



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-08484

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro se*

02/28/2013

**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 February 16, 2010, Applicant applied for a public trust position and submitted a Questionnaire for Public Trust Positions (SF 85).<sup>1</sup> On March 8, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>2</sup> On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on August 7, 2012.<sup>3</sup> On an unspecified date, the DOD issued him another set of interrogatories. He responded to

<sup>1</sup> GE 2 ((SF 85), dated February 16, 2010).

<sup>2</sup> GE 1 ((SF 86), dated March 8, 2011).

<sup>3</sup> GE 3 (Applicant's Answers to Interrogatories, dated April 7, 2012).

those interrogatories on August 7, 2012.<sup>4</sup> On September 7, 2012, the DOD issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD 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 the DOD adjudicators were 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 received the SOR on November 2, 2012. In a sworn statement, dated November 15, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On December 13, 2012, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on January 4, 2013. A Notice of Hearing was issued on January 25, 2013, and I convened the hearing, as scheduled, on February 14, 2013.

During the hearing, eight Government exhibits (GE 1 through GE 8) and five Applicant exhibits (AE A through AE E) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 25, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted additional documents which were grouped and marked as exhibits (AE F through AE L) that were admitted into evidence without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted three (¶¶ 1.c., 1.f., and 1.g.) of the factual allegations pertaining to financial considerations. 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 51-year-old employee of a defense contractor who, since February 2010, has served as a procurement specialist. He was previously employed by other employers in various positions, including mortgage company vice president, escrow and title company vice president, mortgage company loan processor, and mortgage company loan originator.<sup>5</sup> He has no military service.<sup>6</sup> It is unclear if Applicant was ever

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<sup>4</sup> GE 4 (Applicant's Answers to Interrogatories, dated April 7, 2012).

<sup>5</sup> GE 1, *supra* note 2, at 10-16.

<sup>6</sup> GE 1, *supra* note 2, at 17.

granted a security clearance, although he believes he was granted a “general clearance” to allow him access to the facility where he works.<sup>7</sup> Applicant received a bachelor’s degree in psychology in June 1990.<sup>8</sup> He has never been married, and he has no children.

## Financial Considerations

There apparently was nothing unusual about Applicant’s finances until about 2007. In the years prior to that point, Applicant had worked in the real estate and mortgage industry in the region for about 20 years, deriving a stable annual income, based on commissions, bonuses, and transaction fees, of between \$65,000 and \$70,000.<sup>9</sup> He lived a modest, but comfortable, lifestyle, and was able to invest in real estate. All of his accounts were current.<sup>10</sup> However, commencing in 2007, and continuing over the next few years, several events occurred that caused him financial problems that made it difficult for him to remain current on all of his accounts. First, the national, and especially the local, real estate markets deteriorated dramatically as the economy collapsed. His annual income plummeted to \$25,000 to \$30,000, and remained there until 2010.<sup>11</sup> In addition, Applicant’s mother was diagnosed with a medical malady for which treatment was expensive, and which, until her death, created a financial burden on him.<sup>12</sup> As a result of the reduced income and increased medical expenses, Applicant exhausted his savings to meet monthly living expenses and debt.<sup>13</sup> Nevertheless, accounts became delinquent and were either placed for collection or charged off.

He sought guidance from a financial attorney who advised Applicant to seek protection under bankruptcy. But Applicant chose not to avoid his creditors because he felt obligated to work out repayment of his debts.<sup>14</sup> He spoke with, and reviewed, several debt reduction advisors and programs, and selected one program, which he has followed. He contacted the creditors and collection agents regarding his delinquent accounts, and tried to work out repayment arrangements.<sup>15</sup> He also set up a budget and a repayment schedule reflecting anticipated steps in his repayment plan. His plan prioritizes accounts, from smallest to highest balances. Initially, he was only able to

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<sup>7</sup> GE 1, *supra* note 2, at 28; Tr. at 7.

<sup>8</sup> GE 1, *supra* note 2, at 9; Tr. at 25.

<sup>9</sup> Applicant’s Answer to the SOR, dated November 15, 2012, at 1; Tr. at 25-26.

<sup>10</sup> Applicant’s Answer to the SOR, *supra* note 9, at 1; Tr. at 26.

<sup>11</sup> Applicant’s Answer to the SOR, *supra* note 9, at 1. During the hearing, Applicant testified that his annual income dropped to approximately \$22,000 in 2007. See, Tr. at 26.

<sup>12</sup> Applicant’s Answer to the SOR, *supra* note 9, at 1.

<sup>13</sup> AE F (Statement, dated February 20, 2013).

<sup>14</sup> GE 4 (Personal Subject Interview, dated March 25, 2011, at 3).

<sup>15</sup> AE J (Statement, undated).

make a monthly \$50 payment to one creditor, but as he satisfied one creditor, the anticipated payments rolled over to other identified debts, and he was able to increase his monthly payments to \$300.<sup>16</sup> Applicant took full responsibility for his remaining debts, and he intends to pay them off one bill at a time. He has been paying off various smaller accounts, as well as other accounts that are apparently not listed in the SOR, with the intention of eventually addressing the remaining larger accounts.<sup>17</sup> He also obtained part-time employment to supplement his income.<sup>18</sup>

During his interview with an investigator from the U.S. Office of Personnel Management (OPM) in March 2011, Applicant provided a personal financial statement reflecting a monthly net salary of \$3,256.89; monthly household, utility, transportation, and food expenses of \$1,693.64; and monthly debt repayments of \$1,475.81; leaving a monthly remainder of \$87.44, available for discretionary spending or savings.<sup>19</sup> Applicant's 2013 budget reflects a monthly net income of \$3,068; and monthly debt payments of \$300.<sup>20</sup> He has a combined \$700 in his checking and saving accounts; and a combined \$54,000 in his retirement accounts.<sup>21</sup> Other than two debts, described further below, Applicant has no other financial delinquencies, as he had resolved all the other delinquent accounts by the end of 2012.<sup>22</sup>

The SOR identified seven purportedly continuing delinquencies. Those accounts can be divided into two separate categories: those already paid off or otherwise resolved, and those for which attempts to do so have been difficult or unsuccessful for reasons beyond his control.

In the first category, there is a cable account that had an unpaid balance of \$449 that was placed for collection (**SOR ¶ 1.a.**).<sup>23</sup> Applicant acknowledged having the cable service, but contended that when the service was discontinued, the technician removed the cable equipment, but failed to issue Applicant a receipt.<sup>24</sup> The amount sought was for the cost of the missing equipment. Nevertheless, the account was paid in full before the SOR was issued,<sup>25</sup> and the creditor subsequently confirmed that the account was satisfied.<sup>26</sup>

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<sup>16</sup> AE J, *supra* note 15; AE F, *supra* note 13.

<sup>17</sup> AE F, *supra* note 13; AE J, *supra* note 15.

<sup>18</sup> AE G (2013 Personal Budget, undated); AE F, *supra* note 13.

<sup>19</sup> GE 4, *supra* note 13, at 7.

<sup>20</sup> AE G, *supra* note 18. It should be noted that while \$300 is budgeted for payments, those payments are not actually made for reasons described more fully below.

<sup>21</sup> AE H (Net Worth Spreadsheet, undated).

<sup>22</sup> AE H, *supra* note 21; AE J, *supra* note 15.

<sup>23</sup> GE 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 16, 2011), at 7.

<sup>24</sup> GE 4, *supra* note 13, at 5.

<sup>25</sup> GE 3, *supra* note 3, at 13-14; Tr. at 30.

There is also a bank credit card account in the amount of \$8,069 that was placed for collection and charged off (**SOR ¶ 1.b.**)<sup>27</sup> On May 15, 2012, Applicant and the plaintiff-creditor agreed that the account would be settled and resolved by a lump sum payment in the amount of \$4,100.<sup>28</sup> The payment was made, and the case against Applicant was dismissed with prejudice on June 15, 2012, months before the SOR was issued.<sup>29</sup>

There is a bank credit card account in the amount of \$2,591.76 that was placed for collection and charged off (**SOR ¶ 1.d.**)<sup>30</sup> The unpaid balance was increased to \$2,941.76.<sup>31</sup> On May 14, 2012, Applicant and the plaintiff-creditor agreed that the account would be settled and resolved by three payments in the total amount of \$2,150.<sup>32</sup> The payment was made, and the case against Applicant was dismissed on May 31, 2012, months before the SOR was issued.<sup>33</sup>

There is a bank credit card account in the amount of \$4,709 that was placed for collection, charged off, and sold to a debt purchaser (**SOR ¶ 1.e.**)<sup>34</sup> On some unspecified date, Applicant and the debt purchaser agreed to an unspecified repayment plan, and by August 7, 2012, one month before the SOR was issued, Applicant made his final payment on the account, and the matter was deemed resolved.<sup>35</sup> The payment was made, and the case against Applicant was dismissed on May 31, 2012, months before the SOR was issued.<sup>36</sup>

There is a home mortgage loan in the amount of \$345,000 on Applicant's former primary residence, on which he managed to make timely monthly payments to reduce

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<sup>26</sup> AE A (Letter, dated November 8, 2012).

<sup>27</sup> GE 7, *supra* note 23, at 7.

<sup>28</sup> AE I (Stipulation for Settlement, dated May 15, 2012).

<sup>29</sup> AE I, *supra* note 28; AE B (Notice of Voluntary Dismissal With Prejudice, dated June 15, 2012). AE B was attached to GE 3, and submitted to the DOD in August 2012, and AE B was attached to Applicant's Answer to the SOR; Tr. at 31.

<sup>30</sup> GE 7, *supra* note 23, at 6.

<sup>31</sup> AE C (Letter, dated November 14, 2012).

<sup>32</sup> Stipulation for Settlement, dated May 14, 2012, attached to GE 3, and submitted to the DOD in August 2012.

<sup>33</sup> Stipulation for Settlement, *supra* note 32, at 2; AE C, *supra* note 31. AC C was attached to Applicant's Answer to the SOR.

<sup>34</sup> GE 7, *supra* note 23, at 6.

<sup>35</sup> AE D (Letter, dated August 7, 2012). AE D was attached to Applicant's Answer to the SOR.

<sup>36</sup> Stipulation for Settlement, *supra* note 32, at 2; AE C, *supra* note 31. AC C was attached to Applicant's Answer to the SOR.

the unpaid balance to about \$288,000 (**SOR ¶ 1.g.**).<sup>37</sup> Because of the difficulty in continuing to make timely payments due to his reduced income, Applicant initiated the mortgage modification process. He made his agreed payments and put the house on the market. Nothing happened for three years, except the real estate market in the area continued to plummet. In June 2012, despite the new unpaid balance on the account being \$319,397.32, the mortgage holder accepted a short sale offer in the amount of \$159,000.<sup>38</sup> The property was sold on June 27, 2012.<sup>39</sup> The mortgage was released in July 2012, and the account was resolved with the mortgage holder expressing “full payment and satisfaction.”<sup>40</sup> Since the mortgage was cancelled and discharged by the release, contrary to the SOR allegation, there is no deficiency balance.<sup>41</sup>

In the second category, there is a home equity account or unsecured line of credit with an unpaid balance of \$27,630 that was placed for collection and charged off (**SOR ¶ 1.c.**).<sup>42</sup> Applicant has repeatedly called the creditor in an effort to establish a repayment plan, but the bank is unable to locate his account records. He was advised not to make any payments until those records could be located.<sup>43</sup> Applicant has furnished the bank with his contact information, and he is hoping to resolve the account as soon as possible.

There is an account with a national retail home improvement store with an unpaid balance of \$2,532 that was placed for collection, charged off, and sold to a debt purchaser (**SOR ¶ 1.f.**).<sup>44</sup> Although the account is listed in the various credit reports as an individual account in Applicant’s name, he contends that he was merely an authorized user of the account of his former business partner.<sup>45</sup> The collection agent informed Applicant that since he is not a joint owner on the account, and there is no power of attorney from the account owner, they would not share account information with Applicant.<sup>46</sup> The account owner is incapacitated by a stroke.<sup>47</sup> Applicant would pay

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<sup>37</sup> GE 7, *supra* note 23, at 10; Applicant’s Answer to the SOR, at 2-3.

<sup>38</sup> Letter, dated June 13, 2012, with associated documents, attached to GE 3, and submitted to the DOD in August 2012.

<sup>39</sup> Settlement Statement, dated June 27, 2012, attached to GE 3, and submitted to the DOD in August 2012.

<sup>40</sup> AE E (Release of Mortgage, dated July 10, 2012). A copy of the document was attached to Applicant’s Answer to the SOR.

<sup>41</sup> AE E, *supra* note 40.

<sup>42</sup> GE 7, *supra* note 23, at 5; Applicant’s Answer to the SOR, at 2.

<sup>43</sup> Tr. at 34-37; GE 3, *supra* note 3, at 4; Applicant’s Answer to the SOR, at 2.

<sup>44</sup> GE 7, *supra* note 23, at 10; Applicant’s Answer to the SOR, at 2.

<sup>45</sup> Tr. at 40-41; Applicant’s Answer to the SOR, at 2. *See also*, GE 7, *supra* note 23, at 10; GE 5 (Equifax credit report, dated December 13, 2012, at 2.

<sup>46</sup> Tr. at 40-41; Applicant’s Answer to the SOR, at 2.

<sup>47</sup> Applicant’s Answer to the SOR, at 2.

the account if he were permitted to do so.<sup>48</sup> He intends to follow up the matter with the family of the account owner and the current debt holder.<sup>49</sup>

## **Work Performance**

Applicant's work performance has been described by two senior company managers in extremely positive terms. He has been described as reliable, dedicated, eternally upbeat, extremely courteous, exceptionally professional, adept, and honest.<sup>50</sup>

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>51</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>52</sup>

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

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

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<sup>48</sup> Tr. at 41.

<sup>49</sup> Tr. at 44-48. See also, AE K (Letter, dated February 19, 2013).

<sup>50</sup> AE L (Character Reference, dated November 8, 2012; Performance and Development Summary, dated October 19, 2011; E-mail, dated August 23, 2012).

<sup>51</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>52</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”<sup>53</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>54</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>55</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>56</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline F, Financial Considerations

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

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<sup>53</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>54</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>55</sup> *Egan*, 484 U.S. at 531

<sup>56</sup> See Exec. Or. 10865 § 7.



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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Commencing in 2007, Applicant started experiencing some financial difficulties, and over the next few years those difficulties increased to the point where he was unable to make routine monthly payments for a number of accounts. His accounts eventually started becoming delinquent and were placed for collection or charged off. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.<sup>57</sup>

AG ¶ 20(a) partially applies, and AG ¶¶ 20(c) and 20(d) apply. The nature, frequency, and relative recency of Applicant's continuing and escalating financial difficulties since 2007 make it difficult to conclude that it occurred "so long ago" or "was

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<sup>57</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

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

so infrequent.” Although he had extensive experience in finance as a mortgage company vice president, escrow and title company vice president, mortgage company loan processor, and mortgage company loan originator, Applicant consulted with both a financial attorney and a debt reduction advisor. With the guidance received from the debt reduction advisor, Applicant prioritized his accounts and contacted his creditors and collection agents. While he was unable to commence making payments simultaneously on all of the accounts, Applicant did enter into repayment plans with nearly all of his creditors. The result has been positive. Applicant has resolved all but two of the accounts, including five of the seven that are in the SOR and all that are not. If the two remaining creditors or collection agents referred to in the SOR would cooperate with him, Applicant is prepared to resolve those two accounts as well. Applicant’s actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>58</sup>

AG ¶ 20(b) applies. For about 20 years prior to 2007, Applicant had worked in the real estate and mortgage industry in the region, deriving a stable annual income, based on commissions, bonuses, and transaction fees, of between \$65,000 and \$70,000. However, commencing in 2007, and continuing over the next few years, several events occurred that caused him financial problems that made it difficult for him to remain current on all of his accounts. First, the national, and especially the local, real estate markets deteriorated dramatically as the economy collapsed. His annual income plummeted to \$25,000 to \$30,000, and remained there until 2010. In addition, the expenses associated with his mother’s medical malady and death, created an additional financial burden on him. As a result of the reduced income and increased medical expenses, Applicant exhausted his savings to meet monthly living expenses and debt. Accounts became delinquent and were either placed for collection or charged off. Applicant’s indebtedness was not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were largely beyond his control. Under the circumstances, Applicant acted responsibly by addressing his delinquent accounts rather than avoiding them.<sup>59</sup>

### **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):

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<sup>58</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>59</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.

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>60</sup>

There is some evidence against mitigating Applicant's conduct. His handling of his finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection or charged off.

The mitigating evidence under the whole-person concept is more substantial. Applicant sought the assistance of both a financial attorney and a debt reduction advisor. With the guidance received from the debt reduction advisor, Applicant prioritized his accounts and contacted his creditors and collection agents. While he was unable to commence making payments simultaneously on all of the accounts, Applicant did enter into repayment plans with nearly all of his creditors. The result has been positive. Applicant has resolved all but two of the accounts, including five of the seven that are in the SOR and all that are not. If the two remaining creditors or collection agents referred to in the SOR would cooperate with him, Applicant is prepared to resolve those two accounts as well. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment. He possesses an excellent reputation in the workplace.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>61</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of

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<sup>60</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>61</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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. Applicant has made some significant timely efforts to resolve his accounts. This decision should serve as a warning that his failure to continue his debt resolution efforts or the accrual of new delinquent debts will adversely affect his future eligibility for a security clearance. 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. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

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

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|---------------------------|---------------|
| 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 |

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge