



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



In the matter of: )  
 )  
----- ) ISCR Case No. 10-07465  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

12/26/2012

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On February 16, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (e-QIP).<sup>1</sup> On August 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on November 4, 2011.<sup>2</sup> DOHA issued a Statement of Reasons (SOR) to him on April 25, 2012, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; 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

<sup>1</sup> GE 1 (e-QIP), dated February 16, 2010.

<sup>2</sup> GE 2 (Applicant's Answers to Interrogatories, dated November 4, 2011).

29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (financial considerations), and 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 referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on June 20, 2012. In an unsworn statement, dated June 21, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On September 21, 2012, Department Counsel indicated the Government was prepared to proceed. The case was initially assigned to another administrative judge on October 11, 2012, but was reassigned to me on November 1, 2012. A Notice of Hearing was issued on November 30, 2012, and I convened the hearing, as scheduled, on December 11, 2012.<sup>3</sup>

During the hearing, four Government exhibits (GE 1 through GE 4) and four Applicant exhibits (AE A through AE D) were admitted into evidence without objection. Applicant and one other witness testified. The transcript (Tr.) was received on December 20, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted three additional exhibits (AE E through AE G) that were admitted into evidence without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted one of the three factual allegations (¶ 1.a. of the SOR). That admission is incorporated herein as a finding of fact. He denied the remaining allegations (¶¶ 1.b. and 1.c.).<sup>4</sup> 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 53-year-old employee of a defense contractor who, since February 2010, has served as an associate. He previously held a variety of positions with other employers, where he was a consultant, real estate developer, real estate broker, director or Oracle technology, consultant, and programmer/analyst.<sup>5</sup> After being laid off in August 2009 due to economic conditions, he was unemployed from September 2009 until January 2010.<sup>6</sup> Applicant's current employment is located approximately 280 miles from his residence requiring that he commute every weekend between home and office.

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<sup>3</sup> While the Notice of Hearing was issued within 15 days of the scheduled hearing date, Department Counsel and Applicant were, over an extensive period before the notice was issued, in discussions regarding the date and location of the hearing. See, the Directive, Encl. 3, § E3.1.8. Nevertheless, in an abundance of caution, I asked Applicant if he had any objections to proceeding. He did not object, and waived the 15 day notice. See, Tr. at 12.

<sup>4</sup> At the commencement of the hearing, Department Counsel moved to amend the SOR by correcting a typographical error in SOR ¶ 1.c., as follows: delete the figure \$5,9242.00 and substitute the figure \$59,242.00. There being no objection, the motion was granted and the error was corrected. See, Tr. at 11-12.

<sup>5</sup> GE 1, *supra* note 1, at 14-21.

<sup>6</sup> GE 1, *supra* note 1, at 16-17.

Applicant attended a U.S. military academy from July 1977 until he was graduated with a B.A. degree and commissioned in May 1981. He subsequently attended another university from January 1988 until May 1991 when he earned an M.S. degree.<sup>7</sup> He served on active duty as an infantry officer of the U.S. Army from May 1981 until March 1988, when he was discharged and issued an honorable discharge certificate.<sup>8</sup> In April 1988, he joined the U.S. Army National Guard (ARNG) and remained an active member until he resigned in October 1997 and again was issued an honorable discharge certificate.<sup>9</sup> His highest grade was major. During his combined military service, he was awarded the National Defense Service Medal, the Army Service Ribbon, the Overseas Service Ribbon, the Army Commendation Medal with four insignia, the Army Achievement Medal with one insignia, the ARNG Long Service Medal, the ARNG Mobilization Support Ribbon, and the ARNG Foreign Deployment Service Ribbon.<sup>10</sup> He initially received a secret security clearance in 1977,<sup>11</sup> and was granted a top secret security clearance in 2005.

Applicant was married in 1982. He and his wife have two daughters (born in 1984 and 1987) and three grandchildren.<sup>12</sup>

### **Financial Considerations**

There apparently was nothing unusual about Applicant's finances until the latter part of 2006. In 2005, his adjusted gross income was \$879,916 and he should have made quarterly income tax payments totaling \$264,212.<sup>13</sup> He failed to do so. That same year, because he had been traveling extensively for his job and he was missing a desired level of involvement in his family life, he executed a change of pace. With a soaring real estate market, he joined two other individuals in a land development project. He also became a real estate broker. The project involved the purchase and development of a 700 acre tract of land. Applicant initially invested \$230,000 of his own capital into the project in February 2005.<sup>14</sup> In May 2005, he borrowed \$860,000 to purchase 23 acres of the original 46 acre project.<sup>15</sup> The land project was sold in 2007

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<sup>7</sup> GE 1, *supra* note 1, at 11-13.

<sup>8</sup> AE E (Certificate of Release or Discharge from Active Duty (DD Form 214), dated March 13, 1988).

<sup>9</sup> AE F (Report of Separation and Record of Service (NGB Form 22), dated October 3, 1997).

<sup>10</sup> AE E, *supra* note 8; AE F, *supra* note 9.

<sup>11</sup> AE F, *supra* note 9.

<sup>12</sup> GE 1, *supra* note 1, at 32-33.

<sup>13</sup> GE 2 (Internal Revenue Service (IRS) Account Transcript, dated October 24, 2011), attached to Applicant's Answers to Interrogatories.

<sup>14</sup> Tr. at 34-35, 52.

<sup>15</sup> Tr. at 66-67.

for approximately \$10,000,000, but Applicant only received his initial \$230,000 investment plus about \$25,000 to \$30,000 back.<sup>16</sup> His share, based on the agreement he had with his partners, should have been over \$1,000,000. Applicant sued his partner, but the matter is still in litigation, and Applicant has been ordered by the court not to reveal information regarding the litigation.<sup>17</sup>

Although Applicant is unable to specify all of his 2005 expenditures, he also invested \$100,000 in a natural gas project, an unspecified sum in some stocks, and funded a daughter's college tuition. He denied making any "crazy" spending.<sup>18</sup> In 2006, his adjusted gross income had decreased to \$100,000. In 2007, it was \$20,122, and in 2008, it was \$25,578.<sup>19</sup>

Several conditions contributed to Applicant's financial bind: the collapse of the real estate market in 2006 and 2007; his partner's failure to pay Applicant his share of the proceeds from the land development project; and the cancellation of a large contract.<sup>20</sup> In 2006, the IRS penalized Applicant substantial sums for failing to pay his 2005 income taxes.<sup>21</sup> In June 2007, the IRS placed a lien on Applicant's assets due to the \$270,853 balance owed. He was credited with payments taken from his subsequent income tax refunds.<sup>22</sup> In May 2007, the state department of revenue also filed a lien on his assets in the amount of \$59,242.<sup>23</sup>

In 2008, in an effort to generate additional funds, Applicant started "flipping" houses.<sup>24</sup> He purchased several distressed homes and rehabilitated them to sell at increased prices. He and his sister jointly purchased a fourplex with his sister paying \$15,000, acquiring a \$37,000 mortgage loan, and Applicant contributing "sweat-equity." He purchased a condominium for \$5,000 and rehabilitated it, and in 2012, he purchased a single family house for \$1,000 and rehabilitated it. The house and the condominium are owned free and clear of mortgages.<sup>25</sup>

As noted above, Applicant was laid off due to economic reasons and was unemployed from September 2009 until January 2010. That period of unemployment,

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<sup>16</sup> Tr. at 77.

<sup>17</sup> Tr. at 36, 62, 78.

<sup>18</sup> Tr. at 85-89.

<sup>19</sup> Tr. at 55-56.

<sup>20</sup> Tr. at 76-77.

<sup>21</sup> GE 2, *supra* note 13.

<sup>22</sup> GE 2, *supra* note 13.

<sup>23</sup> AE C (Letter, dated November 21, 2012).

<sup>24</sup> Tr. at 37, 54.

<sup>25</sup> Tr. at 68-69.

along with his other financial issues, caused him to have insufficient funds to make all of his monthly payments. As a result, accounts, including his home mortgage, became delinquent. He was essentially living on his credit cards, and by 2010, he had about \$70,000 in credit card debt, with a number of accounts in collection, and one in judgment.<sup>26</sup> Applicant filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code in March 2010. He listed \$160,147.92 in claims with creditors holding unsecured nonpriority claims and \$563,514.60 with creditors holding secured claims.<sup>27</sup> All of Applicant's delinquent accounts, including his two income tax accounts, were discharged in July 2010.<sup>28</sup>

Although Applicant's state recognized the bankruptcy discharge of his 2005 tax liability, a certificate of tax liability was filed and it will remain in place until the debt has been paid.<sup>29</sup> Nevertheless, the IRS tax lien was released in February 2012, and the state tax lien was released in November 2012.<sup>30</sup> Despite the liens having been released, the case "remains open because of an unresolved dispute related to the Trustee's attempts to sell [Applicant's] residence."<sup>31</sup> Although Applicant no longer has any personal liability for the tax debt, it remains a possibility, challenged by Applicant in court, that the IRS could levy on the property and attempt to sell the residence in a tax foreclosure sale.<sup>32</sup> Applicant's mortgage on the residence is \$183,000 and that residence is worth about \$280,000.<sup>33</sup> Although he is no longer obligated to make payments on the mortgage because of his bankruptcy discharge, Applicant has continued making his monthly mortgage payments.<sup>34</sup> In the event he loses his court

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<sup>26</sup> GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 6, 2010); GE 3 (Equifax Credit Report, dated August 30, 2011).

<sup>27</sup> GE 2 (Extracts of Voluntary Petition (Schedules F and D), dated March 31, 2010), attached to Applicant's Answers to Interrogatories; AE D (Letter from Bankruptcy Attorney, dated September 25, 2012).

<sup>28</sup> GE 2 (Discharge of Debtor, dated July 9, 2010), attached to Applicant's Answers to Interrogatories; AE D, *supra* note 27. The tax debts were dischargeable because, while they were of the type and kind described in 11 U.S.C. § 523(a)(1)(A), they did not fall within the exemptions set forth in 11 U.S.C. § 507(a)(98)(A)(i) and/or (a)(8)(A)(ii) because the return was due over three years before the bankruptcy filing date, it was either filed timely or at least two years before the bankruptcy filing date, there was an assessment more than 240 days before the bankruptcy filing date, and because Applicant did not make any effort to evade or defeat the taxes. See AE G (*In re Moore v. State of Alabama Dept. of Revenue*, 2011 WL 5520956 (Bkrtcy. N.D. Ala.)).

<sup>29</sup> GE 2 (Letter, dated October 25, 2011), attached to Applicant's Answers to Interrogatories.

<sup>30</sup> AE D, *supra* note 27; AE A (IRS Account Transcript, dated October 22, 2012); AE B (Certificate of Release of Federal Tax Lien, dated February 15, 2012); AE C, *supra* note 23.

<sup>31</sup> GE 2 (Letter from Bankruptcy Attorney, dated November 3, 2011), attached to Applicant's Answers to Interrogatories.

<sup>32</sup> AE D, *supra* note 27.

<sup>33</sup> Tr. at 71.

<sup>34</sup> Tr. at 103-104.

challenge, he is prepared to vacate the residence.<sup>35</sup> Applicant has no delinquent accounts remaining.<sup>36</sup>

In November 2011, Applicant submitted a personal financial statement that reflected the monthly combined net income for himself and his wife as \$8,000.<sup>37</sup> He claimed \$2,950 in monthly expenses and \$1,938 in student loan payments, leaving a monthly net remainder of \$3,112 available for discretionary spending or saving.<sup>38</sup> Applicant's wife now has a better job which added \$2,000 per month to their combined income and the same increase to their monthly net remainder.<sup>39</sup>

In addition to the mandatory financial counseling for the bankruptcy, Applicant obtained 13 weeks of financial counseling from the Dave Ramsey Financial Peace University for financial responsibility in spending reduction, budgeting, debt payments, and investments.<sup>40</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 emphasizing, "no one has a 'right' to a security clearance."<sup>41</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>42</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.

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<sup>35</sup> AE D, *supra* note 27.

<sup>36</sup> Tr. at 70.

<sup>37</sup> GE 2 (Personal Financial Statement), dated November 8, 2011).

<sup>38</sup> GE 2 (Personal Financial Statement), *supra* note 37.

<sup>39</sup> Tr. at 70.

<sup>40</sup> Tr. at 37, 63-65.

<sup>41</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>42</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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>43</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>44</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>45</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>46</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

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<sup>43</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>44</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>45</sup> *Egan*, 484 U.S. at 531

<sup>46</sup> See Exec. Or. 10865 § 7.

reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Although Applicant's 2005 adjusted gross income was \$879,916 and he should have made quarterly income tax payments, he failed to do so. That same year he made substantial investments in a land development project, a natural gas project, and some stocks, and funded a daughter's college tuition. The next three years saw his adjusted gross income substantially diminished. Tax liens were filed on Applicant's assets by the IRS and the state. Because he had insufficient funds to make all of his monthly payments, accounts became delinquent, and by 2010, he had about \$70,000 in credit card debt, with a number of accounts in collection, and one in judgment. 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.*

When *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*, AG ¶ 20(c) may apply. 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>47</sup> Also, *when 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, AG ¶ 20(e) may apply.*

AG ¶ 20(a) applies and ¶ 20(b) partially applies. Although he was not aware of any financial difficulties until 2006, Applicant's actual financial problems commenced in 2005. Although he had a good income, he failed to make his quarterly income tax payments, and, instead, made substantial investments in land development, natural gas, and stocks. As Applicant acknowledged, his failure to make those quarterly tax payments was his own fault, and could not be attributed to anyone else. However, several conditions contributed to Applicant's financial bind, and they were largely beyond Applicant's control: the collapse of the real estate market in 2006 and 2007; his partner's failure to pay Applicant over \$1,000,000, his share of the proceeds from the land development project; the cancellation of a large contract; and his layoff and period of unemployment. While those financial issues caused him to have insufficient funds to make all of his monthly payments, he attempted to generate additional funds through investing in distressed properties and rehabilitating them. Applicant filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code in March 2010. In July 2010, his delinquent accounts were discharged. Free from the pressures of delinquent debts, Applicant was able to restore his financial house. Applicant now possesses a new awareness of his financial responsibilities and the pitfalls of dealing with questionable investor-associates. Applicant's financial problems occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. Furthermore, he finally acted responsibly under the circumstances.<sup>48</sup>

AG ¶¶ 20(c) and 20(d) apply. As noted above, in addition to the mandatory financial counseling for the bankruptcy, Applicant obtained 13 weeks of financial counseling from the Dave Ramsey Financial Peace University for financial responsibility

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<sup>47</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 she 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>48</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

in spending reduction, budgeting, debt payments, and investments. Furthermore, there are clear indications that his financial problems are being resolved or are under control. All of Applicant's former delinquent accounts were discharged in his 2010 bankruptcy. He was credited with payments for his 2005 income taxes taken from his subsequent income tax refunds. He has also continued to make his monthly mortgage payments following the bankruptcy discharge although he is no longer obligated to do so. In November 2011, Applicant's combined family monthly net income was \$8,000. It is now up to \$10,000, and he has a monthly net remainder of about \$5,000 available for discretionary spending or saving. He jointly owns a fourplex with his sister for which he contributed "sweat-equity." He also owns a condominium and a single family house, free and clear of mortgages. His federal and state income liens have been released.<sup>49</sup> Although Applicant no longer has any personal liability for the tax debt, it remains a possibility that the IRS could levy on the property and attempt to sell the residence in a tax foreclosure sale. In the event he loses his court challenge, he is prepared to vacate the residence. It is significant that since his bankruptcy discharge in 2010, now nearly three years later, Applicant no longer has any delinquent accounts remaining.

AG ¶ 20(e) applies. Although Applicant's credit reports reflect that there are still income tax liens, those reports are incorrect. The liens were released by both the IRS and the state, and Applicant denied the SOR allegations. According to his bankruptcy attorney, and the law, Applicant has a reasonable basis to dispute the alleged status of those liens. Applicant has provided documented proof to substantiate the basis of his disputes.

### **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.

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<sup>49</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.

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

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

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.<sup>50</sup>

There is some evidence against mitigating Applicant’s conduct. His investment activities and mishandling of the family finances pertaining, in part, to his failure to make quarterly income tax payments in 2005, eventually permitted a number of accounts to become delinquent. As a result, accounts became past-due, placed for collection, became income tax liens, or went to judgment.

The mitigating evidence under the whole-person concept is more substantial. Flying high as an investor with a substantial income in 2005, circumstances changed and financial problems ensued. While he alone is responsible for his failure to make the required quarterly income tax payments, several conditions contributed to Applicant’s financial bind that were largely beyond Applicant’s control: the collapse of the real estate market; his partner’s failure to pay Applicant his share of the proceeds from the land development project; the cancellation of a large contract; and his layoff and period of unemployment. In those instances where he could not contribute monetarily, Applicant contributed his “sweat equity.” Applicant now owns a condominium and a single family house, free and clear of mortgages. His income liens have been released. Applicant no longer has any personal liability for the tax debt, but it remains a possibility that the IRS could levy on the property and attempt to sell it in a tax foreclosure sale. Applicant is prepared to vacate the residence. Also, since his bankruptcy discharge of

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<sup>50</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

nearly three years ago, Applicant no longer has any delinquent accounts remaining. Applicant is a decorated military veteran, the former holder of a security clearance, and a good husband, father, and grandfather.

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>51</sup> Applicant has demonstrated a meaningful track record of debt reduction and elimination. He has resolved all of his debts. Delinquent accounts were discharged and income tax liens were released. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Administrative Judge

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<sup>51</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).