



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-05264  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: Tobe Lev, Esquire

October 28, 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 March 24, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (e-QIP).<sup>1</sup> On August 13, 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 September 1, 2009.<sup>2</sup> On December 15, 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

<sup>1</sup> Government Exhibit 1 (e-QIP), dated March 24, 2009.

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated September 1, 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 December 23, 2009. In a sworn, written statement, notarized on January 7, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 24, 2010, and the case was assigned me on March 9, 2010. A Notice of Hearing was issued on March 18, 2010, and I convened the hearing, as scheduled, on April 20, 2010.

During the hearing, five Government exhibits and six Applicant exhibits were admitted into evidence, without objection. Applicant and his wife testified. The record remained open to afford Applicant the opportunity to supplement it, and on April 27, 2010, he submitted nine additional exhibits that were also admitted into evidence, without objection. The transcript (Tr.) was received on April 29, 2010.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all but one of the factual allegations (¶¶ 1.a. through 1.p., and 1.r.) of the SOR. He denied the factual allegation in ¶ 1.q. of the SOR, and submitted two documents in support of his contention pertaining to that particular allegation.

Applicant is a 33-year-old employee of a defense contractor, currently serving as a maintenance trades helper,<sup>3</sup> and he is seeking to obtain a security clearance. He has no prior military service.<sup>4</sup> A May 1997 high school graduate,<sup>5</sup> with some vocational school and community college credits,<sup>6</sup> he has worked in a variety of positions in a variety of locations in two different states. He was a maintenance worker for a local government from August 1998 until August 2005; a maintenance worker for a large national box store; a sorter; a trades crafts worker; a route driver; and a maintenance host, before being hired by his current employer.<sup>7</sup> He also went through periods of

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<sup>3</sup> Government Exhibit 1, *supra* note 1, at 20.

<sup>4</sup> *Id.* at 34.

<sup>5</sup> *Id.* at 18-19.

<sup>6</sup> *Id.* at 17-18.

<sup>7</sup> *Id.* at 19-32.

unemployment, sometimes as few as two months, and once as long as six months.<sup>8</sup> He has been with his current employer since February 2009.<sup>9</sup>

Applicant has been married since March 2001.<sup>10</sup> It is unclear if he and his wife have any children.

### **Character References**

Applicant's supervisor is supportive of Applicant and believes Applicant is "a proven entity" in his division, as well as very courteous in his daily interactions with the clients they serve.<sup>11</sup> A very dear friend of Applicant's mother for the past 19 years, who also happens to be Applicant's landlady since his current employment, characterized him as dedicated and committed to his family, and willing to step into situations to help his mother and grandmother in times of stress.<sup>12</sup>

### **Financial Considerations**

There was nothing unusual about Applicant's finances until about 2004. At some point prior to mid-2004, Applicant's wife lost her job and was unemployed for about four months before obtaining another job with a salary that was 50 per cent less than her old salary.<sup>13</sup> Later that fall, they were unable to continue making the \$460 monthly lease payments on his automobile.<sup>14</sup> The creditor filed an action against Applicant and obtained a garnishment of his wages, resulting in a \$457 attachment of his wages every two weeks, or nearly twice the previous payment.<sup>15</sup> With the assistance of an attorney costing him \$1,600, Applicant was subsequently able to reverse the action, but the automobile was repossessed.<sup>16</sup> The repossession necessitated the purchase or lease of another vehicle, adding to his indebtedness.<sup>17</sup> With insufficient funds to pay the monthly payments, Applicant's accounts fell deeper into delinquency. With his total liabilities reaching \$36,694, and total assets of only \$6,983, in November 2004, Applicant and his wife filed a voluntary joint petition for bankruptcy under Chapter 7 of

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.* at 38.

<sup>11</sup> Applicant Exhibit D (Letter from supervisor, dated April 19, 2010).

<sup>12</sup> Applicant Exhibit A (Letter from landlady, dated April 19, 2010).

<sup>13</sup> OPM Report of Investigation, Personal Subject Interview, dated June 27, 2009, at 1, attached to Government Exhibit 2, *supra* note 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

the U.S. Bankruptcy Code.<sup>18</sup> On February 22, 2005, an unspecified amount of consumer debt was discharged.<sup>19</sup>

Applicant attributed his financial problems at that time to “immaturity to develop a budget,” some financial irresponsibility, and buying habits based on their anticipated continued joint income.<sup>20</sup>

In August 2005, Applicant and his wife decided to relocate from one state to another solely with the expectations of finding better-paying positions in what was initially thought to be a more economically stable economy. They wanted to get away from dependent family members and paying rent, and relocate to start their own lives and income. Expectations were not initially met when they were unable to find good jobs. Instead, they found jobs that paid substantially lower than the ones they previously had, and hoped to get. Eventually, they both got better jobs: his wife was a nursing assistant and he was a painter.<sup>21</sup> In March 2007, fate stepped in and, when his mother asked for help in caring for his suddenly-ill grandmother—with whom he was very close—Applicant and his wife relocated back to the location of their old residence.<sup>22</sup> Applicant initially could not find a job, but in July 2007, he found one in maintenance at a local hotel. His wife did not earn a salary for she was furnishing full-time healthcare for his grandmother.<sup>23</sup>

Applicant’s mother lost her job (paying her \$65,000 per year)<sup>24</sup> in September 2007, leaving him to support the entire extended family of five: grandmother, mother, nephew, Applicant’s wife, and himself.<sup>25</sup> Applicant’s wife had to move again to retain her professional license, and his grandmother’s health had improved, so in August 2008, Applicant joined his wife.<sup>26</sup> Unfortunately for his wife, in mid-2008, she sustained an injury while at work, and three weeks later sustained another injury now requiring surgery.<sup>27</sup> Although she received \$270 workman’s compensation per week,<sup>28</sup> Applicant was still unemployed, and that amount was simply insufficient to sustain them

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<sup>18</sup> Government Exhibit 3 (Voluntary Petition, dated November 17, 2004), at 1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; Tr. at 31-32.

<sup>21</sup> Tr. at 33-35.

<sup>22</sup> *Id.* at 35-36.

<sup>23</sup> *Id.* at 36.

<sup>24</sup> OPM Report of Investigation, *supra* note 13, at 7.

<sup>25</sup> Tr. at 37.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 38.

<sup>28</sup> OPM Report of Investigation, *supra* note 13, at 7.

financially.<sup>29</sup> He started to fall behind in his monthly payments, and several accounts became delinquent and were placed for collection or charged off.

In August 2009, Applicant and his wife met with a financial counselor of the Consumer Credit Counseling Service (CCCS). A debt management program was tentatively prepared along with a budget,<sup>30</sup> but it was the counselor's opinion that Applicant could not sustain a repayment plan involving one monthly payment to be distributed among all of his creditors because he did not have sufficient funds to do so.<sup>31</sup> Instead, it was determined that the best option would be to address several accounts at a time with standard payment arrangements, before moving on to the next set of accounts.<sup>32</sup> That was the plan Applicant arranged and has followed.<sup>33</sup>

In addition to noting Applicant's Chapter 7 bankruptcy, the SOR identified 17 purportedly continuing delinquencies as reflected by two credit reports from 2009.<sup>34</sup> 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 acknowledged, and their respective current status, according to the credit reports, documents submitted by Applicant, and Applicant's related written and testimonial comments, are described below:

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.b.	Apartment lease	\$4,693	Principal: \$3,706.06. <sup>35</sup> Collection. <b>In repayment plan</b> with \$100 to be paid every two weeks starting Oct. 15, 2010. <sup>36</sup>
1.c.	Utility	\$152	Collection. Settled for \$106.46 plus \$3.50, and <b>Paid in full</b> Apr. 5, 2010. <sup>37</sup>

<sup>29</sup> *Id.*

<sup>30</sup> Applicant Exhibit C, Enclosures 16-20 (CCCS Action Plan, dated August 24, 2009).

<sup>31</sup> Applicant Exhibit C, Enclosure 15 (Applicant's statement, undated).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Government Exhibit 4 (Combined Experian, TransUnion, and Equifax Credit Reports, dated April 7, 2009); Government Exhibit 5 (Equifax Credit Report, dated December 3, 2009).

<sup>35</sup> Creditor Account Statement, dated March 3, 2009, attached as Enclosure II-K to Government Exhibit 2, *supra* note 2.

<sup>36</sup> Applicant Exhibit B (Revised Budget, dated April 19, 2010).

1.d.	Dessert catalogue	\$561	Charged off. <sup>38</sup> <b>In repayment plan</b> with entire balance to be paid in full on Dec. 10, 2010. <sup>39</sup>
1.e.	Credit card	\$1,387	High limit: \$300. <sup>40</sup> Charged off, but account sold to collection agency. <sup>41</sup> Collection agency offered to settle for \$715. <sup>42</sup> <b>In repayment plan</b> with \$100 to be paid every two weeks starting Aug. 20, 2010. <sup>43</sup>
1.f.	Credit card	\$1,477	High limit: \$300. <sup>44</sup> Charged off, but account sold to collection agency. <sup>45</sup> Collection agency offered to “settle” for \$1,504.30 over 10 month period. <sup>46</sup> <b>In repayment plan</b> with \$100 to be paid every two weeks starting May. 28, 2010. <sup>47</sup>
1.g.	Credit card	\$441	Collection. Charged off, but account sold to collection agency. <sup>48</sup> <b>In repayment plan</b> with entire balance to be paid in full on Aug. 20, 2010. <sup>49</sup>

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<sup>37</sup> Tr. at 41-42; Applicant Exhibit C, Enclosures 4-6 (collection notice, payment Ledger, and account details, various dates); Applicant Exhibit H (various account documents, various dates).

<sup>38</sup> Applicant Exhibit B, *supra* note 36, at 8.

<sup>39</sup> *Id.*

<sup>40</sup> Tr. at 48. Government Exhibit 4, *supra* note 34, at 8, indicates the credit limit was \$200.

<sup>41</sup> *Id.* Government Exhibit 4.

<sup>42</sup> Government Exhibit 2, *supra* note 2, at 5.

<sup>43</sup> Applicant Exhibit B, *supra* note 36, at 4.

<sup>44</sup> Tr. at 48.

<sup>45</sup> *Id.* Government Exhibit 4.

<sup>46</sup> Government Exhibit 2, *supra* note 2, at 5.

<sup>47</sup> Applicant Exhibit B, *supra* note 36, at 1.

<sup>48</sup> Government Exhibit 4, *supra* note 34, at 13.

<sup>49</sup> Applicant Exhibit B, *supra* note 36, at 4.

1.h.	Credit card	\$473	Collection. Charged off, but account sold to collection agency. <sup>50</sup> Agreement made which predates repayment plan: \$30 per month. <b>Eight payments made</b> through Apr. 6, 2010. <sup>51</sup> <b>In repayment plan</b> with entire balance to be paid in full on May. 14, 2010. <sup>52</sup>
1.i.	Cell phone	\$994	Collection. Charged off, but account sold to collection agency. <sup>53</sup> Settled for \$100, and <b>Paid in full</b> Apr. 6, 2010. <sup>54</sup>
1.j.	Auto down payment	\$2,100	Partial down payment made but Applicant was unable to come up with remainder. A \$50 good-faith payment made and returned, NSF. <sup>55</sup> Charged off, but account sold to collection agency and \$100 service charge added. <sup>56</sup> <b>In repayment plan</b> with \$100 to be paid every two weeks starting Feb. 18, 2011. <sup>57</sup>
1.k.	Telephone service	\$212	Collection. Settled for \$100, and <b>Paid in full</b> Jan. 29, 2010. <sup>58</sup>
1.l.	Student loan	\$567	Principal balance for all four deferred student loans: \$12,672.19. <sup>59</sup> Account 120 days past due. Collection. <b>In repayment plan</b> with \$129, covering four loans, to be paid every month starting May. 14, 2010. <sup>60</sup> <b>First payment made</b> Apr. 19, 2010. <sup>61</sup>

<sup>50</sup> Government Exhibit 4, *supra* note 34, at 14.

<sup>51</sup> Applicant Exhibit I (various account documents, various dates).

<sup>52</sup> Applicant Exhibit B, *supra* note 36, at 1; Tr. at 50.

<sup>53</sup> Government Exhibit 4, *supra* note 34, at 16.

<sup>54</sup> Applicant Exhibit J (various account documents, various dates); Tr. at 50-51.

<sup>55</sup> Government Exhibit 2, *supra* note 2, at 5, and Enclosure II-I; Tr. at 52.

<sup>56</sup> Government Exhibit 4, *supra* note 34, at 18.

<sup>57</sup> Applicant Exhibit B, *supra* note 36, at 9; Tr. at 52-53.

<sup>58</sup> Applicant Exhibit K (various account documents, various dates); Tr. at 51.

<sup>59</sup> Applicant Exhibit E (various account documents, various dates).

<sup>60</sup> Applicant Exhibit B, *supra* note 36, at 1.

<sup>61</sup> Applicant Exhibit L (various account documents, various dates).

1.m.	Student loan	\$360	Same status as 1.l., above.
1.n.	Student loan	\$270	Same status as 1.l., above.
1.o.	Student loan	\$180	Same status as 1.k., above.
1.p.	Loan	\$734	Collection. Charged off. <sup>62</sup> <b>In repayment plan</b> with \$100 to be paid every two weeks starting May. 28, 2010. <sup>63</sup>
1.q.	Cable television	\$236	Collection. Settled for \$130.06, <sup>64</sup> and <b>Paid in full</b> Jan. 4, 2010. <sup>65</sup>
1.r.	Automobile insurance	\$205	Collection. Intends to pay entire balance on Aug. 20, 2010. <sup>66</sup>

Except for the accounts where payments have already been clearly made, Applicant's repayment plan is merely a proposed plan generated by him, without acknowledgment or approval by the remaining creditors.<sup>67</sup> Also, where proposed payment dates have already passed, unless I have received definitive proof of such payments, the record is silent.

In addition to the SOR-related debts, Applicant has also been repaying several debts not listed in the SOR, and has either paid them off or at least brought them current.<sup>68</sup> His wife has some delinquent debts in her name, but Applicant is not concerned with them at this time.<sup>69</sup>

On September 1, 2009, Applicant submitted a personal financial statement indicating monthly net income of \$2,742, monthly expenses of \$2,452, scheduled monthly debt payments of \$71.75, and a net remainder of \$189 available for

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<sup>62</sup> Government Exhibit 4, *supra* note 34, at 10; Applicant Exhibit M (various account documents, various dates).

<sup>63</sup> Applicant Exhibit B, *supra* note 36, at 1; Tr. at 56.

<sup>64</sup> Applicant Exhibit N (various documents, various dates).

<sup>65</sup> Tr. at 56-57; Applicant Exhibit F (check register, dated January 4, 2010).

<sup>66</sup> *Id.* at 57.

<sup>67</sup> *Id.* at 85-90.

<sup>68</sup> *Id.* at 55-60.

<sup>69</sup> *Id.* at 109-112.



discretionary spending.<sup>70</sup> Since that time, Applicant's rent was reduced from \$1,200 to \$800,<sup>71</sup> and in October 2010, his income was scheduled to increase \$.83 per hour.<sup>72</sup>

## 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."<sup>73</sup> 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."<sup>74</sup>

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 used 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."<sup>75</sup> 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

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<sup>70</sup> Applicant's Personal Financial Statement, dated September 1, 2009, attached to Government Exhibit 2, *supra* note 2.

<sup>71</sup> Tr. at 82-83.

<sup>72</sup> *Id.* at 68.

<sup>73</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>74</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>75</sup> "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 (4<sup>th</sup> Cir. 1994).

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.<sup>76</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship 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."<sup>77</sup>

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."<sup>78</sup> 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. . . .

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<sup>76</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>77</sup> *Egan*, 484 U.S. at 531

<sup>78</sup> See Exec. Or. 10865 § 7.

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 mid-2004, when his wife lost her job and was unemployed for about four months before obtaining another job with a salary that was 50 per cent less than her old salary. Unable to maintain monthly payments, disputes arose with creditors and a repossession occurred. With insufficient funds to pay the monthly payments, Applicant’s accounts fell deeper into delinquency. With his total liabilities reaching \$36,694, and total assets of only \$6,983, in November 2004, Applicant and his wife filed a voluntary joint petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. On February 22, 2005, an unspecified amount of consumer debt was discharged.

Six months later, with a relatively clean financial slate, Applicant and his wife chose to relocate to another state based on the expectations of finding better-paying jobs. Expectations were not initially met. Family health issues arose and Applicant and his wife made several other moves to provide care for the various family members while permitting their finances to again deteriorate. Unfortunately for his wife, in mid-2008, she sustained an injury while at work, and three weeks later sustained another injury now requiring surgery. Although she received workman’s compensation, Applicant was unemployed, and accounts again became delinquent and sent for collection, or were charged off. He made very little effort to contact his creditors to resolve his accounts until late 2009. 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.”<sup>79</sup> Also, AG ¶ 20(e) may apply where “the individual has a reasonable

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<sup>79</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

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 2004, were resolved by Chapter 7 bankruptcy discharge of his debts in 2005, and eventually re-emerged. Applicant attributed his pre-bankruptcy financial problems to “immaturity to develop a budget,” some financial irresponsibility, and buying habits based on their anticipated continued joint income; and his post-bankruptcy financial problems to family health issues and periodic unemployment by both his wife and himself.

However, it appears that while these circumstances may have contributed to his financial problems, they do not appear to be the primary cause. Quitting gainful employment in search of the possibility of better employment in another state, bouncing back and forth between states and jobs, generating unemployment, and ignoring the timely handling of his bills, while still spending money, actually caused his financial meltdown. Because the financial situation is frequent and continuing in nature, he receives minimal application of AG ¶ 20(a). Applicant’s handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

Likewise, he receives minimal application of AG ¶ 20(b), for while the conditions that contributed to the financial problem at some point were initially beyond Applicant’s control (e.g., loss of his employment, his grandmother’s health, his mother’s unemployment, and his wife’s unexpected medical problems), Applicant failed to act responsibly under the circumstances. Rather than consolidating and minimizing expenses, he seemingly continued to spend unwisely, relocating state to state, and giving up employment for a job elsewhere. He increased his expenditures, ignored his debts, and failed to reduce his delinquencies.<sup>80</sup>

AG ¶ 20(c) applies because Applicant has received financial counseling and debt consolidation guidance from a CCCS credit counselor in August 2009.

AG ¶ 20(d) only partially applies because Applicant initiated a good-faith effort to start repaying only 3 of the 17 creditors before the hearing, but after the SOR was

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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)).

<sup>80</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. 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)).

issued. With the exception of those three creditors and the few additional ones to whom he started making payments after the hearing, Applicant never contacted any of the creditors to try to make repayment arrangements. Instead, he simply prepared his proposed repayment plan with anticipated payments, but no indication that those creditors had agreed with his plan or that additional payments had, in fact, been made. Over the years, Applicant did not act aggressively, timely, or responsibly to resolve his remaining delinquent debts. Instead, he ignored his debts until his security clearance review commenced. Applicant has been down this path in the past, and while there is some positive action, since 2005, when his Chapter 7 bankruptcy was discharged, it appears he has taken little significant actions to address the satisfaction of his delinquent debts.

AG ¶ 20(e) does not apply because Applicant he has not provided documented proof to substantiate the basis of any disputed account.

### **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, involving his family's health issues, his wife's injuries, and the periodic unemployment by both his wife and himself, his finances continued to go steadily down hill and out of control. After a lengthy period of inaction during which he did not address his creditors, Applicant finally initiated some good-faith efforts to address some accounts before the hearing was conducted, but after the SOR was issued. He also prepared his repayment proposal.

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. Nevertheless, since August 2005, with the exceptions described above in late 2009, he did not make significant good-faith efforts to pay a variety of delinquent debts. He actually made some small payments to a few creditors. But, he generally ignored the remaining creditors until the hearing. Instead, he prepared a repayment plan, without concurrence from his creditors, and made a number of promises to follow his repayment plan. Yet, despite the passage of time, there is little documentation to support his contentions that he had actually commenced his promised payments in compliance with his repayment plan. Now, five years after his debts were discharged under a Chapter 7 bankruptcy, he is making promises to address his remaining delinquent debts. 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.

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.<sup>81</sup> 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:<sup>82</sup>

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.

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<sup>81</sup> 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).

<sup>82</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 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:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge