



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-07338

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: Matthew J. Werner, Esquire

April 29, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his finances. Eligibility for access to classified information is granted.

Statement of Case

On May 21, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and DOHA recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under 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 (Directive); and the Adjudicative Guidelines (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on July 14, 2010, and requested a hearing. The case was assigned to me on September 27, 2010, and was scheduled for hearing on October 28, 2010. The hearing was convened on that date. At hearing, the Government's case consisted of 10 exhibits (GEs 1-10). Applicant relied on four witnesses (including himself) and 16 exhibits (AEs A-K, M, T, and X-Z). The transcript (Tr.) was received on November 5, 2010.

Procedural Rulings

Before the close of the hearing, Appellant requested leave to supplement the record with a documented settlement arrangement with the holder of the second trust deed of trust on the EP property; identification of the entity with a deficiency claim in connection with the EP first trust deed foreclosure, and explore settlement arrangements with the remaining unresolved creditors. For good cause shown, Applicant was granted 30 days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with the following: (a) a letter from a bankruptcy attorney counseling Applicant on his Chapter 13 petition (AE A-3); (b) compilation of documents covering the EP foreclosure and sale in February 2008 (AE C-4); an Applicant letter to the lender's agent inquiring about any deficiency balance (AE C-5); compilation of documents concerning the foreclosure of the first trust deed on the HC property (AE D-3); a printout of the EP lender doing business in another name (AE D-4); Applicant letters to potential creditors holding claims on the second trust deed covering the HC property (AE E-3); a check for \$2,400 settling the creditor 1.g debt (AE G-3); and a creditor letter confirming the settlement of the creditor 1.k debt. (AE K-3)

With his submission of his post-hearing exhibits in November 2010, Applicant requested his first extension to December 28, 2010, to further explore settlement of potential deficiency claims. For good cause shown, Applicant was granted an extension to December 28, 2010 to further supplement the record.

On December 20, 2010, Applicant supplemented the record with a letter of December 8, 2010 from the law firm representing the second trust deed holder on the HC property, and confirming the second trust deed holder's use of another company name. (AE D-5) Applicant asked for a second extension to January 31, 2011, to continue his efforts to identify and resolve the two remaining deficiency claims. For good cause shown, Applicant was granted his second continuance request, this one to January 31, 2011. Applicant's AE D-5 was admitted.

In February 2011, Applicant faxed a copy of his February 2011 letter to the servicing agent of the first trust deed holder regarding the EP property with an attached 1099-A form. (AE C-6) With this submission, Applicant timely requested a third extension to February 28, 2011. For good cause shown, Applicant was granted his third extension request to February 28, 2011. Applicant's proposed AE C-6 was admitted.

Applicant made a fourth request for an extension on February 28, 2011. He asked for an extension to April 18, 2011 to identify and resolve potential deficiency claims with the trust deed holders associated with the EP and HC properties. In March 2011, Department Counsel objected to Applicant's fourth extension request. Noting Department Counsel's objection, I granted Applicant a more limited extension to March 29, 2011 to supplement the record.

On March 29, 2011, Applicant provided a supplemental letter (AE C-7), in which he detailed his telephone efforts to contact and attempt to resolve the potential deficiency claims of his two remaining creditors. He asked for a continued extension to April 18, 2011 to further his attempts to identify and resolve the potential deficiency claims. Department Counsel continued his objection. On April 21, 2011, I granted Applicant's extension request and admitted AE C-7 before closing the record without any additional submissions from Applicant.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 13 protections in January 2007 (dismissed April 2007) and (b) accumulated 10 debts exceeding \$650,000, inclusive of four mortgage-related debts. In his response to the SOR, Applicant admitted one of the allegations (his Chapter 13 petition and dismissal), but denied the remaining allegations without explanation.

Findings of Fact

Applicant is a 43-year-old senior consultant for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Following an extended courtship, Applicant married his first and only identified wife in August 1999; he has a daughter from this marriage. (GE 1; Tr. 94-95). He and his wife each brought one child to the marriage. (GE 2; Tr. 95) Applicant's wife filed for divorce in October 2006.

Applicant and his wife completed a court-approved settlement agreement in March 2007, and their marriage was dissolved at that time. See AEs F, G, K, and M; Tr. 94-95. Because of ongoing contentious issues over parenting rights and responsibilities, their divorce proceedings remain pending. (AEs M, T, and Y; Tr. 121) Currently, Applicant has primary custody of his eight-year-old daughter. (Tr. 122)

Applicant earned a bachelor of science degree in electrical engineering from an accredited local university in February 2006 and has been employed by his current employer as an engineering consultant since August 2003. (GE 2) He has no military service.

Applicant's finances

Following their marriage, Applicant generally relied on his wife to pay the bills and manage their finances. (Tr. 96) Together, they purchased their first home in June 2001. (GEs 6, 7, and 10; AE T; Tr. 94-95) They financed their purchase of their home at EP with a first trust deed of \$162,000 with creditor 1.c (GEs 6, 7, and 10); Tr. 94) Credit reports reflect that Applicant and his wife refinanced their EP home with creditor 1.f in June 2003 with a \$189,000 first trust deed. (GEs 6, 7, and 10) The servicing agent on this mortgage is listed as creditor 1.c in the SOR. Creditors 1.c and 1.f cover the same mortgage obligation on the property. See AE C-1.

In June 2004, Applicant and his wife refinanced their EP property for a second time. The same 1.c/1.f creditor placed a new first trust deed on the property in the amount of \$213,000. (GEs 6, 7, and 10; AEs C-1 and C-2)

In April 2005, Applicant and his wife purchased their second home (the HC property). They placed a first trust deed on this property with creditor 1.d in the amount of \$224,000. (GEs 6, 7, and 10) At the same time, they arranged for a second trust deed on the EP property in the amount of \$56,000 with the same lender. (GEs 6, 7, and 10)

After they completed their purchase of the HC property, Applicant and his wife moved into the HC home and tried to rent out the EP property. (Tr. 96) Faced with a poor rental market, the EP property "sat empty for maybe six months" (Tr. 96) This unexpected revenue shortfall required Applicant to pay both the EP mortgage (\$1,450 a month) and the HC mortgages (\$2,050 a month) simultaneously without the benefit of any rental revenue. (Tr. 97)

After their purchase of the HC property, Applicant continued to rely on his wife to pay the mortgage accounts and other bills and manage their finances. (Tr. 113) Unbeknownst to Applicant, his wife did not make payments on the HC property as he had expected, and Applicant had to borrow funds from his family (around \$17,000) to cure the default in the HC loan. (Tr. 98) In February 2006, he self-referred himself to a psychotherapist to explore his family's financial issues that were troubling him. (AEs T and Z) Applicant continues to spend considerable time in psychotherapy sessions with this psychotherapist to discuss his marriage and financial decisions. (AE Z)

Several months after his wife filed for divorce in October 2006, Applicant received a notice of foreclosure on the HC property and notification that his EP tenants had vacated their tenancy. (AE T; Tr. 100) Because of poor resale conditions and the timing of the foreclosure notices, the use of a short sale mechanism to dispose of the HC property was not a viable option for him. (Tr. 125-126) Instead, he followed the advice of his real estate attorney and petitioned for Chapter 13 relief in January 2007. (Tr. 102)

In his Chapter 13 petition, Applicant listed real property located at EP (valued at \$280,000) and HC (valued at \$220,000). He listed a first mortgage of \$221,006 on the

HC property with creditor 1.d, a second mortgage of \$56,000 on the HC property with creditor 1.e, and a \$216,000 first mortgage on the EP property with creditor 1.c. (GE 4) Applicant scheduled \$31,000 in unsecured non-priority claims (GE 4). Court minutes note that several creditors objected to Applicant's proposed plan; whereupon, Applicant acquiesced with the objecting creditors in April 2007 and proposed filing a motion to dismiss his petition. (GE 4) Acting on the trustee's motion in April 2007 to dismiss Applicant's petition, the court dismissed his Chapter 13 plan the same month. (GE 7; Tr. 101)

Applicant and his wife completed a separation agreement in March 2007. See AEs F, G, K, and M; Tr. 121-122. Under the terms of their separation agreement, Applicant's wife accepted all of the rights and responsibilities for the EP property. (AEs F-1 and M; Tr. 105-106) Applicant, in turn, agreed to make spousal maintenance payments to his wife in the amount of \$1,500 a month. (AE F-1 and M) Applicant's attorney who represented Applicant in mediation meetings with his wife opined that these monthly payments, together with the wife's own funds from her work, provided more than enough resources to make the scheduled mortgage payments with creditors 1.c and 1.f (AE Y) Her assessments are logical and reasonable and warrant acceptance.

Applicant's separation agreement also allocated payment responsibility for the creditor 1.g (\$7,244) and creditor 1.k (\$2,000) accounts to Applicant's wife. See AEs F, G-2 and K-1; Tr. 115. Applicant's initial documented inquiries to the creditors did not produce any written or oral responses. (AEs G-2 and K-1; Tr. 113-120) Applicant documented his payoffs of the three smaller debts covered by creditors 1.b (\$321), 1.h (\$579), and 1.i (\$115). See AEs B, H, and I; Tr. 113-118. He also provided payment documentation of the library debt covered by creditor 1.j. (AE J) And in his post-hearing submissions, he documented his settled payoffs of the two remaining non-real estate debts covered in the SOR. Applicant's exhibits G-3 and K-3 document payments in full satisfaction of monies owed to creditors 1.g and 1.k.

In May 2007 (just two months after completing his separation agreement with his wife), the HC property was sold at public auction. (AEs D and T) County records document that the property was sold to the highest bidder for \$238,087. (AE D-1) This was enough to satisfy the first trustee holder's interest (AE D-1), but it was not sufficient to satisfy any of the \$56,000 balance remaining on the same creditor's (creditor 1.e) second trust deed. Despite Applicant's good-faith efforts to identify the creditor currently holding this account to try to resolve the deficiency balance, he has been unsuccessful. (AEs C-5 and E-3) Telephonic responses he has received to date from entities previously associated with this loan used such phrases as "paid off," "inactive on system," "closed August 2007," "closed and paid off," and "conveyed" to describe the status of the HC loan. (AE C-7)

Following his completion of his separation agreement with his wife, Applicant deferred to his wife to make the necessary mortgage payments on the EP property. Six months later, he received a notice of foreclosure of the property. (AE 1; Tr. 108) Once he received the foreclosure notice, he contacted a real estate attorney to explore his options

on the EP property. (Tr. 108) Advised that it would take \$10,000 up front to bring the mortgage account current and avert a foreclosure by the first trust holder, he declined. (Tr. 109-110) His wife, who continued to reside in the residence after foreclosure proceedings were initiated, refused to work out sharing arrangements to cover any deficiency balance on the property. (AE Y)

Foreclosure proceedings continued on the EP property by the first trustee deed holder in February 2008 and were reported by Applicant in the incident report he furnished his employer's facility clearance officer. (GE 5; Tr. 94, 107) County records confirm that the EP property was sold at public auction in February 2008 for \$199,700. (AE F-2) This left a deficiency balance owing on the EP first trust deed in the amount of \$36,044. (AE F-2) Applicant's efforts to identify and resolve this potential deficiency claim have been unsuccessful to date. Creditor responses to Applicant overtures have produced no written debt acknowledgments or expressions of interest in working with Applicant to resolve any potential claims associated with the EP first trust deed foreclosure. The only substantive written response that Applicant received came from a former servicing agent of the first trust deed holder who confirmed the sale of the property back to the beneficial holder of the loan. (AE C-6) Asked whether a cancellation of debt (Form 1099-C) had been issued, this servicing agent indicated it had not generated a 2008 1099-C for the loan. Telephonic responses Applicant has received to date from this servicing agent and its predecessor characterized the account as "closed." (AE C-7)

Applicant currently nets around \$4,640 a month. (AE X-2; Tr. 122-123) He reports monthly expenses of \$3,897 and a net monthly remainder of \$743. (AE X-1) His child support payments are automatically deducted from his pay checks every month. Applicant has a 15-year-old vehicle and lives within his means. (AE X-2; Tr. 124) His landlord reports him to be in good standing with his rent. (AE X-3)

Endorsements

Applicant is well regarded by his employer's managers and colleagues as an information systems administrator. (Tr. 56-64) They consider him very skilled, diligent, and trustworthy in his consulting assignments. Applicant's friend of over 20 years described Applicant as highly responsible with his finances. (Tr. 82-89) She expressed familiarity with Applicant's ex-wife and considered her to be extravagant with money. (Tr. 84-85)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors:

- (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

Adjudication Guidelines, ¶ 18.

Burden of Proof

By virtue of the precepts framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a well regarded engineering consultant for a defense contractor who financed two homes with his wife following their marriage in 1999. Faced with foreclosure notices from the lenders holding trust deeds on both of his homes after his wife failed to pay the mortgage obligations on one of the properties during their marriage and the mortgage on the second property she held for herself following their marriage dissolution in March 2007, Applicant made concerted efforts to avert foreclosures of both properties, but without success. All of the remaining debts covered in the SOR have since been paid by Applicant.

By defaulting in their three mortgages (*i.e.*, the first and second mortgages on the HC property and the first mortgage on the EP property, Applicant and his wife exposed themselves to non-judicial foreclosure and ensuing deficiency claims by the first and second trust deed holders. Without resolution these two major mortgage balances still owing on the two outstanding debts with creditors 1.c and 1.e, respectively, create the potential for deficiency liability and raise security concerns over the risks of future enforcement actions by the senior and junior mortgage holders, or their assignees, on these two foreclosed properties.

In May 2007, the first mortgagee on the HP property (creditor 1.d) foreclosed on its first mortgage and sold the property at the scheduled foreclosure sale for \$238,600. While the sale produced enough proceeds to satisfy the first trust deed holder's mortgage debt, it did not generate enough to satisfy the second trust deed holder's outstanding second trust deed. As a consequence, the HP second mortgagee was left with no security in the property and became a legally-characterized sold-out junior lien holder with a potential deficiency claim against Applicant.

Months later (in February 2008), creditor 1.c foreclosed on its first trust deed interest in the EP property. The sale produced only \$199,700, well short of the \$235,000 necessary to satisfy the security interests of the first trust deed holder. (creditor 1.c) As a result, the sale left creditor 1.c with a deficiency balance owing in the amount of \$36,044. Potential deficiency claims of creditors 1.c and 1.e could not be practically resolved by short sales or loan modifications and prompted Applicant to petition for Chapter 13 relief in November 2006 after his wife abruptly separated and ceased paying on any of the mortgages.

Security concerns are raised under the financial considerations guideline of the AGs where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness, and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines¶ DC 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to his wife's abandoning her financial responsibilities during and after their separation and leaving Applicant to essentially fend for himself. By the time he was alerted to the major loan defaults on both of his mortgages, it was too late to explore short sale options or make any repayment arrangements with the lenders that did not involve full payment of the delinquent balances. Foreclosure of both properties became unavoidable for Applicant.

Because Applicant's state does not have an anti-deficiency statute, both senior and junior mortgagees (*i.e.*, creditors 1.c and 1.e) are entitled to pursue deficiency claims against Applicant, provided they do so within the time allowances covered by the state's relevant statute of limitations for written contracts and claims involving real estate. In Applicant's state, the pertinent statute of limitations is six years (C Rev. Stat. ¶ 13-80-102, *et seq.*) Between them, these two sold-out senior and junior mortgagees hold deficiency claims that have over two years to run and encompass claims exceeding \$90,000 in the aggregate.

Once the foreclosed property at issue in a particular case is sold at public auction for less than the value necessary to cover the claims of the junior mortgage holders, the

creditors may seek deficiency relief through independent court actions within six-year windows. Whether creditors 1.c and 1.e will ever institute suits to recover deficiency balances owed to them is still uncertain at this time. But the stakes and risks associated with each junior mortgagee seeking judgment relief against Applicant are still considerable and cannot be fully discounted under current market conditions in Applicant's local region and state.

Based on his evidentiary showing, extenuating circumstances certainly contributed to Applicant's inability to resolve his mortgage obligations in his community. A confluence of heavy mortgage debts on both properties, overextended personal finances, failure of Applicant's spouse to discharge her payment responsibilities during their marriage and in accordance with their settlement agreement, poor real estate sales conditions, and insufficient resources to withstand his wife's breaches, hampered his ability to cure the loan defaults on the two properties and avert foreclosures. Available to Applicant is ¶ MC 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior 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)." While some judgment problems persist over Applicant's taking on so much debt with his joint purchases of both homes without more cash reserves at the outset, his actions are considerably extenuated by unforeseen economic and marital conditions and his inability to cure the defaults once foreclosure proceedings were already under way with the properties.

In recognition of the considerable good-faith efforts Applicant made to resolve his mortgage debts and his smaller debts, mitigation credit is available to him. All of the smaller debts have since been paid (*viz.*, creditors 1.b and creditors 1.g through 1.k). And most importantly, Applicant has mounted major communication initiatives with the creditors last reported to be holding potential deficiency claims, and has not received any encouraging responses to his persistent inquiries. The most he has been able to learn is the identity of a firm doing business in behalf of the second trust deed holder on the HC property and that he does not owe any money to one of the servicing agents of the EP property. None of his contacts have led to any productive settlement discussions.

Applicant's use of financial counseling and good-faith repayment efforts to date certainly merit the application of three of the mitigating conditions for financial considerations: ¶ MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," ¶ MC 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," and ¶ MC 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a

clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Consideration of Applicant's background and circumstances surrounding his situation permits extenuation and considerable mitigation of his accumulated delinquent mortgage and consumer debts. Extenuating conditions associated with his taking on his mortgage debts associated with his purchases of his two homes following his 1999 marriage, his wife's failure to assume her fiducial responsibilities towards Applicant, poor real estate marketing conditions, and his failure to learn of the defaults in time to cure them himself all contributed to his inability to meet his financial obligations with his lenders.

Judgment lapses and economic choices do play some role in Applicant's situation. Between 2003 and 2004, Applicant twice refinanced his EP home, raising the debt ceiling on his first mortgage from \$162,000 to \$213,000. By the evidence presented, Applicant and his wife had no established track record or resources to carry such a large mortgage without the use of both of their incomes. When they purchased a more expensive home (the HC property) in 2005 without first selling their EP property they were forced to rely almost exclusively on the rent from their EP home to cover the new mortgage on the home. Within two years, both home loans were in default and targeted for foreclosure.

Applicant may be faulted some for not making more aggressive efforts earlier to resolve the deficiency claims of his two major creditors with lump sums or other forms of payment measures. With his available resources, several options were potentially available to him. Individually negotiated payment plans, debt consolidation, and refiling for Chapter 13 bankruptcy relief comprise just a few examples of possible resolution measures open to him.

To be sure, Applicant is aware of the time limits of his state's statute of limitations (six years), and the substantial possibilities that neither creditor will pursue him to enforce their deficiency entitlements. By recommitting to paying them with his letter inquiries, he risks validating any enforcement claims of the creditors or their assignees and tolling the statute's potential bar to collection. Standing pat and letting the statute of limitations run on the two claims that approach \$100,000 in overall debt makes some economic sense. But reliance on such an enforcement bar, while available to Applicant, is not a substitute for good-faith efforts to address outstanding debts. Applicant recognizes his dilemma and has taken active steps to identify his lenders holding potential deficiency claims and resolve any remaining balances.

Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated by the Appeal Board with good-faith efforts to repay overdue creditors. See, e.g., ISCR Case No. 02-30304 at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 2001)). What constitutes a "good-faith" effort to repay overdue creditors requires a showing that "a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation" See *id.* In sum, an applicant

must establish some kind of concrete plan for repaying the debt in issue besides relying on a legally permissible option like filing for Chapter 7 bankruptcy or taking advantage of a statute of limitations.

When addressing repayment efforts generally, the Appeal Board has not required an applicant to establish “that he has paid off each and every debt listed in the SOR.” See ISCR Case no. 07-06482 at 2-3 (App. Bd. May 21, 2008)(internal citations omitted). All that the Board has required is that the “applicant demonstrate he has a plan to resolve his financial problems and has taken significant actions to implement that plan.” See *id.*

In Applicant’s case, it was incumbent upon him to demonstrate some tangible steps to satisfy his listed delinquent debts (including his two major lending creditors holding potential deficiency entitlements) with the resources he has available every month. This he has demonstrated in discrete ways: paying off several of the small creditors and documenting his diligent efforts to contact his remaining creditors to explore repayment plans. While not voluntary, his two largest real estate delinquencies were resolved by foreclosure actions by the lenders holding first trust deeds on his two residences (*i.e.*, creditors 1.c/1.f and creditor 1.d).

From a whole-person standpoint, there is ample evidence presented that Applicant has mounted good-faith efforts to resolve the remaining deficiency balances with his two primary lenders and his other smaller debts. Since the dissolution of his marriage in 2007, Applicant has lived frugally and is able to maintain a small surplus every month. While he retains some exposure to enforcement actions by the two lenders still holding deficiency balances, the risks of debt enforcement against him appear to be low, based on the responses of his potential claimants to his inquiries. In his favor are the vigilant efforts he has taken to date to identify and resolve the debts of creditors holding potential claims against him, as well as his ex-wife. So far, the responses he has received to date from these potential creditors have ranged from documentary silence to verbal responses of disinterest.

Taking into account all of the extenuating facts and circumstances surrounding Applicant’s two mortgage debt obligations, deficiency enforcement risks extant, and the good-faith efforts he has mounted to resolve his outstanding debts, Applicant successfully mitigates judgment, reliability and trustworthiness concerns related to his debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a through 1.k:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge