



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-09149

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel

For Applicant: *Pro se*

October 13, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On May 6, 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 Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on an unspecified date, and the parties agreed to adopt the date as July 13, 2011 - the date of the hearing.² On March 25, 2011, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified*

¹ Government Exhibit 1 (SF 86), dated May 6, 2010.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated July 13, 2011). See Hearing Transcript (Tr.) at 25.

Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on March 31, 2011. In a sworn statement, dated April 12, 2011, 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 11, 2011, and the case was assigned to me on May 25, 2011. A Notice of Hearing was issued on June 24, 2011, and I convened the hearing, as scheduled, on July 13, 2011.

During the hearing, three Government exhibits (GE 1-3) and one Applicant exhibit (AE A) were admitted into evidence without objection. Applicant testified. The hearing transcript (Tr.) was received on July 25, 2011. The record was kept open until July 29, 2011, to enable Applicant to supplement it, and he submitted 13 additional exhibits which were admitted as Applicant exhibits (AE B-N), without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted a majority of the factual allegations (¶¶ 1.b. through 1.i.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. He denied the remaining factual allegation (¶ 1.a.) of the SOR. 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:³

Applicant is a 55-year-old employee of a defense contractor, currently serving as a senior project engineer and quality manager - assembly processor.⁴ He is seeking to obtain a security clearance, the level of which has not been revealed. He previously held a security clearance in 1979 for a period of one or two years.⁵ Applicant attended

³ I have read all of the documents generated by Applicant, including his SF 86, Personal Subject Interview, his Answer to the SOR, his Answers to the Interrogatories, and various letters from him, and I have listened to his testimony. Unfortunately, pertaining to various dates and events, Applicant's evidence is very inconsistent. Specific dates and events that he periodically refers to in one source differ from dates and events appearing in other sources. He has acknowledged misstatements regarding dates and events. See Applicant Exhibit L (E-mail from Applicant, dated July 29, 2011). Accordingly, I have concluded that except where a date or event is confirmed by a source document generated by third parties, the dates and events furnished by Applicant are nothing but unreliable guesstimates.

⁴ Government Exhibit 1, *supra* note 1, at 13.

⁵ *Id.* at 38-39; Tr. at 30, 72.

a college preparatory school for several years, but did not graduate.⁶ After attending a vocational school, with some evening college courses, he received a degree in aviation maintenance technology and a power plant air frame license in 1978.⁷ Attending night school from about 1980, Applicant eventually obtained a B.A. degree in business administration in 1994.⁸ He has held several different positions with various employers. He was with one company for 13 years in an unspecified capacity, commencing in 1979.⁹ In addition, Applicant was an engineer from January 2001 until he was laid off in about January 2003; a senior engineer from January 2003 until January 2006; a project engineer from January 2006 until January 2007; and a senior design engineer from January 2007 until he was again laid off in about December 2008.¹⁰ He joined his current employer in May 2009.¹¹ Applicant has never served with the U.S. military.¹² He was married in July 1981 and divorced in April 1996.¹³ That marriage produced two children: a daughter born in 1984, and a son born in 1992.¹⁴ He has cohabited with his girlfriend since December 2009.¹⁵

Financial Considerations

In June 2010, Applicant contended his personal financial issues commenced in early January 2009 when he was laid off and he had insufficient funds in his savings to pay his bills.¹⁶ Although he received an unspecified monthly unemployment compensation payment, that sum was insufficient to cover all of his personal “basic necessities.”¹⁷ During the hearing, Applicant conceded his financial problems started earlier than previously stated. He acknowledged that before he was laid off, his credit cards were getting close to being “maxed out.”¹⁸ He added: “I was irresponsible with my

⁶ Tr. at 29-30.

⁷ *Id.* at 30, 71.

⁸ *Id.* at 71-72.

⁹ *Id.* at 30.

¹⁰ Government Exhibit 1, *supra* note 1, at 14-19; *Id.* at 31-32. In his SF 86, Applicant stated he was employed until May 2009, when he was laid off. See Government Exhibit 1, at 14.

¹¹ *Id.* at 13.

¹² *Id.* at 21-22.

¹³ *Id.* at 25. *But see* Tr. at 34, wherein Applicant stated he was divorced in 1994.

¹⁴ *Id.* at 29.

¹⁵ *Id.* at 26.

¹⁶ Government Exhibit 2 (Personal Subject Interview, dated June 7, 2010, at 1), attached to Applicant's Answers to the Interrogatories.

¹⁷ *Id.*

¹⁸ Tr. at 36.

spending.”¹⁹ He spent his money on household goods and family-related, as well as girlfriend-related expenses. His girlfriend had a very minimal job, and her eldest, newly divorced daughter and two grandchildren moved in with Applicant and his girlfriend.²⁰ Applicant claimed he “needed new air conditioning for the home, needed new appliances, (and) many upgrades.”²¹ Although he lived off his credit cards, a small IRA account, and his unemployment stipend for about six months before obtaining his current employment, his accounts became delinquent and were placed for collection or charged off. His child support payments fell into arrearage, and his residence went into a foreclosure status.

In June 2010, Applicant informed an investigator with the U.S. Office of Personnel Management (OPM) that he was “currently” working on bringing his accounts to current status, and intended to resolve all of his delinquent accounts no later than September 30, 2010.²² He failed to meet his goal.

The SOR identified 12 purportedly continuing delinquencies as reflected by a credit report from 2010.²³ Included in the SOR are a home mortgage in the amount of \$250,578, of which \$15,388 is past due; and various credit cards, charge accounts, medical accounts, and a cell phone account, totaling approximately \$56,950. Some accounts reflected in the credit report have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. The information reflected in the credit report is not necessarily accurate or up to date.

(SOR ¶ 1.a.): Unable to handle his monthly mortgage payment without his salary, Applicant applied for a mortgage loan modification.²⁴ The events as described by Applicant are confusing and at odds with the available documentary evidence. According to Applicant, in September 2009, he was accepted into the trial period and made monthly payments of \$1,300 for three months.²⁵ However, a trial plan agreement was presented to Applicant in October 2010, and it called for three payments of \$1,240.22, commencing in November 2010 and ending in January 2011.²⁶

¹⁹ Government Exhibit 2 (Personal Subject Interview), *supra* note 16, at 1.

²⁰ Tr. at 32.

²¹ *Id.* at 37.

²² Government Exhibit 2 (Personal Subject Interview), *supra* note 16, at 1-3.

²³ Government Exhibit 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 25, 2010).

²⁴ Tr. at 42-43.

²⁵ *Id.* at 43.

Nevertheless, according to Applicant, in April 2010, the bank purportedly informed him that the loan modification had been denied.²⁷ It is unclear if Applicant continued to make any further monthly mortgage payments since he made the last payment under the trial period. In May 2011, the bank granted Applicant the loan modification.²⁸ Under the modification, the new principal balance became \$135,275.26, and a new monthly mortgage payment, commencing June 1, 2011, became \$1,053.60.²⁹ As of the closing of the record, Applicant offered no documentation to support any monthly mortgage payments made since the loan modification went into effect.³⁰

(SOR ¶¶ 1.b. through 1.f., 1.h., and 1.j. through 1.l.): As noted above, during his period of unemployment and before, Applicant increased the balances on various credit cards, charge accounts, medical accounts, and a cell phone account. The unpaid balances on those accounts run from as little as \$165 to as high as \$21,611. He has made no effort to make any payments on any of delinquent accounts,³¹ claiming that his sole concentration has been on regaining his residence.³² He also acknowledged that it would not have created a hardship on him to have paid the smaller account balances.³³ He does, however, now contend that, with the exception of the cell phone company, he contacted the various creditors or collection agents, and they are supposedly willing to reduce the outstanding balances by 50 percent.³⁴ He has offered no documentary evidence to support his contentions, and has made no discernible efforts to enter into repayment arrangements with those creditors. Interestingly, Applicant's earlier contention was that the mortgage lender had agreed to pay off his delinquent homeowners association (HOA) fees, but since it failed to do so, that money, when received, will be used to pay all of these delinquent accounts.³⁵ There is no evidence to support Applicant's contention.

The account with the cell phone company **(SOR ¶ 1.j.)** is slightly different. Applicant purchased the cell phone and plan for his girlfriend's 26-year-old son as a Christmas gift. When the first bill was received the following January, the balance was

²⁶ Government Exhibit 2 (Mortgage Modification: Trial Plan Agreement, dated October 15, 2010), attached to Applicant's Answers to the Interrogatories.

²⁷ *Id.*

²⁸ Applicant Exhibit A (Loan Modification Agreement, dated March 16, 2011); Applicant Exhibit J (Loan Modification Agreement, dated May 13, 2011).

²⁹ Applicant Exhibit K (Mortgage Loan Statement, dated May 20, 2011).

³⁰ Payment records were discussed during the hearing and Applicant indicated he intended to furnish them at a later date. See Tr. at 47. To date, no such records have been submitted.

³¹ Tr. at 48-54.

³² *Id.* at 54.

³³ *Id.* at 64-65.

³⁴ *Id.*

³⁵ Applicant's Answers to the SOR, dated April 12, 2011, at 1-3.

supposedly \$2,000.³⁶ Applicant was less than pleased, and when he sought relief from the cell phone company, and no satisfactory agreement could be reached, Applicant cancelled the plan.³⁷ Doing so added cancellation fees to the outstanding balance.³⁸ Applicant claims promises were made by the company, but not kept, so he informally disputed the amount and disavowed responsibility for it. He has submitted no evidence of a formal dispute, has made no effort to contact the creditor since his earlier discussions, and has made no effort to make any payments.³⁹

(SOR ¶¶ 1.g. and 1.i): Unlike Applicant's actions pertaining to his other credit cards and charge accounts, Applicant contends he did make two payments of \$100 on one account and an unspecified number of \$57.50 payments on the other account.⁴⁰ However, it appears that Applicant made his last payment of \$175 on one account in November 2009, and his last payment of \$54 on the other account in December 2010.⁴¹ He has offered no documentary evidence to support his contentions regarding more recent contacts with the creditors or payments purportedly made, and has made no discernible efforts to enter into continuing repayment arrangements with those creditors.

In July 13, 2011, Applicant submitted a personal financial statement reflecting a monthly net income of approximately \$4,238, including a \$300 pension⁴² which is anticipated to commence in August 2011, and monthly expenses of approximately \$840, not including any mortgage payments.⁴³ He referred to unspecified unsecured credit debt and delinquent medical bills, along with an estimated monthly mortgage payment projected to be \$1,000, but failed to estimate a monthly remainder, if any, available for discretionary spending.⁴⁴ At that time, he reflected \$1,000 in savings and a \$20,000 share in a boat.⁴⁵ During the hearing, he stated his annual salary was \$72,000,⁴⁶ and acknowledged he had not made any payments on more than \$3,000 in

³⁶ Tr. at 52. The actual past-due balance was \$1,854. See Government Exhibit 2 (Equifax Credit Report, dated February 10, 2011), at 27-28, attached to Applicant's Answers to the Interrogatories.

³⁷ Tr. at 52-53.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 49-50.

⁴¹ Government Exhibit 2 (Equifax Credit Report), *supra* note 35, at 26-29.

⁴² Applicant's estimate was too high, for the pension, or annuity, is actually \$266.68 per month, for life. Applicant Exhibit H (Letter from pension service center, dated June 7, 2011); Applicant Exhibit I (Letter from pension service center, dated June 7, 2011).

⁴³ Government Exhibit 2 (Personal Financial Statement, actually undated, but presumed to be July 13, 2011), attached to Applicant's Answers to Interrogatories. See Tr. at 25.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Tr. at 39.

non-SOR medical bills.⁴⁷ By selling a one-half interest in his boat for \$20,000, Applicant was able to pay off the HOA arrearage of approximately \$17,000 by December 31, 2010.⁴⁸ He also satisfied his child support arrearage. Effective August 5, 2011, Applicant received a \$4,200 annual increase.⁴⁹

Applicant realizes a monthly remainder of approximately \$2,000 available for discretionary use such as paying bills or saving.⁵⁰ When asked how long it is appropriate to simply say, "I'm going to take care of it (paying delinquent accounts), but not taking care of it?" Applicant replied "I think I've been very irresponsible. . . ."⁵¹

Applicant stated that when his financial issues started, he called a debt counselor who wanted a payment up-front, so no agreement was ever established.⁵² He did receive some guidance from another source with respect to the loan modification program.⁵³ There is no evidence that Applicant ever received financial counseling on money management, debt management, debt consolidation, or repayment plans.

Work Performance and Character Reference

Applicant's supervisor has known Applicant for close to 30 years and over that period they have worked together at three companies. It is his opinion that Applicant would never allow his personal situation to compromise his job or allow it to be used against him.⁵⁴

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."⁵⁵ 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

⁴⁷ *Id.* at 63; Government Exhibit 2, *supra* note 2, at 108.

⁴⁸ Government Exhibit 2 (Letter from creditor, dated December 23, 2010), attached to Applicant's Answers to the Interrogatories; Applicant Exhibit E (E-mail from Applicant, dated July 14, 2011); Applicant Exhibit F (Letter from creditor, dated January 18, 2011); Applicant Exhibit G (Release of Claim of Lien, dated March 4, 2011).

⁴⁹ Applicant Exhibit N (E-mail from Applicant, dated August 1, 2011).

⁵⁰ Tr. at 67.

⁵¹ *Id.*

⁵² *Id.* at 55-56, 67-69.

⁵³ *Id.* at 68.

⁵⁴ Applicant Exhibit M (E-mail from supervisor, dated August 1, 2011).

⁵⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”⁵⁶

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.”⁵⁷ 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.⁵⁸

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.”⁵⁹

⁵⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁷ “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).

⁵⁸ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁵⁹ *Egan*, 484 U.S. at 531

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.”⁶⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly, under AG ¶ 19(c), *“a history of not meeting financial obligations”* may raise security concerns. As noted above, there was nothing unusual about Applicant’s finances until 2008 when his income proved to be insufficient to handle his monthly expenses. He acknowledged that before he was laid off in January 2009, his credit cards were getting close to being “maxed out.” He was irresponsible with his spending. For about six months before obtaining his current employment, Applicant’s accounts became delinquent and were placed for collection or charged off. His child support payments fell into arrearage, and his residence went into a foreclosure status. 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*

⁶⁰ See Exec. Or. 10865 § 7.

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.”⁶¹

There was nothing unusual about Applicant’s finances until 2008. Applicant attributed his financial problems to one main cause: his nearly six-month period of unemployment commencing with his lay-off in January 2009. However, while that event was a contributor to his financial problems, there were, in fact, additional substantial causes: 1) he was irresponsible with his spending, even before the lay-off, claiming he needed new air conditioning for the home, needed new appliances, and many upgrades; 2) his decision to concentrate solely on saving his residence, to the exclusion of any of his other accounts; and 3) he undertook financial responsibility for his girlfriend’s eldest, newly divorced daughter and two grandchildren. Applicant’s financial resources proved to be insufficient to handle his monthly expenses. While the lay-off and unemployment were unexpected and beyond Applicant’s control, the degree to which those factors had an impact on Applicant’s ability to overcome them has not been adequately explained. Applicant had unemployment compensation, a small IRA, and a boat while he was unemployed. Even after he was once again among the employed, making an annual salary of \$72,000, he resolved only one SOR account (the residence foreclosure that was accepted into the loan modification program) and two non-SOR accounts (the child support arrearage and the HOA arrearage), but he has effectively ignored all of the other accounts.

The SOR alleged 12 delinquent accounts, but there were actually others that were not alleged. Applicant’s response to most of the accounts was to ignore them, explaining that he was concentrating on saving his residence. But concentrating on a mortgage loan modification does not excuse ignoring most other debts. While he was unhappy over the cell phone account, the account was his responsibility. Other than the three accounts that were resolved, Applicant has only made promises of his intention to address the remaining accounts. First there was the promise to the OPM investigator to resolve his accounts by September 30, 2010. That was followed by other promises to

⁶¹ 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)).

resolve them. The most recent explanation was that there were offers from each of the SOR creditors to accept 50 percent on the accounts. In reality, the promises were meaningless and there has been little good-faith efforts made by Applicant to address the remaining 11 SOR accounts.

Applicant has continued to accrue salary from his employer, and, effective August 1, 2011, a small pension from an earlier employer. His monthly income is seemingly capable of meeting most of his financial obligations. He simply decided not to pay his creditors. He has an estimated \$2,000 per month available for discretionary use, which could be used to resolve his other delinquent accounts, Applicant has, instead, chosen to put it away, rather than use it.

Some of what occurred was beyond Applicant's control and took place under such circumstances that it is unlikely to recur. Other than some generic guidance pertaining to mortgage loan modification, there is no evidence of financial counseling, debt management, or debt repayment. There is little indication that the problems associated with his delinquent accounts are now being resolved. By failing to make more than minimal good-faith efforts to resolve his delinquent accounts since 2008, Applicant acted irresponsibly under the circumstances, and his current reliability, trustworthiness, or good judgment, are in question. AG ¶¶ 20(a), 20(c), and 20(d) do not apply. AG ¶ 20(b) only partially applies.

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. 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.⁶²

⁶² 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 in favor of mitigating Applicant's conduct. He experienced financial problems because his income diminished with his lay-off and nearly six-month period of unemployment. He successfully obtained a mortgage loan modification from his mortgage lender and paid off two non-SOR accounts.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶³

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.

There are substantially more questionable actions by Applicant in handling his delinquent accounts. For whatever reason, Applicant made a decision to stop paying his monthly accounts and chose, instead, to concentrate on saving his residence. While his intentions and efforts are understandable, his failure to address his other accounts is not. His contention was that the mortgage lender had agreed to pay off his delinquent HOA fees, but since it failed to do so, that money, when received, will be used to pay all of his other delinquent accounts. There is no evidence to support Applicant's contention. Now, he claims his creditors are willing to accept 50 percent of the delinquent balances, but once again, there is no documentary evidence to support his claim. Applicant has acknowledged that he has been very irresponsible in his handling of his 11 remaining SOR accounts, as well as his non-SOR accounts. Applicant's track record for debt reduction reveals no meaningful plan to accomplish his repeatedly promised goals. Instead, his track record is primarily one of unfulfilled promises and inaction. I conclude that Applicant has failed to establish a meaningful track record. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I

⁶³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

conclude Applicant has failed to mitigate the security concerns arising from his financial considerations.

Formal Findings

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

| Paragraph 1, Guideline F: | AGAINST APPLICANT |
|---------------------------|-------------------|
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | Against Applicant |
| Subparagraph 1.l: | Against Applicant |

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge