



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



In the matter of: )  
)  
) ISCR Case No. 10-00055  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: Julia Chico Abbitt, Esquire

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on August 24, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 14, 2010, detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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 (AG) implemented on September 1, 2006.

Applicant received the SOR and submitted his written answer and one document on July 15, 2010. Applicant requested a hearing before an administrative judge. DOHA received the request on July 19, 2010, and Department Counsel was prepared to proceed on August 4, 2010. DOHA assigned the case to me on August 23, 2010. DOHA issued the first notice of hearing on September 10, 2010. Counsel for Applicant entered her appearance on September 21, 2010 and asked to reschedule the hearing, so that she could investigate and properly prepare her case. For good cause shown, I granted her request and rescheduled the hearing for October 28, 2010 in an Order dated September 23, 2010.

On September 23, 2010, DOHA issued an amended notice of hearing, and I convened the hearing as scheduled on October 28, 2010. The Government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified. He submitted eight exhibits (AE) A through H, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on November 5, 2010.

I held the record open until November 30, 2010 for Applicant to submit additional documents. Applicant, through his counsel, requested an additional 15 days to submit the requested documents. Department Counsel did not object to the extension of time. By Order dated December 1, 2010, I granted Applicant's request. He timely submitted AE I through AE N, without objection. The record closed on December 15, 2010.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend the SOR**

Twice during the hearing, Department Counsel moved to amend the SOR to conform with the evidence. Applicant's counsel did not object. Department Counsel requested to amend SOR to correct the account numbers listed in the SOR allegations 1.w and 1.ff. The motions were granted and SOR allegations 1.w and 1.ff were amended to reflect the correct account number for the listed debts. (Tr. 37-38, 62-63)

### **Evidentiary ruling**

At the hearing, Department Counsel did not object to the record being held open for the submission of post-hearing documents. Department Counsel now objects to the documents submitted by Applicant. Department Counsel argues that the Government cannot cross-examine Applicant about the source of funds for debts paid after the hearing, about the financial information contained in his redacted bank account information, and about the ongoing garnishment payments. The Government's objection is overruled. The Government's objections go to the weight to be accorded the evidence and not to its admissibility. Applicant's post-hearing evidence (AE I -AE N) is admitted into the record.

## Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.l, 1.n-1.r, 1-t-1.v, 1.x-1.kk, 1.mm, 1.nn, 1.qq, and 1.uu-1.xx of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.m, 1.s, 1.w, 1.ll, 1.oo, 1.pp, and 1.rr-1.tt of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.<sup>2</sup>

Applicant, who is 44 years old, works as a cleaning technician for a Department of Defense contractor. He began this employment in August 2009. He accepted this employment because he received medical benefits. His current employer supports his application for a security clearance.<sup>3</sup>

From November 1988 until February 2005 and from April 2007 until August 2009, Applicant worked for a commercial cleaning contractor. He last worked as a supervisor for this company and earned \$9.75 an hour. This employer did not provide him with medical insurance. From February 2005 until April 2007, Applicant worked as a rip saw operator for a national hardwood company. This company laid him off and has closed its business operations in his locale.<sup>4</sup>

Applicant did not complete high school, but he obtained his GED diploma. Applicant and his first wife were married about 10 years. He married his second wife in 2001, and they divorced in 2004. He has seven children, ages 22, 20, 18, 17, 15, 9, and 7. The three oldest children no longer live at home. Applicant provides the primary custodial care for his children. His mother helps with him with their care when he is at work.<sup>5</sup>

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<sup>1</sup>When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>Response to SOR.

<sup>3</sup>GE 1; Tr. 23.

<sup>4</sup>GE 1; Tr. 23, 96.

<sup>5</sup>GE 1; Tr. 95-97.

Applicant currently earns \$11 an hour. He also works overtime and receives shift premium pay. He averages \$2,492 a month in gross income and \$1,616 in net monthly income. He does not receive child support for his children. However, he receives \$400 a month in food stamps, giving him a total net monthly income of \$2,016. He occasionally receives a clothing allotment of \$125 from the State for his children. When he did not have medical insurance, the State determined that his children were eligible for medical care under the State Medicaid Program and provided his children with a medical card.<sup>6</sup>

Applicant purchased a house in late 2007. His credit did not prevent him from purchasing his house. He pays his monthly mortgage payment of \$460. His other monthly expenses include \$550 for utilities, \$600 for food (includes food stamps), and \$100 for car expenses. He failed to list his phone expenses, estimated at \$60, and a \$25 payment on medical debts. His car expenses are probably low, given the high cost of gasoline. I estimate his usual monthly car expenses at \$200 for gas and insurance, not \$100. His monthly expenses average approximately \$1,895. A wage garnishment of \$296 is taken from his pay, and thus, it is not included as part of his expenses. He has approximately \$120 remaining at the end of each month.<sup>7</sup>

Applicant fell and broke his leg on the job in 2005. He received medical treatment at a local hospital. He thought his injury would be paid through worker's compensation, but it was not. Because he did not have medical insurance, Applicant submitted a financial assistance application to the hospital in January 2006. He understood that his medical bill would be paid through this program. When he met with the Office of Personnel Management (OPM) investigator in 2009, he learned that he had an unpaid hospital bill for approximately \$7,671. He did not initially connect the unpaid hospital bill to the 2005 hospital treatment, as he thought the bill had been paid. Because the investigator made it clear to him that this unpaid bill was a problem, he investigated the bill and eventually spoke with representatives at the hospital. After working with him for several months, the hospital confirmed that this bill has been resolved because he was eligible for financial assistance. The hospital did not explain why his application had not been processed and acted upon earlier. The \$7,671 hospital bill in SOR allegation 1.uu is satisfied.<sup>8</sup>

In 2008, Applicant fell and broke his wrist. He received medical treatment at a medical facility. He did not have medical insurance which would pay the bill nor did he have funds to pay the bill. Through its credit collector, the hospital eventually obtained a judgment against him in the amount of \$3,758 plus interest and costs of \$483. The creditor enforced the judgment by garnishing his wages, starting in August 2010. The

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<sup>6</sup>GE 2; AE L; Tr. 68.

<sup>7</sup>GE 2.

<sup>8</sup>Response to SOR; GE 2; AE A; Tr. 25-27, 73-74.

creditor received its first payment in August 2010 and receives a payment of \$148 twice a month. This debt is not listed in the SOR.<sup>9</sup>

The SOR identified 50 purportedly continuing delinquencies as reflected by credit reports from 2009 and 2010, totaling approximately \$19,237. Some accounts may have been transferred, reassigned, or sold to other creditors or collection agents. 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. Most of the accounts listed in the 2010 credit reports do not list the name of the original creditor or the current creditor; rather the unpaid debts are identified only as medical. In addition, these credit reports do not show an address or telephone number for Applicant to contact the creditor about payment of the debt.<sup>10</sup>

Applicant's unpaid medical bills relate primarily to problems with the Medicaid card used for his children's medical care. When his mother took his children to the doctor or clinic, she did not always present or have the child's Medicaid card with her. Even though the doctors had the Medicaid card information in their system, Applicant realizes now that bills were not submitted for payment.<sup>11</sup>

When he met with the OPM investigator, Applicant denied knowledge of any of the debts listed on his credit report, except for a hospital bill. When he answered the SOR, he denied 10 of the alleged debts because he did not recognize the debts or he believed the debts belonged to his father, who has the same first and last name, but not the same middle name.<sup>12</sup> After further investigation into the debts listed in the SOR, Applicant determined that he confused several debts. Applicant concluded that the debts denied in SOR ¶¶ 1.m, 1.w, and 1.pp were his. He also concluded that the debts in SOR ¶¶ 1.mm, 1.nn, and 1.xx, which he admitted as his, are not his debts.<sup>13</sup>

At the hearing, Department Counsel advised the SOR allegations 1.a and 1.b are the same. Applicant paid this \$99 utility bill in October 2010. The record evidence showed that the debts in SOR ¶¶ 1.c (\$74), 1.l (\$136), and 1.z (\$103) had been paid. With the assistance of his employer, who provided Applicant with a loan, he paid the medical debts listed in SOR allegations 1.d, 1.e, 1.f, 1.g, 1.h, 1.k, 1.l, 1.m, 1.n, 1.o, 1.p,

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<sup>9</sup>AE K; Tr. 79-85.

<sup>10</sup>GE 3; GE 4; GE 5.

<sup>11</sup>Tr. 23-24, 68-69.

<sup>12</sup>The September 4, 2009 credit report lists Applicant's father's name as another name used by Applicant. GE 4, at p. 2. See also GE 1, p. 22.

<sup>13</sup>AE E; AE G; Tr. 43-44.

1.q, 1.r, 1.t, 1.w, 1.y, and 1.pp for a total debt payment of \$3,138. Applicant will repay this loan through deductions from his paycheck.<sup>14</sup>

In 2009, Applicant reached an agreement with the creditor in SOR paragraphs 1.c, 1.l, 1.aa, 1.bb, 1.ee, 1.ff, 1.hh, 1.ii, 1.jj, and 1.qq to repay these debts. Beginning in August 2009, Applicant authorized the creditor to deduct \$25 a month from his checking account, which Applicant described as a garnishment at the hearing. Applicant provided copies of his bank statement, showing that the creditor deducted \$25 a month from Applicant's checking account. Applicant has reduced this \$1,410 debt by at least \$325.<sup>15</sup>

Applicant disputes the eight debts in SOR ¶¶ 1.ll (\$556), 1.mm (\$165), 1.nn (\$256), 1.oo (\$541), 1.rr (\$79), 1.ss (\$268), 1.tt (\$384), and 1.xx (\$189). He believes the debts in SOR ¶¶ 1.mm, 1.nn, 1.oo, and 1.xx may belong to his father. He has no knowledge of the debts listed in SOR ¶¶ 1.ll, 1.ss and 1.tt, and he denies the debt in 1.rr<sup>16</sup> as his bill with this company is current.<sup>17</sup>

Applicant has encountered problems with contacting the creditor for the debts in 1.mm, 1.nn, 1.oo, 1.vv (\$73), 1.ww (\$164); and 1.xx. After the hearing, he mailed a letter to this creditor at the address listed on the September 4, 2009 credit report. The post office returned the letter as undeliverable and unable to forward. The March 15, 2010 and September 21, 2010 credit reports do not show a mailing address or telephone number for this creditor.<sup>18</sup>

The status of the debts in SOR ¶¶ 1.j (\$100), 1.s (\$2,586), 1.u (\$15), 1.v (\$26), 1.x (\$143), 1.cc (\$15); 1.dd (\$39), 1.gg (\$136), 1.vv (\$73), and 1.ww (\$164) remains unknown and unresolved. Most of the smaller debts are related to his children's medical bills. The \$2,500 debt is unknown to Applicant. He believes that this debt belongs to his father. His daughter acknowledged owing the cable debt in SOR ¶ 1.kk, and he acknowledged he allowed her to use his name to obtain this service. Applicant testified that his daughter would be paying the bill. Applicant submitted a receipt from the cable

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<sup>14</sup>GE 5, p.1; AE C. The debt listed in SOR ¶¶ 1.m and 1.pp are the same debt. Some confusion arose at the hearing about SOR ¶¶ 1.g and 1.h because of account numbers. After reviewing the payments made, I conclude that these debts have been paid.

<sup>15</sup>AE J; Tr. 71, 83-85. The Government objected to the admission of AE J on the grounds it could not cross-examine Applicant about other redacted information on his bank statements. Through these statements, Applicant provided the information requested at the end of the hearing on his \$25 a month payment. He also provided the Government with information on his monthly bills in his response to interrogatories and during his meeting with the OPM investigator. From these documents, the Government had information to cross-examine Applicant about his monthly income, bill payment and expenses. AE J is admitted for the limited purpose of showing the payments to one creditor each month.

<sup>16</sup>At the hearing, Applicant stated that he understood "charge off" to mean his bill was paid. Tr. 78.

<sup>17</sup>GE 3; GE 4; GE 5; AE E; AE G; Tr. 43-44, 49-53.

<sup>18</sup>AE N; Tr. 41.

company (AE I) showing a cash payment and a zero balance; however, the receipt does not show an account number which matches either account number Applicant's daughter acknowledged owing. I am unable to determine if the debt in SOR ¶ 1.kk is resolved.<sup>19</sup>

After he met with the OPM investigator, Applicant focused on resolving the debt in SOR ¶ 1.uu. Applicant also identified many of the creditors in the SOR and has worked to resolve the debts that are his. Applicant has not obtained financial counseling or debt consolidation services.<sup>20</sup>

Applicant provided a letter of recommendation from a State police officer, who has known him for the last two years. The police officer has no knowledge of any improper behavior or criminal activity in the two years he has known Applicant.<sup>21</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing 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. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

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<sup>19</sup>AE I; Tr. 28-29.

<sup>20</sup>Tr. 89-90.

<sup>21</sup>AE H.

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the disqualifying conditions, and especially the following:

- (a) inability or unwillingness to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems when he broke his leg and later his wrist, as he did not have medical insurance to pay for his medical costs. Although he had State medical assistance for his children, much of his medical debt arises from the non-payment of his children’s medical care by the State. He lacked sufficient funds to pay these bills. These two disqualifying conditions apply.

The Financial Considerations guideline also includes conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.
- d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.<sup>22</sup>

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the Applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. She filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The Applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that Applicant's debts were unresolved at the time the Administrative Judge's decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>23</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

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<sup>22</sup>AG ¶ 20(f) is not raised in this case.

<sup>23</sup>Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009), the Appeal Board addressed a situation where an Applicant who had been sporadically unemployed lacked the ability to pay his creditors noting that “it will be a long time at best before he has paid” all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.” *Id.*

Applicant’s unpaid medical debt arose from an on-the-job injury, which was not covered by worker’s compensation, and the failure of medical offices to submit their bills for payment under the State Medicaid program. These are events which occurred under unusual circumstances which not likely to recur and do not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment. When he learned that the medical treatment of his leg injury was not covered by worker’s compensation, he immediately applied for financial assistance from the State. For unknown reasons, the State did not act on his application until more than four years after he applied. In 2009, Applicant reached an agreement to repay some of his children’s medical bills. Applicant has not acted irresponsibly nor has he shown poor judgment in the management of his limited resources. Rather, he acted responsibly under the circumstances. AG ¶¶ 20(a) and 20(b) apply to SOR allegations 1.c, 1.i, 1.aa, 1.bb, 1.ee, 1.ff, 1.hh, 1.ii, 1.jj, 1.qq, and 1.uu.

Applicant did not receive formal financial counseling. He generated a personal financial statement (PFS) as part of his response to DOHA interrogatories. He maintains his own budget. Applicant’s financial situation was damaged by insufficient income and low wages, even though he has worked steadily for 24 years. Since receipt of the SOR and meeting with the OPM investigator, Applicant has worked to resolve his debts. He spent months working with the hospital to resolve his outstanding bill. He contacted

other creditors by telephone and received offers to settle his debt through a lump sum payment, but he lacked the cash to pay the settlement offers. In 2009, he developed a payment plan for approximately 10 debts listed in the SOR, and more recently, his employer lent him money which he used to resolve a number of his debts. He also paid several smaller debts. (SOR ¶ 1.a-1.c, 1.i, 1.z) Finally, he disputed eight debts because the debts are unknown to him or may be his father's debts. Because the credit reports list his father's name as an "also known as" name for him, he has a legitimate reason to dispute debts unknown to him. His financial problem is being resolved or is under control. AG ¶¶ 20(c) and 20(e) apply. He admitted responsibility for his SOR debts, and he is taking reasonable and responsible actions to resolve his SOR debts, showing some good faith and partial mitigation under AG ¶ 20(d).<sup>24</sup>

### **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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the

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<sup>24</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

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

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

evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant married and divorced twice. He has seven children, three of whom are now living independently. He began working in 1986 and has worked regularly and steadily for the last 24 years providing custodial services. During most of these years, he did not receive medical benefits from his employer nor did he earn a high wage. To make sure his children received medical care as they were growing, he applied for State medical assistance and received approval for his children because of his limited income. Since his children had a Medicaid card and the medical providers kept this information in their records, he was unaware that their bills were not being paid. As would the average person, he assumed the bills had been submitted to the State for payment. Applicant

has supported his children to the best of his ability. His limited income has been supplemented by food stamps, a small clothing allowance, and medical assistance for his children.

When he realized that the medical bills for his broken leg would not be paid by worker's compensation, he immediately contacted the hospital and applied for financial assistance to pay his bill. For unknown reasons, the hospital did not act on his application until recently. Without medical insurance and based on his limited income, Applicant was placed in a position of choosing to buy food and provide housing for his children or to pay his medical bills. His income and some State assistance provided for basic needs, but left little money to pay his medical creditors.

Applicant and his father share the same first and last name, but not the same middle name. The close similarity in their names creates problems on Applicant's credit reports. The September 2009 credit report lists his father's name as an alternative name for Applicant, which has resulted in unpaid bills, belonging to his father, being identified as his. He legitimately challenged those bills which he believes are not his and may belong to his father. He has encountered problems with one medical creditor, which has been uncooperative. When he wrote to this creditor, the letter came back from the post office as not deliverable and unable to forward, even though this was the address listed on the September 2009 credit report.

After meeting with the OPM investigator, Applicant worked primarily on resolving his \$7,600 unpaid hospital bill, which took him many months. He attempted to contact his other creditors and did reach an agreement with one creditor in 2009 to repay 10 debts listed in the SOR. The 2010 credit reports in the record do not provide all of the creditor identities or contact information, making it difficult for Applicant to determine to whom he owed money. Nonetheless, he determined that many of the unidentified medical bills in the SOR were his and worked to resolve his debts. His employer helped him by lending him money to pay some of these medical bills. He will repay his employer through automatic payments from his salary. The credit reports do not reflect that he uses credit cards to finance a lifestyle or that, other than his medical bills, he has numerous other unpaid bills.

Applicant has been the sole financial provider for his seven children for many years. In determining how to use his limited resources, he made decisions which provided his children with their basic needs, such as livable housing, food and clothes. Applicant manages his limited financial resources prudently. Given his limited income, his ability to instantly pay his old medical bills is impossible. Over the years, Applicant has made choices about using his scarce resources. He always made financial decisions which favored providing for the needs of his children. He made an effort to assure that his children's medical bills were paid by applying for State medical assistance for them. He attempted to make sure the medical bill from his broken leg was paid by applying for financial assistance. He works steadily. By providing him money to pay his outstanding medical bills, his employer showed its belief that he is a reliable and dependable employee. He pays his usual living expenses, and is paying

several of his old debts. He is not required to pay all his old debts at one-time; rather, he must show that he has a plan to resolve his outstanding debts. Through his evidence, Applicant has shown that he has resolved \$11,714 of the SOR debts, which is more than 55% of the debts listed in the SOR and that he is paying another \$1,260 or approximately 10% of the SOR debts. He disputed about \$2,500 of the SOR debts, which are not his. Overall, he has worked to resolve about 80% of the debts listed in the SOR since meeting with the OPM investigator. Given some of the limited information he had for the medical creditors, he has done a remarkable job in determining which debts are his and then worked to resolve the debts.

Applicant has focused his attention on providing a stable domestic environment for his family. Most significantly, he has taken affirmative action to pay or resolve many of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) He has not been able to specifically address about \$3,822 in debts. These debts, however, cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) Overall, the record reflects that Applicant has worked to resolve his financial problems caused by his lack of medical insurance. He is a solid citizen and custodial worker. He is a responsible individual as is shown by the fact he is raising seven children on his own.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.xx:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge