



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



In the matter of:)
)
-----) ISCR Case No. 10-06763
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: Gayle J. Brown, Esq.

09/12/2012

Decision

Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 22 delinquent debts or accounts, totaling \$154,543. Excluding his mortgage account, the total SOR debt is \$52,444. He has a history of delinquent debt. He did not make sufficient progress resolving his delinquent SOR debts. In September 2009, he committed two felony-level offenses, when he assaulted his second spouse with an unloaded firearm and broke three windows on her car with a hammer. He will remain on probation until February 4, 2013. Personal conduct concerns are mitigated. Financial considerations and criminal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 11, 2010, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) or SF 86. (GE 1) On April 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines J (criminal conduct), E (personal conduct), and F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On May 1, 2012, Applicant responded to the SOR. (HE 3) On June 20, 2012, Department Counsel indicated he was ready to proceed on Applicant's case. On July 3, 2012, DOHA assigned Applicant's case to me. On July 27, 2012, DOHA issued a hearing notice, setting the hearing for August 23, 2012. (HE 1) Applicant's hearing was held as scheduled using video teleconference. Department Counsel offered 11 exhibits, and Applicant offered two exhibits. (Tr. 32-33, 99-100; GE 1-11; AE A-B) There were no objections, and I admitted GE 1-11 and AE A-B. (Tr. 33, 100-101) Additionally, I admitted the hearing notice, SOR, and Applicant's response to the SOR. (HE 1-3) On August 31, 2012, I received the transcript.

Findings of Fact¹

Applicant's SOR response admitted: he was arrested and is currently on probation after pleading guilty to a felony (SOR ¶¶ 1.a and 2.a); his two spouses obtained protective orders against him in 1997 and 2009 (SOR ¶¶ 2.b and 2.c); he is responsible for the debts in SOR ¶¶ 3.e, 3.g, 3.i, 3.j, 3.l, 3.m, 3.n, 3.p, 3.q, 3.r, and 3.v; and his debts were discharged through bankruptcy in July 1998. (SOR ¶ 3.w) He denied the remainder of the SOR allegations. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 58-year-old employee of a defense contractor, who has worked as a truck driver for thirty years. (Tr. 54, 88; GE 1; AE B at 2) He has been working for his current employer continuously since April 1998. (Tr. 55) He earned a high school diploma. (Tr. 89) He has never served in the military. (Tr. 89) Applicant married his first spouse in 1973, and he was divorced in March 1998. (GE 1) He married his second spouse in April 2003; was separated from her in September 2009; and divorced in January 2012. (Tr. 58, 95; GE 1) He has two children, who were born in 1974 and 1976. (Tr. 96; GE 1)

Criminal conduct and personal conduct

In August 1997, Applicant's first spouse alleged that he illegally entered her residence at about 1:00 am, woke her up, and took the keys to her truck. (GE 11 at 14) She claimed he previously injured her in several incidents of domestic violence. (GE 11 at 14) He denied that he committed any physical violence against her. (Tr. 81, 129-131) In September 1997, a judge granted her request for a domestic violence protective order against Applicant. (Tr. 57, 81-84; SOR ¶ 2.c; GE 11 at 18)

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

In 2009, Applicant's second spouse often consumed excessive amounts of alcohol. (Tr. 59) In September 2009, Applicant's son had emergency brain surgery and was near death. (Tr. 60, 96; AE B at 4) Applicant and his second spouse were under great stress. (Tr. 60) On September 16, 2009, Applicant had been awake for about 50 hours and was exhausted. (Tr. 61, 95) His second spouse entered their residence while Applicant was asleep. She was intoxicated, and Applicant argued with her. (Tr. 61-62, 66) Applicant got out his .22 caliber firearm and placed it on the table because he wanted his second spouse to give it to his first spouse. (Tr. 64-66, 84-85) The firearm was not loaded.² (Tr. 64) His second spouse was confused, and she slapped Applicant. (Tr. 62) She threatened to cut him with a steak knife. (Tr. 66) Applicant's stepdaughter³ and second spouse told the police that he pointed the unloaded firearm at his second spouse and threatened her. (Tr. 65-66, 85-86; GE 2 at 13, 18; GE 3 at 21) The police report indicates Applicant admitted that he pointed the unloaded firearm at his second spouse in his stepdaughter's presence. (Tr. 67; GE 2 at 2, 5) Applicant denied his second spouse and stepdaughter's allegation that he kicked his second spouse when she was going down the stairs. (Tr. 87; GE 2 at 13) At his hearing, he said he may have pointed his firearm at her when he was turning around; however, he denied that he deliberately pointed the firearm at her head. (Tr. 68) Applicant was not impaired by alcohol at the time of the incident. (Tr. 67-68) When Applicant was in his garage, his second spouse pushed Applicant. (Tr. 69; GE 2 at 5) Applicant picked up a hammer and broke three windows on his second spouse's car. (Tr. 69, 86; GE 2 at 5, 7; AE B at 5) The police recovered an unloaded gun in a black case with two full magazines, which the police said witnesses identified as the weapon Applicant pointed at his second spouse. (GE 2 at 9)

On September 17, 2009, Applicant was arrested and charged with (1) Assault in the Third Degree⁴ (a felony) and (2) Criminal Mischief in the Third Degree (a felony). (Tr. 95; SOR ¶¶ 1.a and 2.a; SOR response; AE B at 5) In February 2010, charge (1) was dismissed, and he pleaded guilty to charge (2). (Tr. 87) His sentence was suspended for three years, and he was placed on probation for three years. The court ordered him to pay restitution for the damage to his second spouse's vehicle. (AE B at 8) There is no evidence in his file that he had any probation violations. (Tr. 37-39) He is

²Applicant's stepdaughter believed the firearm was unloaded because she saw the magazine on the floor. (GE 2 at 13) Applicant insisted it was unloaded.

³The police report summarizes an audio recorded interview of his stepdaughter as follows:

[His stepdaughter] went upstairs and saw [Applicant] pointing a gun at [his second spouse, and he stated that] he was going to kill her. [She] jumped between [Applicant] and [his second spouse]. [Applicant] continued to try and point the handgun at [his second spouse] by moving it around [his stepdaughter]. . . . [His stepdaughter said,] "He kept on trying to point it at [his second spouse] while I was trying to get it away from him." (GE 2 at 18)

⁴Under the law of Applicant's state, assault in the third degree with a firearm includes unloaded firearms. "[F]irearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury." Copies of the pertinent statutes are included in the file.

compliant with all rules and has been at a minimal level of supervision since October 14, 2010. (Tr. 37-38, 50) On October 24, 2011, the court denied Applicant's request for early termination of his probation. (Tr. 54-55; GE 6 at 1) His probation will be completed on February 4, 2013. (Tr. 39-41, 55, 88; SOR response) If he successfully completes his probation, his civil rights will be restored. (Tr. 41, 88)

After the September 2009 arrest, Applicant's second spouse obtained a one-year protective order against him. (Tr. 72-73; SOR ¶ 2.b) Applicant was never charged with violation of the protective order. (Tr. 73) His only contact with his second spouse after September 2009 was in divorce court. (Tr. 73-74)

Financial considerations

Applicant's SOR and credit reports list 22 delinquent debts or accounts, totaling \$154,543 (excluding the mortgage account, the total SOR debt is \$52,444 (Tr. 28)), as follows: 3.a to 3.f and 3.h to 3.k are collection accounts owed to the same creditor for \$58 (3.a), \$814 (3.b), \$178 (3.c), \$130 (3.d), \$131 (3.e), \$181 (3.f), \$219 (3.h), \$342 (3.i), \$480 (3.j), and \$116 (3.k); 3.g is a telecommunications debt for \$1,091; 3.l and 3.m are collection accounts originating from the same creditor for \$5,609 and \$5,943; 3.n is a mortgage account in the amount of \$261,292 that is past due in the amount of \$102,099; 3.o is a charged off bank account in the amount of \$2,486; 3.p and 3.q are charged off accounts in the amounts of \$3,570 and \$3,990; 3.r is a charged off account for \$8,736; 3.s to 3.u are medical collection accounts for \$2,055, \$213, and \$295; and 3.v is a collection account for \$15,807.

In July 1998, Applicant's nonpriority, unsecured delinquent debts were discharged under Chapter 7 of the Bankruptcy Code. (SOR ¶ 3.w) Applicant's bankruptcy in 1998 was caused by his first divorce. (Tr. 75) He could not afford to pay the family debts without his first spouse's income. (Tr. 75-76)

Applicant's second spouse was responsible for paying the family debts. (Tr. 71) Applicant was often away from home driving a truck. In August 2009, Applicant learned he had delinquent debts. (Tr. 93) His financial situation shocked Applicant, and he told his second spouse he wanted a divorce. (Tr. 94-95)

Applicant purchased a house in May 2004 for about \$200,000 with a down payment of about \$12,000. (Tr. 108, 133; AE B at 2) Later, they borrowed \$50,000 for home improvement. (Tr. 111) They subsequently refinanced the loan, and their payment increased to \$3,500 per month. (Tr. 112) He unsuccessfully attempted to get the loan changed. (Tr. 112-114) Applicant could not afford the increased payment, and his house went into foreclosure. (Tr. 76, 113) He moved out of his house on September 17, 2009, shortly after his arrest for domestic violence. (Tr. 114) His house was sold six or seven months ago to the lender for \$260,000. (Tr. 76, 116) He believes the creditor is not seeking any funds from him. (Tr. 76, 116-117, 134)

Applicant has not received financial counseling. (Tr. 117) He believes he can afford to pay his creditors "a couple hundred bucks a month until [he] can get other bills

and stuff taken care of.” (Tr. 77) Applicant provides some financial support for his father, who has Parkinson’s Disease and dementia. (Tr. 97)

Applicant had 10 SOR debts owed to the same creditor for \$2,649. (Tr. 101; SOR ¶¶ 3.a to 3.f and 3.h to 3.k) He said he had been in touch with the creditor once or twice, but not recently. (Tr. 101-102) He did not provide any correspondence to or from the creditor. He planned to arrange a payment plan. (Tr. 102) He promised to try to get his debts paid off. (Tr. 106) Applicant said he has not made any payments to any of his SOR creditors. (Tr. 98, 105) Later, he said he paid off a vehicle that his second spouse refinanced, some medical bills, and a debt to the Internal Revenue Service (IRS). (Tr. 102-103) He is paying the IRS \$750 each month to address a non-SOR debt of about \$3,500. (Tr. 121)

Applicant admitted responsibility for five credit card debts. (Tr. 105; SOR ¶ 3.l for \$5,609; ¶ 3.m for \$5,943; ¶ 3.p for \$3,570; ¶ 3.q for \$3,990; and ¶ 3.r for \$8,736) He does not currently have a credit card. (Tr. 124-125) He was unsure about the origin of any other credit card debts that may have resulted in collections on his credit report. (Tr. 105)

After Applicant and his second spouse separated in September 2009, he did not want to pay the debts until the divorce court settled the issue of responsibility for each debt. (Tr. 75) On January 25, 2012, the divorce court ordered Applicant to pay \$5,654 owed on his truck, and 15 debts (includes four utility debts), totaling \$29,560. (AE B at 10, 18) The post-divorce-hearing briefs indicate Applicant will pay “all debt except three credit card obligations” that his second spouse would pay. (AE B at 17) I have credited Applicant with not being required to pay his second spouse’s medical and credit card debts; however, there is no evidence that those debts were included in Applicant’s SOR-listed debts. (AE B at 17)

From 2006 to 2009, Applicant’s income was \$69,217; \$69,079; \$71,243; and \$57,872. (AE B at 22) He was unemployed because of cluster headaches for about four to six months from about November 2006 to about February 2007. (Tr. 70; AE B at 3) In the last six months, he has averaged about \$5,000 income each month; however, during the winter the amount of work is less. (Tr. 122-123) Applicant receives an hourly wage of more than \$24. (Tr. 90)

Character Evidence

Applicant’s brother described Applicant as diligent, conscientious about following rules, law abiding, honest, generous, and trustworthy (Tr. 10-11) Applicant’s second spouse consumed an excessive amount of alcohol and caused conflict in Applicant’s marriage. (Tr. 10-11) In the last year, Applicant’s second spouse expressed some remorse for her contributions to their marital difficulties. (Tr. 16)

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 that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines J (criminal conduct), E (personal conduct), and F (financial considerations) with respect to the allegations set forth in the SOR.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case, “(a) a single serious crime or multiple lesser offenses,” “(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” and “(d) individual is currently on parole or probation.”

AG ¶¶ 31(a), 31(c), and 31(d) apply. In September 2009, Applicant pointed an unloaded firearm at his second spouse and threatened her. He damaged her vehicle by breaking three windows with a hammer. The two offenses are felonies, which are serious crimes. He is on probation until February 4, 2013.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person’s life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or

restitution, job training or higher education, good employment record, or constructive community involvement.

Although none of the mitigating conditions fully apply, there are important mitigating factors. The offense occurred in September 2009, which is more than three years ago and not recent. Appellant admitted his misconduct to the police, which is a positive development. He was not convicted of assaulting his second spouse. He has scrupulously complied with all the terms of his probation. He has been continuously employed since September 2009. He has expressed regret and remorse concerning the altercation with his second spouse.

At his hearing, Applicant denied that he deliberately pointed his unloaded firearm at his second spouse; however, I specifically find that he deliberately pointed his unloaded firearm at his second spouse and threatened her. More time without any criminal misconduct must elapse before there is enough assurance that criminal conduct is unlikely to recur. Appellant is not ready to be entrusted with access to classified information.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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

Appellant's personal conduct concerns involve Appellant's criminal conduct as discussed in the previous section. AG ¶ 16 provides two conditions which may be applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Appellant's criminal offenses, as discussed in the previous section, violate criminal statutes and important rules in our society, and such behavior is obviously conduct a person might wish to conceal, as it adversely affects a person's professional and community standing. AG ¶¶ 16(d)(3) and 16(e)(1) are established.

AG ¶ 17(c) provides, "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." The protective order issued in 1997 is over 15 years ago. The underlying facts concerning Applicant physically injuring his first spouse are disputed, and it is too remote to raise any security concern. I have credited Applicant with mitigating the 1997 domestic violence protection order under AG ¶ 17(c).

Applicant's September 2009 criminal conduct was more than three years ago. It has not recurred. Appellant was divorced in January 2012, and the assault on his second spouse occurred under somewhat unique circumstances. Now that his second spouse is out of his life, it is less likely that he will commit such misconduct in the future. AG ¶ 17(c) partially applies to SOR ¶¶ 2.a and 2.b.

The mitigating condition outlined in AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress" partially applies. Security officials, the police, the probation office, and the state courts are well aware of Appellant's misconduct. The documentation in his security file and in his criminal records eliminates any vulnerability to exploitation, manipulation, or duress. I do not believe Appellant would compromise national security to avoid public disclosure of his misconduct. His criminal offenses are discussed under the criminal conduct guideline. Any personal conduct security concerns pertaining to his criminal offenses are dealt with more thoroughly under Guideline J in this recommended decision. Personal conduct security concerns related to his criminal offenses are mitigated as a duplication of the criminal conduct concerns.

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his SOR response, and his hearing record. Applicant's SOR alleges 22 delinquent debts or accounts, totaling \$154,543 (excluding the mortgage account, the total SOR debt is \$52,444). Some debts have been delinquent since 2009. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁵ and

⁵The 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) 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)).

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct in resolving his debts does not warrant full application of any mitigating conditions to all SOR debts. I have credited Applicant with mitigating the debt in SOR ¶ 1.n and his 1998 bankruptcy in SOR ¶ 1.w. Applicant stated he was informed by his mortgage company that his mortgage debt was resolved, and his divorce caused his bankruptcy in 1998.

Applicant fell behind on his debts because he trusted his wife's statements that she was paying their debts. As a truck driver, he was often not home when bills and correspondence from creditors arrived. He was not aware of the extent of his delinquent debts. Some medical debts resulted from his son's brain surgery or other family medical problems. He did not receive financial counseling. He showed some good faith when he admitted responsibility for some his SOR debts in his SOR response and at his hearing.

Applicant has not taken reasonable actions to resolve most of his SOR debts. He has six SOR debts that are less than \$300, and one debt is for \$58. The circumstances beyond his control were significant; however, he did not adequately explain why he had not made any payments to his SOR creditors, especially after his divorce was final in January 2012. He did not provide documentation proving that he maintained contact with his SOR creditors, and he did not provide any documentation showing his attempts to negotiate payment plans with his SOR creditors.⁶ There is insufficient evidence that his financial problem is being resolved and is under control. He did not establish his financial responsibility.

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

⁶“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.

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. I have incorporated my comments under Guidelines J, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is a 58-year-old employee of a defense contractor, who has worked for his current employer continuously since April 1998 as a truck driver. He earned a high school diploma, and he has never served in the military. He married in 1973 and was divorced in 1998. He married in April 2003; was separated from his second spouse in September 2009; and divorced in January 2012. He has two children, who were born in 1974 and 1976. Some circumstances beyond his control, such as insufficient income, unemployment due to cluster headaches, divorce, family medical problems, and his second spouse's irresponsible handling of his finances adversely affected his financial circumstances. He is an intelligent person who knows what he must do to establish his financial responsibility. He paid court ordered restitution for damaging his second spouse's vehicle. He has scrupulously complied with all probation requirements, and I am confident he will successfully complete probation on February 4, 2013. Applicant's brother described his law abiding and trustworthy character. There is no evidence of security violations, disloyalty, or that he would intentionally violate national security. He has made important progress towards mitigation of security concerns.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant's SOR alleges 22 delinquent debts or accounts. After excluding the mortgage account, his SOR debt totals \$52,444. Some debts have been delinquent since 2009. He failed to prove that he could not have made greater progress resolving and documenting resolution of his SOR debts. He did not provide documentary proof that he made any payments to any of the SOR creditors. Six SOR debts are less than \$300 each. In September 2009, he assaulted his second spouse with an unloaded firearm and threatened her. He intentionally damaged her vehicle. He was convicted of damaging her vehicle, a felony, and sentenced to pay restitution. He is on probation until February 4, 2013. His failure to pay his debts and criminal offenses show lack of judgment and "raise[s] questions about [Applicant's] reliability, trustworthiness and ability to protect classified information." See AG ¶ 15.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude personal conduct concerns are mitigated; however, criminal conduct and financial considerations concerns are not

fully mitigated. For the reasons stated, I conclude he is not eligible for access to classified information.

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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a to 2.c:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a to 3.m:	Against Applicant
Subparagraph 3.n:	For Applicant
Subparagraphs 3.o to 3.v:	Against Applicant
Subparagraph 3.w:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge