



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 11-09854
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

06/14/2013

**Decision**

Tuider, Robert J., Administrative Judge:

Applicant's statement of reasons (SOR) alleges nine delinquent debts, totaling \$24,808. Applicant's spouse had unexpected medical expenses, and he had periods of unemployment. He paid three SOR debts, and his remaining SOR debts are in a payment plan. He paid over \$4,000 to address his SOR debts in the previous 12 months. Financial considerations are mitigated. He did not provide accurate and complete financial information on his security clearance application; however, when he submitted it, he disclosed the financial information was incomplete and he disclosed unrelated derogatory information on his SF 86. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 10, 2010, Applicant submitted an SF 86 (GE 1). On December 27, 2012, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations) and E (personal conduct). The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On January 17, 2013, Applicant responded to the SOR. On March 27, 2013, Department Counsel was ready to proceed. On April 2, 2013, DOHA assigned Applicant's case to me. On April 3, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for April 25, 2013. Applicant's hearing was held as scheduled using video teleconference. At the hearing, Department Counsel offered five exhibits, and Applicant offered seven exhibits. (Tr. 17-20; GE 1-5; AE A-G) There were no objections to my consideration of any of the documents, and they were admitted into evidence. (Tr. 19-20) On May 3, 2013, DOHA received the transcript of the hearing. After the hearing, Applicant submitted 13 exhibits, which were admitted without objection. (AE H-T) The record was closed on May 14, 2013. (Tr. 70)

### **Findings of Fact**

In his Answer to the SOR, Applicant accepted responsibility for the debts listed in the SOR. (SOR ¶¶ 1.a – 1.i) He also explained what he had done and was doing to resolve his delinquent debts. Applicant denied intentionally falsifying his security clearance application. (SOR ¶ 2.c) His admissions are accepted as findings of fact.

Applicant is a 46-year-old network systems engineer for a defense contractor. (Tr. 21-24; GE 1) He has worked for his current employer since December 2012. (Tr. 21) He held a security clearance from 1999 to 2005. (Tr. 21) His secret clearance was renewed on December 11, 2012. (Tr. 23) He graduated from high school in 1984, and he has about 20 college credits. (Tr. 24) He has never served in the military. (SF 86)

Applicant was divorced in October 2009. (Tr. 25) His children are ages 14, 16, and 20. (Tr. 24) His children live with his former spouse. (Tr. 24) His monthly child support payment was reduced from \$1,400 to \$1,100. (Tr. 24) He was unemployed for six months in 2010, and for four months in 2012. (Tr. 25) He has a child support arrearage of about \$6,000. (Tr. 58) He is making \$125 monthly payments to reduce the arrearage. (Tr. 58) As part of the divorce agreement, he accepted responsibility for the marital credit card debts. (Tr. 59) His former spouse received the house, a truck, and responsibility for the lien on the truck and mortgage on the house. (Tr. 59-60)

Applicant's annual salary is \$79,000. (Tr. 25) In June 2010, he remarried. (SF 86) His spouse is disabled and has not been employed outside their home since January 2011. (Tr. 25-26, 42) She has applied for Social Security disability. (Tr. 26) One of his wife's children was living with Applicant and his spouse. (Tr. 43) Her former spouse pays Applicant and his spouse \$900 monthly in child support. (Tr. 43)

In March 1987, Applicant was in a vehicle accident and broke his neck. (Tr. 36) The insurance company paid him an initial \$12,000 payment; every five years he

received \$10,000; \$20,000; \$30,000; and in July 2007, he received a final payment of \$135,000. (Tr. 37) He used the settlement payments to pay his delinquent debts. (Tr. 37) Some of the final settlement was spent frivolously. He used \$40,000 from the final payment to purchase a boat and about \$5,000 for vacations. (Tr. 63-64) None of the final payment was saved, and he admitted he was immature about how he handled the settlement money. (Tr. 64) In 2011, he sold the boat for \$22,000. (Tr. 64) He used the \$22,000 to pay some debts. (Tr. 64)

In 1996, he purchased a house for \$165,000. (Tr. 38) Applicant turned the house over to his spouse during the divorce. (Tr. 41) In 2010, the house was foreclosed because of Applicant's unemployment. (Tr. 39-40) He did not know whether the creditor sold the property or there was a deficiency. (Tr. 41)

Applicant provided the following information on his nine SOR debts:

1.a. Applicant owed a landlord \$273 for unpaid rent. (Tr. 44-46) He moved out of the apartment in 2011. (Tr. 45) About a year ago, he asked the landlord to explain the debt; however, the landlord did not provide the necessary details. (Tr. 46) The landlord was unwilling to reduce the amount of the debt. (Tr. 45-46) On May 8, 2013, he paid the debt. (AE T)

1.b. Applicant told an Office of Personnel Management (OPM) investigator that he had a payment arrangement with the creditor; he owed \$4,980 on a credit card debt from his previous marriage; and he was making \$67 monthly payments. (Tr. 47) He said he made six or seven payments. (Tr. 47-48, 57)

1.c and 1.d. Applicant had medical debts for \$50 and \$133. (Tr. 49) Applicant erroneously thought he paid the \$50 debt, and his former spouse said she paid the \$133 debt. (Tr. 49-50) On May 6, 2013, he paid the two debts. (AE I, J, R, S)

1.e. Applicant told an OPM investigator that he had a payment arrangement with the creditor; he owed \$1,582 on a credit card debt; and he said he was making \$60 monthly payments. (Tr. 50, 57) He made 12 payments in 2009-2010; however, he stopped making payments when he was out of work. (Tr. 50)

1.f. Applicant admitted the debt in his SOR response. (Tr. 52) At his hearing, he said he was unaware of the basis for the collection debt for \$1,000. (Tr. 51-52) His credit report indicates the account was opened in 1991 and was a joint revolving account. (Tr. 51)

1.g. Applicant told an OPM investigator that he planned to arrange a payment plan with the creditor; he owed \$5,730 on a credit card debt; and for the last month he had been communicating with the creditor about starting a \$50 monthly payment plan. (Tr. 53)

1.h. The SOR indicates the amount of the collection debt is \$9,229. On September 29, 2011, the creditor obtained a judgment for \$8,672. (AE G) He currently

owes the creditor \$6,722; the creditor is garnishing 25% of his pay; and four \$574 payments were garnished over a two month period. (Tr. 53-54, 55, 57-58) The creditor offered to lift the garnishment, and Applicant promised to pay the creditor \$274 monthly, using a credit counseling service (CCS). (AE H, L, N, O)

1.i. He owes the creditor \$1,813, and he said he could not afford to make any payments. (Tr. 57)

At the time of his hearing, Applicant had not had financial counseling; however, his spouse is able to manage their finances. (Tr. 60) They have an 18-month plan to pay all of their debts. (Tr. 65) Their plan is not in written form. (Tr. 66) Applicant is current on his federal and state income taxes. (Tr. 61) He received a \$2,800 federal income tax refund in 2013, and he used \$1,900 to pay down his child support arrearage and part to address a delinquent utility debt. (Tr. 62) Because of the garnishment, Applicant's expenses exceed his income every month by \$500 to \$600. (Tr. 66-67)

I asked Applicant to provide a written budget, to provide proof of financial counseling, and documentation showing status and resolution for each SOR debt. (Tr. 70-71) After his hearing, he provided 13 exhibits. (AE H-T) His budget showed he had \$182 left after paying his debts and expenses. (AE L) His budget assumes the garnishment is released. (AE H, L, M) He also provided proof that he paid the three debts in ¶¶ 1.a, 1.c, and 1.d. (AE R-T)

On May 8, 2013, Applicant opened an account with a credit counseling service (CCS), and he paid CCS \$743. (AE M) CCS is scheduled to address six debts, including the debts in SOR ¶¶ 1.b, and 1.e-1.i. (AE M, Q) His monthly payment to CCS is \$743. (AE L, M) All of his debts are either paid or in a payment plan.

## **Personal Conduct**

Section 26 of Applicant's December 10, 2010 SF 86 asks whether he has debts currently delinquent over 90 days or delinquent over 180 days in the last seven years. (GE 1) He answered, "no" to these two questions. (Tr. 28; GE 1) He was rushed by his Human Resources office, and they did not give him sufficient time to collect the necessary information to fully complete his SF 86. (Tr. 28) He needed to go home to get the negative financial information; however, he did not believe he had time to leave his work place. (Tr. 31) He told Human Resources that he needed more time to collect information, and he was still told to submit his SF 86 by close of business. (Tr. 29)

Applicant gave the same explanation about failing to disclose complete financial information, that he was rushed to complete his SF 86, when an OPM investigator interviewed him on January 21, 2011. (Tr. 29; GE 2) He knew when he submitted his SF 86 that if he submitted his derogatory financial information "it would jeopardize [his] employment, [or] it could possibly jeopardize [his] employment with [his] employer." (Tr. 31) When he sent in his SF 86, he told the Human Resources person that he needed to update his SF 86 with correct data. (Tr. 32-33)

Applicant disclosed on his December 10, 2010 SF 86 that he was terminated from a previous employment for conflict of interest and taking excessive lunch breaks. At his hearing, he verified that he was fired from his employment with a car dealership for these reasons. (Tr. 41-42) The conflict of interest related to operating a private business. (Tr. 41-42)

### **Character evidence**

Five of Applicant's friends have known him for many years both personally and professionally as well as through church and their neighborhood. (AE A-C, E-F) His supervisor also provided a very positive description of Applicant. (AE D) They describe him as honest, reliable, responsible, conscientious, diligent, helpful, intelligent, creative, energetic, and courteous. (AE A-F)

### **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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant's allegiance, loyalty, or patriotism.

It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, his OPM interview, his SOR response, and his statement at his hearing.

Applicant's debts became delinquent several years ago. His SOR alleges nine delinquent debts, totaling \$24,808. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct in resolving his debts warrants full application of AG ¶¶ 20(a) and 20(b). Unexpected medical bills, divorce, unemployment, and insufficient income to support his family and pay his child support caused Applicant to have debts he could not afford to pay. His financial problems were affected by circumstances largely beyond his control. He paid three SOR debts, and his remaining SOR debts are in a payment plan. He paid over \$4,000 to address his SOR debts in the previous 12 months.<sup>1</sup>

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the applicant had \$41,000 in delinquent

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<sup>1</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support to her. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment)” even though that applicant’s debts were unresolved at the time the Administrative Judge’s decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence<sup>2</sup> of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant, who had been sporadically unemployed and lacked the ability to pay her creditors, noting that “it will be a long time at best before he has paid” all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

Partial application of AG ¶ 20(c) is warranted. Applicant received some financial counseling, and he generated a budget. Although there is limited evidence of record that he established and maintained contact with his creditors,<sup>3</sup> his financial problem is

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<sup>2</sup> Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

<sup>3</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



being resolved or is under control. When he became employed and received his federal income tax refund, he paid down his delinquent child support. He paid three debts and started a payment plan to resolve his remaining SOR debts.

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing some good faith.<sup>4</sup> AG ¶ 20(e) is not applicable. Applicant did not dispute any of his delinquent SOR debts.

In sum, Applicant fell behind on his debts primarily because of insufficient income, his unemployment, divorce, his spouse's disability and her unemployment, and to a lesser extent because of medical debts. He paid three of nine SOR debts. He made numerous debt payments and has established payment plans on all of his SOR debts. Applicant has a sufficient monthly remainder as shown by his PFS and budget to maintain his financial responsibility. It is unlikely that financial problems will recur. His efforts are sufficient to fully mitigate financial considerations security concerns. Assuming, financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

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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.

<sup>4</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) 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)).

## Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

One personal conduct disqualifying conditions under AG ¶ 16 is potentially applicable. This disqualifying condition provides:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.<sup>5</sup>

AG ¶ 16(a) applies. The Government produced substantial evidence that Applicant's answers were incorrect when he responded to Section 26 of his December 10, 2010 SF 86, which asks about his debts currently delinquent over 90 days or delinquent over 180 days in the last seven years. He answered, "no" to these two questions. He did not disclose that he has several debts that were currently delinquent for more than 180 days. Further analysis concerning applicability of mitigating conditions is required.

AG ¶¶ 17(a) and 17(f), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts" and "the information was unsubstantiated or from a source of questionable reliability" are applicable. When Applicant submitted his SF 86, he was rushed, and he told Human Relations that it was incomplete. He did not have sufficient time to research and list his delinquent debts. His incomplete SF 86 should have been rejected. When he had his

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<sup>5</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

OPM interview six weeks after he completed his SF 86, he disclosed his delinquent debt. He did not have the intent to conceal his financial problems. He disclosed unrelated derogatory information on his SF 86 that he was terminated from previous employment for misconduct. Personal conduct concerns are mitigated.

### **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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guidelines F and E, but some warrant additional comment.

Applicant is a 46-year-old network systems engineer, who has worked for his current employer, a defense contractor, since December 2012. He held a security clearance from 1999 to 2005, and there are no allegations of security violations. He graduated from high school in 1984, and he has about 20 college credits. In June 2010, he remarried. His spouse is disabled and has not been employed outside their home since January 2011. She has applied for Social Security disability. He is sufficiently mature to understand and comply with his security responsibilities. There is every indication that he is loyal to the United States and his employer. Medical expenses, divorce, and underemployment contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for his delinquent debts in his January 21, 2011 OPM personal subject interview, responses to DOHA interrogatories, SOR response, and at his hearing. He received a strong endorsement from his supervisor and five character references from a neighbor and friends, who have known him many years. He has the financial resources to pay his debts.

Even though he lacked financial resources because of his spouse's disability, divorce, and periodic unemployment, Applicant made numerous payments to address his child support debt, and he paid over \$4,000 in the last 12 months to address his delinquent debts. He paid three SOR debts, and he placed his remaining six SOR debts

into a payment plan. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

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

Applicant is an intelligent person, and he understands how to budget and what he needs to do to establish and maintain his financial responsibility. Taking into account all of the evidence, Applicant appears trustworthy. He established a "meaningful track record" of debt repayment and he recognizes the importance of maintaining financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations and personal concerns are mitigated, and eligibility for access to classified information is granted.

### **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
Subparagraphs 1.a to 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

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

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Robert J. Tuidor  
Administrative Judge