



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-11267

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel

For Applicant: *Pro se*

06/10/2014

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 18, 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 Department of Defense (DOD) Consolidated Adjudications Facility – Industry Division (CAF) issued him a set of interrogatories. He responded to the interrogatories on May 28, 2013.² On February 13, 2014, the DOD CAF 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*

¹ GE 1 ((SF 86), dated May 18, 2011).

² GE 2 (Applicant’s Answers to Interrogatories, dated May 28, 2013).

Personnel Security Clearance Review Program (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators could not make a preliminary affirmative finding under the Directive 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 March 3, 2014. In a sworn statement, dated April 10, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge.³ On April 24, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on April 28, 2014. A Notice of Hearing was issued on May 12, 2014. I convened the hearing, as scheduled, on May 28, 2014.⁴

During the hearing, four Government exhibits (GE 1 through GE 4) and ten Applicant exhibits (AE A through AE J) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on June 5, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted one additional document which was marked as Applicant exhibit AE K and admitted into evidence without objection. The record closed on June 2, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations (§ 1.a. through 1.i.) 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 35-year-old employee of a defense contractor serving as a material specialist 3 lead with his current employer on a U.S. Marine Corps (USMC) base since August 2008. He was previously a bank wealth investment support specialist, a client support specialist, a part-time sales and student assistant, and a part-time Spanish tutor and computer lab assistant.⁵ He also went through periods of unemployment from February 2003 until August 2004, July 2006 until February 2007, and May 2008 until

³ Applicant's Answer to the SOR.

⁴ The Directive established that notification as to the date, time, and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. See, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential time and location long before the actual Notice of Hearing was issued. Nevertheless, because the period between the issuance of the Notice and the hearing was approximately 15 days, I inquired of Applicant if the period of notice was sufficient, and Applicant specifically waived the 15-day notice requirement. See, Tr. at 11-12.

⁵ GE 1, *supra* note 1, at 12-18.

August 2008.⁶ With financial assistance received under the G.I. Bill, Applicant received an associate's degree from a community college in December 2006.⁷

Applicant enlisted in the USMC in February 1999, and remained on active duty until he was honorably discharged with the rank of lance corporal (E-3) in February 2003.⁸ That same year he joined the USMC Inactive Reserve, and remained with that component until he was again honorably discharged in February 2007.⁹ Applicant has never been married and has no children.

Military Awards and Decorations

During his active military service, Applicant was awarded the Marine Corps Good Conduct Medal, the National Defense Service Medal, the Sea Service Deployment Ribbon (two awards), the Meritorious Unit Commendation, a Letter of Commendation, and a Navy and Marine Corps Achievement Medal.¹⁰

Financial Considerations

There was nothing unusual about Applicant's finances until May 2008. A series of events occurred commencing in 2003 or 2004 that contributed to the accumulation of about \$38,000 in debt from credit cards, medical bills, school, and living expenses. He encountered the three periods of unemployment, obtained some part-time work, attended college full-time, and experienced an illness (a polyp was removed).¹¹ As a result of his most recent period of unemployment, and because of insufficient money to continue making all of his monthly payments, some of his accounts became delinquent, placed for collection, or were charged off.

While Applicant has held his current position since August 2008,¹² it was not until about 2011 that he indicated he was "currently in the process of seeking out legal financial advice" to reorganize his delinquent debts by filing for bankruptcy under either Chapter 7 or Chapter 13, and looked forward to taking action to get his finances improved.¹³ In April 2014, he indicated that after resolving one non-SOR credit card

⁶ GE 1, *supra* note 1, at 13-14, 18.

⁷ GE 1, *supra* note 1, at 10-11; Tr. at 31, 51.

⁸ AE K (Certificate of Release or Discharge from Active Duty (DD Form 214), dated February 15, 2003).

⁹ GE 1, *supra* note 1, at 20.

¹⁰ AE K, *supra* note 8; AE I (Certificates, various dates).

¹¹ GE 1, *supra* note 1, at 38; Applicant's Answer to the SOR; Tr. at 37.

¹² In his SF 86 (GE 1, *supra* note 1, at 12), Applicant indicated he was hired by his current employer in August 2008, but in his Answer to the SOR, he stated he was hired in October 2008. Because the SF 86 entry was made in 2011 and the Answer to the SOR was issued in 2014, I have given greater weight to the information in the SF 86 as it was made closer to the actual date of hiring and would appear to be more reliable.

¹³ GE 1, *supra* note 1, at 38; Tr. at 20.

account in February 2013,¹⁴ he has “continued to save money in order to pay off [his] debt or seek financial counseling. Negotiating a settlement with the credit collection agencies has been difficult due to the high lump sum payment they seek and [he is] unable to afford at one time.”¹⁵ Applicant sought legal counseling and guidance from the employee assistance program (EAP) and was advised to consider bankruptcy as an option, an action he did not want to consider.¹⁶ Instead, Applicant intends to “save enough money to eventually resolve and settle” his debts.¹⁷

The SOR identified nine purportedly continuing delinquencies as reflected by credit reports from June 2011,¹⁸ and March 2013,¹⁹ totaling approximately \$41,461. Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in these credit reports, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. Some accounts reflect no account number. Those debts listed in the SOR and their respective current status, according to the credit reports, other evidence already in the case file, and Applicant’s submissions regarding the same, are described below.

(SOR ¶¶ 1.a.-1.c.) There are three medical accounts with past-due balances in the amounts of \$422, \$432, and \$1,987, which were placed for collection in 2011.²⁰ The accounts were for medical services Applicant received in connection with his 2008 surgery.²¹ He has not made any effort to approach the creditors to establish repayment plans, and he has not made any payments to any of the creditors.²² The accounts have not been resolved.

(SOR ¶ 1.d.) There is a bank credit card account with a high credit and unpaid balance of \$17,350 and a past-due balance of \$2,918 that was closed by the creditor, placed for collection, and charged off in 2009.²³ The account was apparently purchased by a debt buyer who increased the unpaid balance to \$28,560.37, but offered to settle

¹⁴ AE A (Summary of Account Activity, dated February 26, 2013); Tr. at 19-20.

¹⁵ Applicant’s Answer to the SOR.

¹⁶ Applicant’s Answer to the SOR; AE B (Letter, dated May 21, 2014).

¹⁷ Applicant’s Answer to the SOR.

¹⁸ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 8, 2011).

¹⁹ GE 4 (Experian Credit Report, dated March 7, 2013).

²⁰ GE 3, *supra* note 18, at 9; GE 4, *supra* note 19, at 1.

²¹ GE 2 (Personal Subject Interview, dated June 16, 2011), at 5.

²² GE 2 (Personal Subject Interview), *supra* note 21, at 5; Tr. at 39, 41.

²³ GE 3, *supra* note 18, at 6.

the account for one payment of \$13,560.38.²⁴ Applicant used this credit card to pay for his routine living expenses. He contends he approached the original creditor but they demanded too much in a lump sum payment. He has not made any effort to approach the debt buyer to establish a repayment plan because he does not have sufficient funds to start making payments.²⁵ The account has not been resolved.

(SOR ¶ 1.e.) There is an internet and cable account with a high credit and past-due balance of \$214 that was placed for collection in 2010, with the unpaid balance increased to \$364.²⁶ He has not made any effort to approach the collection agent to establish a repayment plan because he does not have sufficient funds to start making payments.²⁷ The account has not been resolved.

(SOR ¶ 1.f.) There is a bank credit card account with a high credit of \$4,158 and a past due balance of \$4,765 that was placed for collection and sold in 2011.²⁸ The debt purchaser offered to settle the account for \$1,713.90, but Applicant failed to take any action in response to the offer.²⁹ Applicant used this credit card to pay for his routine living expenses. He has not made any effort to approach the creditor to establish a repayment plan because he does not have sufficient funds to start making payments.³⁰ The account has not been resolved.

(SOR ¶ 1.g.) There is a credit card account with a high credit and remaining unpaid balance of \$2,274, as well as a past due balance of \$1,501, that was placed for collection and charged off in 2010.³¹ The creditor offered to settle the account for 50% which was \$47.38 per month over a period of 24 months.³² Applicant used this credit card to pay for his routine living expenses. He has not made any effort to approach the creditor to establish a repayment plan for three reasons: (1) he was advised by someone not to trust the creditor and to try to negotiate a settlement, (2) he feared that negotiating would restart the clock (apparently referring to the statute of limitations), and (3) because he does not have sufficient funds to start making payments.³³ The account has not been resolved.

²⁴ GE 4, *supra* note 19, at 1; GE 2 (Settlement in Full Offer, dated April 3, 2013), attached to Applicant's Answers to Interrogatories.

²⁵ GE 2 (Personal Subject Interview), *supra* note 21, at 4-5; Tr. at 47.

²⁶ GE 3, *supra* note 18, at 6; GE 4, *supra* note 19, at 1.

²⁷ GE 2 (Personal Subject Interview), *supra* note 21, at 5; Tr. at 47.

²⁸ GE 3, *supra* note 18, at 8; GE 4, *supra* note 19, at 2; GE 2 (Letter, dated May 8, 2013), attached to Applicant's Answers to Interrogatories).

²⁹ GE 2 (Letter, dated May 8, 2013), *supra* note 28; Tr. at 38.

³⁰ GE 2 (Personal Subject Interview), *supra* note 21, at 5.

³¹ GE 3, *supra* note 18, at 5; GE 4, *supra* note 19, at 2.

³² GE 2 (Settlement Offer, dated November 28, 2012), attached to Applicant's Answers to Interrogatories.

³³ GE 2 (Personal Subject Interview), *supra* note 21, at 4; Tr. at 39.

(SOR ¶¶ 1.h.-1.i.) There is a charge account with a large consumer electronics company with a high credit of \$1,522 and an unpaid balance of \$1,064 that was past due and sold to a debt purchaser in 2009.³⁴ Applicant used the account to purchase a computer.³⁵ The debt purchaser, claiming to be the original creditor, reported that the high credit, past-due amount, and unpaid balance were all \$1,063.³⁶ The account, listed in the name of the debt purchaser, does not appear in Applicant's 2013 credit report. The account was subsequently resold to another debt purchaser that indicated the outstanding balance was actually \$1,063.53, and offered to settle it for \$372.24.³⁷ Applicant has not made any effort to approach the creditor to establish a repayment plan because he does not have sufficient funds to start making payments.³⁸ The account has not been resolved.

In May 2013, Applicant submitted a personal financial statement (PFS). Applicant's monthly net income was \$2,880. With monthly household expenses totaling \$2,174, and no debt payments, he had approximately \$706 available for discretionary spending of savings. He did not indicate that he had any savings.³⁹ Applicant drives a 2013 Nissan Sentra.⁴⁰ During the hearing, Applicant indicated he had been able to save \$1,000 since August 2008.⁴¹ He was asked to furnish a current PFS,⁴² but has apparently chosen not to do so.

Applicant contends that he is current on all of his present accounts, including rent, utilities, and car payments, and that he has not accumulated any additional delinquent debts.⁴³ Although he claimed to be saving money to be in a position to start resolving his debts, he apparently has only \$1,000 in savings. Additionally, while he contends he has sought guidance and counseling from an attorney, the EAP, his union, and a financial counselor, in 2010 or 2011, his efforts came to a halt when he perceived the debt consolidation services to be a scam.⁴⁴ With the exception of his May 2014

³⁴ GE 3, *supra* note 18, at 8; GE 4, *supra* note 19, at 2. After selling the account, the original creditor reported a zero balance.

³⁵ GE 2 (Personal Subject Interview), *supra* note 21, at 5.

³⁶ GE 3, *supra* note 18, at 5.

³⁷ GE 2 (Letter, dated April 3, 2013), attached to Applicant's Answers to Interrogatories.

³⁸ GE 2 (Personal Subject Interview), *supra* note 21, at 5; Tr. at 49.

³⁹ GE 2 (Personal Financial Statement, dated May 6, 2013), attached to Applicant's Answers to Interrogatories.

⁴⁰ Tr. at 52.

⁴¹ Tr. at 54.

⁴² Tr. at 63.

⁴³ Tr. at 19, 53-54.

⁴⁴ GE 2 (Personal Subject Interview), *supra* note 21, at 6.

discussions with an attorney regarding a possible bankruptcy, Applicant has offered no documentation to support his contention that he has had any discussions with the EAP, the union, or a financial counselor.

Character References and Work Performance

Applicant has been recognized by management on several occasions for his personal commitment, dedication, and performance.⁴⁵ He has been entrusted with a corporate credit card.⁴⁶ Members of his corporate management have declined to furnish him with a letter of recommendation or character reference, claiming that they are not permitted to do so because they “are members of the management for the company that is trying to adjudicate his clearance application.”⁴⁷ Applicant’s former supervisor, a friend and former colleague in the USMC, and coworkers, are very supportive of Applicant’s application for a security clearance. Applicant has been characterized in the following terms: trustworthy, exceptional work ethic, levelheaded self-starter, intelligent, articulate, effective, extremely knowledgeable, and integrity in all aspects of life.⁴⁸

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.

⁴⁵ AE H (Certificates and Messages, various dates).

⁴⁶ AE J (Corporate Credit Card, expiration date: February 2017).

⁴⁷ AE C (E-mail Stream, dated May 23, 2014).

⁴⁸ AE D (Character Reference, dated May 23, 2014); AE E (Character Reference, undated); AE F (Character Reference, dated May 27, 2014); AE G (Character Reference, undated).

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.

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, 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

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).

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.

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 May 2008, Applicant found himself with insufficient funds to continue making his routine monthly payments, various accounts became delinquent, and they were placed for collection, charged off, or sold. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.⁵⁵

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.'

AG ¶ 20(b) only minimally applies. Applicant's financial problems culminated in May 2008 after a series of events occurred that Applicant contends negatively impacted his finances. He noted that commencing in 2003 or 2004, he accumulated about \$38,000 in debt from credit cards, medical bills, school, and living expenses. He also encountered the three periods of unemployment (February 2003 until August 2004, July 2006 until February 2007, and May 2008 until August 2008), obtained some part-time work, attended college full-time, and experienced an illness for which medical insurance coverage was denied. While the periods of unemployment and the medical insurance issue may have contributed to some of his financial difficulties, the remaining issues have not been fully explained. Applicant received financial benefits under the G.I. Bill to enable him to pay his college tuition and living expenses. Applicant obtained his current position in August 2008, and he claims he generally has approximately \$706 each month available for discretionary spending or savings. Yet, during the ensuing nearly six years since his full employment, he has been able to save only \$1,000 (and purchase a 2013 Nissan Sentra). Applicant's financial issues were left unresolved. There is insufficient evidence that Applicant was unable to do more to pay his delinquent SOR debts. Applicant failed to act responsibly under the circumstances.⁵⁶

AG ¶ 20(a) does not apply. The nature, frequency, and relative recency of Applicant's financial difficulties since 2008, or even before that time, make it difficult to conclude that it occurred "so long ago" or "was so infrequent," especially since those financial problems are continuing.

AG ¶ 20(c) does not apply because there is only oral evidence, unsubstantiated by any documentation, that Applicant has ever received financial counseling or debt consolidation guidance. In addition, he failed to establish that there are clear indications that his finances are under control and his SOR debts are being paid.

AG ¶ 20(d) does not apply because Applicant failed to initiate a "good-faith effort," to start repaying any of his SOR-creditors. There is evidence that he did resolve one non-SOR account. Applicant never made repayment arrangements, even for accounts as little as \$364, \$422, or \$432. Creditors have reached out to him to settle some debts, with one creditor offering a repayment plan of \$47.38 per month over 24 months, but Applicant did nothing. Over the years since his full employment, Applicant did not act aggressively, timely, or responsibly to resolve his delinquent debts. Instead,

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].

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

⁵⁶ "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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

he ignored his debts and continues to do so, claiming he is saving money to eventually resolve and settle his debts. Applicant was previously a bank wealth investment support specialist, which would indicate some awareness of financial matters. In addition, when he noted that negotiating with one particular creditor would restart the clock, he was apparently referring to the statute of limitations for some of the debts that would be dropped from his credit report and become uncollectable once the statute of limitations had run its course. Applicant has been with his current employer since August 2008 – nearly six years – and more positive movements should have already taken place to resolve some of his delinquent accounts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant 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.

There is some evidence in favor of mitigating Applicant's conduct. He was honorably discharged from the USMC after serving on active duty and in the reserves. With the exception of his periods of unemployment, Applicant has generally been employed in either part-time or full-time positions. He completed his initial degree. He has repeatedly declared his intention of resolving his delinquent accounts once he has the funds to do so.

The disqualifying evidence under the whole-person concept is more substantial than the mitigating evidence. While the unemployment and reduced earnings were circumstances beyond his control, Applicant either had no ability or no intention to pay his delinquent accounts. Aside from his one non-SOR creditor, he did not make any efforts to pay his creditors, generally ignoring them, even after he had acquired his current position in August 2008. His long-standing failure to repay creditors, at least in reasonable amounts (such as \$47.38 per month for 24 months), or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

I am mindful that any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light. 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.⁵⁷ The absence of any efforts or evidence to reflect actual payments to his SOR creditors are sufficient to raise continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁸

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

Applicant has demonstrated a negative track record of making minimal efforts to pay his creditors, and generally ignoring them until he is financially able to address his delinquent debts. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:

AGAINST APPLICANT

⁵⁷ 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).

⁵⁸ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant (duplicate of 1.i.)
Subparagraph 1.i:	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