



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-06672

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel

For Applicant: *Pro se*

May 10, 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 April 13, 2010, 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 September 27, 2010.<sup>2</sup> On November 9, 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*

<sup>1</sup> Government Exhibit 1 (SF 86), dated April 13, 2010.

<sup>2</sup> Government Exhibit 2 (Applicant's Answers to Interrogatories, dated September 27, 2010).

*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 17, 2010. In a written statement, notarized on an unspecified date, 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 22, 2011.<sup>3</sup>

During the hearing, three Government exhibits (GE 1-2) and four Applicant exhibits (AE A-D) were admitted into evidence without objection. Applicant testified. The hearing transcript (Tr.) was received on March 30, 2011. The record was kept open until April 5, 2011, to enable Applicant to supplement the record. Applicant took advantage of that opportunity and he submitted 11 additional exhibits which were admitted into evidence (AE E-P) without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted some of the factual allegations (¶¶ 1.a., 1.d., 1.e., 1.g., and 1.h.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. He denied the remaining allegations. 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 48-year-old employee of a defense contractor, currently serving as a force protection and physical security officer.<sup>4</sup> He is seeking to retain a secret security clearance.<sup>5</sup> A 1981 high school graduate,<sup>6</sup> Applicant enrolled in evening classes at a military education center overseas, and completed one year of college classes in 1999.<sup>7</sup> Applicant worked in a variety of full-time and part-time positions before graduating from high school, including work in construction, horse ranching, and as a fast-food counter

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<sup>3</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 11-12.

<sup>4</sup> *Id.* at 118.

<sup>5</sup> Government Exhibit 1, *supra* note 1, at 41.

<sup>6</sup> Tr. at 36.

<sup>7</sup> Government Exhibit 1, *supra* note 1, at 14-15.

person.<sup>8</sup> He enlisted in the U.S. Army in August 1981, at the age of 18, and eventually retired from active duty, with an honorable discharge, in January 2003.<sup>9</sup> Following his retirement, Applicant held a number of different positions with various employers. He was an insurance claims adjuster from January 2004 until November 2004;<sup>10</sup> in security and maintenance from December 2004 until September 2006;<sup>11</sup> and a supervisor of security from January 2007 until March 2010.<sup>12</sup> He was laid off in September 2006, and remained unemployed until January 2007.<sup>13</sup> Applicant joined his current employer in March 2010.<sup>14</sup> Applicant married a foreign national in November 1998.<sup>15</sup> They were separated in 2004, and divorced in April 2007.<sup>16</sup> He has no children.

## Financial Considerations

There was nothing unusual about Applicant's finances until some time between 2003 and about May 2005.<sup>17</sup> Applicant initially created some confusion about when his financial problems started, claiming they were concurrent with the date of his divorce. He furnished different dates, and he claimed during his interview with the investigator from the Office of Personnel Management (OPM) that "he lost various jobs."<sup>18</sup> Applicant acknowledged that he always found himself struggling to pay his bills and would often use credit cards to pay the bills and utilities, but was unable to make the credit card payments.<sup>19</sup> He never sought to supplement his income by searching for a second or part-time job. At some unspecified point, Applicant failed to keep up with his monthly payments, and accounts started to become delinquent. Some of the accounts were placed for collection with a variety of collection agents, some accounts were charged

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<sup>8</sup> Tr. at 36-37.

<sup>9</sup> Government Exhibit 2 (Certificate of Release or Discharge from Active Duty (DD Form 214), dated January 31, 2003), attached to Applicant's Answers to Interrogatories).

<sup>10</sup> Government Exhibit 1, *supra* note 1, at 20-21.

<sup>11</sup> Tr. at 121.

<sup>12</sup> Government Exhibit 1, *supra* note 1, at 13.

<sup>13</sup> Tr, at 121.

<sup>14</sup> Government Exhibit 1, *supra* note 1, at 16.

<sup>15</sup> *Id.* at 28.

<sup>16</sup> *Id.*; Tr. at 38.

<sup>17</sup> Government Exhibit 2 (Personal Subject Interview, dated May 11, 2010), at 1, attached to Applicant's Answers to Interrogatories). In his interview, Applicant claimed he was divorced in May 2005, but the date provided by him in the SF 86 and during the hearing was 2007. Applicant acknowledged during the hearing that he was separated in 2004. *Also see* Tr. at 104, 111-112, wherein Applicant described his financial difficulties in 2003.

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

<sup>19</sup> *Id.* at 1-2.

off, and one automobile was repossessed. A review of his government-generated 2010 credit report<sup>20</sup> reveals several delinquencies occurred as early as 2003.

The SOR identified 11 purportedly continuing delinquencies, as reflected by credit reports from 2010, totaling approximately \$15,511, in collection or charged-off accounts. Some accounts reflected in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. The information reflected is not necessarily accurate or up to date.

Of the 11 accounts in the SOR, Applicant has never contacted the original creditors or their respective collection agents of 9 of the accounts. There is an account in the amount of \$52 (SOR ¶ 1.c.) for unspecified purposes that Applicant cannot recall.<sup>21</sup> Applicant has never contacted the original contractor or collection agent, stating he “wasn’t going to talk to somebody about something I didn’t believe I owed.”<sup>22</sup> He contends that he disputed the account with the credit reporting agency,<sup>23</sup> but he has not furnished any documentary evidence to support his contention. One account in the amount of \$62 (SOR ¶ 1.d.) was for medical services provided to Applicant in 2004, and he has never disputed the charges or contacted the creditor.<sup>24</sup> Another account in the amount of \$314 (SOR ¶ 1.e.) was also for medical services provided to Applicant in 2004, and he has never disputed the charges or contacted the creditor.<sup>25</sup> One account in the amount of \$113 (SOR ¶ 1.f.) was for telephone service. Applicant has never disputed the charges or contacted the creditor.<sup>26</sup> Another account in the amount of \$2,131 (SOR ¶ 1.h.) was for a credit card. Applicant has never disputed the charges or contacted the creditor.<sup>27</sup> There is an account in the amount of \$51 (SOR ¶ 1.i.) for unspecified purposes that Applicant does not recall. Applicant has never disputed the charges or contacted the creditor.<sup>28</sup> There is an account in the amount of \$236 (SOR ¶ 1.j.), for telephone service. Applicant has never disputed the charges or contacted the

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<sup>20</sup> Government Exhibit 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 20, 2010).

<sup>21</sup> The account does not appear in Government Exhibit 3, but is reflected in Applicant Exhibit D (Experian Credit Report, dated March 2, 2011), at 8.

<sup>22</sup> Tr. at 64.

<sup>23</sup> Tr. at 63-64.

<sup>24</sup> *Id.* at 68-70.

<sup>25</sup> *Id.* at 73-75.

<sup>26</sup> *Id.* at 78-79.

<sup>27</sup> *Id.* at 88-89.

<sup>28</sup> *Id.* at 93-94.

creditor.<sup>29</sup> There is also an account in the amount of \$7,000 (SOR ¶ 1.k.), for a credit card. Applicant has never disputed the charges or contacted the creditor.<sup>30</sup> Applicant has not made any payments on the above accounts, although he is aware of them and intends to pay them.<sup>31</sup>

In late 2006, Applicant moved from one state to another to take a new job. His military retirement was non-taxable in the state he left, but was taxable in the new state. Despite actually residing in the new state until February 2010, Applicant claimed that his “residence” was still in the old state.<sup>32</sup> Applicant became confused and was under the impression he had filed his state and federal income taxes for the year, reversed his view and acknowledged not having filed income taxes, and subsequently changed his recollection once again.<sup>33</sup> In any event, in July 2009, a tax lien was filed against Applicant in the amount of \$1,297 (SOR ¶ 1.a.). Although it was initially unclear as to which state or federal entity filed the tax lien, Applicant presumed it was the federal Internal Revenue Service (IRS). Accordingly, he contacted the IRS and set up an installment agreement under which Applicant agreed, effective December 2010, to make \$150 monthly payments.<sup>34</sup> The initial payment was made December 2, 2010, with four subsequent payments made through April 3, 2011.<sup>35</sup>

There is an account in the amount of \$255 (SOR ¶ 1.b.) for cable television that was placed for collection in January 2007.<sup>36</sup> When Applicant and his wife separated, he returned the cable equipment and told his wife that she had to pay the bill because she had watched the television for the last month they resided together.<sup>37</sup> Applicant’s wife did not pay the bill. When Applicant was questioned about the account during his OPM interview, he thought the account was related to a cell phone bill for unsatisfactory service which he cancelled. He believed the charge was a cancellation fee, and he had no intention to pay it.<sup>38</sup> On March 11, 2011, after he received the Notice of Hearing, Applicant called the collection agent and agreed to a settlement.<sup>39</sup> He convinced the

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<sup>29</sup> *Id.* at 94-95.

<sup>30</sup> *Id.* at 95-96.

<sup>31</sup> *Id.* at 36.

<sup>32</sup> *Id.* at 39.

<sup>33</sup> *Id.* at 39-40, 50-51.

<sup>34</sup> Applicant Exhibit B (Cancelled checks, various dates, and memo, undated).

<sup>35</sup> *Id.*; Applicant Exhibit E (Cancelled check, dated April 3, 2011); Applicant Exhibit P (Memo from IRS, dated March --, 2011).

<sup>36</sup> Government Exhibit 3, *supra* note 20, at 7.

<sup>37</sup> Tr. at 53-54.

<sup>38</sup> Government Exhibit 2, *supra* note 17, at 1.

<sup>39</sup> Applicant Exhibit D (Notes, dated March 11, 2011), *supra* note 21, at 8.

collection agent that he had returned the cable equipment, and the unpaid balance was reduced to about \$200.63.<sup>40</sup> On March 14, 2011, Applicant paid the agreed balance.<sup>41</sup>

Applicant leased an automobile in March 2002. He routinely made his monthly payments throughout the term of the lease,<sup>42</sup> and intended to return the vehicle when the lease expired. At the expiration of the lease he was told that he had exceeded the maximum mileage covered under the lease and he was expected to pay an additional \$4,000 (SOR ¶ 1.g.).<sup>43</sup> Applicant got angry, refused to pay the balance, and challenged the leasing company to come get the vehicle.<sup>44</sup> The vehicle was repossessed.<sup>45</sup> Although Applicant contended the account was settled in February 2010,<sup>46</sup> he has offered no evidence that he has, since the repossession, contacted the creditor or made any payments on the account.

In October 2010, Applicant submitted a personal financial statement reflecting a net monthly income, including military retirement and disability (\$2,300),<sup>47</sup> of \$5,222.31; monthly expenses of \$2,450; and debt repayments of \$555.12.<sup>48</sup> He estimated he has a monthly remainder of \$2,217.19 available for discretionary spending.<sup>49</sup> Applicant continues to receive overdraft charges for checks written on his checking account, and has spent funds in golf-related activities.<sup>50</sup>

In 2003, Applicant's wife approached Consumer Credit Counseling Service (CCCS) and, after several meetings, a repayment plan was set up for several of Applicant's delinquent accounts, including non-SOR accounts.<sup>51</sup> Under the plan, Applicant was to make \$190 monthly payments.<sup>52</sup> Applicant contends he made the payments until he lost a job and the separation ensued.<sup>53</sup> He never returned to

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<sup>40</sup> *Id.*; Tr. at 54.

<sup>41</sup> Applicant Exhibit A (E-mail, dated March 11, 2011; and Account history, dated March 16, 2011); Tr. at 54.

<sup>42</sup> Tr. at 84.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 84-85, 87-88.

<sup>45</sup> Government Exhibit 1, *supra* note 1, at 45.

<sup>46</sup> *Id.* at 44.

<sup>47</sup> Government Exhibit 2, *supra* note 17, at 2.

<sup>48</sup> Government Exhibit 2 (Personal Financial Statement, undated), attached to Applicant's Answers to Interrogatories.

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

<sup>50</sup> Government Exhibit A (Account history), *supra* note 41.

<sup>51</sup> Tr. at 104, 111-112.

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

<sup>53</sup> *Id.* at 104-105.

CCCS.<sup>54</sup> Applicant has never received any formal financial counseling, debt consolidation counseling, or debt management guidance.<sup>55</sup>

### **Military Character References and Performance**

During his military career, Applicant was awarded the Meritorious Service Medal, Army Commendation Medal (three awards), Army Achievement Medal (four awards), Army Good Conduct Medal (six awards), National Defense Service Medal (two awards), Southwest Asia Service Medal with one bronze service star, Noncommissioned Officer's Professional Development Ribbon with numeral, Army Service Ribbon, Overseas Service Ribbon (four awards), and the French Forces Commando Badge,<sup>56</sup> as well as certificates from The Joint Staff and the 82d Airborne Division. One of his Army Achievement Medals was for "an exceptionally courageous act in the face of grave danger."<sup>57</sup> In one of Applicant's assignments, he was a physical security inspector on a Pacific atoll during the disposal of chemical weapons.<sup>58</sup>

### **Civilian Character References and Work Performance**

The military commander, the chief of operations, the security manager, and a security specialist of the research facility in which Applicant is currently employed, are effusive in their praise for Applicant, and are highly supportive of his application for a security clearance. Applicant is characterized as exemplary, reliable, and dedicated.<sup>59</sup> "[Applicant] is a retired NCO that I would unquestionably trust with my life, my employees' lives and the security of our Nation."<sup>60</sup> He exhibits expertise, attention to detail, and a strong work ethic.<sup>61</sup> Applicant's integrity and trustworthiness are unquestioned.<sup>62</sup>

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

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<sup>54</sup> *Id.* at 105.

<sup>55</sup> *Id.* at 112-113, 120.

<sup>56</sup> Government Exhibit 2 (DD Form 214), *supra* note 9.

<sup>57</sup> Applicant Exhibit M (Citation, dated December 14, 1983).

<sup>58</sup> Tr. at 32.

<sup>59</sup> Applicant Exhibit F (Character reference, dated April 4, 2011).

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

<sup>61</sup> Applicant Exhibit G (Character reference, dated March 28, 2011).

<sup>62</sup> Applicant Exhibit H (Character reference, dated March 28, 2011).

emphasizing, “no one has a ‘right’ to a security clearance.”<sup>63</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>64</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>65</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, 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>66</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

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<sup>63</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>64</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>65</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).

<sup>66</sup> *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).



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>67</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>68</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. . . .

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 sometime between 2003 and 2005. Applicant and his wife were apparently experiencing financial difficulties in 2003 when they contacted CCCS, and additional financial difficulties around the time of their separation and eventual divorce. Applicant was briefly unemployed, but still receiving his military retirement and disability payments. Nevertheless, at some point, Applicant failed to keep up with his monthly payments, and accounts started to become delinquent. Some accounts were placed for collection, and some accounts were charged off. AG ¶¶ 19(a) and 19(c) apply.

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<sup>67</sup> *Egan*, 484 U.S. at 531

<sup>68</sup> See Exec. Or. 10865 § 7.

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>69</sup>

AG ¶¶ 20(a) and 20(b) only partially apply. Applicant’s initial financial problems commenced sometime between 2003 and 2005. As noted above, Applicant and his wife were apparently experiencing financial difficulties in 2003, as well as around the time of their separation and eventual divorce. Applicant attributes his financial difficulties to his separation, divorce, and unemployment, but never explained how those events directly affected his finances and ability to handle his debts. Applicant was briefly unemployed, obviously a situation beyond his control. But, Applicant was still receiving his military retirement and disability payments throughout his financial difficulties. He never sought to supplement his income by searching for a second or part-time job. Applicant obtained his current job in March 2010. Of the 11 accounts in the SOR, Applicant never contacted the original creditors or their respective collection agents of 9 of the accounts. Despite having \$2,217.19 available for discretionary spending each month, Applicant’s primary actions have been to repeatedly promise to address his delinquent accounts while failing to do so. Applicant’s inaction casts doubt on his current reliability, trustworthiness, or good judgment.<sup>70</sup> AG ¶ 20(c) does not apply because Applicant has never received any financial counseling.

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<sup>69</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)).

<sup>70</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

AG ¶ 20(d) partially applies. Before the SOR was issued, Applicant addressed only one delinquent account, which was not listed in the SOR. Since the SOR was issued, he contacted and either settled and paid off (SOR ¶ 1.b.), or started making payments on (SOR ¶ 1.a.), two of the SOR accounts. Applicant waited nine months after obtaining his current job before making any effort to address his delinquent debts. Circumstances may have been such that he was initially unable to resolve them all either by settling them or by paying them off, but he never attempted to do so.<sup>71</sup> Instead, he has spent money on golf-related activities. Instead of continuing to address his delinquent financial responsibilities, he has merely promised to do so, without furnishing evidence that any of the remaining SOR accounts, including those with miniscule balances such as \$51, \$52, or \$62, have been paid, or even addressed.

### **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 evidence in favor of mitigating Applicant's conduct. He has an outstanding military record. Unfortunately, Applicant has a history of financial delinquencies commencing in 2003. He went through a separation, divorce, and unemployment. At some point, accounts became delinquent and were placed for collection or charged off. He paid off or settled or otherwise resolved accounts with a non-SOR creditor and one SOR creditor, and is currently paying another SOR creditor. He has repeatedly promised to resolve his delinquent debts.

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<sup>71</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.

The disqualifying evidence under the whole-person concept is more substantial. Applicant's initial financial delinquencies occurred in 2003, without any explanation as to causation. Thereafter, once again, at some point, he permitted accounts to become delinquent and placed for collection or charged off. Applicant attributes his financial difficulties to his separation, divorce, and unemployment, but he never explained how those events directly affected his finances and ability to handle his debts. Applicant was briefly unemployed, but he was still receiving his military retirement and disability payments. He let his anger control his actions related to his leased automobile. Despite \$2,217.19 available for discretionary spending, he still has not contacted the original creditors or their respective collection agents of 9 of the SOR accounts.

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>72</sup> Applicant's initial 2003 good-faith efforts were limited, 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>73</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 to eventually resolve his delinquent accounts, and he has repeatedly promised to do so. Unfortunately, his promises have not been turned into action, and he has not contacted 9 of his 11 SOR creditors. Overall, the evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a

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<sup>72</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>73</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For 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

**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