



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-03241
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: Kenneth C. Kaye, Esquire

05/09/2012

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on May 24, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on October 13, 2011, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified 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 (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on October 26, 2011, which he answered on November 27, 2011. Applicant retained counsel and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on January 23, 2012. I received the case assignment on February 9, 2012. DOHA issued a Notice of Hearing on February 21, 2012, and I convened the hearing as scheduled on March 5, 2012. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE D, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 15, 2012. I held the record open until March 26, 2012, for Applicant to submit additional matters. Applicant timely submitted AE E - AE L.<sup>1</sup> Department Counsel did not object to the admission of AE E and AE F. Department Counsel objected to the admission of AE G through AE L. The record closed on March 25, 2012.

## **Procedural and Evidentiary Rulings**

### **Notice**

Applicant received the hearing notice less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. After consulting with counsel, Applicant affirmatively waived his right to the 15-day notice. (Tr. 9.)

### **Evidentiary ruling**

Department Counsel objects to the admission of Applicant's post-hearing exhibits AE G through AE L (marked Exhibits C through H) on the grounds the materials and cases provide interesting information, but are not instructive to security clearance proceedings in general, and the issues raised in the cases are not relevant to a security clearance determination. Department Counsel further asserts that, through his arguments based on these cases, Applicant is asking the Administrative Judge to speculate as to the likely outcome if Applicant sues the creditor in court. Department Counsel also argues that Applicant has not sought judicial relief from his creditors<sup>2</sup> nor has he challenged the legitimacy of the debts, and that Applicant has not provided evidence to show that his debts have been forgiven under the Statute of Limitations. Applicant, through his counsel, responded, arguing that Applicant has established mitigation in this case.<sup>3</sup> Applicant's counsel objects to the Government's request to

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<sup>1</sup>Applicant's counsel marked his post-hearing exhibits as A through H. Because Applicant submitted AE A through AE D at the hearing, his post-hearing exhibits are marked beginning with AE E.

<sup>2</sup>The Government argues that Applicant has not sought judicial relief from his debts. It is unclear what, if any, judicial action Applicant can take against the creditors.

<sup>3</sup>The April 23, 2012 letter from Applicant's counsel is not being admitted as an exhibit, but as a supplemental post-hearing brief.

disregard most of his brief as “speculation” and requests the admission of all the post-hearing submissions. The Government’s objection to AE G is sustained. The Government’s objection to AE G through AE L is overruled. AE E, AE F, and AE H through AE L are admitted into evidence and will be accorded the weight deemed appropriate, if any.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied all the factual allegations in the SOR.<sup>4</sup> After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 57 years old, applied for a law enforcement professional position, after being recruited by a Department of Defense contractor. Applicant began working in law enforcement in 1974. He started his career as a patrolman, then moved to a field training officer, to a field training supervisor, to administrative assistant to the police chief, and finally to criminal investigations in a city police department. After many years with a city police department, he transferred to the county police department, where he worked as a criminal investigator. His police work with the county involved undercover work and multi-jurisdictional task forces during his 14 years of employment. Applicant left full-time police work for private industry in October 1999. He retained a \$100 a month position with the county, which allowed him to maintain his position for retirement. He returned to full-time county police work in January 2005 and continues in his position as the chief deputy in a precinct in the county. He also works off-duty police security work. Applicant is a master certified peace officer.<sup>5</sup>

Applicant submitted six letters of recommendation from his supervisor, a former Chief of Police, friends, and professional colleagues. They highly respect him as an individual, leader, mentor, and professional. They describe him as an intelligent, capable, dedicated, and honorable man, who has integrity and good character. None indicate any knowledge of the financial problems raised in the SOR.<sup>6</sup>

Applicant graduated from high school. He has attended college programs, and most recently, he received a leadership command certificate. He married his current

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<sup>4</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. “That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern.” See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>5</sup>GE 1; Tr. 18-27.

<sup>6</sup>AE E.

wife in 1986. They have two sons, who are 22 and 20 years old. He has two daughters, ages 38 and 31, from previous marriages.<sup>7</sup>

In October 1999, Applicant accepted an opportunity to develop a dormant franchise with a national tool company. Within nine months, his franchise moved from a dormant franchise to one of the top ten performing franchises. His successful performance led to the tool company offering him a district manager position. In this position, his initial work area covered a geographical area measuring approximately 230 miles by 50 miles, and included 16 franchises. As the district manager, he supported the franchises in his district. The tool company required him to purchase high-value tools every month, which he warehoused then resold to the franchises based on monthly customer orders. During the first six months of this job, he terminated seven franchises because of fraud in the franchise operations.<sup>8</sup>

Following the terrorist attacks of September 11, 2001, the national tool company experienced a downturn in business, which impacted the financial payments Applicant received from the corporate office. Within 90 days of this event, the national tool company began to restructure its business. The national tool company reduced the number of district managers by 40%, which directly impacted Applicant's work area. His geographic territory increased to an area measuring 700 miles by 100 miles, and his number of franchises increased from 16 to 46. The corporate restructuring increased the monthly shipment of tools to him, with the cost being charged to his credit cards. Corporate payments to him slowed, creating debt payment problems for him. With the new corporate model, his income decreased, rather than increased. After reviewing the impact of these changes and the corporate model, Applicant decided to leave the company in 2002.<sup>9</sup> When he ended this employment, the national tool company owed him thousands of dollars in repayment for the tools it had shipped to him. He has never received the money owed to him.<sup>10</sup>

Applicant worked in the construction industry after leaving the national tool company. He also operated his own small construction business on a part-time basis from approximately January 2002 until September 2006. While working in the construction industry, Applicant earned less income, which limited his ability to reduce his debt.

As the only surviving child, his mother resided with him in his home from 1996 until 2006. From 2006 until her death in 2008, his mother lived in a nursing home. He

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<sup>7</sup>GE 1.

<sup>8</sup>GE 1; GE 2; Tr. 27-33.

<sup>9</sup>On his e-QIP, Applicant listed his dates of employment with the national tool company as October 1999 to April 2002. At the hearing, he estimated he worked from 2000 to 2003. His e-QIP dates are being used as the more accurate because other employment dates more closely aligned with these dates. GE 1.

<sup>10</sup>GE 2 - personal subject interview; Tr. 27-41.

paid her expenses beyond her medicaid income during his time, which created additional financial strain for him. In 2008, his home suffered damage from a hurricane. For six months, he and his family lived in a recreational vehicle he owned while their home was repaired. He paid \$6,000 in out-of-pocket expenses for this damage.<sup>11</sup>

Applicant currently earns \$4,223 in gross income from his job and another approximately \$4,000 a month from off-duty law enforcement work. His net monthly income totals approximately \$6,762. His monthly expenses total \$5,657, leaving \$1,105 for debt payment. He pays his current bills.<sup>12</sup>

Applicant began to experience problems with paying his financial obligations in 2005. He met with his banker, who helped him develop a strategy for paying his debt. Upon the advice of his banker, Applicant approached his creditors with a “balance liquidation plan” to resolve his outstanding debts. He developed payment plans with some creditors, but other creditors refused his offer, demanding full payment as the alternative. Under the plans he developed, he made monthly payments for six months, then he called the creditor to re-establish another six months of payments. He began his payments in 2006. In 2008, Applicant attended a credit counseling program offered to individuals damaged by the hurricane.<sup>13</sup>

The debts identified in SOR ¶¶ 1.a and 1.b originated from the same bank and are being collected by the same collection agent. The \$20,962 debt in SOR ¶ 1.a is a credit card originally owned by a bank. Applicant developed a “balance liquidation plan” with the bank, which included a reduction in interest on his debt and a reduced principle, although he did not provide documented proof of these agreement terms. He began paying \$280 a month in January 2006. While in the payment plan, Applicant continued to receive calls from the bank’s collection department about payment of his debt. Applicant provided documentation, reflecting payments on this debt from April 2008 through November 29, 2008. The bank assessed a 15% finance charge each month on his balance through June 2008. Thus, his monthly payments reduced the principle by approximately \$55 a month. From July 2008 through November 2008, the bank did not calculate any interest charges on this account, which allowed a substantial reduction in the principle. In December 2008, Applicant received a letter from the bank asking him to call to reestablish his payment plan. When he called, the bank advised that it had stopped his payment plan. The bank referred him to their collection department, which demanded a \$1,089 payment each month beginning in January 2009.<sup>14</sup> Applicant could

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<sup>11</sup>GE 2 - personal subject interview; Tr. 43-46.

<sup>12</sup>GE 2 - Personal Financial Statement; Tr. 108-110. Applicant listed a \$500-a-month car payment. He testified that this debt had been paid. Tr. 110.

<sup>13</sup>Tr. 47, 49-55, 82-85.

<sup>14</sup>The bank’s December 18, 2008 letter advised Applicant that his last \$280 payment was scheduled for January 31, 2009. On January 15, 2009, Applicant received a letter from the bank, stating that his account was past due and that he must pay \$1,089 by his next due date. The bank did not explain how it calculated

not and did not pay the requested amount. The bank later transferred or sold this account to another creditor. Applicant has not made any payments on this account since November 29, 2008.<sup>15</sup>

The \$22,486 debt in SOR ¶ 1.b is a credit card originally owned by a bank. Applicant developed a “balance liquidation plan” with the bank, which included a reduction in interest on his debt and a reduced principle, although he did not provide documented proof of the terms of this agreement. He began paying \$290 a month in January 2006. While in the payment plan, Applicant continued to receive calls from the bank’s collection department about payment of his debt. Applicant provided documentation reflecting payments on this debt from March 2008 through November 29, 2008. The bank assessed a 20% finance charge each month on his balance through June 2008. Thus, his monthly payments reduced the principle by approximately \$25 a month. From July 2008 through November 2008, the bank charged a 1% interest rate on this account, which allowed a substantial reduction in the principle. In December 2008, Applicant received a letter from the bank asking him to call to reestablish his payment plan. When he called, the bank advised that it had stopped his payment plan. The bank referred him to their collection department, which demanded a payment in January 2009 of more than \$1,000 a month.<sup>16</sup> Applicant could not and did not pay the requested amount. The bank later transferred or sold this account to another creditor. Applicant has not made any payments on this account since November 29, 2008.<sup>17</sup>

Concerning the \$3,142 credit card debt in SOR ¶ 1.c and the \$8,265 credit card debt in SOR ¶ 1.g, Applicant had three credit cards with this company, mostly used for his business expenses. Applicant contacted this creditor about a “balance liquidation plan,” but the company declined to enter into a payment plan with Applicant. In 2008, Applicant offered a lump-sum payment to settle one of these accounts, which the company did not accept. Instead, the company chose to forgive one credit card debt, which is still listed as an unresolved debt on his credit reports, and issued Applicant a 1099-C for the tax year. The June 18, 2010 and June 23, 2011 credit reports reflect a date of last activity on these two debts as May 2005. Applicant has not made any payments on these two debts nor has he contacted the company recently.<sup>18</sup>

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this amount. Applicant’s monthly account information does not reflect any past-due amount prior to December 29, 2008. Applicant’s testimony that this amount was the new required monthly payment is accepted based on this letter. GE 2 - Attachments marked Exhibits 1 and 2.

<sup>15</sup>GE 2 - Exhibit AA, p. 1-2; GE 2 - Exhibits 1-14; Tr. 49-56.

<sup>16</sup>Unlike the first account with this bank, Applicant did not provide a copy of a letter from the bank in December 2008, advising Applicant when his last \$290 payment was scheduled and asking him to call to reschedule. He also did not provide proof that the bank requested a payment of more than \$1,000 a month. However, based on the information provided on the first account (SOR ¶ 1.a), his statements are credible.

<sup>17</sup>GE 2 - Exhibit AA, p. 3-4; GE 2, Exhibits 15-27; Tr. 49-56.

<sup>18</sup>GE 2 - Exhibit AA, p. 5-6; GE 2 - Exhibit L; GE 3; AE B; Tr. 59-65.

The \$8,430 debt in SOR ¶ 1.d remains unpaid. Applicant obtained this credit card in December 2001 to pay business and personal travel expenses. He contacted the creditor about a “balance liquidation plan,” but the company declined to enter into a payment plan with Applicant. The June 18, 2010 and June 23, 2011 credit reports reflect a date of last activity on this debt as May 2005. Applicant has not made any payments on this debt since that time nor has he been in contact with the creditor. He received a notice in February 2012 from a collection company about this debt. He has not contacted this company.<sup>19</sup>

Applicant open a credit card account with a bank in July 1997. He believes this is the \$15,000 debt referenced in SOR ¶ 1.e under the name of a collection company, but the credit reports of record do not definitively show that the bank was the original creditor for this debt. Applicant developed a “balance liquidation plan” with the bank in 2003, which included a reduction in interest on his debt, although he did not provide documented proof of the terms of this agreement. He began paying \$315 a month in 2003. Applicant’s post-hearing evidence reflects that he made a \$315 payment to this creditor on January 17, 2008, February 15, 2008, and April 1, 2008, but it does not show he made any payments on this plan in late 2007. Applicant’s hearing documentation reflected payments on this debt from April 2008 through July 2008 and an interest assessment of 6% each month on his balance. Because of hurricane damage, Applicant asked the bank to place the account on hold, while he repaired his house. The bank declined, advising him that participation in the program was a one-time opportunity. Applicant received a letter from a collection company dated February 26, 2012. The letter offers a settlement of the debt and indicates that the creditor is the collection company identified in the SOR and that the original creditor is the bank. Applicant has not paid on this account since July 2008.<sup>20</sup>

The last SOR debt (1.f - \$12,479) concerns a bank credit card which Applicant opened in October 2002. When he lost income, Applicant contacted this creditor about a balance liquidation program. The creditor agreed, and Applicant began payments of \$102 a month in 2004. Applicant’s post-hearing evidence shows the following payments to this creditor: a \$300 payment on December 10, 2007; a \$7 payment on January 8, 2008; a \$297 payment on February 15, 2008; a \$250 payment on February 29, 2008; and a \$100 payment on March 27, 2008. Applicant received a letter from the creditor, dated April 15, 2008. The creditor advised him that his account was no longer in a payment program and that the account terms would be adjusted to the terms in his card member agreement and its amendments. The letter gave no explanation for the change in Applicant’s payment plan. Applicant has not paid on this debt since April 2008.<sup>21</sup>

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<sup>19</sup>GE 2 - Exhibit AA, p. 7, GE 2 - Exhibit L; GE 3; AE B; AE D; Tr. 59-65.

<sup>20</sup>GE 2 - Exhibit AA, p. 8-9; GE 2 - Exhibits 28-31; AE C; AE F; Tr. 70-71.

<sup>21</sup>GE 2 - Exhibit AA, p. 10-11; GE 2 - Exhibits 32; AE F; Tr. 72.

Applicant disputes the credit card balances listed on his credit reports and in the SOR. He does not deny he owes money to the original creditors. Because he paid a significant amount of money to the creditors in the past and ultimately, did not receive credit for his payments, he is concerned about making payments to companies who indicate they are collecting the debt. He wants verification that the present companies actually own and hold his debts, and he wants assurance that any payment he makes will show he has resolved the debt. He has not formally challenged the validity of the debts, and he has not written to these companies requesting all documentation which shows that the companies own the debt. He cannot access the equity in his house to pay these debts because the debts are listed on his credit reports and reflect a negative credit history. He indicated that the payments were to be automatically deducted from his checking account. His records reflect differently. Besides the SOR debts, the credit reports do not reflect that Applicant has incurred any recent past-due accounts.<sup>22</sup>

### **Legal Argument**

Through his counsel, Applicant argues that he has established mitigation because his debts are either barred from collection because of the Statute of Limitations in the State in which he lives or the named creditors are not the holders and owners of the debts listed in the SOR. The Government responds, contending that Applicant has not provided proof that he has sought judicial relief from his creditors nor has he challenged the legitimacy of their claims.

### **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing 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. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this

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<sup>22</sup>AE F; Tr. 74-81, 83-84, 92-95.



decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems from the financial practices of his tool industry employer and later, from working in the construction industry. Most of the debts have not been resolved. These two disqualifying conditions apply.

In ISCR Case NO. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained the parties burden of proof:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligation 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.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns.<sup>23</sup> I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following are potentially applicable under the facts presented in this case:

(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;

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<sup>23</sup>In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

(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 financial problems started after the events of September 11, 2001. The economy slowed as did the tool business. His company restructured its business model as well as its payments to district managers, such as Applicant. The changes increased the number of franchises Applicant managed from 16 to 46, which increased the volume of tools shipped to him, and his direct costs related to the shipment of these tools. At the same time, his company slowed its payments to him, which decreased his monthly income and increased his debt levels. The precipitating event was beyond Applicant's control as was the corporate restructuring decision of his employer. For several years Applicant paid his credit card debt, but his employment in the construction industry did not provide sufficient income for him to pay all his credit card debts. In 2005, he met with his banker, who helped him develop a plan to resolve his debts, which are listed in the SOR. He contacted his creditors and instituted a payment plan with four of the seven creditors listed in the SOR. He began these payments in 2006. The creditors terminated the payment plans in 2008, without explanation. The remaining three SOR creditors did not agree to his proposed payment plan. Applicant stopped his payments to these creditors in 2005 and has not done anything about these debts since then. AG ¶ 20(b) partially applies because his financial problems arose from a factor beyond his control. In 2005, he worked diligently on creating a debt payment plan which would resolve his debts. For several years, he paid four creditors as agreed. By the end of 2008, these four creditors had withdrawn their agreement to accept his payment plan without explanation. This is also a factor beyond his control. In 2008, his house sustained damages from a hurricane, an event beyond his control. However, since December 2008, he has not paid the SOR creditors. He made no effort to pay the three creditors, who declined to accept his debt reduction plan in 2005. The second part of this mitigating condition is not established as he has not acted reasonably in the last three years.

Applicant received financial counseling in 2008 after sustaining property damage from a hurricane. He is given counseling credit for working with his banker in 2005 to develop a plan to resolve his debts. The debts listed in the SOR are not under control. Rather, Applicant is not taking any actions on these debts. AG ¶ 20(c) is partially applicable.

In 2005, Applicant made a good-faith effort to resolve his mounting credit card debt when he called his creditors and asked to resolve his debts through a “balance liquidation plan” or more simply a payment plan to reduce his debts. Four creditors agreed. He paid under this plan for several years until the creditors ended their participation in the plan. AG ¶ 20(d) cannot be fully applied to SOR debts in §§ 1.a, 1.b, 1.e, and 1.f because for more than three years, Applicant has not made any efforts to resolve these debts or the other three SOR debts.<sup>24</sup> Likewise, AG ¶ 20(a) is not applicable because Applicant’s significant credit card debt is ongoing. These seven debts remain unresolved.

When an Applicant disputes SOR debts, AG ¶ 20(e) requires the Applicant to articulate a reasonable basis for disputing the debts, which are the cause of the problem, and to provide documented proof to substantiate the basis of the dispute or to provide evidence of actions to resolve the disputed issue. Applicant testified that he had not formally disputed these debts. Copies of letters written to the identified collection agents disputing the debts and requesting documented proof that they own the debt would be evidence of mitigation under this mitigating condition.<sup>25</sup> Furthermore, a lack of response is evidence which can be considered. In this case, the record lacks any evidence of an actual dispute to the creditor. Thus, AG ¶ 20(e) cannot be applied.

### **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 an applicant’s conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the

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<sup>24</sup>The Appeal Board has held that the debts which are uncollectible under the State Statute of Limitations do not reflect a good-faith resolution of debts under AG ¶ 20(d).

<sup>25</sup>The Fair Credit Reporting Act outlines the information a debtor can request from a creditor.

evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a long and successful career in law enforcement. He is respected by colleagues and his management. After many years in law enforcement, Applicant redirected his career to private industry. He successfully developed a stagnant franchise, which resulted in a promotion to district manager. He again performed his duties well. His company experienced business growth problems after the events of September 11, 2001. His company restructured its business model and expanded his work territory, which increased his tool purchasing costs, but decreased the income payments to him. When he realized the problems with this change, Applicant left the company with debt from required monthly tool purchases and without receiving all the money owed him. He worked for several years in the construction industry, but his debts continued to increase. By 2005, he recognized he had a problem and started working on a resolution. Some of his creditors accepted his proposed "balance liquidation plan" and others did not. For more than two years, he paid four creditors under his plan, although documents reflecting the exact terms of his agreements are not part of this record. By the end of 2008, all the creditors had withdrawn from his payment plan without any clear explanation. His evidence reflects that he made payments as agreed in 2008, but does not show payments from 2006 forward. His evidence also shows that many of his payments minimally reduced his principle because most of his monthly payment covered the monthly interest charge. Despite paying significant money over nearly three years, Applicant did not reduced his debt balances as he anticipated.

Applicant stopped all payments on his SOR debts by December 2008. Through his counsel, Applicant asserts that these debts are resolved because the Statute of Limitations applies or the named creditors in the SOR are not the legal owners or holders of the debts. Applicant needed to provide documentary evidence reflecting his position that the four named creditor collection agents on his SOR did not own or hold his debts.<sup>26</sup>

Concerning the Statute of Limitations argument, Applicant has not made a payment on the debts in SOR ¶¶ 1.c, 1.d, 1.f, and 1.g since 2005. Should these creditors file a civil action to collect these debts, Applicant argues that he can raise his state's four-year Statute of Limitations as an affirmative defense and that the court

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<sup>26</sup>The two issues raised by Applicant are possible defenses to a lawsuit filed against Applicant, not the basis for him to file a court action. The issue of ownership and holder of a debt can also be a demand for proof in any lawsuit filed against Applicant.

would find in his favor based on the Statute of Limitations.<sup>27</sup> At this time, the remaining three debts are not barred by the State's four-year Statute of Limitations. Concerning the application of Statute of Limitations, the DOHA Appeal Board has long declined to recognize Statute of Limitations as a form of debt resolution under any circumstances.<sup>28</sup> In deciding if an individual has mitigated security concerns under Guideline F, the Appeal Board has said that the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner can be considered when determining an applicant's eligibility for a security clearance. Applicant's debts initially occurred under circumstances beyond his control. After he left his tool industry job, Applicant continued to incur debts. He, however, paid his bills for several years. By 2005, his bills overwhelmed him as his income was insufficient to cover all his expenses. In 2005, he took steps to resolve his seven credit card debts. Four creditors worked with him for several years, but then stopped. His concern about paying money to these creditors and not being credited for his payments is legitimate in light of the creditors withdrawal from their prior agreement. Three creditors refused to work with him, and he simply stopped paying them in 2005. His debts continued because he has not taken any action on any of his past-due debt in more than three years.<sup>29</sup> It appears that he is simply waiting for the Statute of Limitations to erase his remaining debts, rather take some affirmative action to resolve the debts.<sup>30</sup>

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

### **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:

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<sup>27</sup>Credit card agreements, as a whole, do not discuss or identify which statute of limitations apply for enforcement of a contract, although such contracts would generally provide which jurisdictional law would govern disputes over the terms of a contract. Contract enforcement generally lies within the jurisdiction of a court where the defendant resides unless otherwise specified in law. Statute of Limitations bar a creditor-plaintiff from proceeding with its lawsuit if the legal action is not timely filed.

<sup>28</sup>As previously noted, the Appeal Board held that the Statute of Limitations does not reflect mitigation under AG ¶ 20(d). Although presented with the issue, the Appeal Board declined to consider the issue as mitigation under the whole-person analysis in ISCR Case No. 08-01122 (App. Bd. Feb. 9, 2009).

<sup>29</sup>Accepted settlement offers can be reduced to writing and such writings are proof of payment against subsequent creditors.

<sup>30</sup>Debts are not "forgiven" under a Statute of Limitations. Rather, this rule of law prohibits legal pursuit of a claim or cause of action because the moving party, in cases such as this it is the creditor, has failed to exercise their legal rights in a timely fashion. Courts decline to grant judgment to a party who has sat on their rights.

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a - 1.g:

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.

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MARY E. HENRY  
Administrative Judge