



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-03240

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel

For Applicant: *Pro se*

February 25, 2011

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance or access to classified information is granted.

**Statement of the Case**

On February 25, 2005, Applicant applied for a security clearance and submitted an ESPQ version of a Security Clearance Application (SF 86).<sup>1</sup> On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on June 29, 2010.<sup>2</sup> On another unspecified date, DOHA issued him another set of interrogatories, again pertaining to his financial situation. He responded to the interrogatories on June 29, 2010.<sup>3</sup> On August 17, 2010, DOHA issued a Statement of Reasons (SOR) to him,

<sup>1</sup> Government Exhibit 1 (SF 86), dated February 25, 2005.

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated June 29, 2010).

<sup>3</sup> Government Exhibit 3 (Applicant's Answers to Interrogatories, dated June 29, 2010).

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, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on August 24, 2010. In a written statement, notarized on September 10, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 14, 2010, and the case was assigned to me on November 9, 2010. A Notice of Hearing was issued on January 4, 2011, and I convened the hearing, as scheduled, on January 26, 2011.

During the hearing, 5 Government exhibits (1-5) and 10 Applicant exhibits (A-J) were admitted into evidence without objection. Applicant testified. The record remained open to afford Applicant the opportunity to supplement it, and on January 28, 2011, he submitted 22 additional exhibits (K-AF) which were admitted into evidence without objection. The transcript (Tr.) was received on February 10, 2011.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.f. of the SOR. Applicant's admissions are incorporated herein as findings of fact. 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 32-year-old employee of a defense contractor, currently serving as a weather observer or technician,<sup>4</sup> and he is seeking to retain a SECRET security clearance. He was previously granted a SECRET security clearance in 1999 or 2000.<sup>5</sup> A May 1996 high school graduate, he received an associate's degree in 1999, and is presently two classes shy of obtaining a bachelor's degree in environmental science.<sup>6</sup> Applicant worked part-time and full-time as a fast food server and a construction laborer until June 1999, when he enlisted in the U. S. Air Force.<sup>7</sup> After serving on active duty for six years, primarily as a weather technician, in the United States, as well as in the Far

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<sup>4</sup> Tr. at 63, 89.

<sup>5</sup> In his SF 86, *supra* note 1, at 9, Applicant indicated he was granted a security clearance in April 1999. During his hearing, he stated the clearance was granted "around" 2000. *Id.* at 6, 88.

<sup>6</sup> Tr. at 5.

<sup>7</sup> *Id.* at 58-60.

East and the Middle East,<sup>8</sup> Applicant decided to leave active duty because he wanted a family to come home to every night and a “steady job at home,” not overseas.<sup>9</sup> He decided to pursue his dream to become a realtor, and concluded his military service in 2005.<sup>10</sup> In September 2007, Applicant married, and in March 2009, he and his wife had a son.<sup>11</sup>

## Financial Considerations

There was nothing unusual about Applicant’s finances until about 2006. Upon leaving active military service and becoming a realtor, Applicant found the local housing market to be “very good.” He was successful for about eight to ten months.<sup>12</sup> However, his optimism was short-lived for, in 2006, the “bottom fell out” of the local housing market as the U.S. economy started to deteriorate.<sup>13</sup> His income was severely impacted and significantly reduced. In 2008, he managed sell only one home.<sup>14</sup> The following year, he sold several homes.<sup>15</sup> In an effort to generate more money to make up for his lost real estate commissions, Applicant took part-time jobs as a desk clerk and a door man at a local resort.<sup>16</sup> In May 2007, he started working for his current employer as a weather technician.<sup>17</sup> His wife’s health became a serious issue creating several thousands of dollars in medical bills.<sup>18</sup> When his son was born, both his wife and his son experienced health problems, adding additional medical expenses.<sup>19</sup> With medical bills coming in and his wife no longer working, Applicant was unable to remain current with his monthly bills without additional income. He occasionally borrowed some money from his family to keep his bills current, but the rising gasoline prices and the absence of qualified buyers made his real estate career difficult.<sup>20</sup> As a result, accounts became delinquent and were either placed for collection or charged off.

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<sup>8</sup> Government Exhibit 1, *supra* note 1, at 3-5.

<sup>9</sup> Tr. at 61.

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

<sup>11</sup> *Id.* at 63.

<sup>12</sup> *Id.* at 64; Applicant’s Answer to the SOR, dated September 10, 2010, at 3.

<sup>13</sup> Applicant’s Answer to the SOR.

<sup>14</sup> Tr. at 48.

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

<sup>16</sup> *Id.* at 89-90.

<sup>17</sup> *Id.* at 89.

<sup>18</sup> Applicant’s Answer to the SOR, *supra* note 12, at 4.

<sup>19</sup> *Id.*; Tr. at 89.

<sup>20</sup> Applicant’s Answer to the SOR, at 3.

In 2008 and 2009, Applicant sought a loan modification on his residential mortgage in an effort to reduce his monthly payments. The bank representative required a lump sum payment of \$4,400 just to qualify for the loan modification program, as well as increased monthly payments to repay the deficiency.<sup>21</sup> Negotiations collapsed when the creditor refused to reduce the required payments and Applicant was unable to continue paying both delinquent amounts and the increased monthly payments. Applicant's residence went into foreclosure, and in November 2010, it was sold to the creditor for \$100.<sup>22</sup> Prior to the actual foreclosure, Applicant brought a potential buyer to the creditor but the offer was rejected.<sup>23</sup> At the time of the foreclosure, the total outstanding balance was \$192,712.16. After deducting the foreclosure sale price and the U.S. Department of Veterans Affairs (VA) loan guaranty, the deficiency balance came to \$168,669.87. The creditor elected to write off the remaining deficiency and waived its right to pursue the deficiency balance.<sup>24</sup> Applicant no longer owes that deficiency balance.

In 2010, Applicant managed to sell one house,<sup>25</sup> and his income was again reduced because his employer curtailed all weekend and evening schedules and reduced the work week to 32 hours.<sup>26</sup> Applicant no longer works shifts and lost his night time salary differential.<sup>27</sup> His wife recently was certified as a group fitness instructor and is anticipating obtaining a position at a local fitness center.<sup>28</sup>

In 2008 or 2009, Applicant attended a financial seminar conducted at his church.<sup>29</sup> He also watched a video and had the opportunity to learn the Dave Ramsey method of financial management involving debt management, budgeting, money management, and repayment strategies.<sup>30</sup> Applicant has a plan and a budget, but presently he has insufficient funds to make a significant dent in his delinquencies. He has a spread sheet to track and prioritize expenses,<sup>31</sup> and has reduced all unnecessary

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<sup>21</sup> *Id.* at 4; Applicant Exhibit AE (Correspondence stream between Applicant and creditor, various dates).

<sup>22</sup> Applicant Exhibit E (Letter from creditor, dated November 19, 2010).

<sup>23</sup> Applicant Exhibit N (Character Reference, dated January 26, 2011), at 2. It should be noted that the reference is an Office of Personnel Management (OPM) investigator who happens to be Applicant's mother.

<sup>24</sup> Applicant Exhibit E, *supra* note 20.

<sup>25</sup> Tr. at 48.

<sup>26</sup> *Id.* at 47-48.

<sup>27</sup> *Id.* at 48.

<sup>28</sup> Applicant's Answer to the SOR, *supra* note 12, at 6.

<sup>29</sup> Personal Subject Interview, dated February 8, 2010, at 4-5, attached to Government Exhibit 3, *supra* note 3.

<sup>30</sup> Tr. at 65.

<sup>31</sup> *Id.* at 53.

expenses.<sup>32</sup> Nevertheless, following the Ramsey video feed, Applicant called all of his creditors in an effort to establish repayment plans.<sup>33</sup> In addition, as a result of his delinquencies, limited income, the horrible local housing market, and the general state of the economy, Applicant also met with an attorney to explore the possibility of filing bankruptcy. He failed the “means test” necessary to file bankruptcy,<sup>34</sup> and his only alternative was to reduce all “unnecessary” expenditures and pay his debts.

Applicant currently has a \$3,100 monthly salary, \$242 monthly VA disability, and \$935 monthly GI Bill student support, for a total monthly income of \$4,535.<sup>35</sup> In addition, he recently received \$8,100 on a British Petroleum environmental claim due to the oil spill in the Gulf of Mexico, and \$3,100 in real estate commissions.<sup>36</sup> He estimated he has a monthly remainder of \$150 available for discretionary spending.<sup>37</sup> Applicant intends to eventually pay off or settle all of his delinquencies as soon as the economy improves, and the local housing market picks up. He remains confident he will be successful.<sup>38</sup>

The SOR identified six purportedly continuing delinquencies as reflected by credit reports from 2009 and 2010, totaling approximately \$181,918 in collection or charged off accounts and an additional \$487 in a past due account. 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. Some accounts reflect no account number. The information reflected is not necessarily accurate or up to date.

Of the six accounts, two have been paid off or settled (SOR ¶¶ 1.c.<sup>39</sup> and 1.f.<sup>40</sup>), three are being paid under an agreed repayment plan (SOR ¶¶ 1.a.,<sup>41</sup> 1.d.,<sup>42</sup> and

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<sup>32</sup> *Id.* at 52.

<sup>33</sup> *Id.* at 67-68.

<sup>34</sup> Applicant’s Answer to the SOR, *supra* note 12, at 4; Tr. at 52.

<sup>35</sup> Applicant Exhibit V (Personal Financial Statement, dated January 28, 2011), at 1; Applicant Exhibit X (VA School Benefit Status, dated January 24, 2011); Applicant Exhibit W (Earnings Statements, various dates).

<sup>36</sup> Tr. at 38.

<sup>37</sup> *Id.* at 42.

<sup>38</sup> *Id.* at 49, 51.

<sup>39</sup> Foreclosed mortgage. See Applicant Exhibit E, *supra* note 22.

<sup>40</sup> Medical bill in the amount of \$355, which was settled for \$150. See Applicant Exhibit H (Letter from attorney for creditor, dated January 25, 2011). Applicant contends he previously gave the money to a friend to pay the bill, but the friend failed to do so. Tr. at 83-87.

1.e.<sup>43</sup>), and one is awaiting a decision by the creditor to determine if the balance will be excused or remain due (SOR ¶ 1.b.<sup>44</sup>). In addition, Applicant has already paid off other non-SOR accounts and is currently making payments on another non-SOR account.<sup>45</sup>

Applicant's local board of realtors dues are current,<sup>46</sup> and he has three properties currently listed for sale.<sup>47</sup> His real estate broker anticipates that with clean beaches, 10,000 people are anticipated to move into the area this year, and that will boost real estate sales.<sup>48</sup>

## Character References and Work Performance

Applicant's enlisted performance reports reflect the highest ratings possible. His compliance with standards was "Exemplifies top military standards;" his knowledge of military duties was "Excels in knowledge of all related positions. Masters all duties;" and his performance of assigned duties was "The exception. Absolutely superior in all areas."<sup>49</sup> He was routinely recommended for immediate promotion. His real estate broker has known him for three years and has characterized him as a "hard working, very devoted trustworthy man."<sup>50</sup> A friend, who has known Applicant for six years, said he always remains calm and composed, and he is honest and committed with the utmost integrity.<sup>51</sup> Applicant's site supervisor, a person who has known Applicant since

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<sup>41</sup> Credit card with an outstanding balance of \$4,578.28 (listed in the SOR as \$4,778). Under a repayment plan on the account, Applicant pays \$50 per month. See Applicant Exhibit C (Statement of Account, dated December 18, 2010); Applicant Exhibit AB (Statement of Account, dated September 18, 2010 and January 19, 2011); Applicant Exhibit D (Credit Union Checking Account Transaction History, dated January 24, 2011) at 1-2, reflecting five payments between August 30, 2010 and December 28, 2010.

<sup>42</sup> Credit card with an outstanding balance of \$8,763.05 (listed in the SOR as \$8,888). Under a repayment plan on the account, Applicant pays \$25 per month. See Applicant Exhibit F (Statement of Account, dated January 5, 2011), reflecting five payments between August 27, 2010 and December 27, 2010.

<sup>43</sup> Credit card with an outstanding balance of \$3,647.89 (listed in the SOR as \$3,897). Under a repayment plan on the account, Applicant pays \$50 per month. See Applicant Exhibit G (Statement of Account, dated January 5, 2011), reflecting five payments between August 26, 2010 and December 27, 2010.

<sup>44</sup> Home equity loan or "purchase money" second mortgage taken out to pay for closing costs when the residence was purchased, originally in the amount of \$6,500 but now decreased to about \$5,000, on the foreclosed residence. Tr. at 77-78, 82.

<sup>45</sup> See Applicant Exhibit I (Letter from creditor, dated January 24, 2011); Government Exhibit 2, *supra* note 2, at 4; Personal Subject Interview, *supra* note 25, at 5; Applicant Exhibit Y (Court Order, dated February 4, 2009, and Satisfaction of Judgment, dated February 11, 2009); Applicant Exhibit Z (Letter from creditor, dated November 11, 2010).

<sup>46</sup> Applicant Exhibit AF (Board of Realtors Statements, various dates).

<sup>47</sup> Applicant Exhibit J (Full Agent Reports (Listings), various dates).

<sup>48</sup> Applicant Exhibit M (Letter from Broker, dated January 26, 2011).

<sup>49</sup> Applicant Exhibit T (Enlisted Performance Reports, various dates).

<sup>50</sup> *Id.*

<sup>51</sup> Applicant Exhibit D (Character Reference, dated January 27, 2011).

2004, and who had been a security manager while on active duty, selected Applicant to be his assistant, because of Applicant's performance and dependability.<sup>52</sup> Applicant was selected as employee of the quarter on two occasions.<sup>53</sup>

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>54</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>55</sup>

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>56</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the

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<sup>52</sup> Applicant Exhibit A (Letter from Site Supervisor, dated January 23, 2011; Applicant Exhibit R (Letter from Site Supervisor, dated January 26, 2011).

<sup>53</sup> Applicant Exhibit S (Certificates, various dates).

<sup>54</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>55</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>56</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>57</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>58</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>59</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has 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 overextended is at risk of having to engage in illegal acts to generate funds. . . .

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<sup>57</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>58</sup> *Egan*, 484 U.S. at 531

<sup>59</sup> See Exec. Or. 10865 § 7.



The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. As noted above, there was nothing unusual about Applicant’s finances until about 2006. At some point, he failed to keep up with his monthly payments, and accounts started to become delinquent. Some accounts were placed for collection, and some accounts were charged off. He lost his home to foreclosure. 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.”<sup>60</sup>

Applicant’s financial problems commenced sometime in 2006, when the bottom fell out of the local housing market and the U.S. economy started to deteriorate. As a realtor, the rising gasoline prices, the absence of qualified buyers, and the stagnant real estate market were devastating. Because his financial difficulties commenced nearly five years ago and continued until the present, it was initially frequent and continuing in nature. However, Applicant addressed the situation, and, in an attempt to generate more income to satisfy his debts, he took additional part-time jobs as a desk clerk and a door man at a local resort. Then he sought and obtained a position with his current employer. While the local real estate market and the U.S. economy have not yet rebounded, his actions to mitigate his financial situation, under the circumstances, does

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<sup>60</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 [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)).

not cast doubt on Applicant's current reliability, trustworthiness, and good judgment.<sup>61</sup> AG ¶ 20(a) applies.

AG ¶ 20(b) applies because there were several conditions, largely beyond Applicant's control, that made a substantial negative impact on Applicant's financial situation. The devastated economy and local housing market effectively destroyed Applicant's ability to make a living in real estate, at least in the short term, until the present. The business downturn in the housing market was so severe that it effectively constituted a loss of employment. The unexpected medical bills, generated because of health issues for both his wife and son, merely exacerbated his financial problems. These events were clearly beyond Applicant's control, and Applicant acted responsibly to address the debts that resulted.<sup>62</sup>

AG ¶ 20(c) applies because Applicant received financial counseling, and there is clear and abundant evidence that his financial problems are being resolved and are under control. While he still has delinquent accounts, he has established a budget, presented a personal financial statement, and is following his repayment plans in reducing his delinquencies.

AG ¶ 20(d) applies because Applicant attempted to address his delinquent debts well before the SOR was issued. Nevertheless, circumstances were such that he was unable to resolve them all either by settling them or by paying them off, although he attempted to do so.<sup>63</sup> He has paid off or settled, or otherwise resolved accounts with several creditors, including some non-SOR creditors, and is currently active with repayment plans for the remaining creditors. The sole exception is his home equity loan or "purchase money" second mortgage, which is awaiting a decision by the creditor to determine if the balance will be excused or remain due.

### **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

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<sup>61</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>62</sup> *Id.* at 4.

<sup>63</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence against mitigating Applicant's conduct. Applicant has a history of financial delinquencies commencing in 2006. He permitted accounts to become delinquent and placed for collection or charged off. He lost his home to foreclosure.

The mitigating evidence under the whole-person concept is substantial. Applicant's financial delinquencies were the unfortunate consequence of a devastated economy and local housing market, as well as unanticipated medical expenses. Applicant was unable to sustain himself as a realtor because of the rising gasoline prices, the absence of qualified buyers, and the stagnant real estate market. Nevertheless, he addressed the situation and took additional part-time jobs as well as a new permanent position. He did not turn his back on his creditors. Instead, he has paid off or settled, or otherwise resolved accounts with several creditors, including some non-SOR creditors, and is currently active with repayment plans for the remaining creditors. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>64</sup> His substantial good-faith efforts are sufficient to mitigate continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

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<sup>64</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

## **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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ROBERT ROBINSON GALES  
Administrative Judge