



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-04819

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

08/03/2012

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On October 9, 2006, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on August 23, 2011.² On another unspecified date, DOHA issued him a set of interrogatories. He responded to those interrogatories on August 23, 2011.³ On another unspecified date, DOHA issued him a set of interrogatories. He responded to

¹ Government Exhibit 1 ((SF 86), dated October 9, 2006).

² Government Exhibit 2 (Applicant’s Answers to the Interrogatories, dated August 23, 2011).

³ Government Exhibit 3 (Applicant’s Answers to the Interrogatories, dated August 23, 2011).

those interrogatories on December 30, 2011.⁴ On March 30, 2012, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (financial considerations), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on April 11, 2012. In a notarized statement, dated April 25, 2012,⁵ Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 15, 2012, and the case was assigned to me on May 18, 2012. A Notice of Hearing was issued on July 6, 2012, and I convened the hearing as scheduled, on July 11, 2012.

During the hearing, 8 Government exhibits (GE 1-8) and 14 Applicant exhibits (AE A-N) were admitted into evidence, without objection. Applicant and one other witness testified. The hearing transcript (Tr.) was received on July 20, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and subsequently submitted a number of documents which were collated into 15 groups and admitted into evidence as Applicant exhibits (AE O-AC), without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations in the SOR (§§ 1.a. through 1.d., 1.f. through 1.g., 1.i., 1.j., and 1.m. through 1.r.). He denied the remaining factual allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a defense contractor, serving as a principal engineer,⁶ and he is seeking to retain the secret security clearance that was previously awarded to him in 2003.⁷ While he attended a university extension program

⁴ Government Exhibit 4 (Applicant's Answers to the Interrogatories, dated December 30, 2011).

⁵ Applicant's Answer to the SOR, dated April 25, 2012.

⁶ GE 1, *supra* note 1, at 11.

⁷ GE 1, *supra* note 1, at 31.

overseas from 1995 until 2002,⁸ it is unclear if he ever obtained a degree.⁹ Applicant served honorably on active duty with the United States Marine Corps (USMC) in an enlisted capacity from 1978 until 1982.¹⁰ The record is silent regarding Applicant's employment status or activities from 1982 until 1984. He was employed as a field engineer from 1984 until 2003, before joining his current employer in 2003.¹¹ Applicant was married to his first wife in 1975, and divorced in 1984.¹² He married his second wife in 1984, they separated in early 2008, and divorced in 2012.¹³ He and his second wife have three daughters, born in 1986, 1988, and 1990.¹⁴

Financial Considerations

There was nothing unusual about Applicant's finances until about January 2008 when he first started having financial problems, and began falling behind on his various payments.¹⁵ He attributed it to several factors: his second wife's emotional instability and refusal to stop engaging in pyramid scams;¹⁶ her opening credit accounts and then ignoring the unpaid balances; extending themselves beyond their means;¹⁷ maintaining an expensive temporary residence across the country for one year to make his job easier;¹⁸ and their separation with the associated extra costs of maintaining two residences, including spousal support.¹⁹ As to her emotional instability, Applicant's wife routinely sent money to individuals in Jamaica in the erroneous belief that she had won a lottery and had to send money in order to collect her winnings.²⁰ He repeatedly tried to

⁸ GE 1, *supra* note 1, at 10.

⁹ GE 1, *supra* note 1, at 10.

¹⁰ GE 1, *supra* note 1, at 25-26, 28; Tr. at 41.

¹¹ GE 1, *supra* note 1, at 11-12.

¹² GE 1, *supra* note 1, at 17.

¹³ GE 1, *supra* note 1, at 14-15; AE K (Decree of Divorce, dated May 23, 2012), at 4; Tr. at 41-42. During his interview with an investigator from the United States Office of Personnel Management (OPM) in October 2010, and during the hearing, Applicant indicated that he and his second wife had separated in early 2009. See GE 2 (Personal Subject Interview, dated October 25, 2010), at 1; Tr. at 41-42. However, in his answers to interrogatories, he claimed the separation occurred in January 2008. See GE 3, *supra* note 3, at 9.

¹⁴ GE 1, *supra* note 1, at 20-22

¹⁵ GE 2 (Personal Subject Interview), *supra* note 13, at 1; GE 3, *supra* note 3, at 9. It should be noted that as of October 2006, Applicant's credit report reflected accounts in good standing that had generally been paid satisfactorily. See GE 8 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 31, 2006).

¹⁶ GE 2 (Personal Subject Interview), *supra* note 13, at 1.

¹⁷ Tr. at 49; GE 2 (Personal Subject Interview), *supra* note 13, at 7.

¹⁸ Tr. at 47-49.

¹⁹ GE 2 (Personal Subject Interview), *supra* note 13, at 7; Tr. at 44-46.

²⁰ GE 2 (Personal Subject Interview), *supra* note 13, at 1-2.

have her stop doing so, but she rejected his entreaties.²¹ With the loss of her income, and as a result of his delayed payments to creditors, in late 2009, accounts became delinquent and were placed for collection or charged off.²² One account went to judgment.

Applicant's financial situation rapidly turned bleak. In 2009, after trying unsuccessfully to voluntarily relinquish his inoperable automobile because he could no longer afford to make payments on three vehicles and on his second mortgage, the automobile was repossessed.²³ In 2010, because his ex-wife failed to pay the mortgage on the house in which she had remained, the bank foreclosed on the mortgage.²⁴ In 2010, his wages were garnished by a creditor in the amount of \$350 per month to satisfy a delinquent credit card.²⁵ Applicant's ex-wife continued opening accounts in his name without his knowledge or permission, and those accounts eventually became delinquent.²⁶ In late 2010, Applicant started contacting his creditors in an effort to resolve his accounts. He resolved some accounts and commenced payments on others.²⁷

In August 2011, nearly six months before the SOR was issued, Applicant enrolled in a free credit counseling program which furnished financial counseling, budget development, and debt elimination guidance.²⁸ He enrolled in their debt management plan; establishing a budget and action plan, and identifying his creditors with a projected payment rate.²⁹ About three months before the hearing, Applicant obtained a \$3,000 salary advance to resolve some delinquent consumer debt.³⁰ Although Applicant's employer offers free financial counseling,³¹ he was too proud to seek such assistance, but not too proud to ask for the advance.³²

²¹ GE 2 (Personal Subject Interview), *supra* note 13, at 1-2.

²² Tr. at 47.

²³ GE 2 (Personal Subject Interview), *supra* note 13, at 4.

²⁴ GE 2 (Personal Subject Interview), *supra* note 13, at 4.

²⁵ GE 2 (Personal Subject Interview), *supra* note 13, at 4, 8.

²⁶ GE 2 (Personal Subject Interview), *supra* note 13, at 4.

²⁷ GE 2 (Personal Subject Interview), *supra* note 13, at 5.

²⁸ GE 3 (Credit Counseling File, various dates); AE AC (Credit Counseling File, various dates).

²⁹ GE 3 (Credit Counseling File), *supra* note 28; AE AC, *supra* note 26. See also AE N (Payment Schedule, undated).

³⁰ Tr. at 33-34.

³¹ Tr. at 91.

³² Tr. at 91-92.

The SOR identified 18 purportedly continuing delinquencies, totaling approximately \$56,266. Each account is described below, reflecting both the original and present status, as follows:

(SOR ¶ 1.a.): This is a bank credit card account with a high credit of \$10,468 that was past due in the amount of \$1,792, with an unpaid balance of \$10,093.³³ The account was charged off in September 2009.³⁴ In June 2010, the creditor obtained a judgment in the amount of \$10,268.³⁵ By garnishing Applicant's wages, the creditor started receiving monthly payments of \$349 in September 2010, and by June 2012, the unpaid remaining balance had been reduced to \$3,170.³⁶ The account is in the process of being resolved.

(SOR ¶ 1.b.): This is an automobile loan account with a high credit of \$20,445 that became delinquent, and after the vehicle was repossessed, the unpaid balance of \$11,652 was charged off.³⁷ The vehicle was sold by the creditor for \$1,400.³⁸ In late 2011, Applicant contacted the creditor's attorney in an effort to resolve the account, and in January 2012, the creditor agreed to a repayment plan. Under that plan, Applicant made monthly payments of \$150 until April 2012, at which time the payments increased to \$300 per month.³⁹ By June 12, 2012, because of court costs and interest, despite Applicant's payments, the unpaid balance had increased to \$14,559.⁴⁰ The account is in the process of being resolved.

(SOR ¶ 1.c.): This is a joint motorcycle loan account with a credit limit of \$6,500 that became delinquent, and \$4,133 was charged off in September 2010.⁴¹ Although Applicant initially contended to the OPM investigator that he reached an agreement with the creditor to make four payments each of \$650 per month beginning in October 2010,⁴² he was unable to meet that obligation and it was terminated. In August 2011, Applicant and the collection agent for the creditor agreed to monthly payments of \$161

³³ GE 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 8, 2010), at 15.

³⁴ GE 7, *supra* note 33, at 15.

³⁵ GE 7, *supra* note 33, at 5; Garnishment Summons, dated March 31, 2011, attached to Applicant's Answer to the SOR, *supra* note 5.

³⁶ AE A (Letter from creditor's attorney, dated June 14, 2012); AE A (Ledger Card, dated June 13, 2012).

³⁷ GE 7, *supra* note 33, at 7; AE B (Letter from creditor's attorney, dated June 12, 2012).

³⁸ AE W (Notice After Repossession or Voluntary Surrender, dated February 9, 2010), at 2.

³⁹ Letter from creditor's attorney, dated January 6, 2012, attached to Applicant's Answer to the SOR, *supra* note 5; AE B (Letters from creditor's attorney, various dates); AE B (Checks, various dates).

⁴⁰ AE B (Letter from creditor's attorney, dated June 12, 2012).

⁴¹ GE 7, *supra* note 33, at 8.

⁴² GE 2 (Personal Subject Interview), *supra* note 13, at 5.

to commence that month.⁴³ Applicant has made his monthly payments, and as of July 5, 2012, the remaining unpaid balance has been reduced to \$1,957.⁴⁴ The account is in the process of being resolved.

(SOR ¶ 1.d.): This is a telephone account with a past-due balance of \$793 that was charged off and sold to a collection agent.⁴⁵ Applicant claimed it belonged to his ex-wife and he was unaware of the account as the bills were sent to her.⁴⁶ It is unclear what motivated him to settle the account and start making payments, but in April 2012, the account was settled for \$476.⁴⁷ Applicant made his first monthly payment of \$238 in May 2012.⁴⁸ He made his final payment in July 2012, and the account now has a zero balance.⁴⁹ The account has been resolved.

(SOR ¶ 1.e.): This is another telephone account with a past-due balance of \$468 that was charged off and sold to a collection agent.⁵⁰ Applicant was initially unaware of the account and claimed it belonged to his ex-wife.⁵¹ It is unclear what motivated him to settle the account in January 2012, and start making payments, but the account was settled in full for \$132.⁵² Applicant made his final monthly payment of \$66 in February 2012,⁵³ and the account now has a zero balance.⁵⁴ The account has been resolved.

(SOR ¶ 1.f.): This is an employee credit union credit card account with a credit limit of \$5,000, a high credit of \$5,423, and an unpaid balance of \$3,248, that was past due in the amount of \$97.⁵⁵ The balance was charged off and placed for collection.⁵⁶ In

⁴³ AE Y (Letters from collection agent, various dates); AE C (Letters from collection agent, various dates); Letters from collection agent, various dates, attached to Applicant's Answer to the SOR, *supra* note 5. Copies of some of the letters appear in each grouping.

⁴⁴ AE C (Letter from collection agent, dated July 5, 2012).

⁴⁵ GE 7, *supra* note 33, at 9.

⁴⁶ GE 2 (Personal Subject Interview), *supra* note 13, at 5; GE 3, *supra* note 3, at 18.

⁴⁷ Letter from collection agent, dated April 14, 2012, attached to Applicant's Answer to the SOR, *supra* note 5.

⁴⁸ AE D (Letter from collection agent, dated May 12, 2012).

⁴⁹ AE AA (Letter from collection agent, dated July 18, 2012).

⁵⁰ GE 7, *supra* note 33, at 15.

⁵¹ GE 2 (Personal Subject Interview), *supra* note 13, at 5; GE 3, *supra* note 3, at 18.

⁵² Letter from collection agent, dated February 2, 2012, attached to Applicant's Answer to the SOR, *supra* note 5.

⁵³ AE R (Bank Statement, dated February 29, 2012), at 1, a copy of which is also attached to Applicant's Answer to the SOR, *supra* note 5.

⁵⁴ Letter from collection agent, dated February 3, 2012, attached to Applicant's Answer to the SOR, *supra* note 5.

⁵⁵ GE 7, *supra* note 33, at 11; GE 6 (Equifax Credit Report, dated August 1, 2011), at 2.

December 2011, Applicant and the creditor agreed to a repayment plan under which he was to make monthly payments of \$150.⁵⁷ By April 30, 2012, the remaining balance was reduced to \$2,343.⁵⁸ He has continued to do so, with his most recent payment being made on June 28, 2012.⁵⁹ The account is in the process of being resolved.

(SOR ¶ 1.g.): This is a credit union credit card account with a credit limit of \$5,000, and unpaid balance of \$5,745, that was past due in the amount of \$1,232.⁶⁰ The balance was charged off and placed for collection.⁶¹ The collection agent added unspecified costs in the amount of \$1,103, and as of June 2012, the total balance remaining on the account was \$6,848.⁶² This account, as well as two others with the same creditor and collection agent (SOR ¶¶ 1.n. and 1.p.), were merged by the debt management plan,⁶³ and Applicant has been making monthly payments of \$200, including \$66 on this account, since February 2012.⁶⁴ The account is in the process of being resolved.

(SOR ¶ 1.h.): This is a home repair center charge account with a high credit of \$5,473, and unpaid balance of \$5,473, that was past due in the amount of \$1,276.⁶⁵ The balance was charged off and sold to a collection agent in January 2010.⁶⁶ Applicant contended that he and the collection agent agreed to a settlement of \$3,785, as set out in correspondence that was supposedly attached to his Answer to the SOR,⁶⁷ but no such document was attached. He made a payment of \$185 on December 28, 2011,⁶⁸

⁵⁶ GE 6, *supra* note 55, at 2.

⁵⁷ GE 4, *supra* note 4, at 5.

⁵⁸ AE E (Transaction Summary, dated June 13, 2012).

⁵⁹ AE E, *supra* note 58; AE V (Bank Statement, dated June 30, 2012), at 3.

⁶⁰ GE 5 (Equifax Credit Report, dated February 17, 2012), at 2. It should be noted that the SOR ¶ 1.g. erroneously refers to the account with a balance of \$5,475, rather than \$5,745.

⁶¹ GE 5, *supra* note 60, at 2.

⁶² AE I (Account Payment History, dated June 11, 2012).

⁶³ Letter from collection agent, dated January 12, 2012, attached to Applicant's Answer to the SOR, *supra* note 5.

⁶⁴ AE R, *supra* note 53, at 3; AE S (Bank Statement, dated March 31, 2012), at 1; AE T (Bank Statement, dated April 30, 2012), at 2; AE U (Bank Statement, dated May 31, 2012), at 2; AE V, *supra* note 59, at 2.

⁶⁵ GE 7, *supra* note 33, at 15.

⁶⁶ GE 7, *supra* note 33, at 15; GE 6, *supra* note 55, at 4; GE 5, *supra* note 60, at 4.

⁶⁷ Applicant's Answer to the SOR, *supra* note 5, at 2.

⁶⁸ Applicant's Answer to the SOR, *supra* note 5, at 2; AE P (Bank Statement, dated December 31, 2011), at 4, a copy of which is also attached to Applicant's Answer to the SOR, *supra* note 5.

and his final payment of \$3,600 on January 13, 2012.⁶⁹ Although Applicant requested a statement from the collection agent that the account had been paid in full, no such statement was issued after nearly seven months.⁷⁰ Nevertheless, the account is reported as “paid” in Applicant’s June 2012 credit report.⁷¹ The account has been resolved.

(SOR ¶ 1.i.): Applicant’s October 2010 credit report listed a cell phone account with an unpaid balance of \$3,387.⁷² In November 2011, he attempted to resolve the account by contacting the creditor, but was referred to the collection agent.⁷³ The collection agent informed him that the account had been returned to the creditor.⁷⁴ The creditor has no record of the account.⁷⁵ Applicant has not received any responses from either the creditor or the collection agent since November 2011. The account is not listed in Applicant’s August 2011, February 2012, or June 2012 credit reports. Although Applicant believes he owes the money, based on the available evidence, I conclude that the account was either erroneously listed in the October 2010 credit report or has been resolved.

(SOR ¶ 1.j.): This is a bank credit card account with a credit limit of \$3,000 and unpaid balance of \$3,361 that was charged off and sold to a collection agent.⁷⁶ The collection agent engaged the services of an attorney to collect the unpaid balance.⁷⁷ Applicant contacted the attorney in an effort to resolve the account, but the attorney demanded monthly payments of \$580 for six months to settle the debt.⁷⁸ Applicant was unable to commit that size payment and offered \$100 per month.⁷⁹ Applicant has agreed to furnish the attorney’s representative with financial information in an effort to agree to a monthly payment amount.⁸⁰ If they are unsuccessful, Applicant has placed

⁶⁹ Applicant’s Answer to the SOR, *supra* note 5, at 2; AE Q (Bank Statement, dated January 31, 2012), at 2, a copy of which is also attached to Applicant’s Answer to the SOR, *supra* note 5.

⁷⁰ Applicant’s Answer to the SOR, *supra* note 5, at 2; Tr. at 65..

⁷¹ AE AB (Combined Experian, TransUnion, and Equifax Credit Report, dated June 4, 2012), at 3.

⁷² GE 7, *supra* note 33, at 19.

⁷³ GE 4, *supra* note 4, at 5; Tr. at 66-67.

⁷⁴ GE 4, *supra* note 4, at 5; Applicant’s Answer to the SOR, *supra* note 5, at 2; Tr. at 66.

⁷⁵ Applicant’s Answer to the SOR, *supra* note 5, at 2; Tr. at 67.

⁷⁶ GE 7, *supra* note 33, at 19; GE 6, *supra* note 55, at 4; GE 5, *supra* note 60, at 4; AE AB, *supra* note 71, at 2, 14. Applicant contended that the credit card belonged to his ex-wife and she was supposed to maintain it, but she has not done so. See Tr. at 68.

⁷⁷ AE AB, *supra* note 71, at 2; GE 4, *supra* note 4, at 5; Applicant’s Answer to the SOR, *supra* note 5, at 2.

⁷⁸ GE 4, *supra* note 4, at 5; Applicant’s Answer to the SOR, *supra* note 5, at 2; Tr. at 68-69.

⁷⁹ GE 4, *supra* note 4, at 5.

⁸⁰ GE 4, *supra* note 4, at 5.

the account in his debt management program for eventual monthly payments.⁸¹ While the account has not been resolved, Applicant is in the early stages of attempting to do so.

(SOR ¶ 1.k.): This is an electric utility account with a past-due balance of \$380 that was placed for collection in January 2010.⁸² In December 2011, repayment arrangements were made under which Applicant agreed to make monthly payments of \$75 until the account was resolved.⁸³ He complied with the repayment plan,⁸⁴ and the current balance is zero.⁸⁵ The account has been resolved.

(SOR ¶ 1.l.): This is a medical account with an unidentified medical provider with an unpaid balance of \$259 that was placed for collection.⁸⁶ Applicant was able to identify the medical provider, and in December 2011, paid the attorney representing that provider \$259.⁸⁷ The account has been paid in full,⁸⁸ and the account has been resolved.

(SOR ¶ 1.m.): This is a medical account with an unidentified medical provider with an unpaid balance of \$150 that was placed for collection.⁸⁹ Applicant was able to identify the medical provider, and paid the collection agent his initial monthly payment of \$50 on July 9, 2012.⁹⁰ The account has a remaining balance of \$145.⁹¹ The account is in the process of being resolved.

(SOR ¶ 1.n.): This is a credit union student loan account with a high credit of \$2,534 and a past-due unpaid balance of \$2,400.⁹² The balance was charged off and placed for collection.⁹³ The collection agent added interest and costs in the amount of

⁸¹ AE N, *supra* note 29.

⁸² GE 7, *supra* note 33, at 19.

⁸³ GE 4, *supra* note 4, at 5.

⁸⁴ AE P, *supra* note 68, at 4; AE Q, *supra* note 69, at 4; AE R, *supra* note 53; AE S, *supra* note 64, at 4; AE T, *supra* note 64, at 3.

⁸⁵ AE F (Payment Receipt, dated April 25, 2012); AE AB, *supra* note 71, at 5; Tr. at 70.

⁸⁶ GE 6, *supra* note 55, at 1.

⁸⁷ AE G (Letter from collection attorney, dated June 25, 2012); Tr. at 70.

⁸⁸ AE G, *supra* note 87.

⁸⁹ GE 6, *supra* note 55, at 1.

⁹⁰ AE H (Payment Receipt, dated July 9, 2012); Tr. at 71.

⁹¹ AE H, *supra* note 90.

⁹² GE 6, *supra* note 55, at 4.

⁹³ GE 6, *supra* note 55, at 4.

\$434, and as of June 2012, the total balance remaining on the account was \$2,834.⁹⁴ As noted above, this account, as well as two others with the same creditor and collection agent (SOR ¶¶ 1.g. and 1.p.), were merged by the debt management plan,⁹⁵ and Applicant has been making monthly payments of \$200, including \$66 on this account, since February 2012.⁹⁶ The account is in the process of being resolved.

(SOR ¶ 1.o.): This is a self-reported medical account with a medical provider with an unpaid balance of \$873 that does not appear in any of Applicant's credit reports.⁹⁷ Applicant was able to identify the medical provider, and he is currently negotiating a repayment plan with the collection agent.⁹⁸ The initial request was for 6 monthly payments of \$150 each, but Applicant countered with 12 monthly payments of \$75 each.⁹⁹ Applicant is awaiting a response to his offer.¹⁰⁰ If the negotiations are unsuccessful, Applicant has placed the account in his debt management program for eventual monthly payments.¹⁰¹ While the account has not been resolved, Applicant is in the early stages of attempting to do so.

(SOR ¶ 1.p.): This is a credit union line of credit account with a high credit of \$1,042 and a credit limit of \$1,000 that has an unpaid balance of \$638.¹⁰² The balance was charged off and placed for collection.¹⁰³ As of June 2012, the total balance remaining on the account was \$548.¹⁰⁴ As noted above, this account, as well as two others with the same creditor and collection agent (SOR ¶¶ 1.g. and 1.n.), were merged by the debt management plan,¹⁰⁵ and Applicant has been making monthly payments of \$200, including various different amounts on this account, since February 2012.¹⁰⁶ The account is in the process of being resolved.

⁹⁴ AE I, *supra* note 62, at 1.

⁹⁵ Letter from collection agent, *supra* note 63.

⁹⁶ AE R, *supra* note 53, at 3; AE S, *supra* note 64, at 1; AE T, *supra* note 64, at 2; AE U, *supra* note 64, at 2; AE V, *supra* note 59, at 2.

⁹⁷ GE 3, *supra* note 3, at 8.

⁹⁸ Tr. at 71-72.

⁹⁹ Tr. at 72.

¹⁰⁰ Tr. at 72.

¹⁰¹ AE N, *supra* note 81.

¹⁰² GE 7, *supra* note 33, at 9; GE 6, *supra* note 55, at 2; GE 5, *supra* note 60, at 2.

¹⁰³ GE 6, *supra* note 55, at 2. It is interesting to note that two of the three different credit reporting agencies reflect different unpaid balances on the same page of the same credit report. See AE AB, *supra* note 71, at 12.

¹⁰⁴ AE I, *supra* note 62, at 2.

¹⁰⁵ Letter from collection agent, *supra* note 63.

¹⁰⁶ AE R, *supra* note 53, at 3; AE S, *supra* note 64, at 1; AE T, *supra* note 64, at 2; AE U, *supra* note 64, at 2; AE V, *supra* note 59, at 2; AE I, *supra* note 62, at 2; AE Z (Letter from collection agent, dated July 2, 2012).

(SOR ¶ 1.q.): Applicant's February 2012 credit report listed an unspecified type of bank account with an unpaid balance of \$4,505.¹⁰⁷ The account, with no account number reflected, was charged off and closed at the consumer's request.¹⁰⁸ Applicant contended the account was actually one of his ex-wife's credit cards.¹⁰⁹ In fact, the account is a duplicate of the one identified in SOR ¶ 1.a. Applicant's August 2011 credit report listed the same account as having an unpaid balance of \$6,775,¹¹⁰ while the October 2010 credit report listed it as having an unpaid balance of \$10,093.¹¹¹ The diminishing unpaid balance can be attributed to the garnishment of Applicant's wages that has been in place since 2010. As noted above, the account is in the process of being resolved.

(SOR ¶ 1.r.): This is an unspecified account with a high credit limit of \$468 and a past-due balance of \$137.¹¹² The account is actually a duplicate of the telephone account alleged in (SOR ¶ 1.e.) that had a past-due balance of \$468 that was charged off and sold to a collection agent.¹¹³ As noted above, the account was settled in full for \$132.60. Applicant made his final monthly payment of \$66 in February 2012, and the account now has a zero balance. The account has been resolved.

In July 2012, Applicant's annual salary was \$115,835, and his net monthly income was \$6,849.¹¹⁴ His monthly expenses were \$1,943, and his debt payments to his various creditors, including alimony for his ex-wife, were \$4,754.¹¹⁵ He had a small balance for discretionary spending or savings. Applicant has no other debts as all of his accounts are current.¹¹⁶ Applicant intends to continue his repayment arrangements, and make larger payments when he is able to do so, until all of his accounts are resolved.

Character References

The chief executive officer of the government contractor for whom Applicant works has known Applicant since May 2003, and is fully aware of Applicant's financial situation. He noted that Applicant has "always been a top quality performer," and has

¹⁰⁷ GE 5, *supra* note 60, at 2.

¹⁰⁸ GE 5, *supra* note 60, at 2.

¹⁰⁹ Tr. at 72.

¹¹⁰ GE 6, *supra* note 55, at 2.

¹¹¹ GE 7, *supra* note 33, at 15.

¹¹² GE 5, *supra* note 60, at 4.

¹¹³ GE 7, *supra* note 33, at 15; AE AB, *supra* note 71, at 3. It should be noted that the account numbers are identical.

¹¹⁴ AE L (Monthly Income and Expenses, dated July 11, 2012), at 1.

¹¹⁵ AE L, *supra* note 114, at 2.

¹¹⁶ Tr. at 81.

received the top rating of any employee in the company. Applicant has been an employee of the year.¹¹⁷ Applicant's reputation for honesty and integrity is excellent, and he is trusted "implicitly."¹¹⁸ He is reliable and dependable.¹¹⁹

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."¹²⁰ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."¹²¹

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

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

In the decision-making process, facts must be established by "substantial evidence."¹²² The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced

¹¹⁷ Tr. at 36-37.

¹¹⁸ Tr. at 37-38.

¹¹⁹ Tr. at 38.

¹²⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹²¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹²² "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.¹²³

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."¹²⁴

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."¹²⁵ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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

¹²³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹²⁴ *Egan*, 484 U.S. at 531

¹²⁵ See Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly, under AG ¶ 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant’s financial problems commenced in about 2008 when accounts became delinquent and were placed for collection, charged off, or went to judgment. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *“the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”* Also, under AG ¶ 20(b), financial security concerns may be mitigated where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.”* Evidence that *“the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control”* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”*¹²⁶

AG ¶¶ 20(a) and 20(b) partially apply. Applicant’s financial problems commenced in 2008 when he began falling behind on his various payments. He attributed his financial problems to several factors, most of which were beyond his control: his second wife’s emotional instability and refusal to stop engaging in pyramid scams; her opening credit accounts and then ignoring the unpaid balances; extending themselves beyond their means; maintaining an expensive temporary residence in California for one year to make his job easier; and their separation with the associated extra costs of maintaining two residences, including spousal support. Although Applicant tried to stop his wife from spending money on a Jamaican lottery scam, he could not do so. Even after they separated, she continued to increase the unpaid balances of various accounts, and essentially ignored her financial responsibilities while causing Applicant’s financial situation to deteriorate. He finally diminished the negative impact she was having on his financial situation and divorced his wife, but only after agreeing to pay her significant

¹²⁶ The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

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

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

alimony. With the exception of extending themselves beyond their means, all of Applicant's financial problems occurred under such circumstances that they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment.¹²⁷

AG ¶¶ 20(c) and 20(d) apply. In late 2010, Applicant started contacting his creditors in an effort to resolve his accounts. He resolved some accounts and commenced payments on others. Nearly six months before the SOR was issued, Applicant enrolled in a free credit counseling program which furnished financial counseling, budget development, and debt elimination guidance. He enrolled in their debt management plan; establishing a budget and action plan, and identifying his creditors with a projected payment rate. He obtained a \$3,000 salary advance to resolve some delinquent consumer debt. Applicant followed the financial guidance received, and continued to make his monthly payments to his remaining creditors. Circumstances may have been such that Applicant was unable to resolve all of his accounts by bringing them up-to-date or resolving them before the SOR was issued, but he did do so with several of his accounts. His failure with respect to his remaining accounts was not for lack of trying.¹²⁸

There is a substantial risk when one accepts, at face value, the contents of a credit report without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the combined Experian, TransUnion, and Equifax credit reports and the Equifax credit reports referred to numerous creditors for relatively few delinquent accounts. Because of abbreviated names and acronyms, many of those entries are garbled and redundant, and have inflated the financial concerns. Likewise, the absence of account numbers or the true identity of the original creditors in the SOR to link an allegation to a particular account makes it more difficult for an applicant to track down the various creditors or collection agents associated with those accounts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

¹²⁷ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

¹²⁸ "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.

(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.

There is evidence against mitigating Applicant's conduct. He allowed several accounts to become delinquent, and they were either placed for collection, charged off, or went to judgment.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems commenced in 2008 when he began falling behind on his various payments because of his second wife's emotional instability; her refusal to stop engaging in pyramid scams; her opening credit accounts and then ignoring the unpaid balances; maintaining an expensive temporary residence in California for one year to make his job easier; and their separation with the associated extra costs of maintaining two residences, including spousal support. Applicant attempted to limit the damage his wife was causing his financial situation, and finally divorced her, but only after agreeing to pay her significant alimony. Most of Applicant's financial problems occurred under such circumstances that they are unlikely to recur. Applicant sought guidance and assistance of a consumer debt counselor. He enrolled in their debt management plan; establishing a budget and action plan, and identifying his creditors with a projected payment rate. Some accounts were settled; some have been paid off; and he has continued to make his monthly payments to his remaining creditors. Applicant's efforts pertaining to his delinquent accounts have been unrelenting, and have eliminated any doubt as to his current reliability, trustworthiness, or good judgment. Moreover, several of the accounts alleged in the SOR are duplicates of other accounts alleged in the SOR. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.¹²⁹ Applicant's continuing good-faith efforts have been extensive, and are sufficient to mitigate security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:¹³⁰

¹²⁹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

¹³⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a meaningful track record of debt reduction and elimination. Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant

Subparagraph 1.p:
Subparagraph 1.q:
Subparagraph 1.r:

For Applicant
For Applicant
For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge