



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



In the matter of: )  
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----- ) ISCR Case No. 11-03402  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

January 4, 2012

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists 16 delinquent debts totaling \$113,382, and he has a delinquent \$117,000 second mortgage, bringing the total of delinquent debt to \$230,382. One debt was involuntarily resolved through garnishment, and another is being paid with an involuntary allotment. Although he is making progress, financial considerations concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

On June 25, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On August 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to him, alleging security concerns under Guideline F (financial considerations) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (AG) promulgated by the President on December 29, 2005. 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 him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On September 2, 2011, Applicant responded to the SOR. (HE 3) On September 29, 2011, Department Counsel was prepared to proceed. On November 1, 2011, the case was assigned to me. On November 18, 2011, DOHA issued a hearing notice setting the hearing for December 8, 2011. (Tr. 57-59; HE 2) The hearing was held as scheduled. At the hearing, Department Counsel offered eight exhibits. (Transcript (Tr.) 19-23, 30-32; GE 1-8) Applicant offered nine exhibits. (Tr. 34-37; AE A-I) I admitted GE 1-8 and AE A-I. (Tr. 31-32, 30-31, 37-38) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) I took administrative notice of the law on deficiency judgments in California as described in *Kalin, Deficiency Judgments and California Law*; and *California Association of Realtors and Bank of America v. Graves*, 51 Cal. App. 4<sup>th</sup> 607, 59 Cal. Rptr. 2<sup>nd</sup> 288 (1996). (Tr. 78-79; HE 4, 5) I did not receive any documentation after the hearing. On December 16, 2011, I received the hearing transcript.

### **Findings of Fact<sup>1</sup>**

Applicant admitted responsibility for the debts alleged in SOR ¶¶ 1.a-1.g, 1.i-1.m, and 1.o-1.p, and he denied responsibility for the debts in SOR ¶¶ 1.h and 1.n. (HE 3) His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 45-year-old employee of a defense contractor, who supports the Navy's ships in the management and maintenance of electronic and components. (Tr. 6; GE 1; AE G) In 1985, he graduated from high school, and he has earned some college credits. (Tr. 6-7) Applicant married in 1985, was separated from his spouse in 2003, and was divorced in May 2005. (Tr. 7, 39) His children are ages 17 and 21, and both of them live with Applicant. (Tr. 7, 82) He served in the Navy from May 1985 to May 2005. (Tr. 8) His rate was electronics technician. (Tr. 9) He honorably retired from the Navy at the grade of chief petty officer (E-7). (Tr. 8) There is no derogatory information concerning Applicant's police records, such as arrests, illegal drug possession or use, or alcohol-related incidents. (GE 1)

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's June 25, 2010 SF-86 (GE 1) or his Office of Personnel Management (OPM) investigative personal subject interview (PSI). (GE 5) Applicant's opening statement was offered and admitted as substantive evidence. (Tr. 32-33, 38)

## Financial Considerations

The SOR alleges 16 delinquent debts totaling \$113,382 as follows: 1.a is a judgment, alleging a delinquent debt owed to a bank for \$1,010; 1.b is a judgment, alleging a delinquent debt owed to a bank for \$10,160; 1.c is a telecommunications debt for \$59; 1.d is a telecommunications debt for \$321; 1.e is a charged-off account owed to a bank for \$2,239; 1.f is a charged-off account owed to a bank for \$19,475; 1.g is a charged-off account owed to a store for \$859; 1.h is a charged-off account owed to a bank for \$8,634; 1.i is a charged-off account owed to a bank for \$1,393; 1.j is a charged-off account owed to a bank for \$8,376; 1.k is a charged-off account owed to a store for \$358; 1.l is a charged-off account owed to a collection company for \$3,567; 1.m is a charged-off account owed to a bank for \$6,135; 1.n is a second mortgage account that is overdue in the amount of \$42,037; 1.o is an overdue account owed to a store for \$7,982; and 1.p is a charged-off account owed to a bank for \$777. (HE 2) He disclosed the debt in SOR ¶ 1.d on his June 25, 2010 SF-86 in response to question 26.g, which asked about debts turned over to collection agencies. (GE 1)

When Applicant was divorced in May 2005, his family income was \$120,000, and his spouse made substantially more money than him. (Tr. 83) The divorce court awarded him possession of his home and custody of his two children. (Tr. 40) The court ordered spousal support of \$1,000 per month. (Tr. 40) He took out a mortgage of \$125,000 to pay his spouse for the house. (Tr. 40) The court also required him to pay some credit card debts. (Tr. 40) Some or all of the credit cards were joint with his former spouse. (Tr. 58) He was unemployed from May to October 2005. (Tr. 40) Applicant's debts were current until 2007. (Tr. 39; AE I) His first and second mortgages had adjustable interest rates, and the monthly payment increased from \$2,800 to \$4,000. (Tr. 41-42) He was notified that his payments were delinquent in October 2008. (Tr. 42) He asked the lender to lower his interest rate, and he attempted a short sale. (Tr. 43) However, the house went into foreclosure. (Tr. 42-43)

Applicant used his credit cards to obtain cash advances and for the expenses of day-to-day living. (Tr. 44, 46) He telephoned his creditors and asked them to agree to a payment plan; however, all of them wanted a substantial down payment or payment in full. (Tr. 45-46, 51) For example, he learned he could settle the \$19,475 debt in SOR ¶ 1.f for \$10,000. (Tr. 52) However, the creditor in SOR ¶ 1.f declined to accept a payment plan in lieu of a single payment. (Tr. 52) Applicant did not send them any written offers to settle the debts or to establish payment plans. (Tr. 45-46, 51, 53)

Applicant's debt in SOR ¶ 1.h for \$8,634 was paid through garnishment. (Tr. 54)<sup>2</sup> He denied responsibility for this debt in his SOR response. His October 16, 2011 pay statement shows \$681 being garnished and \$8,856 being paid to date in 2011. (Tr. 54; AE B) His debt in SOR ¶ 1.o for \$7,982 is being paid through an automatic monthly

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<sup>2</sup>See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011) (citing ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009) (stating, "involuntary payment of debts through garnishment is not necessarily mitigating")).

payment for \$250 from his retired pay. (Tr. 65-67) The payments were essentially an involuntary garnishment. (Tr. 67) He indicated he has paid \$10,000 to address his SOR debts, and he was referring to his payments to the debts in SOR ¶¶ 1.h and 1.o. (Tr. 67-68)

For the telecommunications debts in SOR ¶¶ 1.c and 1.d for \$59 and \$321 respectively, Applicant accepted responsibility for the debts in his SOR response. He said he called the creditor; however, the creditor was unable to find information about the two debts. (Tr. 48) He currently has an account with the creditor; however, he has not written the creditor to seek information about the debt or to dispute the debt with the creditor or the credit reporting company. (Tr. 49-50) He said he could pay off the debt in SOR ¶ 1.k to a store for \$358. (Tr. 58)

Applicant denied responsibility for the second mortgage in SOR ¶ 1.n, which is past due for \$42,037 on a mortgage for \$117,000, because the bank foreclosed on his property. (Tr. 60) He believed that the foreclosure resolved this debt. (Tr. 60) Applicant told the OPM investigator that he borrowed or refinanced his residence about four times, and the refinancing occurred both before and after his divorce. (GE 4 at 2) He used the funds to remodel his home, to purchase two cars, to consolidate debts, and to reduce the monthly mortgage payments. (GE 4 at 2) He also refinanced to pay off his former spouse's credit cards and to buy out his spouse's interest in their home. (GE 4 at 2) The liability for repayment of his second mortgage is dependent on several factors such as when the second mortgage was obtained in relation to the purchase of the residence or later as well as whether it was used to pay off a spouse's interest through a divorce or for home improvement. (Tr. 60-63; HE 4, 5) The creditor for the debt in SOR ¶ 1.n offered to settle the debt for \$20,000; however, Applicant did not have the \$20,000. (Tr. 78) Applicant did not indicate whether the foreclosure was judicial or nonjudicial or whether the lenders sought or received a deficiency judgment.<sup>3</sup>

Applicant stopped working with an attorney in January 2011 because the attorney recommended that he resolve his debts through a Chapter 13 Bankruptcy payment plan. (Tr. 50, 70, 79-80) He takes care of his elderly mother. (Tr. 82) In November 2011, Applicant's mother was admitted to a hospital with serious medical problems. (Tr. 55) She was in an intensive care unit for about 17 days. (Tr. 55) His commitments to his family made it more difficult for him to prepare for his hearing. (Tr.

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<sup>3</sup>Under California law, mortgage lenders to home owners have significant legal hurdles to surmount before a deficiency judgment may be obtained. See Kalin, *Deficiency Judgments and California Law*; and *California Association of Realtors and Bank of America v. Graves*, 51 Cal. App. 4<sup>th</sup> 607, 59 Cal. Rptr. 2<sup>nd</sup> 288 (1996) (HE 4, 5). For example under some circumstances, "to obtain a deficiency judgment, a lender must apply to the court for a deficiency judgment within three months of the judicial foreclosure sale." Kalin at 3. "No deficiency judgment is allowed following a trustee's sale." *Id.* at 4. However, "a borrower who takes out a construction loan for improvements or repairs, but not to finance a personal residence, is subject to a deficiency judgment." *Id.* at 5 (citation omitted), see also *id.* (discussing availability of deficiency as remedy for junior lien holders). In *California Association of Realtors and Bank of America v. Graves*, the court described several scenarios where junior lien holders lost or retained their legal right to obtain a deficiency judgment. Here, there is simply not enough information to determine whether the creditor in SOR ¶ 1.n has the option of obtaining a deficiency judgment against Applicant.

55) In 2009 to 2010, he had nine people living in his home. (Tr. 82)<sup>4</sup> He decided he would reduce his expenses and attempt to pay his creditors. (Tr. 70)

On July 30, 2010, an Office of Personnel Management (OPM) investigator interviewed Applicant. (GE 5 at 1-3) He acknowledged the SOR debts in his OPM interview and on his SF-86. (GE 5 at 3) He paid a bankruptcy attorney \$3,000, and he planned to file for bankruptcy in the next three months. (GE 5 at 3) He admitted he “had used credit cards [too] much to maintain a lifestyle that he was not able to afford after his marriage terminated. [He] stated that all his current past due debts came about after his separation from his wife.” (GE 5 at 3)

Applicant’s December 7, 2011 personal financial statement (PFS) described his monthly financial entries as follows: gross income of \$8,502; deductions of \$4,272 (includes garnishments); net income of \$5,454; expenses of \$4,930; debt payments of \$428 (for his vehicle loan); and net remainder of \$96. (Tr. 71-74; AE A) He had \$900 in an IRA and no other assets, and none of his debt payments were listed as being paid to the SOR creditors. (AE A) His three largest monthly expenses are \$1,500 for rent, \$1,250 for miscellaneous, \$800 for food, and \$800 for utilities. (AE A) He is paying the Federal Internal Revenue Service (IRS) \$400 per month to address a \$16,000 tax debt. (Tr. 75)<sup>5</sup> The IRS payment is included in the miscellaneous line on his PFS. (Tr. 76; AE A) Tax year 2011 will be the first tax year in four years where he did not underwithhold his tax payments. (Tr. 77) For the last four years, Applicant’s gross income has been about \$100,000 per year. (Tr. 81)

Although he did not provide written evidence of any negotiations such as offers or counter offers to make payments to these four SOR creditors, his statements about the ongoing negotiations are accepted as credible. He declined to provide any additional documentation after his hearing. (Tr. 84) His utilities, rent, vehicle payment, and other expenses of daily living are current. When the garnishments stop, a substantial amount of funds will be available to address the other SOR debts. (Tr. 88) Aside from his second mortgage debt, he thought he could pay all SOR creditors in less

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<sup>4</sup> In June 2010, Applicant’s fiancée and his fiancée’s adult daughter and two grandchildren lived with Applicant. *Compare* SF-86 at 57 *with* July 30, 2010 OPM PSI (indicating his fiancée moved in with her adult daughter).

<sup>5</sup> The SOR did not allege that Applicant failed to timely and fully pay his federal income taxes. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). In light of the lack of notice in the SOR about his failure timely and fully pay his federal income taxes, I decline to consider this derogatory financial information for any purpose.

than three years. (Tr. 77) He emphasized that he planned to pay all of his creditors,<sup>6</sup> and that a Chapter 7 Bankruptcy was not an option for him. (Tr. 79-80)

## Character Evidence

Applicant's DD Form 214 lists a Navy and Marine Corps Commendation Medal, four Navy and Marine Corps Achievement Medals, three Meritorious Unit Commendations, six Good Conduct Medals, two National Defense Service Medals, and three Sea Service Deployment Ribbons among other medals and ribbons. (GE 4 at 8) He completed seven years and 15 days of sea service. *Id.*

Applicant's character references and evaluations establish that he is a dedicated and reliable employee, who has excellent integrity. He is knowledgeable, patriotic, trustworthy, and professional, and had made substantial contributions to his employer and the Navy.

## 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 that, "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 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). 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 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

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<sup>6</sup> See ISCR 10-00194 at 5 (App. Bd. Feb. 1, 2011) (citing ADP Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (stating, "Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner.")).

information. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. 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 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 or her] 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**

### **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.

*Id.* (internal citation omitted). Applicant's history of delinquent debt is documented in his SF-86, credit reports, responses to DOHA interrogatories, his OPM interview, his SOR response, and his hearing. Applicant's SOR lists 16 delinquent debts totaling \$113,382. This includes \$42,037 in delinquent interest on his \$117,000 second mortgage. If the delinquent second mortgage is included, his delinquent SOR debt total is \$230,382. He did not provide sufficient information to refute his responsibility for his \$117,000 second mortgage. He indicated he received a settlement offer of \$20,000 from the creditor collecting on his second mortgage account. 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 limited application of AG ¶¶ 20(b), 20(c), and 20(d).<sup>7</sup> Applicant's financial situation was damaged in his separation

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



and divorce. He assisted other family members and nine people were living in his residence. However, he was separated from his spouse in 2003 and his divorce was final in May 2005, and his financial circumstances have been relatively stable for the last four years as he has earned about \$100,000 each year. One debt was paid through garnishment (SOR ¶ 1.h), and another debt was being involuntarily paid (SOR ¶ 1.o). He is credited with some financial counseling through his generation of a budget and receipt of advice from his divorce attorney. He showed some good faith when he admitted responsibility for his SOR debts in his SF-86, to the OPM investigator, in his response to DOHA interrogatories, in his SOR response, and at his hearing. He has not provided sufficient information about efforts to start paying his SOR creditors before 2011 to fully establish any mitigating conditions. His December 7, 2011 personal financial statement described gross monthly income of \$8,502 and net remainder of \$96. The debt in SOR ¶ 1.h (\$8,634) was paid in December 2011, and the monthly \$1,362 garnishment will be available to address other SOR debts. He did not describe how he is reducing his monthly expenses, which would allow him to have more money available each month to start paying his remaining SOR creditors.

Applicant did not establish that he acted responsibly under the circumstances. Although he maintained contact with the SOR creditors, and he attempted to negotiate some payment plans,<sup>8</sup> there are no receipts or account statements from creditors, establishing any payments to the SOR creditors, except for the creditors in SOR ¶¶ 1.h and 1.o. There is insufficient evidence that his financial problem is being resolved and is under control. The file lacks evidence that he has acted responsibly on 14 of his 16 SOR debts totaling \$213,766 and there is no track record of voluntary payments to his SOR creditors to support a conclusion that he will resolve his delinquent SOR debts in the near future.

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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)).

<sup>8</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.

## 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 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. 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.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. There is no derogatory information concerning Applicant's police records, illegal drug possession or use, or alcohol-related incidents. He is loyal to the United States. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information. Applicant is a 45-year-old employee of a defense contractor, who is sufficiently intelligent and mature to understand and comply with security requirements. He served in the Navy from May 1985 to May 2005 as an electronics technician. He honorably retired from the Navy at the grade of chief petty officer (E-7). He earned a Navy and Marine Corps Commendation Medal, four Navy and Marine Corps Achievement Medals, three Meritorious Unit Commendations, six Good Conduct Medals, two National Defense Service Medals, and three Sea Service Deployment Ribbons among other medals and ribbons. He sacrificed for his country during seven years and 15 days of sea service. His character references and evaluations establish that he is a dedicated and reliable employee, who has excellent integrity. He is knowledgeable, patriotic, trustworthy, and professional, and had made substantial contributions to his employer and the Navy.

Circumstances beyond Applicant's control caused him to have delinquent debt. He was divorced in May 2005. He provided support to his children and other relatives as well as to his fiancée and her relatives. Prior to his current employment, he was underemployed, and he was briefly unemployed after his retirement from the Navy. His utilities, rent, vehicle payment, and other expenses of daily living are current. His December 7, 2011 personal financial statement described gross monthly income of \$8,502 and net remainder of \$96. The debt in SOR ¶ 1.h (\$8,634) was paid in

December 2011, and the monthly \$1,362 garnishment will be available to address other SOR debts. He understands what he must do to establish his financial responsibility.

The financial circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. His SOR lists 16 delinquent debts totaling \$113,382. This includes \$42,037 in delinquent interest on his \$117,000 second mortgage. If the delinquent second mortgage is included, his delinquent SOR debt total is \$230,382. He did not provide sufficient information to refute his responsibility for his \$117,000 second mortgage. He indicated he received a settlement offer of \$20,000 from the creditor collecting on his second mortgage account. He paid one debt (SOR ¶ 1.h—\$8,634) and one debt is in an established payment plan (SOR ¶ 1.o—\$7,982). Applicant currently has 14 delinquent SOR debts totaling \$213,766. Those 14 debts have been delinquent for more than two years. Applicant's divorce was final in May 2005, and his financial circumstances have been relatively stable for four years. In 2010, he was considering filing for bankruptcy and did not begin making payments to address his delinquent SOR debts. In 2011, he paid more than \$10,000 through two garnishments and reduced his delinquent debt. However, he cannot receive full whole-person credit for resolving the debts in SOR ¶¶ 1.h and 1.o because his payments were not fully voluntary. It is unclear why he did not more aggressively address some of his smaller SOR debts (1.c for \$59; 1.d for \$321; 1.k for \$358; and 1.p for \$777) when he had the means to do so. He had an obligation to begin serious negotiations with his creditors and set up some voluntary payment plans or to save up sufficient funds to make some lump sum payments to creditors. If he reduced his standard of living and expenses, he could increase his net funds available to address his SOR debts. There is no evidence that any of the 14 SOR creditors have received any payments. Applicant has been receiving about \$100,000 per year for the last four years, and he has failed to provide sufficient evidence of progress resolving his 14 delinquent SOR debts to establish his financial responsibility.

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 Applicant has not fully mitigated the financial consideration security concerns.

### Formal Findings

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

Paragraph 1, Guideline F:	Against APPLICANT
Subparagraphs 1.a to 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i to 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	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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Mark Harvey  
Administrative Judge