



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



In the matter of: )  
)  
) ISCR Case No. 11-03581  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esq., Department Counsel  
For Applicant: *Pro se*

11/27/2012

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant has more than \$650,000 in unresolved debt. He rebutted the criminal and personal conduct concerns, but failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

**History of the Case**

Applicant contests the Department of Defense’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on February 14, 2012, detailing security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct.

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On June 1, 2012, Applicant answered the SOR and requested a hearing. On September 4, 2012, I was assigned the case. On September 4, 2012, DOHA issued a Notice of Hearing for the hearing held on September 17, 2012.

The Government offered exhibits (Ex.) 1 through 8, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through E, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On September 27, 2012, additional material was submitted. Department Counsel had no objection to the lack of timeliness or any other objection to the material, which was admitted into the record as Ex. F. On September 25, 2012, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.b, 1.c, 1.k, 1.l, and 2.c. He neither admitted nor denied the allegation in SOR ¶ 3.a. He admitted the remaining factual allegations. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 47-year-old structural engineer who has worked for a defense contractor since August 2010, and seeks to obtain a security clearance. He makes \$28.50 per hour. (Tr. 102) He called no witnesses other than himself, but provided four character reference letters. (Ex. B-E) His wife, coworkers, and supervisor state his character is above reproach, that he is loyal, honest, dedicated, punctual, knowledgeable, and a team player who works well with others. He volunteers for job tasks from which others turn away. (Ex. C) At work, he goes above and beyond what is expected. (Ex. D) He is active in his church. (Tr. 149)

In September 2002, Applicant filed for bankruptcy protection. (Ex. 4) In January 2003, his debts were discharged. He asserts the bankruptcy resulted from the decline of the housing market as he worked in the home construction business. Most of the \$900,000 debt was business debt, with \$150,000 the value of the home, and \$10,000 to \$20,000 listed as personal debt. (Tr. 33) He asserts that his customers failed to pay him \$300,000 to \$400,000, which he never received. (Tr. 35)

In 2002, Applicant and his then spouse, now former spouse, purchased 14 acres of land for \$180,000 and began building a house on the property. (Tr. 65, 66, 133) They obtained a million dollar construction loan with \$3,500 monthly payments. (Tr. 67) In 2005, the loan was converted to a conventional loan. It took five years to build the house, which later went to foreclosure. (Tr. 65) After August 2008, no one lived in the home after he left the house to attend school. His former spouse maintained a separate residence. (Tr. 123)

In late 2005 or 2006, Applicant's former spouse began handling the household's finances. (Tr. 62) Their 2006 state taxes were not paid. He asserts it was his former wife's responsibility to file and pay the taxes, which she failed to do. (Ex. 2) The state

put a tax lien on their home. He asserted, but failed to document, the lien was paid when his home went through foreclosure. (Ex. 2, Tr. 30) He also asserted, but failed to document, that he had contacted the state and the state agreed to remove his name from the lien if he sent them a copy of the tax return, which he alleged was fraudulently signed by someone purporting to be him. (Tr. 74)

In January 2008, Applicant became unemployed and remained unemployed until August 2008, when he went to school. (Tr. 104) During this period, he received no unemployment compensation. From August 2008 to January 2010, Applicant attended school in Canada. (Ex. 3) He never completed his studies. He paid \$5,000 for the first year, but owes the school \$2,500 for the first half of his second year. (Tr. 85) The first year's tuition was paid from a mortgage he obtained on his house. (Tr. 139)

In April 2008, Applicant and his former wife divorced, which cost him approximately \$5,000 in attorney fees. (Ex. A, Tr. 106) His former spouse waived child support for their then 16-year-old daughter. If she was later to claim child support, he was to be entitled to a \$20,000 child support credit. The divorce decree stated their house would be sold and the proceeds divided with Applicant to receive the larger of fifty percent of the proceeds or \$400,000. His former wife was to have possession of the property until sold and was to pay all debts and liabilities connected with the residence including the mortgage and utility bills. (Ex. A) In August 2010, Applicant and his former spouse resumed living together, sharing expenses, and he provided her with support. (Tr. 114) During this period he referred to her as his "common-law wife."<sup>2</sup> (Tr. 113-114)

Applicant asserts that after turning the key over to his former spouse she never made a mortgage payment, never paid the utility bills, and started dismantling the house. (Tr. 30) The house was never listed for sale. (Tr. 70) In 2009, he discovered she had stripped the home of countertops, cabinets, air conditioning units, and anything else of value. (Tr. 70) Applicant said he never had sufficient funds to enforce the decree, and, by that time, his former spouse had no funds should he obtain a judgment against her. (Tr. 31)

In early 2008, Applicant's lender started the foreclosure procedure when the mortgage was not paid. (Ex. 3) He asserted that the home was formerly worth \$2.2 million. In June 2008, which would have been after the divorce decree was entered, he obtained an \$80,000 second mortgage (SOR 1.d, \$78,525), which he used to pay bills and for school tuition. He was to pay \$500 to \$600 monthly on the debt. (Tr. 71) Applicant is unsure when the multimillion dollar house went to foreclosure. He believes the foreclosure may have occurred in late 2008 or 2009 and heard it sold for \$650,000. (Tr. 133) In November 2010, his former wife included the mortgage in her bankruptcy filing, which would relieve her of liability, but would not affect Applicant's liability on the mortgage.

Applicant worked as a field supervisor for his former father-in-law who ran a construction business. (Ex. 3, Tr. 38) Applicant, his former spouse, and former father-in-

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<sup>2</sup> Applicant also stated they never lived together after the divorce was final. (Tr. 124)

law, who is now deceased, had a number of financial dealings with Mr. A, which included doing construction work on Mr. A's home; his former father-in-law purchasing three house from Mr. A; and Mr. A purchasing a \$100,000 boat for Applicant and his former father's-in-law, on which they had agreed to make all monthly payments,

Applicant portrayed Mr. A as a criminal who was investigated by the FBI for various crimes. (Ex. 3) Applicant asserts he and his former father-in-law were victims of Mr. A's misconduct and that Mr. A faces sentencing in federal court later this year. (Tr. 29, 62) Applicant's former spouse, having pleaded guilty to money laundering and bank fraud, is currently facing 48 to 50 months in federal prison. (Tr. 62, 137) She is to testify against Mr. A. Applicant provided no documents supporting his allegations against Mr. A.

During the housing boom, homes were appreciating rapidly. Homes valued at \$300,000 would appreciate to \$500,000 in a year and to \$700,000 the following year. (Tr. 63) Applicant asserts, but failed to document, Mr. A would locate a house and have the owner agree to split an over-inflated sales price for the home. Mr. A would then locate a buyer, pay off an appraiser and the bank, and sell the overpriced property to an unsuspecting buyer. (Tr. 126) Applicant's former father-in-law purchased three homes from Mr. A, each for over a million dollars. (Tr. 125) Applicant asserts, but did not document, Mr. A did this to approximately 100 individuals. (Tr. 126)

In May 2008, Mr. A brought suit against Applicant, Applicant's former wife, and his former father-in-law alleging fraud, conversion, conspiracy to commit fraud, extortion, misrepresentation, and unfair and deceptive trade practices. (Ex. 5) In the summer of 2005, a boat and trailer was purchased by Mr. A for \$99,331. Applicant and his former father-in-law made a \$5,000 down payment and agreed to make the \$1,200 monthly payments. (Tr. 55) Mr. A convinced Applicant and his former father-in-law that the boat should be in his name because if it were placed in his former father-in-law's name, it might have a negative impact on his former father-in-law's ability to borrow sufficient funds to purchase the million dollar homes Mr. A was selling him. (Tr. 54)

Payments were made on the boat for two or three months. In August 2007, Applicant last saw the boat and trailer at the house and property owned by him and his former spouse when he returned the keys to the property to his former wife. (Tr. 59) Applicant never contacted Mr. A to come and get the boat. He says he tried to contact Mr. A, at some unspecified time, only to learn Mr. A had changed his telephone numbers, moved from his home, and was no longer in business. (Tr. 135) His former wife told him the boat sold for \$30,000. (Tr. 57)

The remainder of the judgment related to grading, building a retaining wall, landscaping, and other work Applicant and his former father-in-law had agreed to do on Mr. A's property. (Tr. 39) Applicant asserted that in late 2006 or 2007, he and his former father-in-law's construction company entered into an oral contract with Mr. A for work at his home. They obtained the contract after Mr. A sued the former construction company that was to do the same work on Mr. A's home. There was no written contract and the quoted price was \$100,000 for the work. (Tr. 40) The work started in the fall of 2006 and

work ceased in mid-2007. (Tr. 42) Until the spring of 2007, Mr. A made payments on the contract, but still owed Applicant \$250,000 for the contracted work. (Ex. 3) When the work ended, Applicant had completed work costing \$150,000. (Tr. 42)

Mr. A alleged he paid Applicant and Applicant's former father-in-law \$115,000 for the work performed and it would cost \$455,610 to repair and complete the work that remained to be done. (Ex. 5) The complaint alleges work to be completed that was never part of the original agreement including paving the driveway and other work. In 2009, Mr. A's home, where the work was to be done, went to foreclosure. (Tr. 142)

In August 2008, a \$554,941 default judgment in Mr. A's favor was entered against Applicant and the other defendants. The defendants failed to answer or respond to the complaint. Applicant asserts he never received notice. He has no knowledge as to the identity of the individual shown on the service of process as having signed for the service. The May 2008 service was by certified mail to an address from which he had moved in May 2007. He said he never saw the documents related to the judgment until provided by Department Counsel (DC) pursuant to this hearing. (Tr. 28) He stated his former spouse never told him about the lawsuit. (Tr. 127) While a student in Canada between August 2008 and January 2010, he learned of the judgment when it appeared on his credit bureau report (CBR). (Tr. 43, 44) In November 2010, he was asked about the judgment during his personal subject interview. (Ex. 3, Tr. 45) He asserted he was working with an attorney who was going to attempt to have the judgment set aside due to improper service. (Tr. 29, 47, 49) No documentation as to what the attorney was able to accomplish was presented.

At the hearing, Applicant said he had been working with an attorney *pro bono* for the three weeks prior to the hearing. Applicant is not contemplating settling any of the SOR debts because an attorney told him it was better if they were paid in full. (Tr. 88)

In May 2008, Applicant took a 20-day business and pleasure trip to a foreign country, which he funded with \$3,000 on his credit card. The balance was paid by an individual who was in the business of shipping goods to that country. (Tr. 117)

In September 2008, Applicant purchased a new \$30,637<sup>3</sup> car for his 17-year-old daughter with \$557 monthly payments. (Ex. 8, Tr. 128). At the time, he was a full-time student with no income, but anticipated he would be receiving \$400,000 from the sale of his home within six months. (Tr. 132) He said he had to buy the car because his former wife had lost the two vehicles she had been awarded five months earlier in the divorce decree.<sup>4</sup> (Tr. 96) He made nine monthly payments on the vehicle. (Ex. 3) As reported in his November 2010 CBR, the account was delinquent and closed in November 2009. As of November 2011, the account was listed as charged off and in collection. (Ex. 7) His former wife told him the lender repossessed the vehicle, the lender denied they had

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<sup>3</sup> Applicant chose to buy a new vehicle because the auto company was offering zero percent interest on new vehicles. (Tr. 131)

<sup>4</sup> The April 2008 divorce decree states Applicant's former spouse was to receive the Land Rover Discovery and the lease on the 2007 Cadillac Escalade. (Ex. A, Tr. 130)

repossessed it, and then it turned up in an auction in a different state where it sold for \$2,000 to \$3,000. (Tr. 94, 97) He last talked with the creditor a couple of years ago. (Tr. 98)

In November 2010, also when he was a full-time student with no income, Applicant purchased a vehicle for himself for \$24,000. (Tr. 129) He still has the vehicle and is current on the payments.

Applicant asserted he contacted the creditors listed in SOR 1.e through 1.j. and they all wanted the full balance paid and would not accept payment plans. (Tr. 31) He asserts he is currently contacting them and that he and his attorney will figure out what to do about these debts. (Tr. 31) He has not provided them with his current address. (Tr. 83) He provided no documentation showing contact with his creditors.

Applicant's current wife, whom he married in November 2011, is self-employed and earned \$18,000 last year. (Tr. 107, 115) They have \$45 in savings. (Tr. 89) He has \$20,000 in his 401(k) retirement plan. (Tr. 140) A month ago, he incurred approximately \$2,000 in moving expenses when his daughter went to college. (Tr. 91) He recently incurred \$5,000 in plumbing expenses. (Tr. 90) During the past year, he and his current spouse paid \$9,000 of her debt. (Tr. 99) He maintains a monthly budget. (Tr. 112) He is current on his \$915 monthly mortgage payments. (Tr. 109) He asserts he is living within his means. He is current on his car payments and current on payments for his wife's 2004 car. (Tr. 110) He has no credit, and he only deals in cash. (Tr. 111) There was no testimony related to financial counseling. He has paid approximately \$300 on nine debts not alleged in the SOR. (Tr. 153)

In June 2001, Applicant asserts his former wife attacked him, started hitting him, and she hit her head when he pushed her away. (Tr. 118) He spent two days in jail, and the charge of assault on a female was voluntarily dismissed. In June 2008, he was again arrested on the same charge, and the charge was again voluntarily dismissed. He stated that an argument with his former spouse about money escalated into a physical altercation. (Tr. 119) He asserts he was simply defending himself.

A summary of Applicant's judgment, accounts charged off, accounts placed for collection and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Chapter 7 bankruptcy September 2002.	\$900,000	Contributed to by the downturn in the housing market.
b	Default judgment obtained by Mr. A.	\$554,941	Unpaid.
c	State tax lien placed on his home for unpaid taxes.	\$5,673	Unpaid. Applicant asserts, but failed to document, this debt was paid when the house went to foreclosure.

	Creditor	Amount	Current Status
d	A charged-off credit union account.	\$78,525	Unpaid. Second mortgage obtained in June 2008. (Ex. 3) Divorce decree stated his former spouse was to make all mortgage payments. However, the loan was obtained two months after the April 2008 divorce decree.
e	Charged-off bank account. Account was opened to rebuild Applicant's credit. (Tr. 81)	\$3,010	Unpaid. Applicant asserts he contacted this creditor and the creditors in SOR 1.f through 1.j. They all wanted the full balance paid and would not accept payment plans. (Tr. 31)
f	Collection agency attempting to collect a bank debt.	\$853	Unpaid. See e above.
g	Collection agency attempting to collect a bank debt.	\$6,017	Unpaid. See e above.
h	Collection agency collecting for a bank debt.	\$6,547	Unpaid. See e above.
i	Collection agency attempting to collect on a credit card account for dental work. (Tr. 85)	\$2,703	Unpaid. See e above.
j	Collection agency attempting a credit card account.	\$2,102	Unpaid. See e above.
k	Automobile financial corporation charged-off account.	\$30,637	Unpaid.
l	Collection agency attempting to collect an electric bill.	\$651	Unpaid. Divorce decree stated his former spouse was to pay all utility bills. (Tr. 76)
	Total debt listed in SOR	\$691,659	

### 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 must be considered 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 interests of 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 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. In 2002, Applicant sought bankruptcy protection. In addition to an unresolved \$555,000 judgment, he has unresolved delinquent debts including: seven accounts placed for collection (\$22,000), state tax lien (\$5,673), credit union loan (\$78,525), and a vehicle repossession (\$30,637). Altogether, he has approximately \$690,000 in unresolved debt. AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

The following six Financial Considerations 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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant meets none of the mitigating factors for financial considerations. In November 2010, he had a personal subject interview in which his finances and delinquent accounts were reviewed. In November 2011, he answered written interrogatories about his unresolved delinquent obligations. Since being notified of the Government's concern about his unpaid debts, he has not made a single payment to any SOR creditor. His unresolved collection accounts are numerous and recent. He has not acted responsibly in addressing his debts. He has received no credit or financial counseling, has not demonstrated that his financial problems are under control, has no plan to bring his debts under control, and has not made a good-faith effort to satisfy his debts.

Applicant asserts he was never properly served in the civil judgment entered against him. He also asserts Mr. A is facing imprisonment for his own illegal conduct. At some future time, Applicant may obtain relief from the judgment, but until that time the judgment is a valid, unresolved obligation. However, the amount owed Mr. A would be the cost of the purchase price of the boat (\$99,331) less the amount recovered (\$30,000) from the sale of the boat, less any payments made on the boat, plus any additional interest or late charges added to the sale price. The amount owed Mr. A would be approximately \$60,000 and not the \$550,000 claimed in the judgment. But Applicant has known of the judgment since he was in school and has done little to have it set aside.

Under AG ¶ 20(a), Applicant's financial obligations are normal living expenses. Following his divorce decree, he obtained a \$78,000 loan on his house at a time when he was not working. He purchased a \$30,000 vehicle for his daughter when he had no income. His sole plan for repaying these debts was his hope that his home would sell and he would receive at least \$400,000 from the sale. The house went to foreclosure. He received nothing from the sale. His unresolved debt casts doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), in April 2008, Applicant was divorced. It has been four years since the divorce and other than the \$5,000 he incurred in legal fees, he has not documented the financial ramifications of the divorce on his ability to repay his creditors. He is not in contact with his creditors. When he last talked with them, they were unwilling to accept repayment plans. He has not acted responsibly under the circumstances. AG ¶ 20(b) does not apply to his unresolved financial obligations. Due to the downturn in the housing market, Applicant had to file for bankruptcy protection. This was beyond his control. AG ¶ 20(b) applies to his bankruptcy.

Applicant has not received financial counseling and there are no clear indications his financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. He has not made a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) does not apply.

Applicant disputes the judgment entered against him and three other debts. However, he has failed to establish he has a reasonable basis to dispute the legitimacy of the past-due obligations. Additionally, he has failed to provide documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue. AG ¶ 20(e) does not apply. AG ¶ 20(f) does not apply because affluence has not been alleged.

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” Applicant was arrested twice for assault on a female, once in 2001 and again in 2008. AG ¶ 31(a) “a single serious crime or multiple lesser offenses,” applies.

The arrests involved arguments with Applicant's former spouse that escalated into inappropriate conduct. Applicant asserts he was merely defending himself. Both charges were dismissed. It has been more than eleven years since the first incident and four since the second incident. Arguing with his former spouse about money is unlikely to recur. AG ¶ 32(a)<sup>5</sup> applies.

The escalating arguments over money could be considered pressure that caused the conduct. His former spouse is no longer a part of his life. AG ¶ 32(b)<sup>6</sup> applies. It has been more than four years since the last criminal conduct. Applicant has a good employment record, is active in his church, and attended higher education. AG ¶ 32(d)<sup>7</sup> applies. Applicant has mitigated the criminal conduct security concerns.

Fraud, extortion, misrepresentation, and unfair and deceptive trade practices were alleged against Applicant in a civil action that resulted in a judgment by Mr. A against Applicant, his former spouse, and his former father-in-law. Although criminal conduct was alleged, this was a civil lawsuit. No criminal action was ever pursued against Applicant for the alleged conduct. Since no criminal actions have been taken

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<sup>5</sup> AG ¶ 32(a) “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.”

<sup>6</sup> AG ¶ 32(b) “the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life.”

<sup>7</sup> AG ¶ 32(d) “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.”

and serious questions exist concerning this judgment, I find for Applicant as to this allegation under the criminal conduct guideline.

## **Personal Conduct**

Adjudicative Guideline (AG) ¶ 15 articulates the security concerns relating to personal conduct:

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 same three allegations of misconduct alleged under the criminal conduct guideline are also alleged under the personal conduct guideline. The judgment is a valid judgment until set aside. Applicant has raised doubt as to the nature of Mr. A and the facts related to the judgment. The record is insufficient for me to find the dated assaults and civil judgment created a personal conduct security concern. Although, Applicant is likely to owe less than the \$555,000 listed in the judgment, he still owes some amount, and has not acted to have the judgment set aside.

## **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 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has more than \$136,000 in unresolved debt plus a \$550,000 default judgment entered against him. He has not had any recent contact with his creditors. He failed to document any action taken by his

*pro bono* attorney. Since being questioned about his unresolved financial obligations in November 2010, he has made no payments on the debts listed in the SOR choosing instead to help address his current spouse's delinquent accounts.

The issue is not simply whether all his debts are paid—they are not—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

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

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.l:	Against Applicant

Paragraph 2, Criminal Conduct: FOR APPLICANT

Subparagraphs 2.a – 2.c:	For Applicant
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Paragraph 3, Personal Conduct: FOR APPLICANT

Subparagraph 3.a:	For Applicant
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### **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 a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge