



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



In the matter of: )  
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----- ) ISCR Case No. 11-09126  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

01/18/2013

**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 28, 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>1</sup> On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on July 31, 2012.<sup>2</sup> On September 13, 2012, the DOD 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; 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

<sup>1</sup> GE 1 ((SF 86), dated February 28, 2011).

<sup>2</sup> GE 2 (Applicant's Answers to Interrogatories, dated July 31, 2012).

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 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 received the SOR on September 25, 2012. In a sworn statement, dated September 27, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On October 24, 2012, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on November 1, 2012. A Notice of Hearing was issued on November 30, 2012, and I convened the hearing, as scheduled, on December 12, 2012.

During the hearing, 6 Government exhibits (GE 1 through GE 6) and 18 Applicant exhibits (AE A through AE R) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on December 27, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted five additional exhibits (AE S through AE W) that were admitted into evidence without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all but six (¶¶ 1.c., 1.f., 1.i., 1.j., 1.n., and 1.w.) of the factual allegations pertaining to financial considerations.<sup>3</sup> 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 33-year-old employee of a defense contractor who, since October 2010, has served as an electronic technician. He was previously employed by other employers in various positions, including electronic technician, IT specialist, stocker, and electrical technician.<sup>4</sup> In addition, Applicant served on active duty with the U.S. Army from November 2000 until January 2008, when he was honorably discharged with a disability and given severance pay.<sup>5</sup> He was deployed to Iraq from September 2003 until April 2004.<sup>6</sup> During his period of military service, Applicant was awarded the Army Good Conduct Medal (with one oak leaf cluster), the National Defense Service Medal, the Global War on Terrorism Service Medal, the Army Service Ribbon, the Combat

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<sup>3</sup> During the hearing, Department Counsel moved to amend the SOR to conform to the evidence presented by deleting five of the factual allegations (¶1.k. (a duplicate of ¶1.b.), ¶1.p. (a duplicate of ¶1.h.), as well as ¶¶1.u. through and 1.w.). There being no objection, the motion was granted. See, Tr. at 149-154.

<sup>4</sup> GE 1, *supra* note 1, at 19-24. In an effort to generate additional money during a period of financial difficulty, Applicant accepted a minimum wage position paying \$7.40 per hour.

<sup>5</sup> AE U (Certificate of Release or Discharge from Active Duty (DD Form 214), dated January 15, 2008).

<sup>6</sup> GE 2 (Personal Subject Interview, dated May 18, 2011), at 1; Tr. at 28.

Action Badge, and the Parachute Badge.<sup>7</sup> He was initially granted a secret security clearance in 2001, but it was suspended for unspecified reasons from December 2009 until March 2010.<sup>8</sup> Applicant received an unspecified number of undergraduate credits on line, but did not earn a degree.<sup>9</sup> He is currently working on a bachelor's degree in business and information systems, and is in his senior year.<sup>10</sup>

Applicant was married the first time in July 2001, and divorced in March 2008. He was married the second time in March 2009. He has four children (a daughter born in 2001, a son, born in 2002, a daughter born in 2002, and a son born in 2003).

### **Financial Considerations**

There apparently was nothing unusual about Applicant's finances until about 2003. Commencing in 2003, 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. Those events included his first wife quitting her job in April 2006, lowering the family income; having her vehicle damaged with broken axles after hitting a pothole;<sup>11</sup> the transmission on his automobile needed to be replaced; having to purchase another vehicle to get to work and transport the children to school; a lengthy period of unresolved military error in calculating his pay and shorting it for about six months; separating from his first wife; eventually getting divorced; moving into government quarters and losing his basic housing allowance; loaning an apartment to a friend who failed to pay the rent and vacated the apartment, stealing his furniture; having his insured automobile stolen from the military facility and damaged; the insurance company's failure and eventual refusal to pay his insurance claim; his ex-wife's failure to make the monthly payments on her vehicle (which had the title in his name), and having it repossessed; loaning his automobile to a friend who incurred parking tickets and failed to pay them in a timely fashion; paying child support; and losing his job and being unemployed on two separate occasions during March-July 2009, and January-April 2010.<sup>12</sup> Added to this litany of financial problems was Applicant's lack of financial sophistication. As a result of the above combined situations, accounts became delinquent and were either placed for collection or charged off.

**(SOR ¶ 1.a):** Applicant sought guidance from his noncommissioned officer, and he was advised to file for bankruptcy.<sup>13</sup> He was unaware then that he could have

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<sup>7</sup> AE U, *supra* note 5.

<sup>8</sup> GE 1, *supra* note 1, at 47-48; GE 2 (Personal Subject Interview), *supra* note 6, at 8.

<sup>9</sup> GE 1, *supra* note 1, at 18-19; GE 2 (Personal Subject Interview), *supra* note 6, at 1-2.

<sup>10</sup> Tr. at 36.

<sup>11</sup> Tr. at 48.

<sup>12</sup> Tr. at 48-53.

<sup>13</sup> Tr. at 52.

obtained emergency financial assistance from Army Emergency Relief.<sup>14</sup> In October 2006, Applicant filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code.<sup>15</sup> He listed liabilities totaling \$40,541, including \$32,702 in liabilities to creditors holding secured claims and \$7,839 in liabilities to creditors holding unsecured nonpriority claims.<sup>16</sup> Applicant's nonpriority, unsecured debts were discharged in February 2007.<sup>17</sup> Unfortunately for Applicant, continuing and subsequent events reestablished financial difficulties, and accounts eventually became delinquent.

When he filed for bankruptcy, Applicant filed a current income schedule. It reflected a net monthly income of \$2,331.69.<sup>18</sup> On an unspecified date, Applicant submitted a personal financial statement reflecting a net monthly income of \$5,028.77. He claimed \$2,062 in monthly expenses, as well as \$1,583.28 in mortgage, auto, and student loan payments. He had approximately \$1,383 left over each month for discretionary spending or savings.<sup>19</sup>

Applicant contacted a variety of creditors and collection agents regarding his newer delinquent accounts. In addition to the personal financial management training he had received in connection with his previously-filed bankruptcy, Applicant sought the assistance of a credit management counselor, and after reviewing his credit report, he successfully disputed a number of erroneous entries, resulting in their either being deleted from his credit report or corrected.<sup>20</sup> He also set up a budget and a repayment schedule reflecting anticipated steps in his "credit payoff plan."<sup>21</sup> His plan prioritizes accounts, reflects payment start dates, expected payoff dates, and monthly payment amounts. Once an account is satisfied, the anticipated payments roll over to other identified debts.<sup>22</sup> Applicant takes full responsibility for his remaining debts, and although he may disagree regarding specific amounts owed, he intends to pay them off one bill at a time.<sup>23</sup> He has been paying off various smaller accounts, as well as other

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<sup>14</sup> Tr. at 52.

<sup>15</sup> GE 3 (Voluntary Petition, dated October 2, 2006).

<sup>16</sup> GE 3, *supra* note 15, at 4 (Summary of Schedules).

<sup>17</sup> GE 3, *supra* note 15, at 14 (Discharge of Debtor, dated February 5, 2007).

<sup>18</sup> GE 3, *supra* note 15, at 8 (Schedule I – Current Income of Individual Debtor(s), dated October 2, 2006).

<sup>19</sup> GE 2 (Personal Financial Statement, undated), attached to Applicant's Answers to Interrogatories. Applicant's finances are currently described as "fine." See, Tr. at 65.

<sup>20</sup> GE 2 (E-mail from Credit Counselor, dated May 15, 2012), attached to Applicant's Answers to Interrogatories; GE 3 (Debtor's Certificate of Completion of Instructional Course Concerning Personal Financial Management, dated October 2, 2006).

<sup>21</sup> AE V (Budget Sheet, undated, and Credit Payoff Plan, undated).

<sup>22</sup> AE V (Credit Payoff Plan), *supra* note 21.

<sup>23</sup> GE 2 (Financial Response, undated), attached to Applicant's Answers to Interrogatories.

accounts that are apparently not listed in the SOR, with the intention of eventually addressing the remaining larger accounts.<sup>24</sup>

The amended SOR identified 18 purportedly continuing delinquencies. Those accounts can be categorized into three separate groups: those already paid off and resolved, those being paid, and those not yet being paid, but listed for eventual repayment.

In the first group, those accounts that were already paid off and resolved, in addition to his non-SOR accounts, are his ex-wife's cell phone account in the disputed amount of \$1,019 (**SOR ¶ 1.e.**) that was settled for \$713.59, and paid off in August 2012;<sup>25</sup> a credit card account in the disputed amount of \$616 (**SOR ¶ 1.f.**) that was settled for \$462.35, and paid off in September 2012;<sup>26</sup> two student loans in the disputed amounts of \$1,312 and \$2,000 (**SOR ¶¶ 1.i. and 1.j.**) that were paid off in February 2011;<sup>27</sup> three parking tickets (incurred by a friend without Applicant's knowledge), each in the amount of \$65 (**SOR ¶¶ 1.q. through 1.s.**), that were paid off in November 2012;<sup>28</sup> and issuing a worthless check for \$500 (**SOR ¶ 1.x.**) that was actually a stopped check initially made to Applicant's divorce attorney and subsequently paid off. As to the check, Applicant's attorney required an additional \$500 to represent him in his divorce hearing and Applicant sent him a check. It was not until Applicant's soon-to-be ex-wife called him to advise him the divorce had been dismissed because his attorney had failed to appear that Applicant stopped payment on the check and his attorney reported it to the authorities. Applicant paid \$1,025, including the \$500, and the matter was resolved.<sup>29</sup>

In the second group are those accounts that are in the process of being paid, including an advanced payment account with the U.S. Government regarding a military move in the amount of \$969 (**SOR ¶ 1.g.**) that Applicant has been paying \$50 intermittently since October 2012, and as of December 4, 2012, has already paid \$350 towards the outstanding balance;<sup>30</sup> an automobile loan for his ex-wife's automobile in

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<sup>24</sup> GE 2 (Financial Response), *supra* note 23, at 1.

<sup>25</sup> GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 26, 2011), at 20; GE 2 (Financial Response), *supra* note 23, at 1; GE 2 (Letter from Creditor, dated July 25, 2012), attached to Applicant's Answers to Interrogatories; AE B (Release of Debt, dated December 3, 2012); Tr. at 85-87.

<sup>26</sup> GE 2 (Financial Response), *supra* note 23, at 1; GE 2 (Letter from Creditor, dated July 27, 2012), attached to Applicant's Answers to Interrogatories; AE G (Letter from Creditor, dated September 26, 2012); AE H (Letter from Creditor, dated September 26, 2012); Tr. at 88.

<sup>27</sup> GE 2, *supra* note 25, at 19; GE 2 (Financial Response), *supra* note 23, at 2; GE 2 (Letters from Experian, dated April 20, 2012), attached to Applicant's Answers to Interrogatories; AE B (Release of Debt, dated December 3, 2012).

<sup>28</sup> GE 5, *supra* note 25, at 17; AE S (On Line Payment Confirmation, dated November 30, 2012).

<sup>29</sup> Tr. at 141-146; AE Q (Court Record, dated September 26, 2012).

<sup>30</sup> GE 6 (Equifax Credit Report, dated July 9, 2012), at 2; AE D (Account Activity, dated December 11, 2012); Tr. at 89-94. Applicant explained that the paperwork to support his expenses regarding the move were either lost in the mail or he forgot to mail them in, and he did not keep copies of that paperwork.

the amount of \$10,186 (**SOR ¶ 1.h.**) that she was supposed to pay but failed to do so without Applicant's knowledge, and the vehicle was repossessed and sold at auction, that, effective October 2012, is being paid \$120 every two weeks by agreement through an approved automatic withdrawal from Applicant's bank account;<sup>31</sup> and child support arrearage in the disputed amount of \$22,430, that one state is enforcing for another state (**SOR ¶ 1.n.**), that Applicant has been paying since his divorce.<sup>32</sup> As to the child support issue, when the divorce was finalized, Applicant was required to pay \$1,478 per month for the support and maintenance of three minor children.<sup>33</sup> There were times, especially when he was periodically unemployed, that he could not afford to do so, but once he regained employment, he restarted his payments directly to his ex-wife. Unfortunately for Applicant, those direct payments were not included in the state calculations, and he was not credited with making them.<sup>34</sup> Income tax refunds were attached by the state to pay child support, and occasionally his entire paycheck was garnished for the same purpose.<sup>35</sup> The state has garnished \$675.27 of Applicant's wages every two week pay period since October 2010.<sup>36</sup> Applicant has attempted to resolve the issue and correct the amount demanded, but the state where the children reside would not talk to him or give him an accounting since he was not a resident of that state, and the state where he resides is unable to talk about the account.<sup>37</sup>

In the third group, those remaining delinquent accounts are in line to be addressed when other accounts, currently being addressed, are resolved, or when he has sufficient funds to resolve them earlier. Those accounts include a lease for an apartment in the disputed amount of \$1,741 (**SOR ¶ 1.b.**) that Applicant sublet to a friend for the remaining four months of the lease with the understanding that she would pay the remaining rent. She did not, and was, without Applicant's knowledge, evicted from the apartment.<sup>38</sup> The landlord apparently obtained a judgment against Applicant in the amount of \$734,<sup>39</sup> but as of July 2012, a collection attorney is seeking \$1,741.<sup>40</sup> In

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<sup>31</sup> GE 5, *supra* note 25, at 16; AE E (Letter from Creditor, dated October 15, 2012); AE F (Account Activity, dated December 11, 2012; Tr. at 94-101.

<sup>32</sup> GE 5, *supra* note 25, at 7; AE I (Statement from Ex-wife, dated October 1, 2012); AE O (Extract from Petition for Modification of Child Support, dated December 11, 2012); Tr. at 111-122.

<sup>33</sup> AE O, *supra* note 32.

<sup>34</sup> AE I, *supra* note 32; Tr. at 111, 121.

<sup>35</sup> GE 2 (Financial Response), *supra* note 23, at 2; AE M (Earnings Statement, dated May 14, 2010); AE N (Earnings Statement, dated May 21, 2010; Earnings Statement Details, various dates in July 2012, attached to Applicant's Answers to Interrogatories.

<sup>36</sup> Tr. at 115-117.

<sup>37</sup> Tr. at 117, 119.

<sup>38</sup> Tr. at 54-57, 60-63.

<sup>39</sup> GE 5, *supra* note 25, at 5.

<sup>40</sup> GE 6, *supra* note 30, at 1. In July 2009, the unpaid balance was \$1,428 (see, GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 25, 2009), at 12), and by March 2011, the balance had increased to \$1,512 (see, GE 5, *supra* note 25, at 10).

December 2012, Applicant and the creditor were in the process of discussing a possible settlement, but until another debt is resolved, he is unable to commence making payments.<sup>41</sup> An account related to the lease issue is with a furniture store for furniture that was in the apartment, in the amount of \$3,077 **(SOR ¶ 1.d.)**.<sup>42</sup> That furniture was stolen by Applicant's "friend" when she was evicted from the apartment. Two years later, when he encountered her, he noticed she is now unemployed and residing in a trailer with no furniture or water, and he has taken no action against her.<sup>43</sup> Applicant intends to commence monthly \$200 repayments in March 2013.<sup>44</sup>

Applicant had previously financed the purchase of a motor vehicle that he had insured with an insurance company and registered on base. About six months later, in May 2007, the vehicle was stolen from the military facility. Applicant reported the theft to the provost marshal that same day. The vehicle was later found in another city burned and considered a total loss.<sup>45</sup> Applicant's enlisted supervisor and a judge advocate assisted him with his claim. Although the insurance company initially agreed to cover the loss, it eventually refused to do so, without offering Applicant any reasons for its decision, except to say that the claim was beyond the statute of limitations.<sup>46</sup> Shortly thereafter, after he was discharged, Applicant was no longer eligible for judge advocate assistance. He furnished the finance company the appropriate paperwork, but did not hear from them until 2011, when someone came to his residence to repossess the vehicle. Additional submissions were made, but he received no further satisfaction.<sup>47</sup> Instead, the loan was not forgiven by the finance company, and it charged off \$5,947 **(SOR ¶ 1.c.)**.<sup>48</sup> Applicant intends to commence monthly \$150 repayments in February 2013.<sup>49</sup>

Applicant also had a credit union loan for \$805 that was charged off **(SOR ¶ 1.i.)**.<sup>50</sup> The SOR also alleges a separate \$25 delinquency for the same account **(SOR ¶ 1.m.)**.<sup>51</sup> Applicant contends the two amounts relate to the same account, and that when he discussed the account with the creditor, only the balance of \$805.81 appeared in

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<sup>41</sup> Tr. at 58, 64.

<sup>42</sup> GE 6, *supra* note 30, at 1.

<sup>43</sup> Tr. at 62-63. Applicant believes she sold the furniture.

<sup>44</sup> AE V (Credit Payoff Plan), *supra* note 21, at 1.

<sup>45</sup> AE A (Military Police Report, dated June 1, 2007); Tr. at 66-67.

<sup>46</sup> Tr. at 68-74; GE 2 (Financial Response), *supra* note 23, at 2.

<sup>47</sup> Tr. at 80-83.

<sup>48</sup> GE 5, *supra* note 25, at 17.

<sup>49</sup> AE V (Credit Payoff Plan), *supra* note 21, at 1.

<sup>50</sup> GE 5, *supra* note 25, at 6. The entry was reported by Equifax.

<sup>51</sup> GE 5, *supra* note 25, at 7. The entry was reported by Experian.

their records.<sup>52</sup> Applicant intends to commence monthly \$100 repayments in March 2013.<sup>53</sup>

There was a cable account in the amount of \$355 that was placed for collection (**SOR ¶ 1.o.**) that Applicant had previously mistakenly thought he had resolved, but he had not.<sup>54</sup> Applicant intended to pay off the entire balance in December 2012,<sup>55</sup> but he offered no documentary evidence that he had yet done so.

There is a bank credit card account for \$505 that was charged off in 2009 that Applicant initially thought was his account, but subsequently denied ownership and disputed the account (**SOR ¶ 1.t.**).<sup>56</sup> He contacted the creditor on two occasions; the account was listed as a fraud account; and he disputed it with one of the credit reporting agencies.<sup>57</sup> His request for documentation to confirm the account status has, so far, been unsuccessful.<sup>58</sup> It should be noted that while the account is listed in Applicant's 2009 credit report, it does not appear in either his 2011 or his 2012 credit reports.

### **Character References**

Applicant's ex-wife is steadfast in her support for him for while they did not remain married, they encountered some situations that were beyond their control, and he continued to support their children and her when needed. She has witnessed him go from an immature man to the more mature man that he is today. "The man that I see today is a very dependable man that would never turn his back on his integrity no matter the situation."<sup>59</sup> The information assurance manager for Applicant's employer has characterized Applicant as trustworthy and honest as well as extremely hard working.<sup>60</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>61</sup> As Commander in Chief,

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<sup>52</sup> Tr. at 110.

<sup>53</sup> AE V (Credit Payoff Plan), *supra* note 21, at 2.

<sup>54</sup> GE 5, *supra* note 25, at 10; Tr. at 123-124.

<sup>55</sup> Tr. at 124-125.

<sup>56</sup> Tr. at 130-131; GE 1, *supra* note 1, at 52; GE 4, *supra* note 40, at 10.

<sup>57</sup> Tr. at 130, 134-137.

<sup>58</sup> Tr. at 130.

<sup>59</sup> AE I, *supra* note 32.

<sup>60</sup> AE T (Character Reference, dated December 18, 2012).

<sup>61</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).



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>62</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.

In the decision-making process, facts must be established by “substantial evidence.”<sup>63</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>64</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.

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<sup>62</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>63</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>64</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>65</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>66</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:

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 2003, 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*

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<sup>65</sup> *Egan*, 484 U.S. at 531

<sup>66</sup> See Exec. Or. 10865 § 7.

*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>67</sup> In addition, it is potentially mitigating under AG ¶ 20(e) when the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.*

AG ¶ 20(a) partially applies, and AG ¶ 20(c) applies. Applicant's initial debts were discharged in February 2007. Unfortunately for Applicant, continuing and subsequent events reestablished financial difficulties, and accounts eventually became delinquent. 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 so infrequent." Applicant consulted with a credit management counselor, set up a budget and a repayment schedule, and started following that repayment schedule. He prioritized accounts and started his monthly payments. Once an account is satisfied, the anticipated payments roll over to other identified debts. Eight of his SOR accounts have been resolved, and three are in the process of being resolved through monthly payments. Several of his delinquent accounts have not yet been resolved, but they are in line awaiting their turn under his repayment plan. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>68</sup>

AG ¶ 20(b) applies. Applicant attributed his financial problems largely to his lack of financial sophistication as well as to a variety of circumstances that were largely beyond his control. Those circumstances included his first wife quitting her job, lowering the family income; having her vehicle damaged with broken axles after hitting a pothole; the transmission on his automobile ceasing to function; having to purchase another vehicle to get to work and transport the children to school; the lengthy delay in resolving

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<sup>67</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)).

<sup>68</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

a military error in calculating his pay and shorting his pay for about six months; separating from his first wife; eventually getting divorced; moving into government quarters and losing his basic housing allowance; loaning an apartment to a friend who failed to pay the rent and vacated the apartment, and stealing his furniture; having his insured automobile stolen from the military facility and damaged; the insurance company's failure and eventual refusal to pay his insurance claim; his ex-wife's failure to make the monthly payments on her vehicle (which had the title in his name), and having it repossessed; loaning his automobile to a friend who incurred parking tickets and failed to pay them in a timely fashion; paying child support; and losing his job and being unemployed on two separate occasions during March-July 2009, and January-April 2010. 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 Applicant's control. Under the circumstances, Applicant acted responsibly by addressing his delinquent accounts rather than avoiding them.<sup>69</sup>

AG ¶ 20(d) applies. With the guidance received from the credit management counselor, Applicant prioritized his accounts and contacted a variety of collection agents. While he was unable to commence making payments simultaneously on all of the accounts, Applicant did enter into repayment plans with some creditors. The result has been positive. Applicant has resolved several accounts, including some that are in the SOR and some that are not, and is in the process of resolving several others. Under his repayment plan, he intends to pay his remaining creditors off one bill at a time.

AG ¶ 20(e) applies. After reviewing his credit report, Applicant successfully disputed a number of erroneous entries, resulting in their either being deleted from his credit report or corrected.

### **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

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<sup>69</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.

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>70</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. Despite having those delinquent accounts discharged in a Chapter 7 bankruptcy in 2007, financial difficulties reappeared and new accounts eventually became delinquent.

The mitigating evidence under the whole-person concept is more substantial. Applicant sought the assistance of a credit management counselor; successfully disputed erroneous accounts and account information; contacted his creditors or collection agents; prioritized his delinquent accounts; and he has resolved several accounts and is in the process of resolving several others. Under his repayment plan, Applicant intends to pay his creditors off one bill at a time. He possesses an excellent reputation in the workplace and is a loving and engaged husband and father.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>71</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 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

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<sup>70</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>71</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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:

| 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:         | Withdrawn     |
| Subparagraph 1.l:         | For Applicant |
| Subparagraph 1.m:         | For Applicant |
| Subparagraph 1.n:         | For Applicant |
| Subparagraph 1.o:         | For Applicant |
| Subparagraph 1.p:         | Withdrawn     |
| Subparagraph 1.q:         | For Applicant |
| Subparagraph 1.r:         | For Applicant |
| Subparagraph 1.s:         | For Applicant |
| Subparagraph 1.t:         | For Applicant |
| Subparagraph 1.u:         | Withdrawn     |
| Subparagraph 1.v:         | Withdrawn     |
| Subparagraph 1.w:         | Withdrawn     |
| Subparagraph 1.x:         | 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