DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 11-08844
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

10/18/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On May 2, 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).[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 April 9, 2012.[2] On May 4, 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*

[1] GE 1 ((SF 86), dated May 2, 2011).

[2] GE 2 (Applicant's Answers to Interrogatories, dated April 9, 2012).

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 May 14, 2012. In a sworn statement, dated June 14, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On July 12, 2012, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on August 9, 2012. A Notice of Hearing was issued on September 5, 2012, and I convened the hearing, as scheduled, on September 25, 2012.

During the hearing, four Government exhibits (GE 1 through 4) and two Applicant exhibits (AE A and B) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on October 2, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted seven additional exhibits (AE C through I) that were admitted into evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted all ten (¶¶ 1.a. through 1.j.) of the factual allegations pertaining to financial considerations of the SOR. 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 56-year-old employee of a defense contractor who, since April 1981, has been promoted to various positions, but now serves as a senior manager, production operations.[3] He has never served in the U.S. military.[4] He has held a secret security clearance since 1988.[5] Applicant received a Bachelor of Science in Engineering in 1981, and a Master of Science in Engineering in 1984, and has, over a number of subsequent years, completed various graduate courses in the doctoral degree program.[6]

[3] GE 1, *supra* note 1, at 10.

[4] GE 1, *supra* note 1, at 12.

[5] GE 1, *supra* note 1, at 28.

[6] GE 1, *supra* note 1, at 9; Tr. at 18; GE 2 (Personal Subject Interview, dated May 23, 2011), at 4.

Applicant was married in August 1978, and he has four children (two sons, born in 1979 and 1986, and two daughters, born in 1976 and 1988).[7] He coached children's sports for 17 consecutive years, and has had at least one child in college for the past 18 years.[8]

Financial Considerations

There apparently was nothing unusual about Applicant's finances until about 2007. He had built a five-bedroom home several years earlier, and as the value of the residence increased over the ensuing years, he periodically refinanced the home and used some of the proceeds to finance his children's college education.[9] He had excellent credit ratings and kept all of his accounts current.[10] His primary goal was getting his children through college.[11] In mid-2007, with his youngest child in college, and seeing no need to maintain such a large residence, Applicant intended to "downsize" and put the residence on the market.[12] However, his plans were thwarted by a combination of factors over which he had no control: (1) Applicant's wife became afflicted with colon cancer, requiring both surgery and a lengthy recovery period, delaying any possible relocation; and (2) the national economy, and especially the local housing market, collapsed.[13] Although most of his wife's medical expenses were covered by health insurance, Applicant also had unspecified expenses associated with the high deductible, co-payments, and incidental medical expenses.[14] In early 2008, he discovered that the value of the residence had fallen below the value of the mortgage, and it was now "under water."[15]

Because he did not want to sell his property at a loss, and hoping the economy and the local housing market would rebound and make a prompt, full recovery, Applicant managed to continue making the necessary monthly payments on his home

[7] GE 1, *supra* note 1, at 17-19; Tr. at 18.

[8] Tr. at 18.

[9] GE 2 (Personal Subject Interview), *supra* note 6, at 3. Although Applicant referred to the residence as having five bedrooms, it is apparently a four-bedroom home with a "bonus room." See AE B (Regional MLS/Customer Synopsis Report/Residential Property, undated).

[10] GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 1; Tr. at 39.

[11] GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 1.

[12] Applicant's Response to the SOR, dated June 14, 2012, at 1; GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 7.

[13] Applicant's Response to the SOR, *supra* note 12, at 1; GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 7.

[14] Tr. at 31.

[15] Applicant's Response to the SOR, *supra* note 12, at 1; GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 7.

mortgages and his credit cards until about January 2011.[16] His mortgage payments became "so burdensome" that he began using credit cards for his daily living expenses, but the credit card banks began raising their rates to about 29 percent.[17] He withdrew $50,000 from his 401(k) retirement account to cover living expenses and to pay off the remaining education loans for his children, and incurred an $11,000 penalty. He was unable to withdraw the remainder penalty-free without resigning from his employment.[18] Unfortunately, he was unable to keep making his payments "based on [his] on-going living expenses," and began making alternative living arrangements.[19] Applicant moved into his mother-in-law's residence, eliminating utility expenses and hoping to consolidate expenses.[20] Nevertheless, accounts started to become delinquent, and were placed for collection or charged off.

In February 2011, Applicant consulted with a financial counselor who furnished him no education on credit management, debt consolidation, or budgeting, but did recommend that Applicant seek resolution of his debts through bankruptcy.[21] In addition, over the past year, Applicant consulted with five different attorneys, and all of them recommended the same course of action.[22] In April 2012, Applicant indicated he intended to initiate bankruptcy proceedings under Chapter 13 of the U.S. bankruptcy Code. In May 2012, he engaged the services of an attorney to represent him in the bankruptcy, and paid the attorney an initial installment of $800 towards the entire $3,000 fee.[23] However, upon receiving the SOR, Applicant concluded he should wait before continuing with the Chapter 13 because of his possible loss of employment.[24] At the time, Applicant did not qualify under the means test for a Chapter 7 bankruptcy because of his salary.[25]

During the hearing, Applicant acknowledged the entire security clearance review issue, including the fear of losing his security clearance and his job, as well as seeking bankruptcy, is embarrassing, and stated he did not wish to take five years to resolve his financial situation under Chapter 13.[26] He concluded it was better to "resign" from his

[16] Applicant's Response to the SOR, *supra* note 12, at 1-2; GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 7-8.

[17] GE 2 (Personal Subject Interview), *supra* note 6, at 3; Tr. at 39.

[18] Tr. at 42, 50-51.

[19] GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 8.

[20] Tr. at 29.

[21] GE 2 (Personal Subject Interview), *supra* note 6, at 3; Tr. at 58.

[22] GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 11; Tr. at 41.

[23] AE A (Letter from Attorney, dated May 7, 2012); Tr. at 44-45.

[24] Tr. at 44.

[25] Tr. at 59.

[26] Tr. at 64, 66.

employment, file a Chapter 7 bankruptcy to have all of his delinquent debts discharged, and collect his pension of $3,700 before taxes.[27] He stated:[28]

> I have been destroyed and I have to just say that the pressure on me from creditors is - - it's really coming from you. It's coming from DOHA. The creditors are being nice to me. They understand the situation now. It's DOHA that's putting the pressure on. . . . I have a life that I have to try to keep together. The way it resolves my debt is it allows me in six months to file Chapter 7 rather than have five years of Chapter 13 and end up being 60-something years old and not a penny to my name and no prospects for employment.

Applicant's gross annual salary as of April 2012, was $152,000.[29] In April 2012, he submitted a personal financial statement reflecting a net monthly income of $8,151.[30] He claimed $6,612 in monthly expenses, as well as zero debt payments.[31] He had $1,539 left over each month for discretionary spending or savings. He had $2,000 in the bank and $175,000 in his 401(k) retirement account. Applicant is unsure as to where the $1,539 monthly remainder has gone since April 2012, except to state that he had some hospital bills and other miscellaneous expenses to address.[32] He recently paid $3,072 towards college classes, books, software, and parking for himself in order to improve his chances of obtaining another job in the event of a "very high probability" that he will lose his security clearance.[33] He also paid his employer $991.36 to close out his business expense account.[34] He did not wish to settle any of his delinquent debts because of the potential tax consequences he might face if he did so.[35] He also commented that he was cautioned by his attorney not to pay other creditors because, under Chapter 13, he was not to show any preference to any of the lenders.[36] Nevertheless, he defended his payment of hospital bills by declaring that he had to be able to continue receiving

[27] Tr. at 52-53.

[28] Tr. at 53.

[29] GE 2 (Earnings Statement, dated April 9, 2012), attached to Applicant's Answers to Interrogatories.

[30] GE 2 (Personal Financial Statement, dated April 11, 2012), attached to Applicant's Answers to Interrogatories.

[31] GE 2 (Personal Financial Statement), *supra* note 29.

[32] Tr. at 60-62; AE F (Hospital Receipt, dated August 1, 2012).

[33] AE I (E-mail from Applicant, dated October 7, 2012), at 1; AE D (University Invoices, various dates).

[34] AE E (Check, dated September 27, 2012); AE I, *supra* note 33, at 1.

[35] Tr. at 63.

[36] Tr. at 41, 62.

service at the hospital when he needs it.[37] Applicant contended he was able to maintain timely monthly payments for all of his current accounts.[38]

The SOR identified ten purportedly continuing delinquencies, totaling approximately $725,152. Two of the accounts are a first mortgage **(SOR ¶ 1.a.)** with an unpaid balance of $550,000,[39] and a second mortgage or home equity loan with the same lender **(SOR ¶ 1.b.)**, taken out to repair and paint the residence to make it more attractive for sale, with an unpaid balance of $73,822.[40] The first mortgage went into a foreclosure status, and in April 2012, the mortgage lender offered to assist Applicant by discussing alternatives to a foreclosure sale.[41] Two of the alternatives were a short sale and a deed in lieu of foreclosure. In August 2012, Applicant selected the short sale option and requested approval from the mortgage lender.[42] It is unclear if the option has yet been approved. Applicant listed the residence as available for a short sale for $270,000 on September 18, 2012.[43] It is unclear as to what efforts may have been taken with regard to the second mortgage.

The eight remaining delinquent accounts, according to Applicant, were credit card accounts.[44] Those accounts, in varying amounts from $539 **(SOR ¶ 1.e.)**, $3,198 **(SOR ¶ 1.d.)**, $4,182 **(SOR ¶ 1.f.)**, $4,570 **(SOR ¶ 1.g.)**, $6,425 **(SOR ¶ 1.h.)**, $18,572 **(SOR ¶ 1.i.)**, $24,224 **(SOR ¶ 1.c.)**, and $34,620 **(SOR ¶ 1.j.)**, were placed for collection and charged off.[45] Applicant initially spoke with his creditors in 2007, but they refused to settle any of the accounts. Instead, with nonpayment, the interest rates increased and the accounts were closed by the creditors.[46] It is unclear when Applicant next spoke with his creditors, but he contends they are now very helpful, agreeing to settle accounts for ten cents on the dollar, but Applicant claims he doesn't have the ten cents.[47] He has no documents to support any of those resolution discussions. Applicant admits he has done nothing to resolve any of these credit card debts,[48] and intends to

[37] Tr. at 62.

[38] GE 2 (Personal Subject Interview), *supra* note 6, at 3.

[39] GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 10, 2011), at 12; GE 3 (Equifax Credit Report, dated March 9, 2012), at 3-4. The two credit reports reflect the unpaid balance as $550,000, but the SOR erroneously listed it as $555,000.

[40] GE 4, *supra* note 38, at 11; GE 3, *supra* note 38, at 2.

[41] GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 8; GE 2 (Letter from Mortgage Lender, dated April 2, 2012), attached to Applicant's Answers to Interrogatories.

[42] AE C (Letter from Mortgage Lender, dated August 30, 2012).

[43] AE B (Short Sale Addendum to Exclusive Right of Sale Listing Agreement, dated September 18, 2012).

[44] Tr. at 38.

[45] Applicant's Response to the SOR, *supra* note 12, at 1.

[46] Tr. at 39.

[47] Tr. at 39.

take no action other than to seek discharge of the debts under a Chapter 7 bankruptcy. There is no evidence that Applicant made any significant effort to resolve these accounts, and they remain unresolved.

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."[49] 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."[50]

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."[51] 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,

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[48] Tr. at 47.

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

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

[51] "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).

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.[52]

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."[53]

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."[54] 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. . . .

[52] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[53] *Egan*, 484 U.S. at 531

[54] *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. Commencing in mid-2007, Applicant started experiencing some financial difficulties, and without charging everyday living expenses to his credit cards, would have been unable to make his monthly mortgage payments. Financial difficulties increased to the point where he was unable to make either his mortgage payments or his credit card payments, and in January 2011, he stopped making any payments. His accounts started becoming delinquent and were placed for collection or charged off. His financial difficulties remain unresolved. AG ¶¶ 19(a) and19(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*."[55]

AG ¶¶ 20(a), 20(c), and 20(d) do not apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties since January 2011 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." While Applicant consulted with a financial counselor who recommended that Applicant seek resolution of his debts through bankruptcy, Applicant acknowledged that the financial counselor furnished him no education on credit management, debt consolidation, or budgeting. Other that initial discussions with his credit card creditors in 2007, and more recent discussions with his mortgage holder in 2012, there is no evidence to indicate that Applicant initiated a good-faith effort to repay his overdue creditors or otherwise resolve

[55] 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)).

his debts. When he discovered that the value of the residence had fallen below the value of the mortgage, and it was now "under water," he chose not to sell his property at a loss, and hoped the economy and the local housing market would rebound and make a prompt, full recovery. So he did essentially nothing.

Applicant refused to address his delinquent accounts with whatever extra money he may have had each month. Instead, he made recent payments for his college classes, books, software, and parking, in order to prepare for the loss of his security clearance and to improve his chances of obtaining another job if he loses his security clearance. He did not wish to settle any of his delinquent debts because of the potential tax consequences he might face if he did so. Applicant's previous statements regarding his future intent to resolve his debts, without corroborating documentary evidence, are entitled to little weight.[56] His most recent comments that he did not wish to take five years to resolve his financial situation under Chapter 13, and his conclusion that it was better to "resign" from his employment, file a Chapter 7 bankruptcy to have all of his delinquent debts discharged, and collect his pension of $3,700 before taxes, reflects a surrender rather than an effort. This latest declaration of future intention to resolve his debts in a Chapter 7 bankruptcy, after so much time where no positive efforts were taken, does not qualify as a "good-faith" effort.

AG ¶ 20(b) partially applies. Applicant attributed his financial problems to his wife becoming afflicted with colon cancer, requiring both surgery and a lengthy recovery period, delaying any possible relocation; and the national economy, and especially the collapse of local housing market. Although most of his wife's medical expenses were covered by health insurance, Applicant contended he also had unspecified expenses associated with the high deductible, co-payments, and incidental medical expenses. While some of those reasons were largely beyond Applicant's control, it is difficult to conclude that Applicant acted responsibly under the circumstances.[57]

In light of his substantial period of continuing financial problems, it is unlikely that they will be resolved in the short term, and they are likely to continue. Accordingly, Applicant failed to mitigate the security concerns under financial considerations, and under the circumstances, his actions do cast doubt on his current reliability, trustworthiness, and good judgment.[58]

[56] *See* ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008).

[57] "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.

[58] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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):

> (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.[59]

There is some evidence in favor of mitigating Applicant's conduct: He has a lengthy history of outstanding employment with the same employer, and he is a caring father and husband. Applicant's financial difficulties were caused, in part, because of his wife becoming afflicted with colon cancer, requiring both surgery and a lengthy recovery period, delaying any possible relocation; the depressed national economy; and especially the collapse of local housing market.

The disqualifying evidence under the whole-person concept is more substantial. When he discovered that the value of the residence had fallen below the value of the mortgage, and it was now "under water," he chose not to sell his property at a loss, and hoped the economy and the local housing market would rebound and make a prompt, full recovery. So he did essentially nothing. Applicant refused to address his delinquent accounts with whatever extra money he may have had each month, and instead spent it on other desires. He did not wish to settle any of his delinquent debts because of the potential tax consequences he might face if he did so. Applicant considered filing a Chapter 13 bankruptcy, but changed his mind because he did not wish to take five years to resolve his financial situation under Chapter 13. Instead, he concluded that it was better to "resign" from his employment, and file a Chapter 7 bankruptcy to have all of his delinquent debts discharged. But even that action has yet to be undertaken by him.

[59] *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).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[60]

> 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.

In this instance, Applicant has offered little evidence of efforts, other than statements and promises, to resolve his delinquent debts. And now, even those statements and promises have been overcome by his new declaration of intent. Applicant's "meaningful track record" is not a satisfactory one. He has discussed bankruptcy before, and still entertains that possibility. Applicant could have made some reasonable timely efforts to resolve his accounts, but he has not done so. Applicant's actions indicate a lack of financial judgment, which raise questions about his reliability, trustworthiness and ability to protect classified information. *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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

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

Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
ROBERT ROBINSON GALES
Administrative Judge