



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-05889

Appearances

For Government: William O'Neil, Esquire, Department Counsel

For Applicant: *Pro se*

August 22, 2011

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 November 17, 2009, Applicant applied for a security clearance and submitted a Questionnaire for Sensitive Positions (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on October 22, 2009.² On another unspecified date, DOHA issued him another set of interrogatories. He responded to the interrogatories on October 22, 2009.³ On March 15, 2010, DOHA issued a Statement of Reasons (SOR)

¹ Government Exhibit 1 (SF 86), dated November 17, 2009.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated October 22, 2009).

³ Government Exhibit 3 (Applicant's Answers to Interrogatories, dated October 22, 2009).

to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (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. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on April 5, 2010. In a sworn statement, dated April 12, 2010, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. At some unspecified point, Applicant changed his mind, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 13, 2011, and the case was assigned to another administrative judge on February 1, 2011. Based on Applicant's unavailability, a hearing could not be scheduled, and the case was reassigned to me on April 18, 2011. A Notice of Hearing was issued on June 23, 2011, and I convened the hearing, as scheduled, on July 14, 2011.

During the hearing, 6 Government exhibits (GE 1-6) and 26 Applicant exhibits (AE A-Z) were admitted into evidence without objection. Applicant testified. The hearing transcript (Tr.) was received on July 25, 2011. The record was kept open until July 29, 2011, to enable Applicant to supplement it, but no further submissions were received.

Findings of Fact

In his Answer to the SOR, Applicant both admitted and denied portions of four of the factual allegations (¶¶ 1.b. through 1.e.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. He denied the remaining factual allegation (¶ 1.a.) of the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 40-year-old sole owner-employee of a defense contractor, currently serving as its president.⁴ He is seeking to retain a security clearance that was initially granted to him in 1993.⁵ A 1989 high school graduate, Applicant has a 1995 bachelor's degree in engineering.⁶ While in high school, Applicant worked part-time in the family business.⁷ Since graduating from college, Applicant has held several different positions

⁴ Government Exhibit 1, *supra* note 1, at 3; Tr. at 40-41.

⁵ Government Exhibit 1, at 8.

⁶ Tr. at 75.

⁷ *Id.*

with various employers. He was a computer salesman from September or October 1995 until March or April 1996;⁸ a technology specialist from May 1999 until September 2000,⁹ when he was laid off for a period of one month;¹⁰ and a technology consultant from October 2000 until September 2001.¹¹ He established his company in October 2001.¹² Applicant has never served with the U.S. military.¹³ He has never been married.¹⁴

Financial Considerations

Applicant contends that between 2000 and 2008, he had excellent or exceptional credit.¹⁵ In reality, in June 2007, a credit analysis conducted by the three major credit reporting companies revealed his creditworthiness to be between fair and good (according to Equifax), good (according to Experian), and between good and very good (according to TransUnion).¹⁶ By April 2008, his creditworthiness with Equifax had improved with his FICO score increasing from 710 to 764.¹⁷

Applicant owns three real estate properties. In 2000, Applicant used his first property (property A) as his primary residence.¹⁸ He purchased a beach property (property B) as a second home in 2003 or 2004. In 2008, in anticipation of getting married, Applicant purchased another property (property C) intended to serve as his new primary residence.¹⁹ At that time, property B had been on the market for two years, but due to real estate market conditions, his efforts to sell the property were not successful.²⁰ At an unspecified time in 2008, Applicant's marriage plans fell through.²¹ At about the same time, he contends the market crashed and his income dropped.²²

⁸ *Id.* at 76.

⁹ Government Exhibit 1, *supra* note 1, at 4.

¹⁰ Tr. at 81.

¹¹ Government Exhibit 1, *supra* note 1, at 4.

¹² *Id.* at 3.

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

¹⁵ Tr. at 34.

¹⁶ Applicant Exhibit I (Credit Score & Analysis, dated June 18, 2007).

¹⁷ Applicant Exhibit A (Notice to the Home Loan Applicant, dated April 11, 2008).

¹⁸ Tr. at 36.

¹⁹ *Id.* at 36-37.

²⁰ *Id.* at 37.

²¹ Government Exhibit 3 (Personal Subject Interview, dated June 4, 2009), at 3.

The SOR identified five purportedly continuing delinquencies, including one mortgage in a past-due status, as reflected by two credit reports from 2009,²³ and one credit report from 2010,²⁴ totaling approximately \$466,444, of which \$50,444 is past due. Some accounts reflected in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor 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. The information reflected in the credit reports is not necessarily accurate or up to date.

(SOR ¶ 1.d.): Unable to handle property C's \$3,700 monthly mortgage payment without his former fiancée's financial contribution, in October 2008, Applicant applied for a mortgage modification.²⁵ In his request, he offered as justification, his loss of income, increased expenses, and medical bills, along with the depressed housing market conditions and dramatically falling sales prices.²⁶ A loan modification was approved, but there was no substantial difference in the payments, and it did not improve his particular conditions,²⁷ so Applicant considered it a denial.²⁸ The mortgage remained current until January 2009, but at about that time he started falling behind on his payments. He stopped making mortgage payments in January or February 2009.²⁹ As of May 2009, with a mortgage balance of \$416,219, Applicant was over 120 days past due with his mortgage payments, in the amount of \$10,701.³⁰ By September 2010, the past-due balance had risen to \$53,000.³¹ Applicant currently resides in the residence,³² but has not paid any mortgage payments "based on [his] hope and desire to get a loan modification through the bank that unfortunately wasn't realized. . . ." ³³ At the time of the hearing, property C had been on the market, but there have been no offers.³⁴ Other

²² *Id.*; Tr. at 82-83.

²³ Government Exhibit 4 (Government Exhibit 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 15, 2009); Government Exhibit 5 (Equifax Credit Report, dated October 28, 2009).

²⁴ Government Exhibit 6 (Equifax Credit Report, dated September 28, 2010).

²⁵ Applicant Exhibit T (Letter to Mortgage Lender, dated October 19, 2008).

²⁶ *Id.*

²⁷ Tr. at 56.

²⁸ *Id.* at 62.

²⁹ *Id.* at 56, 70.

³⁰ Government Exhibit 4, *supra* note 23, at 6.

³¹ Government Exhibit 6, *supra* note 24, at 2.

³² Tr. at 42.

³³ *Id.* at 60.

³⁴ *Id.* at 61.

than his “unsuccessful” 2008 attempt to obtain a satisfactory loan modification, Applicant has made no effort to enter into payment arrangements regarding his delinquent mortgage payments or make ongoing monthly mortgage payments. He indicated that he will probably relinquish the property to the mortgage lender “just to move forward.”³⁵

(SOR ¶ 1.a.): When Applicant purchased property C he had an internet provider install service at the house. During the installation process, the technician ruptured a water main pipe causing an extensive water spill.³⁶ Applicant initially claimed that, as a settlement for the damage caused, the internet provider offered him six months of free premium service, which he accepted.³⁷ He subsequently revised the length of the offer to have been only four months.³⁸ Nevertheless, after six months, Applicant received a bill of over \$400 for services for two months which he challenged.³⁹ In March 2009, the account was placed for collection with an outstanding balance of \$419.⁴⁰ The account was still unresolved as of September 2010.⁴¹ Applicant claims he disputed the account with TransUnion, a credit reporting agency,⁴² and that based on an investigation by TransUnion, the account was deleted from the credit file.⁴³ There is evidence that Applicant disputed the account, erroneously claiming the account was “never delinquent or in collections,”⁴⁴ but there is no evidence that the credit reporting agency had deleted it. Applicant also contends the account with the creditor is current, with no outstanding balance.⁴⁵ In fact, as of May 5, 2011, the account was \$100 past due.⁴⁶

(SOR ¶ 1.b.): Applicant purchased a refrigerator, washer, and dryer from a large retail store for property C.⁴⁷ Applicant contends the technician installed the icemaker improperly and it spilled water throughout the home, causing water damage.⁴⁸ Applicant

³⁵ *Id.* at 62.

³⁶ Government Exhibit 3, *supra* note 21, at 3.

³⁷ *Id.*

³⁸ Tr. at 43.

³⁹ Government Exhibit 3, *supra* note 21, at 3.

⁴⁰ Government Exhibit 4, *supra* note 23, at 8.

⁴¹ Government Exhibit 6, *supra* note 24, at 1.

⁴² Tr. at 44.

⁴³ *Id.* at 44-45.

⁴⁴ Applicant Exhibit S (Letter to TransUnion, dated December 13, 2010).

⁴⁵ Tr. at 42; Applicant’s Response to the SOR, at 1.

⁴⁶ Applicant Exhibit R (Monthly Statement, dated May 5, 2011).

⁴⁷ Government Exhibit 3, *supra* note 21, at 3.

⁴⁸ Tr. at 46.

subsequently complained to the retail store and requested reimbursement for the damage, but negotiations were unsuccessful. He complained that the refrigerator was faulty, and he refused to pay the \$2,797 for the appliances, contending he paid for the repairs and was therefore unable to make payments towards the original purchase.⁴⁹ He asked that the refrigerator be taken back to the retail store,⁵⁰ but there is no evidence that it ever was returned. In April 2009, the account was transferred to a collection agent, and the unpaid balance was increased to \$2,824.⁵¹ By October 2009, the balance had increased to \$2,921.⁵² In January 2011, Applicant hired a law firm to address this and other accounts. However, he was unhappy with their inability to settle this and other accounts,⁵³ so in July 2011, two weeks before the hearing, Applicant engaged the professional services of another attorney to negotiate a settlement,⁵⁴ but as of the hearing, Applicant had not paid any portion of the outstanding account.⁵⁵

(SOR ¶ 1.c.): Applicant had a credit card account with a large national bank. In December 2008, the creditor issued its final notice to him, indicating the delinquent account would be written off as a bad debt and placed for collection.⁵⁶ Applicant initially claimed he received a bill in about January 2009 reflecting an unpaid balance of \$14,000.⁵⁷ He subsequently revised the figure upward to \$16,000.⁵⁸ He said he called the creditor to dispute the amount which he felt was inflated from what he believed to be the true balance of about \$3,000.⁵⁹ He contended the creditor verbally agreed to settle the account for \$3,000, because the other charges were not his.⁶⁰ However, while Applicant was in the “process of obtaining the \$3,000,” the creditor sold the account to a collection agent.⁶¹ In May 2009, the outstanding balance was \$15,625.⁶² By September 2010, the balance had increased to \$17,000.⁶³ Applicant engaged the professional

⁴⁹ Government Exhibit 3, *supra* note 21, at 3.

⁵⁰ *Id.*

⁵¹ Government Exhibit 4, *supra* note 23, at 10.

⁵² Government Exhibit 5, *supra* note 23, at 2.

⁵³ Applicant Exhibit H (Letter from Law Firm, dated January 4, 2011; Tr. at 53).

⁵⁴ Government Exhibit T (Letter to Creditor, dated July 1, 2011).

⁵⁵ Tr. at 46.

⁵⁶ Applicant Exhibit K (Letter from Creditor, dated December 17, 2008).

⁵⁷ Government Exhibit 3, *supra* note 21, at 3.

⁵⁸ Tr. at 49-50.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Government Exhibit 4, *supra* note 23, at 12.

⁶³ Government Exhibit 6, *supra* note 24, at 2.

services of two different attorneys to negotiate a settlement,⁶⁴ but as of the hearing, Applicant had not paid any portion of the outstanding account.⁶⁵

(SOR ¶ 1.e.): When Applicant purchased property C, he also purchased tile flooring and hired a contractor to install it in his residence. He was unhappy with what he characterized as “shoddy workmanship.” The entire cost for the project was about \$20,000.⁶⁶ Applicant initially claimed the contractor had done a poor job and had damaged his granite counters,⁶⁷ but the allegation pertaining to the counters was not repeated. He contends he paid the contractor two-thirds of the agreed amount, but that they walked off the job and never returned.⁶⁸ The project remained unfinished.⁶⁹ Applicant refused to pay the remaining balance, which he estimated to be \$2,500, until the project is completed.⁷⁰ The creditor charged off the \$6,949 balance in May 2009.⁷¹ By October 2009, the balance had increased to \$8,000.⁷² Applicant engaged the professional services of two different attorneys to negotiate a settlement,⁷³ but as of the hearing, Applicant had not paid any portion of the outstanding account.⁷⁴

(Not Alleged): As noted above, from 2000 until 2008, Applicant used property A as his primary residence. In May 2009, Applicant’s mortgage was current.⁷⁵ By September 2009, monthly mortgage payments had fallen behind, and the foreclosure process had commenced.⁷⁶ Applicant made his last mortgage payment in February 2010.⁷⁷ In June 2010, Applicant inquired of his mortgage lender about a possible mortgage modification. The mortgage lender responded offering a variety of options.⁷⁸

⁶⁴ Government Exhibit T, *supra* note 54).

⁶⁵ Tr. at 50.

⁶⁶ *Id.* at 64.

⁶⁷ Government Exhibit 3, *supra* note 21, at 4.

⁶⁸ Tr. at 64.

⁶⁹ *Id.* at 65.

⁷⁰ Government Exhibit 3, *supra* note 21, at 4.

⁷¹ Government Exhibit 4, *supra* note 23, at 11.

⁷² Government Exhibit 5, *supra* note 23, at 2.

⁷³ Government Exhibit T, *supra* note 54).

⁷⁴ Tr. at 64-65.

⁷⁵ Government Exhibit 4, *supra* note 23, at 8.

⁷⁶ Government Exhibit 6, *supra* note 24, at 2.

⁷⁷ Tr. at 68-69.

⁷⁸ Applicant Exhibit M (Letter from Mortgage Lender, dated June 29, 2010).

Applicant applied for the loan modification, but it was rejected by the mortgage lender without offering Applicant a trial period.⁷⁹ When his tenants were unable to continue paying their rent in late 2010, Applicant obtained a writ of possession and had them evicted.⁸⁰ In January 2011, Applicant hired a law firm to represent him in the pending foreclosure action.⁸¹ As of July 2011, a tenant was paying Applicant a monthly rent of \$1,000.⁸² The property has been on the market since October 2010,⁸³ and he has received at least three short sale contract offers,⁸⁴ but there is no evidence that a final agreement has yet been approved.

(Not Alleged): Applicant has owned property B since 2003 or 2004. It is rented for about \$1,400 per month, but because the rent is less than the mortgage payment, Applicant stopped paying his monthly mortgage payments in March 2010.⁸⁵ Applicant applied for a loan modification, but it was rejected by the mortgage lender without offering Applicant a trial period.⁸⁶ The present status of the mortgage is not known.

In October 2009, Applicant submitted a personal financial statement reflecting a monthly income of \$5,500, and monthly expenses of \$5,110, including mortgage payments.⁸⁷ He failed to estimate a monthly remainder, if any, available for discretionary spending.⁸⁸ At that time, he reflected \$12,000 in savings and \$30,000 in stocks and bonds.⁸⁹ In July 2011, Applicant estimated he had a monthly net income, including salary and rental income, of between \$4,500 and \$6,900.⁹⁰ His estimated monthly expenses are approximately \$2,000,⁹¹ leaving a monthly remainder of approximately \$4,000 to \$5,000, which is “being put away, as reflected in [his] bank statements.”⁹² Applicant’s adjusted gross income in 2009 was \$58,053, and in 2010,

⁷⁹ Tr. at 87-88.

⁸⁰ Applicant Exhibit Z (Writ of Possession, dated December 16, 2010).

⁸¹ Applicant Exhibit F (Letter from Law Firm, dated January 12, 2011).

⁸² Tr. at 69.

⁸³ Applicant Exhibit O (Exclusive Right of Sale Listing Agreement, dated October 1, 2010).

⁸⁴ Applicant Exhibit N (Residential Sale and Purchase Contract, undated); Applicant Exhibit P (Residential Contract for Sale and Purchase, undated); Applicant Exhibit Q (“As Is” Residential Contract for Sale and Purchase, undated).

⁸⁵ Tr. at 69-70.

⁸⁶ *Id.* at 89.

⁸⁷ Government Exhibit 2 (Personal Financial Statement, undated), attached to Applicant’s Answers to Interrogatories.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Tr. at 66-68, 71.

⁹¹ *Id.* at 72.

⁹² *Id.* at 72-73.

was \$53,995.⁹³ In 2011, he is on track to make a similar income.⁹⁴ As he stated in October 2009, “my financial condition is really good and will be better with upcoming loan modification on primary residence.”⁹⁵ There is no evidence that Applicant ever received financial counseling.

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.”⁹⁶ 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.”⁹⁷

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.”⁹⁸ The Government initially has the burden of producing evidence to establish

⁹³ Applicant Exhibit Y (Extracts of U.S. Individual Income Tax Return 2009 and 2010 (Form 1040), undated).

⁹⁴ Tr. at 60.

⁹⁵ Government Exhibit 2, *supra* note 2, at 4.

⁹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁹⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁹⁸ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁹⁹

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."¹⁰⁰

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."¹⁰¹ 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 or 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

⁹⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁰⁰ *Egan*, 484 U.S. at 531

¹⁰¹ See Exec. Or. 10865 § 7.

overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly, under AG ¶ 19(c), *“a history of not meeting financial obligations”* may raise security concerns. As noted above, there was nothing unusual about Applicant’s finances until 2008 when, because of the downturn in the economy and the local housing market, and his diminished income, as well as his terminated marriage plans and associated additional discretionary expenses, Applicant’s income proved to be insufficient to handle his monthly expenses. He experienced disputes with vendors and contractors, and refused to pay some accounts because of continuing disputes. Applicant applied for mortgage modifications, all of which were either rejected or approved with terms Applicant did not like, and he intentionally stopped making the monthly payments on his three properties. Mortgages and other accounts became delinquent, and at least two of the three mortgages went into a foreclosure status. AG ¶¶ 19(a) and 19(c) 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.”*¹⁰²

There was nothing unusual about Applicant’s finances until 2008. Applicant attributed his financial problems to three main causes: 1) his diminished income

¹⁰² The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

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

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

because of the downturn in the economy and the local housing market; 2) his terminated marriage plans and associated additional discretionary expenses of purchasing a new residence and making repairs to it to satisfy his fiancée; and 3) defective appliances and shoddy workmanship in the new residence. Although he denied it, claiming he had sufficient money to pay his bills, Applicant's financial resources proved to be insufficient to handle his monthly expenses. While the economic conditions were unexpected and beyond Applicant's control, the degree to which those factors had an impact on Applicant's ability to overcome them has not been adequately explained. The SOR alleged five delinquent accounts, but there were actually others that were not alleged. Applicant's response to some accounts was to dispute them, either because they were not his debts or because there were extenuating circumstances for not resolving them in 2008 or 2009. He challenged unpaid balance amounts, but made little efforts to pay the amounts that were not in dispute. He obtained the professional services of two different law firms to motivate creditors into settlement agreements, but they failed in their efforts. He failed to obtain favorable mortgage modifications, and simply stopped paying his monthly mortgage payments. Applicant claims he intends to resolve his differences with his creditors, but his actions since 2008 reflect a different goal.

Applicant continued to accrue revenue from the rents generated by his two rental properties, and income from his other business enterprise, and was seemingly capable of meeting most of his financial obligations. He simply decided not to pay his mortgages in an apparent effort to force the mortgage lenders to comply with his wishes to lower his monthly payments and otherwise modify all of the mortgages. As a result, he permitted his mortgages to fall into arrears and become delinquent. Applicant seems only concerned with litigation to retain his properties without making the required monthly payments. In July 2011, Applicant had an estimated monthly net income, including salary and rental income, of between \$4,500 and \$6,900, and estimated monthly expenses of approximately \$2,000. With approximately \$4,000 to \$5,000 in discretionary income, which could be used to pay his mortgages and resolve his other delinquent accounts, Applicant has, instead, chosen to put it away, rather than use it.

Some of what occurred was beyond Applicant's control and took place under such circumstances that it is unlikely to recur. Other than some generic guidance from his attorneys, there is no evidence of financial counseling, debt management, or debt repayment. There is little indication that the problems associated with his mortgages or other delinquent accounts are now being resolved. By failing to make good-faith efforts to resolve his delinquent accounts since 2008, Applicant acted irresponsibly under the circumstances, and his current reliability, trustworthiness, or good judgment, are in question. AG ¶¶ 20(a), 20(c), and 20(d) do not apply. AG ¶ 20(b) only partially applies.

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. 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.¹⁰³

There is some evidence in favor of mitigating Applicant's conduct. He experienced some financial problems because his income diminished with the downturn in the economy, he purchased and decorated a new residence in anticipation of a marriage that failed to take place, and he had problems with defective appliances and shoddy workmanship in the new residence. He disputed some accounts, and sought settlements on others. He sought mortgage modifications from his mortgage lenders.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:¹⁰⁴

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.

¹⁰³ 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).

¹⁰⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

There are some questionable actions by Applicant in handling his delinquent accounts. Applicant made a decision to stop paying his monthly mortgage payments for his properties. He continued to accrue revenue from the rents generated by his rental properties, and income from his other business enterprise, and was seemingly capable of meeting most of his financial obligations. He simply decided not to pay his mortgages in an effort to force the mortgage lenders to comply with his wishes to lower his monthly payments and otherwise modify all of the mortgages. As a result, he permitted his mortgages to fall into arrears and become delinquent. As for his credit card and other delinquent accounts, Applicant has simply sought to force settlements with the assistance of attorneys. He disputed balances, but since 2008, has refused to pay undisputed amounts. I conclude that Applicant has failed to establish a meaningful track record. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of 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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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.

ROBERT ROBINSON GALES
Administrative Judge