SOR credit card debts of \$3,741 and \$1,004 (AE A at 17, 26) and his SOR debts in his bankruptcy filing. He completed his financial counseling in connection with the bankruptcy (Tr. 64-65). At the time of his hearing on March 2, 2010, his debts were not yet discharged.

Applicant owes \$8,800 on a vehicle (Tr. 75). He contacted the creditor and asked that the creditor repossess it (Tr. 75). He has another vehicle without a lien on it (Tr. 75). He has \$900 in his checking account (Tr. 75). Repossession of his vehicle is noted on his bankruptcy filing.

As part of the bankruptcy process, Applicant learned how to keep a budget, maintain a check register, and not to permit access to his checking account (Tr. 66). However, he shares a checking account with his current girlfriend (Tr. 66). The balance is \$700, and it is in current status (Tr. 67). Applicant expected his unemployment

compensation to run out around March 10, 2010; however, he has been saving his unemployment compensation and has sufficient funds for another month (Tr. 69).

In sum, the only debt Applicant thought he paid was the judgment in SOR ¶ 1.m for \$413 (Tr. 70-71). He conceded that the creditor had sent the debt to a collection company and it still appeared on his credit report as a liability (Tr. 71).

## 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security 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.” 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, responses to interrogatories, his SOR response, and his bankruptcy filing. His 35 delinquent SOR debts total \$22,916. He said he only paid one of the 35

SOR debts (the debt in SOR ¶ 1.m for \$413). His SOR debts have been delinquent for more than a year. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Additional inquiry about the possible applicability of mitigating conditions is required.

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 debts. 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." There is some residual doubt about whether Applicant is fully committed to avoidance of future delinquent debts.

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by unemployment and underemployment. However, there is insufficient evidence about these circumstances to show he acted responsibly under the circumstances. From January 2008 to February 2009, Applicant earned about \$40,000. He promised to pay the debts listed on his March 7, 2008, security clearance application. However, he did not pay bad checks for \$39 incurred in October 2003 (SOR ¶ 1.j), for \$31 incurred in September 2003 (SOR ¶ 1.k), for \$30 incurred in August 2003 (SOR ¶ 1.l), for \$66



incurred in June 2002 (SOR ¶ 1.dd), for \$179, incurred in March 2002 (SOR ¶ 1.ii), and he did not pay the personal loan for \$8,000 incurred in October 2001 (SOR ¶ 1.w). His relationship with his girlfriend ended in 2006, and he did not pay a total of 17 bad checks totaling \$1,941. Once Applicant learned of his delinquent debts, he had an obligation to maintain contact with his creditors<sup>2</sup> and resolve his debts. There is insufficient evidence to establish his diligence in meeting these security responsibilities.

Applicant disclosed several non-SOR debts on his bankruptcy filing. For example, he owed \$1,100 to the IRS for his 2007 taxes. He had financial problems in the Air Force, which led to his discharge from the service. Because these financial problems were not listed on his SOR, he has not had adequate notice, and I am not drawing any adverse inference against him concerning these financial problems.<sup>3</sup>

AG ¶¶ 20(c) and 20(d) do not fully apply. He received financial counseling and showed some good faith<sup>4</sup> in connection with his bankruptcy. His bankruptcy will resolve all of his delinquent non-priority debts. Applicant is well educated and he understands what he must do to establish his financial responsibility. However, Applicant cannot

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<sup>2</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

<sup>3</sup>In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have not considered these non-SOR issues and problems for any adverse purpose.

<sup>4</sup>The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

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

receive full credit under AG ¶ 20(c) because there are not clear indications that the problem is under control. His history of delinquent debt extends back to 2002. There is an insufficient track record of debt payment to provide assurance that he will show future financial responsibility. AG ¶ 20(e) is not applicable because Applicant did not provide documentation showing he disputed any of his SOR debts.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He has had steady employment from January 2008 to February 2009, and earned about \$40,000. He did not pay the debts he promised to pay on his March 7, 2008, security clearance application. He did not provide enough information about the effect on his finances caused by his unemployment and underemployment. Several of his delinquent debts were incurred more than five years ago, well before his current unemployment. His documented steps are simply inadequate to fully mitigate financial considerations security concerns.

### **Whole-Person Concept**

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

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

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his clearance. Applicant is 32 years old. He is sufficiently mature to understand and comply with his security responsibilities. He has completed almost four years of college. He deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor. There is no evidence that he has ever violated security rules. There is every indication that he is loyal to the United States, the Department of Defense, and his employer. There is no evidence that he abuses alcohol or uses illegal drugs. His unemployment and underemployment

contributed to his financial woes. He is credited for paying the bad checks listed on his security clearance application that are not listed on his SOR.

Applicant admitted responsibility for 34 of 35 SOR debts totaling about \$22,400. His resolution of his delinquent debts through bankruptcy is a positive step in the resolution of his financial problems. Applicant is also credited with mitigating the debt in SOR ¶ 1.m for \$413 because I am satisfied that he would have admitted this debt if he had more assurance from the creditor of his responsibility for this debt.

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. His oldest delinquent SOR debts became delinquent more than five years ago. From January 2008 to February 2009, he earned about \$40,000 and had the means to resolve many of his delinquent debts. On his March 7, 2008, security clearance application he listed five bad checks totaling \$345 incurred from March 2002 to October 2003, and promised to pay them. He did not pay these five debts. His SOR listed a total of 17 bad checks totaling \$1,941, and he did not pay any of them. His documented actions were insufficient to establish he acted responsibly under the circumstances. He had sufficient opportunity to make greater progress in the resolution of his SOR debts, or to provide adequate documentation to mitigate financial issues.

A post-bankruptcy period showing financial responsibility is necessary. Applicant's promise to maintain financial responsibility after his bankruptcy is insufficient without a documented track record of financial responsibility.<sup>5</sup> Lingering doubts remain concerning his current reliability, trustworthiness, and good judgment.

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 fully 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 and Adjudicative Process factors and supporting evidence, 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 at this time.

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<sup>5</sup>See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (discussing importance of track record of financial responsibility).

## Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n to 1.ii:	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