



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



In the matter of:)
)
) ISCR Case No. 10-03711
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Janiffer Pearce, Esquire

03/30/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on December 9, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 11, 2011, detailing security concerns under Guideline F, financial considerations. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on June 2, 2011. He answered the SOR on August 1, 2011. Applicant retained counsel, and he requested a hearing before an

administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on December 1, 2011. I received the case assignment on December 12, 2011. DOHA issued a Notice of Hearing on December 30, 2011, and I convened the hearing as scheduled on January 24, 2012. The Government offered exhibits marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant and one witness testified. He submitted exhibits marked as AE A through AE R, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 2, 2012. I held the record open until February 24, 2012, for Applicant to submit additional matters. Applicant timely submitted AE AA - AE OO,¹ without objection. The record closed on February 24, 2012.

Procedural Ruling

Notice

Applicant was advised of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Through counsel, Applicant affirmatively waived his right to the 15-day notice. (Tr. 11)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.c, and 1.d. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.b, 1.e, and 1.f of the SOR.² 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.

Applicant, who is 47 years old, works as an engineer for a Department of Defense contractor. He began working for his employer in June 1996. His performance evaluations reflect a high level of skills and confidence from his managers. His

¹Applicant's counsel marked Applicant's post-hearing submissions as AE AA through AE OO, rather than following the hearing exhibits sequentially. This numbering has been retained for consistency in the records of all parties. The record does not contain exhibits from Applicant marked as AE S through AE Z.

²When 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).

managers praise his team leadership as a project manager. He is well-respected by his customer, his co-workers and his managers.³

Applicant graduated from college in 1990 with a bachelor's degree. He married in 1985. He and his wife have a 25-year-old daughter and 22-year-old son. His son attends college, and he provides help with tuition costs.⁴

In December 2001, Applicant and his wife formed a real estate investment Limited Liability Company (LLC 1) in the state in which they live. LLC 1's Articles of Incorporation do not identify any corporate officers; rather the Articles identify Applicant and his wife as the only members of LLC 1. This company is still active. His wife performed, and still performs, all the day-to-day operations of this company. Applicant did not involve himself in the company's operations.⁵

In December 2004, Applicant and his wife formed a second real estate investment Limited Liability Company (LLC 2) in the state in which they live. The Articles of Incorporation identify Applicant as the President, Vice President/CFO and Treasurer and his wife as the Secretary of the corporation. On January 3, 2005, by corporate resolution, Applicant, in his capacity as the President of the corporation, authorized his wife, the Secretary, to act on behalf of the corporation. Between January 2005 and the dissolution of this company in 2010, Applicant's wife performed all the day-to-day operations of the company. Applicant did not involve himself in the company's operations or business decisions.⁶

LLC1 and LLC 2 purchased foreclosed real estate property around the country. Between 2002 and 2010, the companies purchased between 30 and 50 properties. The companies paid for some of the properties outright and for some by obtaining a mortgage. After purchasing the properties, the companies would rehabilitate the properties. In some situations, the companies would help the owner return to the property after improving their finances. Applicant's wife used lines of credit and credit cards to finance the repairs and pay other expenses related to the properties. The companies derived income from sales or rent of its properties. In 2007, Applicant's wife began to notice a tightening of the mortgage lending market. The companies, through his wife, started selling property and reducing inventory.⁷

By 2008, the real estate business had slowed significantly, which impacted sales and rental income for the companies and made it difficult for the companies to repair the

³GE 1; AE R; Tr. 69-70.

⁴GE 1; Tr. 86.

⁵AE DD; Tr. 27-29, 35-36, 52-53, 71-73, 95-96.

⁶AE AA - AE CC; Tr. 27-29, 35-36, 52-53, 71-73, 95-96.

⁷Tr. 28, 49-50.

houses it owned or rent the property. LLC 2 purchased one property through the assignment of the mortgage note after the owner died. LLC 2 paid \$10,000 for this property based on a value of approximately \$70,000. At the time of purchase, the property and mortgage were part of the owner's estate and in the probate process, which limited the actions of LLC 2. During probate, the family decided it did not want the property returned to them. At some point, someone stripped and vandalized the property, which decreased its value to less than \$10,000. Under the city laws where this property was located, the vandalized property violated the housing laws. The City moved to enforce its laws by requiring the property owner repair the property. When LLC 2 did not repair the property because it did not have any funds, the City charged the company with criminal misconduct and fined it \$6,000. LLC 2 did not pay the fine or the nearly \$6,000 in demolition costs on this property. LLC 2 no longer owns this property nor does it owe taxes on this property. The City closed its case against LLC 2, after the company pled guilty to the code violations in November 2009.⁸

When Applicant's wife learned about the criminal charge and fine, she initially tried to work with the city to resolve the repair issues and the fine, without success. She also attempted to sell the property, but did not find a buyer in 2009. Finally, she sought legal advice. The company's legal counsel in the City advised Applicant's wife that LLC 2 should consult a bankruptcy attorney about the company filing bankruptcy as a way to reduce Applicant and his wife's personal liability for the fine imposed on the company because the housing violations are strict liability offenses for which a corporate officer could be punished criminally.⁹

LLC 2, through Applicant's wife, sought a legal opinion regarding the company filing bankruptcy. Based on its attorney's advice and lack of funds to pay the fine, LLC 2 filed for bankruptcy in March 2010. Applicant's wife met with the attorney and helped prepare the Chapter 7 bankruptcy. Applicant's wife provided him with the completed petition and discussed LLC 2's debts with him. After reviewing the petition and discussing it with his wife, Applicant signed the petition as president of LLC 2. At the completion of the bankruptcy process in July 2010, all assets of LLC 2 were liquidated by the bankruptcy trustee, and the company dissolved. The bankruptcy court records indicated that his bankruptcy case is "terminated" and noted that discharge did not apply.¹⁰ LLC 2's bankruptcy petition listed five debts totaling \$44,665, including the fines imposed by the City, and no assets.¹¹

The SOR identifies six debts, totaling approximately \$88,000. All of these debts are related to the business operations of LLC 2. The \$18,500 credit card debt identified

⁸AE HH; AE II; AE MM - AE OO; Tr. 27, 30, 49-51, 55-56.

⁹AE GG; Tr. 23-24.

¹⁰Upon a successful completion of a business Chapter 7 bankruptcy, the case filing is shown as "terminated," not "discharged" as in an individual Chapter 7 bankruptcy. AE B.

¹¹AE B; AE I; AE GG, AE HH; Tr. 23-25, 45-47, 84, 109.

in SOR ¶ 1.a; the \$6,900 credit card debt identified in SOR ¶ 1.b; and the \$1,394 past-due credit card debt in SOR ¶ 1.f are three of the five debts listed on LLC 2's bankruptcy petition. These debts are resolved.¹²

Concerning the \$56,235 real estate debt identified in SOR ¶ 1.e, LLC 2 attempted to sell this property. LLC 2 received several offers on the property, which the mortgage company rejected. Applicant and his wife, whose names were on the mortgage, then signed a Deed in Lieu of foreclosure on this property, which transferred ownership of the property to the mortgage company in October 2010. Applicant provided documentation from the mortgage company showing that this mortgage had been released. Applicant has resolved this debt.¹³

Applicant acknowledged personal responsibility for the two debts of LLC 2 identified in SOR ¶¶ 1.c (\$25,315) and 1.d (\$27,769), as he personally guaranteed the payment of these debts when he and his wife opened the accounts several years before they started the LLCs. The companies used these cards for business purchases. When the company's financial problems first began, Applicant's wife contacted the creditor for both debts and attempted to negotiate a settlement of the debts, without success. In July 2011, Applicant and his wife retained the services of a credit repair company to help with the resolution of these debts. The credit repair company successfully negotiated a settlement of the 1.d debt. Applicant fully resolved this debt in October 2011.¹⁴

After Applicant's wife attempted to negotiate a settlement with the creditor in SOR ¶ 1.c, the creditor holding the debt filed a lawsuit against Applicant and his wife. They are defending the lawsuit. As of the hearing, Applicant and his wife had responded to the discovery requests of the creditor; however, they had not received from the creditor its responses to their discovery requests. Once they receive these documents, Applicant and his wife plan to make a settlement offer in this case. Applicant has set aside \$4,000 towards their settlement offer. He is also prepared to make monthly payments.¹⁵

Applicant currently earns \$4,191 in bi-weekly gross income and \$2,922 in bi-weekly net income for a monthly net income of \$5,844.¹⁶ His wife earns approximately \$1,200 a month from her business. His monthly expenses include \$936 for the

¹²SOR; AE A; AE I. For the debt in SOR ¶ 1.f, Applicant provided documentation which reflects that the 12-digit account number identified on the December 2009 credit report and the four-digit account number identified in the bankruptcy petition are the same debt. GE 2; AE I; AE LL.

¹³GE 5; AE A; AE K; Tr. 41, 45.

¹⁴AE C - AE E; Tr. 34-35, 38-40.

¹⁵AE C; AE F; AE O; Tr. 37-38, 93-94.

¹⁶Two months a year, Applicant receives an extra paycheck, which is not calculated into his monthly income.

mortgage, \$597 for a home equity loan, \$832 for car payments, \$100 for credit card payments, \$336 for property taxes, \$344 for utilities, and other usual living expenses of approximately \$2,800. His living expenses total approximately \$5,945, leaving about \$1,100 for debt reduction and unanticipated expenses each month. Applicant is current on his personal expenses.¹⁷

LLC 1 continues to operate and currently owns three properties without any mortgage debt. One property is for sale, and a second property has a sales offer of \$100,000. At the time of the hearing, LLC 1 was waiting for the buyer to receive the funds for closing. The third property has been vandalized. Once the insurance company received all the repair estimates and issues a check, the property will be repaired and then rented. LLC 1 has unsecured debts between \$60,000 and \$70,000, a secured debt (a second mortgage on their house, which is paid each month) of \$200,000, and accounts receivable of \$125,000. Applicant's wife anticipates applying the sales proceeds from the sale of LLC 1's property to its debts. Their personal finances are fine.¹⁸

Applicant and his wife testified credibly about the ownership and operation of the two businesses they own. His wife operated the business day to day. His involvement was much more limited, as he worked full time at his current job. He occasionally discussed some business issues with his wife and occasionally signed documents in his corporate capacity. His limited involvement in the daily business operations provided him with little understanding of the operations of his business. Applicant and his wife received credit counseling.¹⁹

LEGAL ISSUE

Applicant and his wife formed two Limited Liability Companies (LLC) in their place of residence. Under state law, members or officers of a LLC are not personally liable for the debts of a LLC. Specifically, the controlling state statute, Revised Statute ¶ 29-651, reads as follows:

Except as provided in this chapter, a member, manager, employee, officer or agent of a limited liability company is not liable, solely by reason of being a member, manager, employee, officer or agent, for the debts, obligations and liabilities of the limited liability company whether arising in contract or tort, under a judgment, decree or order of a court or otherwise.

¹⁷GE 5; AE EE; AE FF; Tr. 21, 107. Applicant's wife anticipated substantial income in 2011, but did not receive this income. AE G; Tr. 21-22.

¹⁸Tr. 59, 64-65.

¹⁹AE J; Tr. 47, 108.

Liability for any debts of a corporation for which a member or an officer has personally guaranteed payment of the debt attaches as a personal debt of the member or officer. Debts incurred by the corporation on behalf of the corporation by its officers or members does not become the person debt of the member or officer.²⁰

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, 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.

²⁰Post-hearing briefs filed by the parties.

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 conditions, and the following are potentially applicable:

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

When mortgage credit tightened and the real estate market severely declined because of the economic downturn starting in 2007, Appellant developed significant financial problems directly related to the real estate investment business his wife operated. As a result, he incurred unpaid debts. These two disqualifying conditions apply.

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

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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, 2007). 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.

Applicant’s wife decided to start a real estate investment business in 2001. She opened their first limited liability company in 2001, and their second limited liability company in 2004. Applicant’s wife ran the day-to-day operations of both companies. She made the decisions on which properties to buy, what repairs to make, or whether to sell or rent. She obtained the necessary financing to operate the companies. Applicant worked at his engineering job and had little involvement in the companies. Both companies purchased investment real property. After rehabilitating the property, the companies either sold or rented the property. The companies operated successfully and profitably until the economy started to change in 2007. The rapid decline of the economy in 2007 and 2008 directly impacted their real estate investment business. The companies’ property values declined significantly as did rental income. This resulted in a serious decline in cash flow to the companies for repairs to the properties and debt

payment. Vandals stripped and damaged one property, a factor beyond their control. The decline in the real estate market is a factor beyond the control of Applicant and his wife. When his wife realized the problems, she, in her capacity as an officer of LLC 2 with authority to act on behalf of LLC 2, started selling properties and eliminating debts. She contacted two credit card companies in an attempt to work a resolution to the debts, as did Applicant. When one mortgage company refused to work with LLC 2 and them on the sale of a property, they transferred ownership of the property to the mortgage company by a Deed in Lieu, which the mortgage company accepted as a method for resolving their mortgage debt in SOR ¶¶ 1.e. Given the real estate market at this time, Applicant's wife, in her corporate capacity, acted reasonably under the circumstances in which their companies operated. AG ¶ 20(b) applies.

The loss of income from the economic decline directly impacted LLC 2's ability to repair property, which had been vandalized and stripped by unknown persons. As a result, the City, where the property was located, fined LLC 2 for failing to repair the property and entered a finding of guilty against LLC 2. The City never transferred any criminal liability for the failure of LLC 2 to repair this property to Applicant or his spouse. The City closed its case against the LLC 2 in late 2009. Because of these fines, LLC 2 filed for Chapter 7 bankruptcy on the recommendation of two lawyers. The bankruptcy terminated LLC 2, which eliminated its debts, including the fine. As a result, the debts in SOR ¶¶ 1.a, 1.b, and 1.e are resolved. When LLC 2 filed for bankruptcy, Applicant and his wife took a credit counseling class. AG ¶ 20(c) applies.

Applicant and his wife contacted the creditor for the two bank card debts in SOR ¶¶ 1.c and 1.d. Despite their efforts, the creditor refused to work out a settlement plan with them. They then hired a credit repair company, who successfully resolved one of the debts with this creditor. Applicant and his wife acted in good faith by contacting the creditor to settle their debts. One debt remains unpaid as the creditor chose to file a lawsuit, rather than settle the debt. Applicant has money reserved to pay this debt and is willing to establish a payment plan as part of a settlement, once the creditor is willing to discuss settlement with him. AG ¶ 20(d) applies to these two debts. AG ¶ 20(a) is not applicable in this case.

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 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.

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 a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Under state law, liability for the debts of a LLC do not transfer to the officers or the members of the LLC unless an officer or a member personally guarantees payment of the debt. Applicant's wife successfully operated their two LLCs until the economy began a downward spiral in 2007. His wife divested many of the properties owned by the LLCs and attempted to resolve debts. Eventually, LLC 2 filed a corporate bankruptcy which terminated the company and eliminated its debts, which included three SOR debts. LLC 1 continues to operate without impacting Applicant's finances. During all this time, Applicant paid all his personal monthly expenses. None of the debts in the SOR relate to his personal living expenses, which shows a track record for paying debts. His monthly income is more than sufficient to pay his monthly household expenses.

Applicant and his wife credibly testified about his lack of involvement in the day-to-day operations of both LLCs, which is supported by the corporate resolution authorizing her to act on behalf of LLC 2. When it came time to file the bankruptcy petition, Applicant, as the President of LLC 2, is the proper corporate officer to sign the petition. The fact that he signed this petition does not make him an active participant in the day-to-day operations of the company. He did not make the decisions about the purchases and sales of real estate by either LLC or the actual funding of the companies. Both companies operated successfully until the economy declined. The decline in the economy and resulting financial difficulties for the companies does not reflect negatively on his judgment, reliability, and trustworthiness. In this case, Applicant's wife has taken multiple steps to limit the liabilities of the LLCs and pay its debts.

The Government argues that the potential personal liability for the LLC 2's liability and fines for housing code violations reflects the Applicant's poor judgment, reliability and trustworthiness. The City criminally charged LLC 2, and LLC 2 pled guilty, but could not pay the fine. By operation of law, the City may transfer LLC 2's liability and fine to its corporate officers as individual persons. In LLC 2's case, the City closed its case and

chose not pursue further legal action against Applicant and his wife. The damage to the property in question occurred because of the conduct of others, not because of the conduct of Applicant and his wife or LLC 2. The economic downturn depleted corporate funds, making it impossible for LLC 2 to repair the damaged property. His wife unsuccessfully attempted to work with the City on this, then they followed legal advice to file corporate bankruptcy to eliminate further problems with the fines for them personally, as the LLC 2 owned the property. The damage and lack of funds was beyond their control. Given the circumstances in which he found himself because of LLC 2 business problems, he acted reasonably based on the legal advice given. He and his wife are also working to resolve the one remaining credit card debt personally guaranteed by them.

Most significantly, Applicant has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) He has not been able to pay the last remaining credit card debt of more than \$25,000.00 because the debt is currently in the court system, as he must work through the legal system as well as obtain the cooperation of an unwilling creditor. Applicant is willing to settle this debt either by payment of a specific amount or through a payment plan. This debt 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 one debt remain unpaid, it is insufficient to raise security concerns. (See AG ¶ 2(a)(1).) In weighing all the evidence of record, Applicant has mitigated the Government's security concerns about the financial problems created by the companies operated by his wife.

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
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

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.

MARY E. HENRY
Administrative Judge