



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



In the matter of: )  
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----- ) ISCR Case No. 10-04562  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: *Pro se*

May 4, 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 May 18, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) 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. He responded to the interrogatories on August 9, 2010.<sup>2</sup> On another unspecified date, DOHA issued him another set of interrogatories. He responded to the interrogatories on August 9, 2010.<sup>3</sup>

<sup>1</sup> Government Exhibit 1 (SF 86), dated May 18, 2007.

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated August 9, 2010).

<sup>3</sup> Government Exhibit 3 (Applicant's Answers to Interrogatories, dated August 9, 2010).

On October 27, 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* (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. The SOR 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 November 1, 2010. In a written statement, notarized on November 12, 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 January 26, 2011, and the case was assigned to me on February 2, 2011. A Notice of Hearing was issued on March 2, 2011, and I convened the hearing, as scheduled, on March 23, 2011.<sup>4</sup>

During the hearing, 5 Government exhibits (1-5) and 18 Applicant exhibits (A-R) were admitted into evidence without objection. Applicant testified. The hearing transcript (Tr.) was received on March 31, 2011.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations (¶¶ 1.a. through 1.d.) 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 51-year-old employee of a defense contractor, currently serving as a senior systems integration and test engineer.<sup>5</sup> He is seeking to retain a secret security clearance.<sup>6</sup> He enrolled in the state college in May 2002, and with a self-guided study program, graduated with a bachelor of science in electrical engineering and technology in December 2007.<sup>7</sup>

Over the years, since before he entered college, Applicant has held a number of different positions with various employers. He was an engineer from February 1985 until

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<sup>4</sup> It apparently took one week for the Notice of Hearing to reach Applicant. As he was made telephonically aware of the hearing date before the issuance of the official notice, Applicant expressly waived the 15-day notice requirement. See Tr. at 12-13.

<sup>5</sup> *Id.* at 96.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.*; Government Exhibit 1, *supra* note 1, at 10.

February 2004,<sup>8</sup> then, with the same employer, was relocated to another state as an engineer where he remained until June 2006.<sup>9</sup> He was laid off in June 2006, and remained unemployed until December 2006.<sup>10</sup> From December 2006 until March 2007, he characterized himself as a real estate investor and student.<sup>11</sup> Applicant joined his current employer in March 2007.<sup>12</sup>

Applicant was married in June 1984.<sup>13</sup> He has no children. He has never served with the U.S. military.<sup>14</sup>

## **Financial Considerations**

There was nothing unusual about Applicant's finances until June 2006 when both he and his wife were laid off from their respective jobs.<sup>15</sup> His wife had been working at a local title company.<sup>16</sup> While unemployed, Applicant and his wife lived off their savings and withdrawals from his 401(k) to pay their routine bills as well as two home mortgages.<sup>17</sup> When Applicant finally received a job offer in December 2006, the salary offered was significantly less than what he had previously been making.<sup>18</sup> In addition, the offer presented a dilemma, for if he accepted the job, he would be required to relocate to a different part of the state. The option was declining the job offer and remaining unemployed. He accepted the offer and relocated.<sup>19</sup> Applicant's wife eventually obtained a job in the new location, but, it too, was for a lower salary than she had before the layoff.<sup>20</sup>

Applicant owns three properties, including the one in which he currently resides (property Charlie). He resided in property Alpha from the time he was relocated by his

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<sup>8</sup> Government Exhibit 1, at 14.

<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 12-13.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 16-17.

<sup>14</sup> *Id.* at 21.

<sup>15</sup> Government Exhibit 3 (Personal Subject Interview, dated March 31, 2010), at 2, attached to Applicant's Answers to Interrogatories.

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

employer in 2004, until he obtained his current position in 2007.<sup>21</sup> The property was originally purchased by him as a rental property for \$250,000, in January 2003.<sup>22</sup> The property was appraised in 2004 at \$517,000,<sup>23</sup> but as of March 2009, had an estimated value of \$300,000, with a first mortgage of \$198,000 and a second mortgage of \$294,000.<sup>24</sup> The estimated value of the property decreased to \$219,500 by January 2011.<sup>25</sup> When he moved away in 2007, he attempted to have it rented at \$1,000 to \$1,400 per month,<sup>26</sup> but the rental agent was unable to obtain any tenants.<sup>27</sup> The property has remained unoccupied, with the utilities on, and the lot maintained, since Applicant moved out.<sup>28</sup>

Applicant's monthly mortgage payments were \$1,772.<sup>29</sup> Applicant exhausted all of his available assets in July 2009 and his monthly mortgage payments stopped.<sup>30</sup> He estimates he is currently \$45,000 in arrears on the first mortgage (SOR ¶ 1.c.), and it is in a foreclosure status.<sup>31</sup> Negotiations between Applicant's attorney and the mortgage lender have gone on for a substantial period, with a loan modification discussed, but never approved.<sup>32</sup> In March 2009, the mortgage lender proposed Applicant refinance both his first and second mortgages with an adjustable rate mortgage of \$498,000,<sup>33</sup> but the matter was not consummated because of actions taken by the second mortgage lender, described more fully below.

In January 2005, during a period of financial prosperity, Applicant applied at his credit union for a line of credit – essentially a second mortgage – on property Alpha (SOR ¶ 1.b.). His purpose for the second mortgage was to enable him to purchase another rental property.<sup>34</sup> The credit union had property Alpha appraised at \$517,000,

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<sup>21</sup> Government Exhibit 1, *supra* note 1, at 9; Tr. at 60.

<sup>22</sup> Applicant Exhibit O (Internet download, dated January 2011).

<sup>23</sup> Applicant Exhibit N (Appraisal, dated December 17, 2004), at 2.

<sup>24</sup> Applicant Exhibit G (Letter from 2<sup>nd</sup> mortgage lender, dated March 13, 2009), at 2.

<sup>25</sup> Applicant Exhibit O, *supra* note 22.

<sup>26</sup> Tr. at 59-61.

<sup>27</sup> *Id.* at 59.

<sup>28</sup> *Id.* at 60.

<sup>29</sup> *Id.* at 61.

<sup>30</sup> Government Exhibit 3, *supra* note 15, at 2.

<sup>31</sup> Tr. at 57; Government Exhibit 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 17, 2010), at 7.

<sup>32</sup> Tr. at 57.

<sup>33</sup> Applicant Exhibit G, *supra* note 24, at 2-3.

<sup>34</sup> Government Exhibit 3, *supra* note 15, at 1.

and informed Applicant that he qualified for a loan up to \$425,000.<sup>35</sup> Applicant found a water front property (Bravo), and purchased it in March 2005, financed by \$385,000, including a \$100,000 down payment.<sup>36</sup> The monthly payments on the loans were about \$1,200 and \$785, respectively, not including taxes or insurance.<sup>37</sup> Applicant was successful in renting the property to various renters, including local workers and vacationers for periods up to one year at a time.<sup>38</sup> The property generally rented for \$1,100 to \$1,300 per month.<sup>39</sup> The property value increased steadily until late 2008, when it reached nearly \$600,000.<sup>40</sup>

When Applicant became unemployed, he received 21 weeks of salary.<sup>41</sup> Consolidating his assets, Applicant sought to sell property Bravo.<sup>42</sup> After months of negotiations with one would-be purchaser, with a sales price of \$446,000, with an estimated closing date of June 2007, the transaction fell through.<sup>43</sup> Applicant subsequently kept reducing the asking price to the lowest in the neighborhood, and even pursued short sales, but there were no offers received.<sup>44</sup> Although Applicant inquired of the lender about short sales, no agreement could be reached.<sup>45</sup> Applicant stopped making payments. The lender sued on the note and obtained a \$289,000 judgment.<sup>46</sup> The estimated value of the property decreased to between \$178,973 and \$182,000 by January 2011.<sup>47</sup> Applicant's attorney and the mortgage lender have discussed loan modifications and settlement of the judgment for a substantial period, but nothing has yet been resolved.<sup>48</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Tr. at 47-48.

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

<sup>39</sup> *Id.* at 50.

<sup>40</sup> *Id.* 51.

<sup>41</sup> *Id.* at 54.

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

<sup>43</sup> *Id.*; Applicant Exhibit D (HUD-1 Settlement Statement, undated).

<sup>44</sup> Tr. at 55.

<sup>45</sup> *Id.*

<sup>46</sup> Applicant Exhibit L (Letter from Applicant's attorney, dated March 16, 2011), at 1; Government Exhibit 3, *supra* note 15, at 1.

<sup>47</sup> Applicant Exhibit O, *supra* note 22.

<sup>48</sup> Applicant Exhibit L, *supra* note 46, at 1; Applicant Exhibit G, *supra* note 24, at 1-2.

In response to an advertisement, Applicant obtained a bank signature loan to enable him to install hurricane windows in property Alpha (SOR ¶ 1.d.).<sup>49</sup> He was offered a reduced interest rate and extended repayment period, and since it made good financial sense at the time, he accepted the offer.<sup>50</sup> When his financial situation deteriorated, Applicant called the bank and attempted to modify the terms of the loan but the bank refused to do so.<sup>51</sup> He made several attempts to resolve the issue before he missed any payments, but his requests were deemed by the bank to be against the law.<sup>52</sup> Applicant made his last payment in June 2009.<sup>53</sup> In October 2009, the bank charged off \$10,805.<sup>54</sup> Nevertheless, several days before the hearing, the bank contacted him and offered to settle the account for approximately 30 percent of the \$10,000.<sup>55</sup> Applicant intended to discuss the offer with his attorney, but to date, there has been no decision made.

Applicant had a low 12 percent interest bank credit card since 1996, with a credit limit of \$22,500.<sup>56</sup> He turned to it when he needed funds to meet his routine living obligations, eventually owing a balance of \$23,537 (SOR ¶ 1.a.).<sup>57</sup> He made his payments until about May 2009, when the bank raised the interest rate on the unpaid balance to 29.99 percent.<sup>58</sup> Applicant analyzed the financial situation and determined that paying 30 percent of the balance was not feasible in light of his other financial obligations, especially since the bank refused to offer him any help or resolution.<sup>59</sup> Applicant has authorized his attorney to attempt to negotiate more favorable terms for a settlement of the account which is now in collection.<sup>60</sup>

Applicant purchased property Charlie in June 2007, financed by a \$198,000 mortgage.<sup>61</sup> His current mortgage balance is \$185,000.<sup>62</sup> He leased an automobile in

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<sup>49</sup> Tr. at 65-66.

<sup>50</sup> *Id.* at 66.

<sup>51</sup> *Id.* at 67.

<sup>52</sup> *Id.* at 66.

<sup>53</sup> *Id.* at 68.

<sup>54</sup> Government Exhibit 4, *supra* note 31, at 7.

<sup>55</sup> Tr. at 67.

<sup>56</sup> Government Exhibit 4, *supra* note 31, at 7.

<sup>57</sup> Tr. at 33.

<sup>58</sup> *Id.* at 33, 38.

<sup>59</sup> *Id.* at 33.

<sup>60</sup> *Id.* at 35; Government Exhibit 4, *supra* note 31, at 7.

<sup>61</sup> Tr. at 85; Government Exhibit 4, at 6.

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

March 2008, with a monthly payment of \$286 over a term of 39 months.<sup>63</sup> In October 2010, Applicant purchased an automobile, financed with a \$38,745 loan,<sup>64</sup> with a monthly payment of \$570.<sup>65</sup>

Applicant has engaged the professional services of two attorneys in an attempt to negotiate settlements on the existing delinquent mortgages, loans, and credit cards. They have been partially successful, for he had three credit cards with delinquent balances totaling \$57,594.64 charged off in 2009, and Applicant was issued Forms 1099-C for the cancelled debts.<sup>66</sup> They are continuing their efforts. Applicant would prefer retaining property Alpha, while selling property Bravo.<sup>67</sup>

In August 2010, Applicant submitted a personal financial statement reflecting a net joint monthly income of \$6,346; monthly expenses of \$1,547; and debt repayments, including mortgage, automobile loan and lease, and credit cards, of \$3,085.<sup>68</sup> He estimated he has a monthly remainder of \$1,714 available for discretionary spending.<sup>69</sup> He also listed an asset of \$40,000 in 401(k) accounts.<sup>70</sup> Applicant claims that of the remainder, he is depositing \$1,200 per month into their 401(k) accounts.<sup>71</sup>

Applicant has never received any “formal” financial counseling or debt management guidance.<sup>72</sup>

## Character References and Work Performance

The senior engineering manager for whom Applicant works, is highly supportive of Applicant’s application to retain his security clearance. He noted that Applicant had received three certificates of recognition for his work; Applicant had displayed ethical integrity; and Applicant had briefed him on all details of both his personal affairs and

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<sup>63</sup> Government Exhibit 4, *supra* note 31, at 8.

<sup>64</sup> Government Exhibit 5 (Equifax Credit Report, dated October 12, 2010), at 3. Applicant contends he only financed \$28,000, but the credit report indicates the amount was \$38,745.

<sup>65</sup> *Id.*

<sup>66</sup> Applicant Exhibit I (Form 1099-C, dated November 25, 2009); Applicant Exhibit J (Form 1099-C, dated November 17, 2009).

<sup>67</sup> Tr. at 64.

<sup>68</sup> Government Exhibit 2 (Personal Financial Statement, undated), attached to Applicant’s Answers to Interrogatories.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Tr. at 86.

<sup>72</sup> Government Exhibit 3, *supra* note 15, at 5.

business affairs, including the ones under review.<sup>73</sup> On his off-hours, Applicant is actively involved in marine mammal research, environment, and education, as well as working with wounded warriors.

## 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>74</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>75</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>76</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 applicant has the burden of persuasion to present evidence in refutation, explanation,

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<sup>73</sup> Applicant Exhibit A (Character reference, dated March 8, 2011).

<sup>74</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>75</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>76</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).



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>77</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>78</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>79</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>77</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>78</sup> *Egan*, 484 U.S. at 531

<sup>79</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 June 2006, when both he and his wife were laid off. At some point thereafter, he failed to keep up with his monthly mortgage payments and credit card payments, and those accounts started to become delinquent. Some accounts were placed for collection, and some accounts were charged off. 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>80</sup>

Applicant’s initial financial problems commenced in June 2006, when he and his wife were laid off. They eventually were both able to obtain new employment, albeit at a substantially lower salary. Applicant used his available financial resources, including withdrawals from their 401(k)s, his severance package payout, and credit cards, to continue to pay various accounts for a substantial period. However, at some point, he decided not to pour protected assets into saving his properties and he stopped making mortgage payments and credit card payments. A judgment was obtained against him in lieu of a foreclosure, and he was unable to sell his distressed properties. The situation is still unresolved for Applicant has empowered his attorneys to negotiate favorable settlements, but with the exception of three credit card accounts, no resolutions are at

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<sup>80</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)).

hand. Applicant has managed to remain current on other accounts, and even purchased a new residence, a new automobile, and leased another automobile, while allowing his home mortgages and loans associated with properties Alpha and Bravo unattended. Applicant joined his current employer in March 2007. Considering his decision to stop making payments in 2009 and his refusal to enter into repayment negotiations other than those calling for reduced settlements, his financial problems, related to the properties, are likely to continue. Applicant's decision to retain property Alpha, and washing his hands of his responsibilities pertaining to the other accounts, casts doubt on his current reliability, trustworthiness, or good judgment.<sup>81</sup> AG ¶ 20(a) only minimally applies.

AG ¶ 20(b) partially applies because there were several conditions, largely beyond Applicant's control, that made a substantial negative effect on Applicant's financial situation. The plummeting housing market caused the value of his properties to change dramatically so that his mortgage loans covered properties that were now "under water." That alone could be survivable but for the unprecedented recession which basically eliminated potential renters at rental levels sufficient for his mortgage payments. Rental payments were essential for Applicant to continue making his monthly mortgage payments, especially since both he and his wife were initially laid off before obtaining other jobs at substantially reduced salaries. These events were clearly beyond Applicant's control, and Applicant initially acted responsibly to address the debts that resulted. However, once he calculated the economic realities and decided not to continue using his protected assets to pay the respective accounts associated with the properties, and demanded settlements very favorable to him, he failed to act responsibly.

AG ¶ 20(c) does not apply because Applicant has never received any financial counseling. AG ¶ 20(d) partially applies because Applicant attempted to address his delinquent debts before the SOR was issued. Circumstances were such that he was initially unable to resolve them all either by settling them or by paying them off, although he attempted to do so.<sup>82</sup> He has paid off or settled, or otherwise resolved accounts with several non-SOR creditors. Applicant used his available financial resources, including withdrawals from their 401(k)s, his severance package payout, and credit cards, to continue to pay various accounts for a substantial period. However, at some point, he decided not to pour protected assets into saving his properties and he stopped making mortgage payments and credit card payments. Instead, Applicant purchased property Charlie in June 2007, financed by a \$198,000 mortgage; he leased an automobile in March 2008, with a monthly payment of \$286 over a term of 39 months; and in October 2010, Applicant purchased an automobile, financed with a \$38,745 loan, with a monthly

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<sup>81</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>82</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.

payment of \$570. Instead of continuing to address his delinquent financial responsibilities, he directed his attorneys to negotiate settlements favorable to himself, rather than entertaining repayment arrangements. And he went on to incur new financial obligations.

### **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 substantial evidence in favor of mitigating Applicant's conduct. Applicant has a history of financial delinquencies commencing in 2006, when both he and his wife were laid off, and were eventually able to obtain employment at salaries substantially reduced from that they had been earning before their layoffs. Applicant used his available financial resources, including withdrawals from their 401(k)s, his severance package payout, and credit cards, to continue to pay various accounts, including his mortgages, for a substantial period. He has paid off or settled or otherwise resolved accounts with several non-SOR creditors. At some point, however, he permitted the SOR accounts to become delinquent and placed for collection or charged off.

The disqualifying evidence under the whole-person concept is also substantial. Applicant's initial financial delinquencies were the unfortunate consequence of his and his wife being laid off from their respective jobs. However, when he decided not to pour protected assets into saving his properties, and he stopped making mortgage payments and credit card payments, everything changed. Applicant went on to incur new financial obligations: he purchased property Charlie in June 2007, financed by a \$198,000 mortgage; he leased an automobile in March 2008, with a monthly payment of \$286 over a term of 39 months; and in October 2010, Applicant purchased an automobile, financed with a \$38,745 loan, with a monthly payment of \$570. Instead of continuing to address his delinquent financial responsibilities, he directed his attorneys to negotiate settlements favorable to himself, rather than entertaining more reasonable repayment arrangements.

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>83</sup> His initial good-faith efforts were substantial, but his subsequent and current efforts are not sufficient to mitigate 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:<sup>84</sup>

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.

Applicant’s current plan is not to settle or repay, but rather to be relieved of his delinquent accounts, with the intention of retaining property Alpha. The evidence in this instance is very closely balanced. Nevertheless, overall, the evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of 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**

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<sup>83</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).

<sup>84</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against 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.

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ROBERT ROBINSON GALES  
Administrative Judge