



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-03703

Appearances

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

For Applicant: *Pro se*

February 25, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On September 14, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories. He responded to the interrogatories on April 9, 2010.² On August 17, 2010, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

¹ Government Exhibit 1 (SF 86), dated September 14, 2009.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated April 9, 2010).

(January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), 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 20, 2010. In a written statement, notarized on May 14, 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, four Government exhibits (GE 1-4) and four Applicant exhibits (AE A-D) were admitted into evidence, without objection. Applicant testified. The transcript (Tr.) was received on February 14, 2011.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.t.) of the SOR. Those admissions are incorporated herein as findings of fact. He denied the remaining factual allegations pertaining to personal conduct (¶¶ 2.a. through 2.c.).

Applicant is a 39-year-old employee of a defense contractor, serving as an information assurance specialist, and he is seeking to retain a security clearance.³ A May 1990 high school graduate, he initially attended college for about one year, but left in April 1991 due to poor grades.⁴ He worked in a variety of full-time and part-time, as well as seasonal, positions over the years,⁵ before returning to college where he received a bachelor of science degree in management information systems in August 2004.⁶ He has no military service.⁷ Applicant was unemployed on two occasions. He was initially laid off due to a downturn in business from July 2007 until April 2008.⁸ He obtained new employment in April 2008, and remained there until June 2009, when he

³ At the time of the hearing, Applicant held an interim Secret clearance. Tr. at 6.

⁴ *Id.* at 50.

⁵ Government Exhibit 1, *supra* note 1, at 14-19; *Id.* at 50, 52-54.

⁶ Government Exhibit 1, at 12.

⁷ *Id.* at 20.

⁸ Personal Subject Interview, dated November 6, 2009, at 1, attached to Government Exhibit 2, *supra* note

declined to relocate at the company's behest.⁹ He remained unemployed until September 2009, when he accepted his current position.¹⁰ During his periods of unemployment, Applicant received unemployment compensation.¹¹

Applicant was married in May 2004, and he and his wife have one daughter, born in January 2011.¹²

Financial Considerations

Applicant contends that there was nothing unusual about his finances until November 2007, several months after he had been initially laid off.¹³ His wife had also been laid off in July 2007, but she was able to obtain another position in October 2007, at a reduced salary.¹⁴ She was again laid off in April 2009, but was able to find temporary work from June to August 2009, when she transitioned into a permanent position.¹⁵ In September 2007, during one of his periods of unemployment, Applicant had shoulder surgery, followed by physical therapy until November 2007.¹⁶ During one of her periods of unemployment, his wife also underwent wrist surgery, adding to their bills.¹⁷ Applicant attributed his financial difficulties to the reduction in family income, related to unemployment and reduced salaries, as well as the "unexpected" medical expenses of their respective surgeries.¹⁸ As a result, he fell behind in his monthly payments, and several accounts were placed for collection or charged off.¹⁹

When he completed his SF 86 in September 2009, Applicant self-reported three delinquent accounts.²⁰ For one account, with his dentist, Applicant indicated he was making regular monthly payments since he did not have dental insurance.²¹ For another account, pertaining to his physical therapy, he stated there had been unresolved

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Tr. at 55.

¹³ *Id.* 57, 61.

¹⁴ Applicant's adjustments to his Personal Subject Interview, undated, attached to Government Exhibit 2, *supra* note 2.

¹⁵ *Id.*

¹⁶ *Id.*; Tr. at 59-60.

¹⁷ Personal Subject Interview, *supra* note 8, at 2.

¹⁸ *Id.*

¹⁹ Government Exhibit 3 (Combined Experian, Trans Union, and Equifax Credit Report, dated October 6, 2009) (2009 credit report); Government Exhibit 4 (Equifax Credit Report, dated May 19, 2010) (2010 credit report).

²⁰ Government Exhibit 1, *supra* note 1, at 39-41.

²¹ *Id.* at 39.

insurance issues, as well as his unemployment, but that a payment schedule had been set up.²² As to the third account, with his wife's surgeon, Applicant was making regular monthly payments.²³

During his November 2009 interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant admitted he had ignored certain creditors for either unspecified reasons or because the accounts were "not a priority."²⁴ He planned to contact his remaining creditors to negotiate payment plans.²⁵ There is no documentary evidence to indicate that he made any contacts with his creditors, either in 2009 or in 2010.

Applicant received one hour of unspecified "financial counseling" in 2006 in conjunction with an application for a Federal Housing Administration (FHA) home loan.²⁶ He acknowledged he had received no other financial counseling,²⁷ and there is no evidence of any counseling for budgeting, debt management, debt consolidation, or debt repayment plans.

Applicant discussed the details of his monthly budget, and estimated that his monthly net income was \$3,200, and his wife's monthly net income was \$2,000, for a total of \$5,200.²⁸ His annual salary is \$52,500, and his wife's annual salary is \$30,000, but she is currently on 8-12 weeks maternity leave without pay.²⁹ After paying the normal household expenses, including mortgage, utilities, food, transportation, insurance, etc., he estimated his monthly remainder of \$400-\$500 is available for discretionary spending.³⁰

The SOR identified 20 continuing delinquencies as reflected by the credit reports from 2009 and 2010, totaling approximately \$40,999. Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in these credit reports, 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

²² *Id.* at 40.

²³ *Id.* at 41.

²⁴ Personal Subject Interview, *supra* note 8, at 2.

²⁵ *Id.* at 2-3.

²⁶ Tr. at 65.

²⁷ *Id.*

²⁸ *Id.* at 26-27.

²⁹ *Id.* at 25.

³⁰ *Id.* at 27-28.

eliminating the last four digits and in others eliminating other digits. Some accounts reflect no account number.

The delinquent accounts include two student loans totaling \$36,096 (SOR ¶¶ 1.s. and 1.t.); 17 medical accounts totaling \$971 (SOR ¶¶ 1.a. through 1.q.); and a credit card with an unpaid balance of \$3,932 (SOR ¶ 1.r.). Applicant contends that 16 of the medical accounts totaling \$540 (SOR ¶¶ 1.a. through 1.p.) are the same account,³¹ but he offered no documentary evidence to support his contention. Each of the 16 accounts has a separate account number listed in the 2010 credit report.³² Applicant has not paid anything on the account(s) and claims that, for two months, he has been “in negotiations” over a repayment plan.³³ As for the remaining medical account (SOR ¶ 1.q.), he claims he cannot find out who the creditor is, so he has been unable to resolve the account.³⁴ The 2009 credit report identifies the collection agency as well as the account number.³⁵ He contends he is in negotiations over a \$147 monthly repayment plan with the collection agency regarding the delinquent credit card account (SOR ¶ 1.r.), but will have no documents to support his contention until final payment arrangements are made.³⁶ Applicant’s student loans previously had been in deferment, but are now in collection, and he claims one collection agency required 15 per cent of his income to commence repayment, but Applicant is seeking alternative payment arrangements (SOR ¶ 1.s.).³⁷ He claims he is not able to contact the other collection agency (SOR ¶ 1.t.).³⁸

Despite an estimated monthly remainder of \$400-\$500 available for discretionary spending, as well as promises by Applicant to contact his creditors, establish payment plans, and pay off the delinquent accounts, to date, he has offered no evidence that he has made any payments to the creditors. As to the accounts listed in the SOR, based on the evidence before me, I conclude that no payments have been made to any of the delinquent accounts.

Personal Conduct

On September 14, 2009, when Applicant completed and submitted his e-QIP, he responded to several questions set forth in the e-QIP. The SOR alleges Applicant deliberately failed to disclose complete information in response to § 26m: Financial

³¹ *Id.* at 21.

³² Government Exhibit 4, *supra* note 19, at 1-2.

³³ Tr. at 21.

³⁴ *Id.* at 22.

³⁵ Government Exhibit 3, *supra* note 19, at 8.

³⁶ Tr. at 23.

³⁷ *Id.* at 24.

³⁸ *Id.*

Record – (*Have you been over 180 days delinquent on any debt(s)?*), to which he answered “yes,” and listed a medical debt in the amount of \$271.64.³⁹ He did not list his two delinquent student loans. Applicant claims he thought the student loans were in a deferment status, and did not think they were delinquent. He denied the omission was deliberate or an attempt to falsify the material facts.⁴⁰

The SOR also alleges Applicant deliberately failed to disclose complete information in response to § 26n: Financial Record – (*Are you currently over 90 days delinquent on any debt(s)?*), to which he answered “yes,” and listed a dental debt in the amount of \$364.81. Once again, he did not list his two delinquent student loans for the same reason as set forth above. He denied the omission was deliberate or an attempt to falsify the material facts.⁴¹

The SOR also alleges Applicant deliberately failed to disclose complete information in response to § 26p: Financial Record – (*Are you currently delinquent on any Federal debt?*), to which he answered “no.” Once again, he did not list his two delinquent student loans for the same reason as set forth above. He denied the omission was deliberate or an attempt to falsify the material facts.⁴²

Character References and Work Performance

Several of Applicant’s coworkers, as well as his team lead and the individual who led the panel that interviewed the candidates when Applicant was hired, are familiar with him and characterize him in favorable terms. Applicant demonstrates integrity, motivation, patriotism, strong family dedication, honesty, knowledge, intelligence, capability, thoughtfulness, and maturity. He is a hardworking person who is well respected.⁴³

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.”⁴⁴ 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

³⁹ Government Exhibit 1, *supra* note 1, at 38.

⁴⁰ Tr. at 40-41, 70.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Applicant Exhibit A (Character Reference, dated January 25, 2011; Applicant Exhibit B (Character Reference, undated; Applicant Exhibit C (Character Reference, undated); Applicant Exhibit D (Character Reference, dated January 25, 2011).

⁴⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”⁴⁵

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.”⁴⁶ 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 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.⁴⁷

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.”⁴⁸

⁴⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴⁶ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁴⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁸ *Egan*, 484 U.S. at 531.

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.”⁴⁹ 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 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. . . .

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, Applicant contends that there was nothing unusual about his finances until November 2007, several months after he had been laid off. Both Applicant and his wife went through varying periods of unemployment from July 2007 until September 2009. Both Applicant and his wife underwent surgery during one of their periods of unemployment. Applicant attributed his financial difficulties to the reduction in family income, related to unemployment and reduced salaries, as well as the “unexpected” medical expenses of their respective surgeries. As a result, he fell behind in his monthly payments, and several accounts were placed for collection or charged off. They have remained in a delinquent status ever since because Applicant ignored certain creditors for unspecified reasons or because the accounts were not a priority. There is little evidence to indicate any of the SOR-accounts have been resolved. 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

⁴⁹ See Exec. Or. 10865 § 7.

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."⁵⁰ Also, AG ¶ 20(e) may apply where "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."

Applicant's financial problems commenced in November 2007, and have continued to the present day, although his wife joined her current employer in June 2009, and he joined his current employer in September 2009. Applicant has acknowledged limited effective efforts or resolution of his delinquent accounts. His failure to timely handle his bills has exacerbated his financial meltdown. Because he has multiple delinquent debts and his financial problems are continuing in nature, he receives minimal application of AG ¶ 20(a). Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

Likewise, he receives partial application of AG ¶ 20(b), for he and his wife were unemployed for varying periods, and they both had surgery while they were unemployed. Yet, there is little evidence that Applicant was substantially affected by circumstances beyond his control. He received unemployment compensation while unemployed. Applicant's wife has been employed since June 2009, and he has been employed since September 2009. Given sufficient opportunity to address their financial delinquencies, Applicant failed to act timely or responsibly under the circumstances. He failed to resolve his debts and failed to reduce his delinquencies.⁵¹

⁵⁰ 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)).

⁵¹ "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

AG ¶ 20(c) applies only minimally because, other than unspecified “financial counseling” received in conjunction with an FHA home loan in 2006, Applicant has acknowledged never having received financial counseling or debt consolidation guidance from a credit counselor.

AG ¶ 20(d) does not apply because, to date, Applicant has made no proven effort to address his delinquent accounts. There is no documentary evidence to support Applicant’s contentions that he contacted any of his creditors to try to make repayment arrangements. Instead, he talked about doing so, and promised to do so, but there is no documentary evidence that any creditors had agreed with his proposed plan or that any payments had, in fact, been made. Over the years, Applicant did not act aggressively, timely, or responsibly to resolve his delinquent debts.

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

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), a “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” is potentially disqualifying.

Applicant’s omissions in his responses to inquiries in the e-QIP of critical information pertaining to financial delinquencies, provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or were the result of simple oversight or negligence on his part, as he contends. As to the questions pertaining to 90 day or 180 day delinquencies, Applicant answered “yes” to both, and identified two accounts. As to the question pertaining of Federal debt delinquencies, he answered “no.” In all three cases, the omitted accounts were Applicant’s student loans

dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

which he contended were in deferment status, not in a delinquency status. I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his confusion regarding his perceived status of the student loans was real and his explanations are consistent. Considering the quality of the other evidence before me, they have the solid resonance of truth. I find Applicant's explanations are credible in his denial of deliberate falsification.⁵² AG ¶¶ 16(a) has not been established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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

There is some evidence in favor of mitigating Applicant's conduct. He and his wife went through several periods of unemployment and both underwent surgery. After a lengthy period of inaction during which he did not address his creditors, according to Applicant, he initiated some efforts to address his accounts.

The disqualifying evidence under the whole-person concept is more substantial. While the periods of unemployment and reduced earnings, as well as the surgeries, were circumstances beyond his control, Applicant either had no ability or no intention to pay his delinquent accounts. Instead, as he has acknowledged, he ignored certain

⁵² The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

creditors for either unspecified reasons or because the accounts were “not a priority.” He did not make any payments to his SOR creditors, and if he did, he has offered no evidence to support any such actions. Despite the passage of time, there is no documentation to support his contentions that he had contacted his creditors. His long-standing failure to repay creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

I am mindful that any one factor, considered in isolation, might put Applicant’s credit history in a sympathetic light. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵³ His insufficient good-faith efforts or documentary evidence to reflect actual payments to his SOR creditors are sufficient to raise continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁴

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Although there are some positive signs, such as Applicant’s descriptions of proposed efforts to take corrective actions, and maintenance of accounts on his current daily living expenses, these steps are simply insufficient to show he can live within his means, satisfy debts, and meet financial obligations. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and

⁵³ 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).

⁵⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge