



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



In the matter of:)
)
-----) ISCR Case No. 09-04655
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

January 22, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) listed 20 delinquent debts, totaling \$41,117. He admitted responsibility for 13 SOR debts, totaling \$23,525. He was making his child support payments because his pay was being garnished, and he allocated his 2008 income tax refund to reduce his child support debt. One of the 12 remaining SOR debts duplicated another SOR debt. He did not make any payments on the other 11 SOR debts, which totaled \$14,402. He did not take sufficient actions to address or resolve his SOR debts. Financial considerations concerns are not mitigated, and eligibility for access to classified information is denied.

Statement of the Case

On March 28, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or Security Clearance Application (SF 86) (GE 1). On August 7, 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 October 1, 2009, Applicant responded to the SOR (HE 3). He requested a hearing before an administrative judge. On October 27, 2009, Department Counsel indicated she was ready to proceed on his case. On October 29, 2009, DOHA assigned Applicant's case to me. On November 4, 2009, DOHA issued a hearing notice (HE 1). On November 23, 2009, Applicant's hearing was held. At the hearing, Department Counsel offered four exhibits (GE 1-5) (Tr. 16-17), and Applicant offered seven exhibits (Tr. 19-21; AE A-G). There were no objections, and I admitted GE 1-4 (Tr. 17-18), and AE A-G (Tr. 22). Additionally, I admitted the hearing notice, SOR, and response to the SOR (HE 1-3). On December 2, 2009, I received the transcript. I held the record open until December 20, 2009, to permit Applicant to provide additional documentation (Tr. 48-50, 85-88, 97, 99-100). On January 19, 2010, I received 11 exhibits from Applicant (AE H-R). Department Counsel did not object (HE 4), and AE H-R were admitted into evidence that same day.

Findings of Fact¹

Applicant's SOR response admitted 13 debts, totaling \$23,525 as follows: ¶¶ 1.a to 1.e, ¶ 1.g, ¶ 1.i, ¶ 1.l, and ¶¶ 1.p to 1.t (HE 2). He denied the remainder of his SOR debts without elaboration (HE 2).

Applicant is a 51-year-old long-haul truck driver (Tr. 6, 23). He has been employed as a truck driver for about ten years (GE 1). Applicant graduated from high school in 1978 (Tr. 6). He attended a vocational technical school in welding and machine shop; however, he did not graduate (Tr. 7, 27). He served in the Army National Guard from June 1989 to October 2009 (Tr. 29, 58; GE 1). He will not receive a military retirement check until he is age 60.

Applicant committed one security violation. He possessed a cell phone with a camera in his truck in a location where such a device was not permitted (Tr. 30). He also denied that he had the camera-phone, when actually he did have it in his truck (Tr.

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

30). He explained that the reason he denied that he had it was because it was turned off (Tr. 30). His employer suspended him from work for three months (Tr. 31).²

Applicant held a secret or top secret clearance while he was in the Army (Tr. 28, 31-32). He served in Iraq from March 2003 to October 2004 (GE 1). He retired in the grade of sergeant (AE M; GE 1). His DD Form 214 lists a variety of awards, training, and commendations including: an Army Achievement Medal, Meritorious Unit Commendation, Army Reserve Components Achievement Medal (3rd Award), National Defense Service Medal (2nd Award), Southwest Asia Service Medal with Bronze Service Star (2nd Award), Army Service Ribbon, Army Reserve Component Overseas Training Ribbon (3rd Award), Armed Forces Reserve Medal w/M Device (3rd Award), Kuwait Liberation Medal (Saudi Arabia), Kuwait Liberation Medal (Kuwait), Global War on Terrorism Expeditionary Medal, and Global War on Terrorism Service Medal (AE M).

Applicant was married from 1986 to 2005, and he was previously married for 15 months (GE 1). On December 15, 2005, he married his current spouse (Tr. 23). Applicant is planning to obtain a divorce (Tr. 24). His children are ages 15, 21, and 31 (Tr. 24-25; GE 1).

On August 15, 2009, Applicant's security clearance was suspended, and he became unemployed (Tr. 23). His wife is a truck driver, and she became unemployed in October 2009 (Tr. 43, 91). His spouse has not yet started to receive unemployment compensation (Tr. 66). They do not have sufficient income to address their daily living expenses and his SOR debts (Tr. 67-81). Their first and second mortgages, totaling about \$1,000 per month, are about three months behind (Tr. 74). Applicant is not responsible for either of these mortgages (Tr. 76).

Financial Considerations

Applicant's SOR listed 20 delinquent debts totaling \$41,117 as follows: ¶ 1.a (medical—\$368); ¶ 1.b (gasoline expenses—\$1,582); ¶ 1.c (collection—\$174); ¶ 1.d (medical—\$150); ¶ 1.e (collection—\$3,947); ¶ 1.f (collection—\$2,004); ¶ 1.g (child support—\$8,973); ¶ 1.h (collection—\$1,124); ¶ 1.i (collection—\$1,235); ¶ 1.j (collection—\$1,783); ¶ 1.k (collection—\$3,466); ¶ 1.l (collection—\$580); ¶ 1.m (bank—\$1,387); ¶ 1.n (bank—\$6,260); ¶ 1.o (bank—\$1,568); ¶ 1.p (department store—\$1,296); ¶ 1.q (collection—\$1,046); ¶ 1.r (collection—\$941); ¶ 1.s (medical—\$537); and ¶ 1.t (collection—\$2,669) (HE 2).

Applicant asserted several debts were duplications and after the hearing provided the specific debts he thought were duplicated (Tr. 45, 48-50). Applicant states that the following SOR debts are duplications of each other (AE H):

(1) ¶ 1.f (\$2,004) and ¶ 1.p (\$1,296);

²The SOR did not allege that this incident raised a security concern. No adverse inference is made against Applicant for this breach of security rules.

(2) ¶ 1.h (\$1,124) and ¶ 1.r (\$941);

(3) ¶ 1.j (\$1,783) and ¶ 1.q (\$1,046); and

(4) ¶ 1.k (\$3,466) and ¶ 1.t (\$2,669).

Applicant believed the six debts totaling \$11,332 in SOR ¶¶ 1.f (\$2,004), 1.h (\$1,124), 1.j (\$1,783), 1.k (\$3,466); 1.m (\$1,387), and ¶ 1.o (\$1,568) were debts from credit cards where his former spouse was the primary user and Applicant was merely an authorized user (Tr. 35-36, 42, 44-46, 48). He has not communicated with these six creditors (Tr. 36). His divorce papers do not expressly and specifically allocate responsibility for any of these six credit card accounts, and it is unclear whether these delinquent debts were allocated to her or whether Applicant is still liable for some or all of the debts (Tr. 37, 63-64; AE P at ¶ 6.H). In some instances, he disputed the amount of the debts on his credit reports, and the disputes were noted on his credit reports (Tr. 38). I conclude Applicant had a good faith, albeit erroneous belief that he was not legally responsible for these six debts.³

Applicant's spouse owns the house where he currently lives (Tr. 26). His name is not on the deed (Tr. 26). They are behind on their house payments, and Applicant believes they will catch up on their house payments and then file for divorce in January or February 2010 (Tr. 46). Applicant wanted to bring his spouse's mortgages to current status because he wanted to have a peaceful divorce (Tr. 79-80).

Applicant planned to start paying his delinquent debts beginning with his smaller debts once he received employment (Tr. 33-34). He contacted the medical creditors in SOR ¶ 1.a and 1.s in August and September 2009 (Tr. 32, 34, 52). He believed the debts in SOR ¶¶ 1.c and 1.d were the same debt because they were listed as owed to the same creditor (Tr. 34). The amounts of the debts in ¶¶ 1.c and 1.d are within \$25 of each other. He has not been in communication with the creditors for the debts in SOR ¶¶ 1.b, 1.i, 1.l, 1.p, 1.q, 1.r, and 1.t (Tr. 34, 43-46, 50-53).

Applicant denied knowledge and responsibility for the bank debt in SOR ¶ 1.n (\$6,260) (Tr. 47). His credit report indicates the credit card was lost or stolen (Tr. 47; GE 4 at 12).⁴

Applicant's April 15, 2008, credit report shows a past due child support balance of \$11,162 (GE 4 at 12). His monthly child support payment is \$400 (Tr. 40, 72). He believed the child support debt in SOR ¶ 1.g (\$8,973) was reduced to about \$6,000 when Applicant paid \$2,871 of his federal tax refund towards his child support debt (Tr. 39; AE A at 3). He provided a spreadsheet indicating his federal tax refund went to reduce his child support debt (Tr. 41-42; AE J at lines 20, 23, and 31). His pay records

³As such these six debts are mitigated under AG ¶¶ 20(d) and 20(e). See discussion at pages 9-10, *infra*.

⁴This debt is mitigated under AG ¶ 20(e). See discussion at page 10, *infra*.

for January 1, 2009, to August 14, 2009, show a total child support garnishment of \$2,585 (AE Q at 23). When Applicant became unemployed in August 2009, his spouse only made a partial payment on his child support debt (Tr. 72).

Applicant's spouse is the person in the household who pays their debts (Tr. 40). Applicant explained why he believed he was unable to resolve his SOR debts:

I make the money, I hand the money over to her and she pays the bills, and I'm at her mercy as of getting some of these bills paid, but once I get away from her, it will be just my responsibility to get them paid and I will make sure that they do get paid . . . Once I get away from my current wife, yes, I will have a budget.⁵

Applicant contended his financial problems began in 2004 when his Army active duty orders were not extended (Tr. 53-54). From June to November 2005, he was on active duty, and his net income was about \$5,000 per month (Tr. 61-62). He was unemployed until he could obtain post-active duty employment (Tr. 54). When he was previously married, he and his wife used debt consolidation plans to resolve their debts (Tr. 55). However, Applicant's current wife refused to utilize a debt consolidation plan (Tr. 55). Applicant has not received financial counseling; however, he is willing to undertake financial counseling after they file for divorce (Tr. 56).

When Applicant was in Iraq (March 2003 to October 2004), he earned about \$4,000 per month tax free (Tr. 63). His former wife used the money while he was in combat for her own purchases and expenses (Tr. 63). In 2006, Applicant's gross income was about \$38,000, and in 2007, it was about 40,000 (Tr. 61). He and his current wife's joint income in 2006 was \$81,351 (AE N at 2). Their joint income in 2007 was \$92,601 (AE O at 2). In 2008, Applicant's gross income was \$43,000 (Tr. 60; AE A).⁶ From January 1, 2009 to August 14, 2009, Applicant earned \$21,517 from his civilian employment and \$3,017 from the Army National Guard (AE L at 8; AE Q at 23). He was unemployed after August 15, 2009 (Tr. 60). Starting in October 2009, he began receiving monthly unemployment compensation of \$1,060 (Tr. 60). Applicant and his spouse's living expenses are about \$1,700 per month (Tr. 78). Applicant does not have any savings or investments (Tr. 79).

In sum, the only payments made on any of Applicant's SOR debts were payments on his child support debt (Tr. 86). I asked Applicant to provide documentation showing some SOR debts were duplicated by other SOR debts (Tr. 48-49) and proof of any payments on any SOR debts (Tr. 97). Applicant provided some post-hearing documentation addressing some other questions; however, he did not provide any documents from creditors showing debts were duplicated or that he made any payments on any SOR debts, aside from his child support payments. He did not provide

⁵ Tr. 56-57.

⁶There is no record evidence showing Applicant's spouse's income in 2008 and 2009.

any correspondence to or from his other SOR creditors concerning his efforts to pay, establish payment plans, or otherwise resolve his delinquent SOR debts.

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 (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 Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." "It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply." ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) (internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his SOR response, and his statement at his hearing. Many of his SOR debts have been delinquent for a substantial period of time. In Applicant's response to the SOR, he admitted 13 debts, totaling \$23,525 as follows: ¶¶ 1.a to 1.e, ¶ 1.g, ¶ 1.i, ¶ 1.l, and ¶¶ 1.p to 1.t. Applicant's pay was being garnished to satisfy his child support debt in SOR ¶ 1.g. Although he receives limited mitigating credit for involuntarily paying his child

support through garnishment,⁷ this debt is mitigated because he allocated his 2008 income tax refund to reduction of his child support debt, in addition to the pay that was being garnished.

Applicant did not provide any evidence of resolution on the other 12 SOR debts that he admitted. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct does not warrant full application of any mitigating conditions because he did not act more aggressively and responsibly to resolve his delinquent 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 resolving his delinquent SOR debts and is making adequate steps to do so.

⁷See ISCR Case No. 08-06059 at 6 (App. Bd. Sept. 21, 2009) (indicating involuntary payment of debts through garnishment is not necessarily mitigating).

AG ¶ 20(b) partially applies. Applicant's financial situation was damaged by unemployment, divorce, and his current spouse's unwillingness to allocate more of Applicant's salary to address his debts. However, he has not provided sufficient evidence to establish that he acted responsibly under the circumstances with respect to his unresolved SOR debts. He knew that his spouse was allocating less than a fair and appropriate share of his salary for his debts, and he did not take action to address these financial issues. Instead, he is going to wait for their divorce, and then to be rehired to begin making payments to his SOR creditors. From January 2006 to August 14, 2009, his income gradually increased or remained about the same. He had sufficient financial resources to begin a payment plan to address some of his smaller debts and loans, and chose not to do so. He has not maintained contact with most of his creditors.⁸

AG ¶ 20(c) partially applies. Although Applicant did not receive financial counseling, he probably has otherwise learned about financial issues. Applicant cannot receive full credit under AG ¶ 20(c) because he has not paid, started payment plans, disputed, or otherwise resolved 12 of his SOR debts. There are some initial, positive "indications that the problem is being resolved or is under control." He has admitted his responsibility for 13 SOR debts. Although he has a payment plan on one debt through garnishment (SOR ¶ 1.g), he did not provide documentation showing any payments to any of the other 12 SOR creditors. He has not generated a budget and does not monitor expenses. He promised to eventually resolve his delinquent SOR debts.⁹ He also established some mitigation under AG ¶ 20(d) because he showed some good faith¹⁰ in

⁸"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁹ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

¹⁰The 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)).

the resolution of his SOR debts by admitting responsibility for 13 of his SOR debts, and by promising to resolve his delinquent SOR debts.

Applicant believed the six debts totaling \$11,332 in SOR ¶¶ 1.f (\$2,004), 1.h (\$1,124), 1.j (\$1,783), 1.k (\$3,466); 1.m (\$1,387), and 1.o (\$1,568) were debts from credit cards where his former spouse was the primary user and Applicant described himself as an authorized user. As an admitted authorized user of these credit accounts, Applicant is legally responsible for the debts on these accounts, unless he can show that he did not sign the contract with the creditors. Allocation of these debts to his former spouse through their divorce decree does not automatically release his liability to the creditors, unless the creditors were notified and given an opportunity to oppose the release of Applicant's liability. None of his SOR creditors are specifically listed in the divorce decree and none of them signed it. Applicant's remedy is to pay the joint debts in accordance with the contracts with the creditors, and then sue his former wife under the divorce decree. Nevertheless, I will mitigate these debts for purposes of this decision because Applicant was not aware that he had an obligation to pay these debts if his former spouse failed to do so.¹¹ Moreover, Applicant alleged the debts in SOR ¶¶ 1.f (\$2,004), 1.h (\$1,124), 1.j (\$1,783), and 1.k (\$3,466) were duplicated by debts he accepted responsibility for in his SOR response: ¶ 1.p (\$1,296), ¶ 1.r (\$941), ¶ 1.q (\$1,046), and ¶ 1.t (\$2,669). I do not need to determine whether or not they are duplications, having mitigated the debts in SOR ¶¶ 1.f, 1.h, 1.j, and 1.k previously because Applicant was not aware of his responsibility to pay or otherwise resolve these debts. Accordingly, I will find "Against Applicant" on SOR ¶¶ 1.p, 1.q, 1.r, and 1.t because (1) he accepted responsibility for them in his SOR response, and the evidence of his former spouse's responsibility for these four debts is not sufficiently established.

Applicant denied knowledge and responsibility for the bank debt in SOR ¶ 1.n (\$6,260). His April 15, 2008, credit report indicates the credit card was lost or stolen. Applicant is credited with disputing the debt in SOR ¶ 1.n, and it is mitigated under AG ¶ 20(e). I also accept his contention that the debts in SOR ¶¶ 1.c and 1.d are duplications of each other, and SOR ¶ 1.d is mitigated.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. In his SOR response, he admitted 13 debts, totaling \$23,525 as follows: ¶¶ 1.a to 1.e, ¶ 1.g, ¶ 1.i, ¶ 1.l, and ¶¶ 1.p to 1.t. The debt in SOR ¶ 1.d is mitigated as a duplication of the debt in SOR ¶ 1.c. The debt in SOR ¶ 1.g is mitigated because he has an established payment plan. He has had steady employment from January 2006 to August 14, 2009, and he has not shown sufficient progress on the 11 unaddressed SOR debts. His steps are simply inadequate to fully mitigate financial considerations security concerns.

¹¹When Applicant receives this decision, he will have a better understanding of his obligation to resolve these debts, if his former spouse fails to pay them.

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 51 years old, and he is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the Department of Defense as an employee of a defense contractor and as a truck driver for the U.S. Army in Iraq. 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. He has never been fired from a job or left employment under adverse circumstances. His unemployment, divorce, and current marital difficulties concerning allocation of income to resolve debts contributed to his financial woes. He denied responsibility for seven SOR debts. He disputed the debt in SOR ¶ 1.n. Applicant believed in good faith that his former wife was solely responsible for six SOR debts totaling \$11,332. Applicant admitted responsibility for 13 SOR debts. He has made payments on his largest SOR debt for child support through garnishment of his wages and his 2008 income tax refund. One debt was a duplication of another SOR debt. These factors show some responsibility, rehabilitation, and mitigation.

The whole person factors against reinstatement of Applicant's clearance are more substantial at this time. Failure to pay or resolve his just debts is not prudent or responsible. Applicant has a history of financial problems. In his SOR response, he admitted responsibility for 13 SOR debts. The debt in SOR ¶ 1.d duplicated the debt in SOR ¶ 1.c. He had been making payments on his child support debt (SOR ¶ 1.g) through garnishment. Eleven SOR debts totaling \$14,402 are not adequately addressed. He had notice of his delinquent SOR debts, and sufficient opportunity to

contact his creditors. From January 1, 2006, through August 14, 2009, he was making approximately \$3,000 per month. He had sufficient income to arrange payment plans on his SOR debts, or at least to establish and maintain communications with his SOR creditors after he received the SOR. He did not make adequate progress in the resolution of 11 of his SOR debts. He did not pay, start payments, dispute, or otherwise resolve 11 SOR debts.

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

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	Against Applicant
Subparagraph 1.d	For Applicant (duplicates 1.c)
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f to 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m to 1.o:	For Applicant
Subparagraphs 1.p to 1.t:	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.

MARK HARVEY
Administrative Judge