



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-01086

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

10/31/2012

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On February 2, 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).<sup>1</sup> On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on March 5, 2012.<sup>2</sup> On another unspecified date, DOHA issued him a set of interrogatories. He responded to those interrogatories on April 2, 2012.<sup>3</sup> On May 21, 2012, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order

<sup>1</sup> GE 1 ((SF 86), dated February 2, 2010).

<sup>2</sup> GE 3 (Applicant's Answers to Interrogatories, dated March 5, 2012).

<sup>3</sup> GE 2 (Applicant's Answers to Interrogatories, dated April 2, 2012).

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 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 Guideline E (Personal Conduct), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on May 30, 2012. In a sworn statement, dated June 19, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On July 19, 2012, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on August 9, 2012. A Notice of Hearing was issued on September 5, 2012, and I convened the hearing, as scheduled, on September 26, 2012.

During the hearing, 5 Government exhibits (GE 1 through GE 5) and 11 Applicant exhibits (AE A through AE K) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on October 2, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted 6 additional exhibits (AE L through AE Q) that were admitted into evidence without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all 23 (¶¶ 1.a. through 1.w.) of the factual allegations pertaining to financial considerations of the SOR. He denied the sole factual allegation pertaining to personal conduct (¶ 2.a.). Applicant's admissions 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 40-year-old employee of a defense contractor who, since February 2000, has served as a senior quality assurance engineer. He was previously employed by other employers in various positions, including facility manager, safety manager, process engineer, and industrial engineer. He has never served in the U.S. military. He has held a secret security clearance since 2000.<sup>4</sup> Applicant put himself through school while working full-time, and received a Bachelor of Science in Industrial Engineering in 1996. He is currently working on a graduate degree in industrial engineering management.

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<sup>4</sup> GE 1, *supra* note 1, at 35.

Applicant was married in June 2002, and he has two children (a son, born in 2003, and a daughter, born in 2009), as well as a stepdaughter (born in 1996). He is very involved in his children's activities, and has served as a coach for the two older children.

## Financial Considerations

There apparently was nothing unusual about Applicant's finances until about 2001.<sup>5</sup> Applicant's wife was involved in the first of two serious automobile accidents in August 2001, when she was rear-ended by an inattentive elderly driver playing with a dog while driving. She was rear-ended again in April 2004, when another elderly driver with a recent hip replacement, who was not supposed to be driving, was unable to stop his vehicle. The combined accidents caused crippling and costly injuries to Applicant's wife, and "changed our life forever."<sup>6</sup> She also has been diagnosed with fibromyalgia, a syndrome involving long-term, body-wide pain and tenderness in the joints, muscles, tendons, and other soft tissues. Because of the continuing back pain, caused in part, by two slipped disks and muscle damage in her back, Applicant's wife receives between 30 and 60 injections each month to enable her to walk, as well as daily pain medication simply to get her through the day.<sup>7</sup> As a direct result of the injuries sustained in those accidents, as well as her fibromyalgia, Applicant's wife is no longer able to work, reducing the two family incomes to one income. Applicant spends in excess of \$5,000 each year simply to cover his wife's medical expenses.<sup>8</sup>

In 2009, Applicant's medical expenses increased. His stepdaughter broke her foot playing softball and his son required ear surgery. There were complications during the birth of his daughter, and she had to undergo therapy for a condition known as torticollis. The following year, his stepdaughter was struck twice in the face by softballs, requiring reconstructive jaw and nose surgery, and his son also underwent surgery. In 2011, his stepdaughter received braces on her teeth, and his son again had ear surgery.<sup>9</sup> All of the medical and dental procedures for his children were unexpected and costly.

The increasing medical expenses have had a "snowball effect," and Applicant now spends about \$9,000 to \$10,000 per year on just medical expenses which are not covered by insurance.<sup>10</sup> In addition, there are the typical household and automobile expenditures. The family car, a 2001 minivan, had to be replaced because the

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<sup>5</sup> Tr. at 49. Applicant explained that bills were being paid on time and "everything was good."

<sup>6</sup> GE 2, *supra* note 3, at 9; GE 3, *supra* note 2, at 8; Tr. at 49.

<sup>7</sup> GE 2, *supra* note 3, at 9; GE 3, *supra* note 2, at 8. See also, AE E (Letter from Doctor, dated July 18, 2012); AE D (Medical Report, dated September 25, 2012); AE F (MediFile, undated).

<sup>8</sup> GE 2, *supra* note 3, at 9; GE 3, *supra* note 2, at 8.

<sup>9</sup> GE 2, *supra* note 3, at 9; GE 3, *supra* note 2, at 8; Tr. at 43-45.

<sup>10</sup> Tr. at 51.

transmission and air conditioner both failed.<sup>11</sup> As a result of the drain on his finances, Applicant fell behind on his every-day bills, and accounts started to become delinquent, and were placed for collection or charged off.

Applicant contacted a variety of collection agents regarding his delinquent accounts. They generally demanded either payment in full or a discounted amount divided into substantial equal payments in amounts Applicant was unable to afford.<sup>12</sup> At some unspecified point, Applicant attempted to obtain a consolidation loan to enable him to address his delinquent debts, but he did not qualify for one.<sup>13</sup> He also went to a financial counselor to assist him, but he was unable to come up with the necessary money the counselor wanted in order to work with him.<sup>14</sup> Applicant eventually found another financial counselor, and that counselor is guiding him with a debt repayment plan by prioritizing accounts in order to pay them in full and to improve his credit.<sup>15</sup> Applicant sought guidance from a bankruptcy attorney, but decided against avoiding his debts under Chapter 7 of the U.S. Bankruptcy Code.<sup>16</sup> Instead, he takes full responsibility for his debts, and intends to pay them off one bill at a time.<sup>17</sup> At some unspecified point, Applicant withdrew \$29,440.98 (actually \$23,552.78 after the federal tax was withheld) from his 401(k) retirement account, the maximum amount available, in order to pay some bills.<sup>18</sup> Although Applicant is “living paycheck to paycheck,” he has been paying off various smaller accounts, as well as other accounts that are apparently not listed in the SOR, with the intention of eventually addressing the larger accounts.<sup>19</sup>

In March 2011, Applicant submitted a personal financial statement reflecting a net monthly income of \$3,430.06<sup>20</sup> He claimed \$2,145 in monthly expenses, as well as \$1,210 in mortgage payments.<sup>21</sup> He had approximately \$75 left over each month for discretionary spending or savings.

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<sup>11</sup> Tr. at 51.

<sup>12</sup> Tr. at 52.

<sup>13</sup> GE 2 (Personal Subject Interview, dated March 8, 2010), at 1.

<sup>14</sup> GE 2 (Personal Subject Interview), *supra* note 13, at 1.

<sup>15</sup> GE 3, *supra* note 2, at 8.

<sup>16</sup> Tr. at 43; GE 2 (Personal Subject Interview), *supra* note 13, at 1.

<sup>17</sup> Tr. at 43; GE 3, *supra* note 2, at 8; GE 2, *supra* note 3, at 9.

<sup>18</sup> GE 3 (Request a Withdrawal, undated), attached to Applicant’s Answers to Interrogatories.

<sup>19</sup> AE B (Letter from Creditor, dated September 20, 2012); Tr. at 52-53, 58.

<sup>20</sup> GE 4 (Personal Financial Statement, dated March 30, 2011),

<sup>21</sup> GE 4 (Personal Financial Statement), *supra* note 20.

The SOR identified 23 purportedly continuing delinquencies, totaling approximately \$41,465.<sup>22</sup> Three of the accounts listed (**SOR ¶¶ 1.a., 1.p., and 1.v.**) are clearly variations of the same account under the name of the original creditor or the collection agent, listed either with partial account numbers or extended account numbers.<sup>23</sup> In March 2011, Applicant and the collection agent entered into an agreement to resolve the account, and on March 16, 2011, Applicant paid the collection agent attorney \$2,000, settling the account.<sup>24</sup> Two other accounts, one with the same creditor (**SOR ¶ 1.f.**), and the other with the same collection agent (**SOR ¶ 1.w.**), are listed with different account numbers. Based on the agreed amount paid under the settlement agreement, it appears that all of the accounts with the combination of original creditor and subsequent collection agent, totaling \$3,797, have been included, and resolved. Unfortunately, because of his fear of losing his security clearance, Applicant has faithfully accepted the allegations set forth in the SOR as accurate and has recently also paid the collection agent an additional \$20 in a good-faith effort to resolve all of those accounts erroneously listed in the SOR.<sup>25</sup> Those five separate accounts listed in the SOR have been resolved.

There is a department store account (**SOR ¶ 1.b.**) listed in the credit report by a collection agent with a high credit of \$5,174 and an unpaid balance of \$5,973.<sup>26</sup> There is evidence that an account with the same original creditor and current collection agent, with a different account number, but with no specified balance, was settled in full in March 2008.<sup>27</sup> Again, because of his fear of losing his security clearance, Applicant recently paid the collection agent an additional \$10 in a good-faith effort to resolve the account.<sup>28</sup> The account has either been resolved or is in the process of being resolved.

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<sup>22</sup> The accounts identified in the SOR were apparently based upon accounts listed in an Equifax Credit Report, dated March 20, 2012 (GE 5) as well as upon certain unidentified documentation used by the U.S. Office of Personnel Management (OPM) investigator who interviewed Applicant in March 2010. During the interview, Applicant was asked about certain accounts and acknowledged the information furnished to him by the investigator. In reviewing the information which Applicant acknowledged, it is apparent that much of it does not identify the original creditors. For example, Applicant agreed that he had opened certain accounts with specified "creditors," but the purported "creditors" have never issued credit cards for they are merely debt collectors or debt purchasers. In addition, because GE 5 furnishes only the barest of information, it is difficult, if not impossible, to determine if one account is actually listed several times under various collector names, giving the impression that there are more accounts than there actually are.

<sup>23</sup> GE 5, *supra* note 22, at 2-3. The account is listed in the credit report under one entry with a high credit of \$1,186 and an unpaid balance of \$1,464, and in the other entry with a zero balance as the account had been "transferred or sold." The SOR refers to the account in two separate allegations (SOR ¶¶ 1.a. and 1.p.) with an unpaid balance of \$1,185, and in a separate allegation (SOR ¶ 1.v.) with an unpaid balance of \$1,464.

<sup>24</sup> GE 4 (Settlement Stipulation Fax, dated March 15, 2011; Letter to Attorney, dated March 16, 2011; Stipulation of Settlement, dated March 16, 2011); AE N (photocopies of the stipulation documents).

<sup>25</sup> AE L (Checks, dated October 9, 2012).

<sup>26</sup> GE 5, *supra* note 22, at 3. The credit report listed the account with a partial account number and the SOR used an extended account number.

<sup>27</sup> AE P (Letter from Collection Agent, dated October 9, 2012).

<sup>28</sup> AE L, *supra* note 25.

There is an account with a bank with an unpaid balance of \$3,506 that was charged off (**SOR ¶ 1.c.**). No such account is listed in the credit report. There is evidence that an account with the same original creditor with a different account number, but with no specified balance, was settled in full in February 2008.<sup>29</sup> It appears that the account has been resolved.

There are two club super store accounts (**SOR ¶¶ 1.d. and 1.m.**) listed in the SOR under the name of the same creditor with different account numbers and different unpaid balances. One account reflects a \$47 balance and the other, a \$1,000 balance. The credit report lists only one such account, with a balance of \$400, that was transferred or sold.<sup>30</sup> Applicant recently paid the creditor \$10 in a good-faith effort to resolve the account.<sup>31</sup> The account is in the process of being resolved.

There is a super store account (**SOR ¶ 1.e.**) listed in the SOR with a charged-off balance of \$1,744. No such account is listed in the credit report. Applicant recently paid the creditor \$10 in a good-faith effort to resolve the account.<sup>32</sup> The account is in the process of being resolved.

There is a bank account (**SOR ¶ 1.g.**) listed in the SOR with an unpaid balance of \$9,665 that is listed in the credit report under the collection agent's name.<sup>33</sup> Applicant recently paid the creditor \$10 in a good-faith effort to resolve the account.<sup>34</sup> The account is in the process of being resolved.

There is a bank account (**SOR ¶ 1.k.**) listed in the SOR with an unpaid balance of \$143. Although the account was transferred or sold to a number of different collection agents, no such account is listed in the credit report. In September 2012, Applicant and the collection agent entered into a settlement and repayment agreement to resolve the account. In October 2012, Applicant paid the collection agent two \$37.23 payments, settling the account.<sup>35</sup> The account has been resolved.

There is a charge account (**SOR ¶ 1.t.**) listed in the SOR with a charged-off balance of \$146.<sup>36</sup> Applicant recently paid the creditor \$10 in a good-faith effort to resolve the account.<sup>37</sup> The account is in the process of being resolved.

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<sup>29</sup> AE Q (Letter from Collection Agent, dated October 9, 2012).

<sup>30</sup> GE 5, *supra* note 22, at 2. The account listed in the credit report is the same one referred to in SOR with the \$1,000 balance, although the account number in the SOR is extended.

<sup>31</sup> AE L, *supra* note 25.

<sup>32</sup> AE L, *supra* note 25.

<sup>33</sup> GE 5, *supra* note 22, at 2. The account listed in the credit report reflects a high credit of \$7,737, and the account number is a briefer version of the one in the SOR.

<sup>34</sup> AE L, *supra* note 25.

<sup>35</sup> AE A (Settlement Offer, dated September 11, 2012); AE O (Letter from Collection Agent, dated September 27, 2012); Tr. at 55.

<sup>36</sup> GE 5, *supra* note 22, at 1.

There is a charge account (**SOR ¶ 1.u.**) listed in the SOR with a charged-off balance of \$135 that was transferred or sold.<sup>38</sup> Applicant recently paid the collection agent \$10 in a good-faith effort to resolve the account.<sup>39</sup> The account is in the process of being resolved.

According to Applicant, the remaining delinquent accounts are in line to be addressed when other accounts, currently being addressed, are resolved, or when he has sufficient funds to resolve them earlier. Those accounts, in varying amounts from \$65 (**SOR ¶ 1.s.**), \$140 (**SOR ¶ 1.r.**), \$158 (**SOR ¶ 1.q.**), \$169 (**SOR ¶ 1.o.**), \$170 (**SOR ¶ 1.n.**), \$312 (**SOR ¶ 1.j.**), \$1,506 (**SOR ¶ 1.i.**), \$4,371 (**SOR ¶ 1.h.**), and \$4,975 (**SOR ¶ 1.i.**), were allegedly placed for collection or charged off. Some of those accounts are not listed in the credit report.

### **Personal Conduct**

On July 7, 2003, Applicant and his wife were purportedly involved in an altercation. Applicant was arrested and charged with aggravated battery on a pregnant woman. The charges were dismissed and Applicant was not adjudicated guilty of that charge or of any of the acts stemming from the arrest or the alleged criminal activity. On February 13, 2006, Applicant petitioned to seal the criminal history record, and the court ordered the records be sealed.<sup>40</sup> Applicant contends he was falsely accused, the charges were “thrown out,” and the records were expunged.<sup>41</sup> He also discussed the matter with his attorney because he was concerned about his security clearance. Applicant’s attorney advised him that since the record had been expunged, it no longer exists, and Applicant did not have to report it.<sup>42</sup>

When Applicant completed his SF 86 in February 2010, there was a question (§22c) asking: “Have you EVER been charged with a felony offense?”<sup>43</sup> The introductory

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<sup>37</sup> AE L, *supra* note 25.

<sup>38</sup> GE 5, *supra* note 22, at 2.

<sup>39</sup> AE L, *supra* note 25.

<sup>40</sup> AE C (Order to Seal Records and accompanying documents, various dates). Under the state’s rules, all entries and records subject to the order are removed from the official records of the court, the clerk is to make certified copies of the file and expunge the original entries and records, and seal the entries and records, or certified copies thereof, together with the court file and retain the same in a nonpublic index, subject to further order of the court. Under the state law in question, a person commits aggravated battery – a first degree misdemeanor - if the alleged victim was pregnant at the time of the incident and the offender knew or should have known that the victim was pregnant. What would normally be a simple battery (a striking or touching without any real harm), becomes aggravated battery – a second degree felony.

<sup>41</sup> Tr. at 64-65.

<sup>42</sup> Tr. at 65, 67; Applicant’s Answer to the SOR, at 2.

<sup>43</sup> GE 1, *supra* note 1, at 33.

comments to the question stated: “For this item, report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed.”<sup>44</sup>

The SOR alleges Applicant falsified material facts regarding the incident when he responded “no” to the question. He explained that he was simply following the legal guidance he had previously received from his attorney in 2006.<sup>45</sup> He also noted that the introductory comments said matters expunged did not have to be reported.<sup>46</sup> The section of the introductory comment he referred to actually stated: “You need not report convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.”<sup>47</sup> As noted by Department Counsel, this exception refers to drug charges, not aggravated battery charges. Applicant stated that when he saw that comment, he was confused and thought it also applied to him.<sup>48</sup> He also denied he had been charged with a felony because he was not convicted of any charge.<sup>49</sup> Applicant consistently denied intending to falsify the material facts.<sup>50</sup> Applicant’s alleged conduct, under the evidence presented, would have constituted aberrant behavior on his part.

### **Character References and Work Performance**

The three most important components in Applicant’s life are God, his family, and his work.<sup>51</sup> His supervisor characterized him in very favorable terms. Applicant’s key strengths are that he is a “devoted and dedicated hard worker,” and he is “very honest and ethical.”<sup>52</sup> Over the past few years, Applicant has received several individual and team achievement awards, as well as certificates of appreciation.<sup>53</sup>

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

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<sup>44</sup> GE 1, *supra* note 1, at 33.

<sup>45</sup> Tr. at 67-70.

<sup>46</sup> Tr. at 70-71.

<sup>47</sup> GE 1, *supra* note 1, at 33.

<sup>48</sup> Tr. at 71.

<sup>49</sup> Applicant’s Answer to the SOR, *supra* note 42, at 2.

<sup>50</sup> GE 3, *supra* note 2, at 9-10.

<sup>51</sup> Tr. at 42-43.

<sup>52</sup> AE H (Performance Development Summary, dated February 17, 2011); AE I (Performance Development Summary, dated February 23, 2012).

<sup>53</sup> AE J (Certificates, various dates).



emphasizing, “no one has a ‘right’ to a security clearance.”<sup>54</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>55</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>56</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>57</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the

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<sup>54</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>55</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>56</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>57</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>58</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>59</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are 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. Commencing in 2001, Applicant started experiencing some financial difficulties, and 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 or charged off. 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*

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<sup>58</sup> *Egan*, 484 U.S. at 531

<sup>59</sup> 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."*<sup>60</sup>

AG ¶ 20(a) partially applies, and AG ¶ 20(c) applies. The nature, frequency, and relative recency of Applicant's continuing and escalating financial difficulties since August 2001 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Aware of his family's substantial medical issues and their negative impact on his finances, Applicant consulted with an attorney and a financial counselor. Based on the information and guidance they furnished him, Applicant decided not to file for bankruptcy protection under Chapter 7. Instead, he took full responsibility for his debts, prioritized those debts, and set up a plan to resolve them. Based on his wife's medical history, as well as the periodic health issues of his children, it is unclear if additional health issues will recur. Furthermore, while many of his delinquent accounts have not yet been resolved, they are in the process of being so. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>61</sup>

AG ¶ 20(b) applies. Applicant attributed his financial problems to his wife's crippling and costly injuries caused by two rear-end collisions. She receives between 30 and 60 injections each month as well as daily pain medication. As a direct result of those injuries, as well as her fibromyalgia, she is no longer able to work, reducing the two family incomes to one income. In addition, the medical and dental procedures for his children were unexpected and costly. The increasing medical expenses have had a "snowball effect," and Applicant now spends about \$9,000 to \$10,000 per year on just

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<sup>60</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 [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>61</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

medical expenses. Applicant's indebtedness was 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. Under the circumstances, Applicant acted responsibly by addressing his delinquent accounts rather than avoiding them.<sup>62</sup>

AG ¶ 20(d) applies. Applicant attempted to obtain a consolidation loan to enable him to address his delinquent debts but he did not qualify for one. He withdrew funds from his 401(k) retirement account in order to pay some bills. With the guidance received from the financial counselor, Applicant prioritized his accounts and contacted a variety of collection agents. While they generally demanded payments in amounts Applicant was unable to afford, some did enter into repayment plans with him. The result has been positive. Applicant has resolved several accounts, including some that are in the SOR and some that are not, and is in the process of resolving several others. Other accounts are in line. Under his repayment plan, while Applicant has been making some small payments to some creditors and larger ones to others, he intends to pay his creditors off one bill at a time.

There is a substantial risk when one accepts, at face value, the contents of a credit report without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the 2012 credit report referred to several accounts multiple times, creating confusion as to what the actual status, balance, or creditor, of an account might be. Also, because of abbreviated names and acronyms, and the absence of full or, in some instances, even partial account numbers, many of those entries are garbled and redundant, and have inflated the financial concerns.

Notwithstanding having met with a financial counselor, Applicant continues to possess a somewhat superficial understanding of financial procedures, credit reports, and his responsibilities in connection with the security clearance review process. He accepted the erroneous financial conclusions of the OPM investigator and the redundant financial allegations set forth in the SOR without questioning them or seeking validation from the various creditors or collection agents. Redundant accounts were listed in the SOR, but Applicant did not understand that fact. In order to display his good-faith efforts to resolve his debts, Applicant started paying debts to some creditors that had already been resolved with a different creditor name.

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<sup>62</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.

## **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), security concerns may be raised when there is a:

*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.*

Applicant's response to the inquiry in his 2010 SF 86 of critical information pertaining to the charge against him for aggravated battery on a pregnant woman – a charge that was eventually dismissed, sealed, and expunged – provides sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or merely the result of misunderstanding or erroneous guidance he had previously received from his attorney at the time the charge was dismissed and the record was sealed and expunged, as he also contends. He denied the false response was deliberate or an attempt to falsify the material facts. While Applicant's interpretation may be wrong, by reasonably relying on it, he clearly did not intend to falsify his response. His response may have been factually incorrect, but without any proof of deliberate concealment or falsification, in light of his denials and explanations, there is little to link his incorrect response to deliberate concealment of falsification. Considering Applicant's reputation for being very honest and ethical, Applicant's alleged conduct, under the evidence presented, would have constituted aberrant behavior on his part. Accordingly, while Applicant did not report the charge, I conclude his explanations are reasonable, and that he did not intentionally falsify his answer to this question. AG ¶ 16(a) has not been established.

## **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.<sup>63</sup>

There is some evidence against mitigating Applicant's conduct. His handling of the family finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection or charged off. In 2003, Applicant was charged with aggravated battery on a pregnant woman.

The mitigating evidence under the whole-person concept is more substantial. Applicant unsuccessfully attempted to obtain a consolidation loan; he successfully withdrew funds from his 401(k) retirement account; he met with an attorney and rejected the option of declaring bankruptcy under Chapter 7; he sought financial counseling; he contacted his creditors or collection agents; he prioritized his delinquent accounts; and he has resolved several accounts and is in the process of resolving several others. Under his repayment plan, Applicant intends to pay his creditors off one bill at a time. As for the criminal charge, the charge was dismissed and the records were sealed and expunged. He possesses an excellent reputation in the workplace and is a loving and engaged husband and father.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>64</sup>

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

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<sup>63</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>64</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 reasonable timely efforts to resolve his accounts. However, noting the extent of his remaining unresolved accounts, this decision should also 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 a security clearance. As for his personal conduct, Applicant has been characterized as very honest and ethical. The criminal charge was dismissed, sealed, and expunged, and similar conduct has not been repeated. 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 and personal conduct. 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
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant

Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge