



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-08759

Appearances

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

07/23/2013

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 May 5, 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).¹ On an unspecified date, the Department of Defense (DOD) issued him two sets of interrogatories. He responded to the interrogatories on May 24, 2011.² On another unspecified date, the DOD issued him a set of interrogatories. He responded to the interrogatories on June 18, 2012.³ On January 30, 2013, the DOD issued a Statement of Reasons (SOR) to him, under Executive Order

¹ GE 1 ((SF 86), dated May 5, 2010).

² GE 2 (Applicant's Answers to Interrogatories, dated May 24, 2011); GE 3 (Applicant's Answers to Interrogatories, dated May 24, 2011).

³ GE 4 (Applicant's Answers to Interrogatories, dated June 18, 2012).

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) 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 the DOD adjudicators were 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 February 8, 2013. In a sworn statement, dated February 20, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 6, 2013. The case was assigned to me on May 22, 2013. A Notice of Hearing was issued on June 7, 2013, and I convened the hearing, as scheduled, on June 24, 2013.

During the hearing, six Government exhibits (GE 1 through GE 6) and five Applicant exhibits (AE A through AE E) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on July 2, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted six additional documents, which were marked as exhibits (AE F through AE K) and admitted into evidence without objection. The record closed on July 15, 2013.

Findings of Fact

In his Answer to the SOR, Applicant denied, with an explanation, all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.c.). Applicant's explanations are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a defense contractor who, since April 2010, has served as a software engineer. He was previously employed full-time by other employers as a software developer, web applications developer, and research and development software developer.⁴ During periods of economic difficulties, he also held several part-time positions.⁵ Applicant went through several substantial periods of unemployment: February through April 2010, November through December 2008, and February 2002 through January 2005.⁶ He never served with the U.S. military.⁷ He has

⁴ GE 1, *supra* note 1, at 17-27.

⁵ GE 2 (Personal Subject Interview, dated May 26, 2010), at 2, attached to Applicant's Answers to Interrogatories.

⁶ GE 1, *supra* note 1, at 19, 21, 24.

held a secret security clearance since 2009.⁸ Applicant received a Bachelor of Science degree in May 1999.⁹ He was married in August 2003.¹⁰ Applicant and his wife have two daughters, born in 2004 and 2006.¹¹

Financial Considerations

There was nothing unusual about Applicant's finances until about February 2002, when he was laid off by his employer. He was furnished a severance package and accumulated stock options.¹² One of the conditions placed on his stock options required that they be exercised within a certain time period after termination of employment.¹³ He exercised the options in order not to lose the benefits and to provide a funding source for living expenses while he was unemployed. Unfortunately for Applicant, under the federal tax rules, any stock options exercised or shares sold within a certain time window were to be treated as ordinary income. As a result, when Applicant received his W-2 from his employer, the income reflected was significantly higher than Applicant had expected.¹⁴ Compounding Applicant's problems, as a result of his sale of the shares and the exercise of the stock options, Applicant also received a Form 1099 from his broker when the funds were transferred to his bank account.¹⁵ When his bank was purchased by another bank, the surviving bank also reported the transaction to the Internal Revenue Service (IRS). Consequently, the IRS miscalculated Applicant's earnings by tripling the amount of what he actually received.¹⁶

Applicant's repeated efforts to resolve the error on his own with his employer and the IRS over a multiple-year period were unsuccessful. In 2003, the IRS filed a substitute tax return, demanding as a tax an amount that was greater than Applicant's entire savings.¹⁷ He reported in his SF 86 that the requested balance was \$70,000.¹⁸ Applicant finally filed his federal income tax return in 2010 with what he believed to have

⁷ GE 1, *supra* note 1, at 30.

⁸ GE 1, *supra* note 1, at 48-49.

⁹ GE 1, *supra* note 1, at 16; Tr. at 6.

¹⁰ GE 1, *supra* note 1, at 33-34.

¹¹ GE 1, *supra* note 1, at 37-38.

¹² GE 2, *supra* note 6, at 2.

¹³ Tr. at 27.

¹⁴ Tr. at 27-28, 32-33.

¹⁵ Tr. at 28.

¹⁶ Tr. at 28.

¹⁷ GE 4 (Form 911 - Request for Taxpayer Advocate Service Assistance, dated June 8, 2012, attached to Applicant's Answers to Interrogatories).

¹⁸ GE 1, *supra* note 1, at 55.

been the proper amount of income tax, but the IRS ignored that filing.¹⁹ Applicant's repeated inquiries to the IRS pertaining to the 2002 tax year only generated responses of "no documents responsive to this request."²⁰ When he was confronted with "the imminent threat to his livelihood" as a result of the examination into his security clearance eligibility,²¹ Applicant turned to the Taxpayer Advocate Service (TAS), an office that operates independently of any other IRS office and reports directly to Congress through the National Taxpayer Advocate.²²

The TAS was successful in resolving the erroneous tax assessments, and what was originally a \$70,000 assessment by the IRS (and alleged in the SOR as \$81,033), was reduced to \$12,829.95, including \$2,675.67 in tax and penalty, and \$7,673.90 in interest.²³ The TAS apologized for "[Applicant's] financial difficulties, the delays involved, and any inconvenience this has caused [him]."²⁴ Over the ensuing years, there have been several income tax refund diversions applied to the balance.²⁵ The unpaid balance, as of July 8, 2013, was \$13,096.06.²⁶ It has taken Applicant and the TAS several years to arrive at a consensus as to an agreed, adjusted tax for the 2002 tax year. Considering that period of time, the periodic payments by refund diversions, and Applicant's intention to pay the entire balance as soon as he is able to do so,²⁷ this account is in the process of being resolved.

In 2007-08, Applicant's employer went through a period of being taken over by two other companies. In November 2008, Applicant's employer laid off all of its software employees, including Applicant.²⁸ Unable to find another job in the area, Applicant eventually relocated his family halfway across the country when he found another job. He put the house on the market, where it remained for approximately two years during the height of the economic recession.²⁹ He kept making his monthly mortgage payments during the entire time until he was laid off in February 2010.³⁰ He pursued short sales,

¹⁹ GE 4 (Form 911), *supra* note 18; Tr. at 28.

²⁰ GE 4 (Form 911), *supra* note 18.

²¹ Tr. at 28.

²² AE E (Letter, dated September 25, 2012).

²³ AE E (Payoff Calculator, dated September 25, 2012).

²⁴ AE E, *supra* note 22.

²⁵ AE A (IRS Billing Summary, dated June 17, 2013), at 3; Tr. at 31.

²⁶ AE A, *supra* note 25, at 1. It should be noted that during the hearing, Department Counsel moved to amend ¶ 1.a. of the SOR by deleting the figure \$81,033 and substituting therefor the figure \$13,096 to conform to the evidence submitted. There being no objection, the motion was granted.

²⁷ Tr. at 29; Applicant's Answer to the SOR, at 2.

²⁸ Tr. at 36.

²⁹ Tr. at 37.

³⁰ Tr. at 37; GE 1, *supra* note 1, at 19.

and with the residence listed for about \$210,000, had at least one offer for about \$180,000 rejected by the mortgage lender.³¹ Finally, on December 31, 2010, the property was sold for \$150,000 and with a \$2,000 contribution by Applicant, both the first and second mortgages on the property were paid off.³²

While Applicant satisfied his two mortgages, he neglected to adjust his withholding information with his employer, and he no longer had the benefit of his mortgage deductions for his 2010 federal income tax. He timely filed his federal income tax return, but with the loss of the mortgage deductions, Applicant still had an unpaid balance of \$1,424.63.³³ Applicant contends he paid the final payment on April 15, 2013, but offered no documentation to support his contention.³⁴ According to the IRS, as of July 8, 2013, the unpaid account balance for the tax year 2010 has been reduced to \$599.39, including penalty and interest.³⁵ The account is in the process of being resolved.

Applicant and his wife are both afflicted with sleep apnea. While he was working, his employer-sponsored health insurance covered the monthly \$110 rental costs per device for both items of durable medical equipment used by them, and Applicant would pay the monthly \$10 copay per device to the equipment provider. Under the terms of the rental agreement, if his employer no longer had that coverage, the rental would be converted to a purchase.³⁶ When his employer was taken over by another company in 2007, the new employer had a different health plan and Applicant lost the rental coverage. He informed the equipment provider and asked that the rental be converted to a purchase, but he received no confirmation for several months. At that time, the equipment provider also increased the monthly rental cost per device to \$130.³⁷ He eventually received a bill for continuing rental of the equipment. Applicant immediately returned the equipment and again requested that the account be converted to a purchase. He never received a response to either the initial request or the subsequent request.³⁸ Instead, the equipment provider placed the account for collection, claiming a past-due balance of \$2,540.³⁹ Applicant disputed the debt, and requested a validation

³¹ Tr. at 39.

³² GE 3 (Settlement Statement (HUD-1), dated December 31, 2010); Tr. at 40, attached to Applicant's Answers to Interrogatories; GE 3 (Mortgage Release Satisfaction and Discharge, dated February 11, 2011), attached to Applicant's Answers to Interrogatories.

³³ GE 4 (Record of Account, dated May 29, 2012), at 6, attached to Applicant's Answers to Interrogatories.

³⁴ Tr. at 41-42.

³⁵ AE G (Account Transcript, dated June 24, 2013).

³⁶ Tr. at 47-48, 50-51.

³⁷ Tr. at 51-52.

³⁸ Tr. at 48.

from the creditor. He received nothing in response.⁴⁰ While Applicant offered no documentation to support his contention that he disputed the debt with the creditor, the 2010 credit report does confirm his actions.⁴¹ The debt is no longer listed in Applicant's 2013 credit report.⁴² The account has been resolved.

In response to the DOD interrogatories, in June 2012, Applicant provided a personal financial statement reflecting a monthly net income of \$6,912, including his wife's \$750 income; monthly household, utility, transportation, and food expenses of \$3,900; and monthly debt repayments of \$2,500; leaving a monthly remainder of \$500 available for discretionary savings or expenditures.⁴³ There is no evidence that Applicant ever received financial counseling. Applicant furnished documentary evidence that he has resolved all of his formerly delinquent non-SOR accounts.

Work Performance

Applicant's overall work performance during the period April 2011 through March 2012 was rated 4 out of a possible 5. He was rated particularly high as a recognized expert who was routinely called on by management and customers to provide advice and direction on difficult technical issues. He also makes timely and effective decisions; meets commitments; consistently accepts expanded responsibilities; and is effective at planning, organizing, and prioritizing work.⁴⁴ His initial eight-month appraisal from the same rater noted that Applicant was very reliable; exhibits above average judgment, with thinking that is very mature and sound; and is a high volume producer who always does more than is expected or required.⁴⁵

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."⁴⁶ As Commander in Chief,

³⁹ GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 15, 2010), at 9. It should be noted that the SOR alleged the debt was listed in a credit report from September 12, 2012, but no such document was offered as evidence. See, Tr. at 49.

⁴⁰ Tr. at 48. In addition to the general dispute, Applicant disputed the amount being sought by the collection agent, pointing out that the charge of \$260 per month for a period of six months only totaled \$1,560, not the claimed \$2,540. See, Tr. at 52.

⁴¹ GE 5, *supra* note 39, at 9. The listing includes the statement that "consumer disputes this account (sic)."

⁴² See, GE 6 (Equifax Credit Report, dated June 21, 2013).

⁴³ GE 4 (Personal Financial Statement, dated June 8, 2012), attached to Applicant's Answers to Interrogatories.

⁴⁴ AE K (Employee Performance Appraisal, dated April 25, 2012).

⁴⁵ AE J (Employee Performance Appraisal, dated February 14, 2011).

⁴⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”⁴⁷

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.”⁴⁸ 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.⁴⁹

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.

⁴⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴⁸ “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 (4th Cir. 1994).

⁴⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁵⁰

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.”⁵¹ 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. In addition, under AG ¶ 19(g), *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same* is potentially disqualifying. Commencing in 2002, when he was initially laid off, and continuing until he obtained new employment in 2005, Applicant started experiencing some financial difficulties. Over the next few years, those difficulties increased to the point where he was unable to make routine monthly payments for a number of accounts. His accounts eventually started becoming delinquent and were placed for collection. He failed to file his 2002 federal income tax return. AG ¶¶ 19(a), 19(c), and 19(g) 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*

⁵⁰ *Egan*, 484 U.S. at 531

⁵¹ See Exec. Or. 10865 § 7.

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.⁵² In addition, if 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 to resolve the issue, AG ¶ 20(e) may apply.

AG ¶¶ 20(b), 20(c), 20(d), and 20(e) apply. AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's financial difficulties since 2002 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were largely beyond Applicant's control. He was laid off on three occasions, with the initial layoff commencing in February 2002 and continuing until January 2005. Based on redundant information submitted to the IRS by his former employer, his stock broker, and his bank, the IRS concluded that Applicant's earnings were far larger than they actually were. The matter was finally resolved with the intervention of the TAS, and what the SOR initially alleged as being a debt of \$81,033, was significantly reduced to \$12,829.95. Two layoffs later, Applicant finally sold his vacant residence and satisfied the mortgage balances. In doing so he neglected to alter his withholding information, and when he filed his 2010 federal income tax return, the mortgage deductions were no longer available to him, and his income tax liability was higher than anticipated.

Applicant's dispute with the durable medical equipment provider arose when the provider failed to comply with several obligations: it continued to rent the equipment despite the terms of the rental agreement; it failed to comply with Applicant's request that the rental be converted to a purchase; it failed to validate the dispute submitted by

⁵² 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)).

Applicant; and it failed to respond to Applicant's requests. Instead, it simply sent the account to collection. Applicant disputed the negative credit report listing, and the account is no longer listed in his latest credit report.

Applicant acted responsibly by addressing his delinquent accounts.⁵³ He filed his 2002 federal income tax return and engaged the professional services of the TAS to assist him with the 2002 federal income tax issue. The IRS finally agreed with Applicant and substantially reduced the unpaid income tax balance. Over the years, including those in which Applicant was laid off, several income tax refunds were diverted to pay the outstanding balance. When funds are available, Applicant intends to continue reducing his liability. Applicant's 2010 federal income tax debt has also been significantly reduced to \$599.39. His non-SOR accounts have been paid off, and he is in the process of resolving those two IRS debts. He no longer has any other delinquent debts. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.⁵⁴

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. Moreover, 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.⁵⁵

⁵³ "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.

⁵⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁵⁵ 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).

There is some evidence against mitigating Applicant's conduct. His handling of his finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection. He was inattentive to his federal income tax responsibilities regarding the rules for stock options and mortgage deductions, and he failed to file his federal income tax return for 2002 when he was required to do so.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Rather, his problems were largely beyond Applicant's control because of his repeated and sometimes lengthy layoffs. Unable to resolve a tax problem with the IRS, Applicant obtained the assistance of the TAS. It is of some significance that the TAS, an office that reports directly to Congress through the National Taxpayer Advocate, apologized to Applicant for his financial difficulties, the delays involved, and any inconvenience the matter had caused him. The two IRS debts are in the process of being resolved. Applicant also resolved a number of non-SOR accounts. The entire situation occurred under such circumstances that it is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁶

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 has demonstrated a "meaningful track record" of debt reduction and elimination. Applicant has made some significant timely efforts to resolve his accounts. This decision should serve as a warning that his failure to continue his debt resolution efforts or the accrual of new delinquent debts will adversely affect his future eligibility for

⁵⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

a security clearance.⁵⁷ 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.

ROBERT ROBINSON GALES
Administrative Judge

⁵⁷ While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant's financial condition. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant's security clearance. See, e.g., ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).