



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



In the matter of: )  
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----- ) ISCR Case No. 10-09607  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

January 27, 2012

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges eight delinquent debts, totaling \$19,288. Applicant’s financial problems were caused by his two divorces, and over three years of unemployment or underemployment. Before he became unemployed, his debts were paid, and he showed he was financially responsible. Once he secured employment in 2011, he showed excellent self-discipline and good judgment by paying about \$7,000 to his SOR creditors. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 11, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On December 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA could not make the 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 Applicant's clearance should be granted, continued, denied, or revoked (HE 2).

On February 9, 2011, Applicant responded to the SOR and requested a hearing. (HE 3) On March 14, 2011, Department Counsel was ready to proceed on Applicant's case. On March 17, 2011, DOHA assigned Applicant's case to another administrative judge. On April 15, 2011, DOHA issued a hearing notice and on May 2, 2011, Applicant's hearing was held. At the hearing, Department Counsel offered 5 exhibits (GE 1-5), and Applicant offered 16 exhibits. (AE A-P) There were no objections, and he admitted GE 1-5 and AE A-P, except exhibits AE I, N and O (a school award and two death certificates), which were supposed to be provided after the hearing. AE I, N, and O were provided to the Appeal Board. On May 10, 2011, the transcript was received. On August 31, 2011, the administrative judge issued his decision and denied Applicant access to classified information.

On November 18, 2011, the Appeal Board ordered:

Applicant has met his burden of demonstrating harmful error that warrants a remand.<sup>[1]</sup> Pursuant to the Directive ¶ E3.1.33.2, the Board remands the case for correction of identified error. Because of the second identified error, no useful purpose would be served by remanding the case to the same Judge. Accordingly, the Board remands the case with the recommendation that the case be assigned to another Judge for a new hearing and issuance of a new decision.<sup>[2]</sup>

On November 28, 2011, Applicant's case was assigned to me. On December 9, 2011, the notice of video teleconference was issued setting the hearing for January 3, 2012. (HE 1) The hearing was held as scheduled. In addition to the exhibits admitted during the previous hearing (GE 1-5; AE A-P), Department Counsel offered an updated credit report and Applicant offered two exhibits, which were all admitted without objection. (Tr. 12, 23-27; GE 6; AE Q, R) I admitted the December 9, 2011 hearing

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<sup>1</sup> The Appeal Board decided there was insufficient evidence for the administrative judge to infer that in 2006, when Applicant returned from overseas, he had \$93,000 accumulated. ISCR Case No. 10-09607 at 3 (App. Bd. Nov. 18, 2011). The Appeal Board indicated that the record was "unfortunately, silent as to how much money Applicant had accumulated upon his return to the United States, [and] it can reasonably be inferred from the available evidence that the amount was significantly less than \$93,000." *Id.*

<sup>2</sup> The Appeal Board objected to the administrative judge's dialogue with Applicant about seeking employment and income from 2006 to 2008. The administrative judge was attempting to assess whether Applicant was using good judgment in the way he was seeking employment and improving his income. In his whole-person discussion, the administrative judge stated, "Applicant sought employment but for some reason has been unsuccessful even during the growing economy from 2006 to 2008."

notice, SOR, and Applicant's response to the SOR as hearing exhibits. (HE 1-3) On January 12, 2012, I received the transcript. On January 13, 2012, I received Applicant's final exhibit, which was admitted without objection. (Tr. 78, 87; AE S) On January 13, 2012, I closed the record.

### **Findings of Fact<sup>3</sup>**

In his Answer to the SOR, Applicant admitted that he owed all of the debts in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 52 years old. (Tr. 7) His first marriage was from 1990 to 1994, and he has three children, who are ages 28, 20, and 19. (Tr. 35-36) He met his future second spouse in the Philippines in April 2007, and in 2008, he went to the Philippines to facilitate her travel to the United States. (Tr. 47, 49) He was unemployed when he made these two trips to the Philippines. In March 2009, she came to the United States on a fiancé visa. (Tr. 49) He married her in June 2009. (Tr. 49) In April 2010, she informed Applicant that she wanted to end their marriage. (Tr. 50) In April 2011, he filed for divorce, and on September 22, 2011, he was divorced. (Tr. 35, 51; AE Q at 42-44)

Applicant completed almost one year of college in 2004. (Tr. 7, 27) He served in the National Guard from 1975 to 1979, and he was on active duty in the Army from 1979 to 1980. (Tr. 8, 36) In 1980, he received a general discharge under honorable conditions from the Army. (Tr. 37)

Applicant worked for the police department for 4 ½ years as a detention officer, and then for the fire department for a large city for 16 ½ years. (Tr. 8, 38, 86) At the fire department, he was a senior lieutenant and training instructor when he left that employment in October 2005. (Tr. 8, 38) He received early retirement from the fire department. (Tr. 38) From October 2005 to October 2006, he served in Iraq, working for a Department of Defense contractor. (Tr. 8, 38-39)

During Applicant's year in Iraq working as a government contractor, he earned \$93,000. (Tr. 40) His income was exempt from federal income taxes, and his room and board were free. (Tr. 40) He sent some money to support his family, and he had expenses relating to the death of his mother in 2006. (Tr. 41, 53) When he returned from Iraq, he had \$55,000 in his bank accounts. (Tr. 41-42) He paid \$10,000 for a used van, reducing his bank accounts to \$45,000. (Tr. 42, 73)

In 2007, Applicant's step mother was diagnosed with cancer. (Tr. 66) Applicant traveled several thousand miles to be with her and paid some of her expenses. (Tr. 66-67) She died on August, 9, 2007. (Tr. 66; AE N) From October 2006 to 2008, he lived primarily off of his savings. Applicant's former spouse and youngest child were having

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<sup>3</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. The source for some facts in this section is Applicant's July 26, 2010 Office of Personnel Management personal subject interview (OPM PSI). (GE 4)

conflicts, and Applicant frequently traveled to their location, which was an expensive undertaking. (Tr. 52) His savings were exhausted in 2008.

From October 2006 to 2010, Applicant was sporadically employed for brief periods of time. (Tr. 42) For example, he worked for the Census Bureau for about five weeks. (Tr. 43) He unsuccessfully sought employment as a fireman or fast-food restaurant manager. He lived primarily off of his savings, unemployment, and his pension. (Tr. 44) He described a variety of attempts to obtain employment. (Tr. 54) In 2007, his income was \$35,618. (Tr. 47; AE Q at 29) In 2008, his income from unemployment compensation was \$4,675, and he had \$9,880 in income from a business. (AE Q at 33-34) In 2009 and 2010, his income was \$2,219 from his pension and about \$2,611 from the federal earned income credit. (Tr. 47; AE Q at 37-41) He also received \$4,000 from a lawsuit against his former overseas employer of which he had about \$2,000 remaining in 2010.

Applicant is currently employed full-time, providing metal coatings for military equipment. (Tr. 28) His salary is \$16 an hour. (Tr. 29; AE Q) His pay statement from August 11, 2011 to November 13, 2011 indicates his earnings in 2011 are \$11,288. (Tr. 30; AE Q at 2) It shows payment of \$2,047 in 2011 towards his child support debt, and net pay for 2011 of \$6,438. (AE Q at 2) He does not require a security clearance for his current employment. (Tr. 30) He hopes to obtain a security clearance and return to supporting the Department of Defense on an overseas assignment. (Tr. 39)

## **Financial Considerations**

Applicant's SOR lists eight debts, totaling \$19,288. The status of his eight SOR debts is as follows:

**1.a (bank-based collection account for \$1,866)—Unpaid.** Applicant planned to pay this debt after he has paid off some other debts. (Tr. 57-58)

**1.b (telecommunications collection account for \$422)—Paid.** On December 19, 2011, Applicant paid \$229, resolving this debt. (Tr. 58-59; AE Q at 21-22)

**1.c (television collection account for \$385)—Paid.** On December 27, 2011, Applicant paid \$212, resolving this debt. (Tr. 59; AE Q at 20, 23)

**1.d (credit card-based collection account for \$564)—Payment Plan.** Applicant agreed to pay \$250 on January 13, 2012 to resolve this debt; however, I did not ask him to provide proof of payment, as his hearing had already occurred. (Tr. 57-58; AE S)

**1.e (telecommunications collection account for \$744)—Unpaid.** Applicant planned to pay this debt after he has paid off some other debts. (Tr. 59-60)

**1.f (utility-based collection account for \$2,677)—Unpaid.** Applicant planned to pay this debt after he has paid off some other debts. (Tr. 60-61)

**1.g (child support arrearage for \$12,535)—Payment Plan.** Applicant's November 13, 2011 pay statement shows he is currently paying \$818 monthly to resolve his child support debt. (Tr. 31, 33; AE Q at 2) He is also paying \$148 monthly out of his partial firefighter pension through a garnishment to reduce his child support debt. (Tr. 31, 34) The remainder of his monthly pension is \$101. He was only required to pay child support of \$609 monthly, and he was paying more than the required amount because he wanted to pay off this debt by the end of 2012. (Tr. 31, 70) Applicant's children are all grown and he is not accruing additional child support. (Tr. 32) In January 2012 his child support debt was \$9,421. (AE Q at 27) In 2011, he reduced his child support debt by about \$6,500. (AE Q at 27)

**1.h (storage debt for \$95)—Disputed.** Applicant left some items in storage when he deployed to Iraq, and the storage facility auctioned off his property. He disputed this debt because he believed the items auctioned off were worth substantially more than his storage debt. (Tr. 61-62; AE S)

From March 2004 to July 2006, Applicant paid eight non-SOR debts totaling \$35,714 (Tr. 71-72; AE R; GE 6), on the dates indicated:

- (1) \$3,774 debt in March 2004;
- (2) \$1,852 debt in June 2005;
- (3) \$599 debt in August 2005;
- (4) \$9,000 in December 2005;
- (5) \$12,215 debt in February 2006;
- (6) \$1,997 debt in April 2006;
- (7) \$1,394 debt in July 2006; and
- (8) \$4,883 student loan debt in July 2006.

Applicant contacted his bank and learned he could receive a debt consolidation loan after establishing a six-month track record of debt payment. (Tr. 62) He plans to borrow about \$4,500 in a debt consolidation loan, which should be sufficient to pay all of his remaining debts, except for SOR ¶ 1.g (child support arrearage). (Tr. 62, 68-69) His van is broken down because he cannot afford repairs. (Tr. 64) He has lived in a homeless shelter for more than one year. He plans to stay in a homeless shelter until he can pay more of his debts. (Tr. 63-64) In November 2011, he purchased a 2002 Hyundai Accent for \$8,500. (Tr. 64) His federal and state income taxes are current. (Tr. 68) He received financial counseling from the Salvation Army. (AE Q at 57)

## Character Evidence

Applicant submitted character letters and professional training certificates from 1992 to the present time. In 1992, he saved the life of a three-month-old child. (AE C) His character letters state Applicant is competent, honest, hardworking, and very responsible. He has extensive training in fire fighting and other public safety areas. (AE M) He worked for a city fire department from October 1989 to July 2005 when he went overseas to be a fire fighter after taking early retirement from the fire department, and several letters laud his exemplary service over many years as a firefighter. (AE D-P) He volunteered for various community and political entities and received numerous letters of commendation and appreciation.

## 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guideline F (financial considerations).

### **Financial Considerations**

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

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

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

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his OPM PSI, his SOR response, and his statement at his hearing.

Applicant's debts became delinquent in 2007. His SOR lists eight delinquent debts totaling \$19,218. His retirement pay has been and is being garnished to pay his child support debt. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

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

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) and 20(b). Applicant's unemployment and underemployment for more than three years, as well as his two divorces, and the deaths of his mother and stepmother had a profoundly negative affect on his financial circumstances and caused several debts to become delinquent. He made adjustments to his lifestyle and reduced his expenses, and for the past 12 months has paid about \$7,000 to reduce his delinquent SOR debts. He is currently focusing on paying off his child support debt and resolving his smaller debts.<sup>4</sup> He plans to pay all of his SOR debts by the end of 2012 if he is able to obtain a

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<sup>4</sup>Of course, Applicant loses some mitigating credit because part of his child support debt is being paid through garnishment of his salary even though his opportunity to establish a payment plan was limited because of his overall financial predicament when he was unemployed. Payment of a debt "though garnishment, rather than a voluntary effort, diminishes its mitigating force." *Compare* ISCR Case No. 08-



debt consolidation loan. If he is unable to obtain a debt consolidation loan, he will be able to pay all of his SOR debts in 18 months. His financial problems were generated by circumstances largely beyond his control. There is no evidence that he acted irresponsibly.

The Appeal Board decisions in ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010) and ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). Both cases resulted in remands to the administrative judge to address the Appeal Board's analysis of AG ¶¶ 20(a) and 20(b).

In ISCR Case No. 09-08533, the Applicant had \$41,871 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. She filed for bankruptcy the same month the administrative judge issued her decision. *Id.* at 1-2. The Applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that Applicant's debts were unresolved at the time the Administrative Judge's decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>5</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant who had been sporadically unemployed lacked the ability to pay his creditors noting that "it will be a long time at best before he has paid" all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

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06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns).

<sup>5</sup> Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not “responsible” in light of his limited circumstances.” *Id.*

Partial application of AG ¶ 20(c) is warranted. Applicant received formal financial counseling from the Salvation Army. He maintains his own budget. Applicant’s financial situation was damaged by insufficient income as a result of two divorces, unemployment and underemployment. In August 2011, his financial circumstances stabilized because he was employed by a government contractor. Applicant established that he acted responsibly under the circumstances. He maintained contact with several of his creditors.<sup>6</sup> He attempted to pay or settle, or attempted to establish payment plans with several of his creditors. He is paying several hundred dollars more than required on his child support debt, and he settled and paid two SOR debts. His financial problem is being resolved or is under control. He took reasonable and responsible actions to resolve his SOR debts, when he was able to do so, showing some good faith and partial mitigation under AG ¶ 20(d).<sup>7</sup> AG ¶ 20(e) is applicable to the \$95 storage debt in SOR ¶ 1.h.

In sum, Applicant fell behind on his debts because of marital problems, and two divorces. He was unemployed or underemployed for more than three years. Before his

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<sup>6</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.

<sup>7</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) 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)).

unemployment, his debts were paid. After he was became employed in 2011, he rapidly paid about \$7,000 to his SOR creditors. It is unlikely that such problems will recur. He cannot be fully credited for making some child support payments because some of the debt payments were made through garnishment of his pay. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

### **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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is 52 years old. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor, and previously as a soldier on active duty and in the National Guard. He served under hazardous conditions for one year in Iraq. There is every indication that he is loyal to the United States and his employer. His security clearance application does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts. There is no evidence that he abuses alcohol or uses illegal drugs. His two divorces, deaths of his mother and stepmother, unemployment, and underemployment all contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for all of his SOR debts. Even though his income was very low for several years, he did not accrue more delinquent debts. Instead he made adjustments in his lifestyle and reduced his expenses to the point of choosing to remain in a homeless shelter to conserve funds.

Once Applicant became employed in 2011, he aggressively paid down his child support debt by \$6,500, and he paid \$500 to resolve two debts. Applicant has a payment plan for one debt, and one debt is disputed. In sum, he has about three debts

to resolve, totaling about \$5,000. I am confident he will keep his promise to continue resolving the SOR debts and avoid future delinquent debt. 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his 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 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.

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

Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility. There is simply no reason not to trust him. Moreover, he has established a “meaningful track record” of debt re-payment. I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are fully mitigated, and eligibility for access to classified information is granted.

### **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
Subparagraphs 1.a to 1.h:	For Applicant

## **Conclusion**

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

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MARK HARVEY  
Administrative Judge