



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 11-15269

Appearances

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

11/19/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and foreign preference. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On July 28, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on May 4, 2012.² On May 30, 2012, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative*

¹ GE 1 (SF 86), dated July 28, 2011.

² GE 5 (Applicant's Answers to Interrogatories, dated May 4, 2012).

Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (financial considerations), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on June 19, 2012. In a sworn statement, dated June 27, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On August 3, 2012, pursuant to ¶ E.3.1.13 of the Directive, DOHA issued him an amendment to the SOR. The SOR amendment added alleged security concerns under Guideline C (foreign preference). Applicant acknowledged receipt of the SOR amendment on August 14, 2012. On that same date, he responded to the SOR amendment. Department Counsel had indicated the Government was prepared to proceed on August 6, 2012. The case was assigned to me, along with the companion case of Applicant's wife, on August 9, 2012. A Notice of Hearing was issued on September 5, 2012, and I convened the joint hearing, as scheduled, on September 26, 2012.

During the hearing, ten Government exhibits (GE 1 through GE 10) and four Applicant exhibits (AE A through AE D) were admitted into evidence without objection. Applicant and his wife testified. The transcript (Tr.) was received on October 4, 2012. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted a substantial number of additional exhibits (AE E through AE AK) that were admitted into evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted 15 of the factual allegations pertaining to financial considerations (¶¶ 1.a., 1.c. through 1.b., 1.g., 1.i., 1.m., 1.o. through 1.u., and 1.w. of the SOR).³ In his Answer to the SOR amendment, Applicant admitted both of the factual allegations pertaining to foreign preference (¶¶ 2.a. and 2.b.) Those admissions are incorporated herein as findings of fact. He denied the remaining allegations. 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 68-year-old chief executive officer (CEO) of a defense contractor that he established in the United States in 1993. He was born in the United Kingdom (UK) to British citizen-residents, and was raised and educated in the UK. He graduated from a British high school in May 1960 and received his first associate's degree in business management in May 1977 in the UK. He received a second associate's degree in an unspecified discipline from a college in the United States in January 2004.

³ Department Counsel conceded that SOR ¶¶ 1.l. and 1.m. were duplicates, and moved to strike ¶ 1.l. There being no objection, the motion was granted. Tr. at 17-18.

He was married on two occasions: the first time in 1960 and divorced in 1980; and the second time in 1983. He and his first wife have a son, and he and his current wife have two sons (born in 1985 and 1987).⁴

Applicant first arrived in the United States in 1993 in response to an invitation by a state economic development commission conducting an assessment of Applicant's technology capabilities. He established the company in the United States and staffed it, but continued to operate both the U.S. entity and a UK entity, spending several weeks at a time at each location. In 1997, he relocated his family to the United States.⁵ He became a naturalized U.S. citizen in May 2001,⁶ and his wife became a naturalized U.S. citizen in May 2004.⁷

Financial Considerations

It is unclear when Applicant's financial problems first started to develop. During the four-year period that he was commuting between the United States and the UK, he had an employee serving as the senior administrator who was looking after the company finances, running the business in Applicant's absence, and producing monthly reports. Eventually, however, Applicant discovered that aside from being very nice and very clever, she had a propensity to steal. She had embezzled and fraudulently obtained monies and credit in the names of both the company and Applicant. She also obtained a false Social Security number. There were balances on credit cards that he was not aware of, forged signatures, and unpaid taxes. Applicant estimated his company lost substantially over \$300,000. The employee was successfully prosecuted by the authorities. She was placed on house arrest, given 15 years' probation, and required to pay restitution to the extent she could do so over the period of 15 years. The employee actually repaid only about \$2,000.⁸ Because of those illegal activities, Applicant and his company were in substantial debt. Nevertheless, while he was legally absolved from any responsibility for those debts, he felt a moral obligation to do so, and he embarked on an effort to pay his creditors in full.⁹ Applicant got his business back on track in 1998-1999.¹⁰

During a period of financial prosperity, both nationally and personally, Applicant invested in about ten rental properties. He paid cash for some of the properties and

⁴ GE 1, *supra* note 1, at 15-16, 18-19.

⁵ Tr. at 42-43.

⁶ GE 7 (Personal Subject Interview, dated August 29, 2011), at 1.

⁷ GE 2 (e-QIP), dated July 28, 2011), at 6-7.

⁸ Tr. at 43-46; Applicant's Response to the SOR, dated June 27, 2012), at 2.

⁹ Applicant's Response to the SOR, *supra* note 8, at 2.

¹⁰ Tr. at 69; AE C (Statement, dated September 24, 2012), at 1.

obtained several small home mortgages for others.¹¹ He also purchased a residence in about 2004 or 2005 for \$2.4 million, and he obtained several lines of credit. The rents from the rental properties easily covered the mortgages. Applicant felt that some of the properties could be leveraged if he needed to generate additional income for research and development.¹²

Several additional circumstances created Applicant's present financial difficulties. In 2004 and 2005, there were expenses and development costs of certain technology that Applicant expected to play "a significant role" in a high profile national activity that has been hotly debated over the past four years. Because of his enthusiasm with his project, Applicant allowed his core business – product design – to drift as he put all of his focus on software.

In 2008, because of the national economic downturn, major corporations across the nation that had been working with his company suddenly ceased substantial involvement in several areas of Applicant's company's core technology design services, and he lost over 50 percent of his anticipated revenue. Applicant was confident that he was close to a breakthrough, and had to make a choice of either shutting down his project and losing what he had already put into it, or continuing with his efforts. He needed more time and more money to accomplish his goals, so he chose the latter option, and to generate the necessary funds to do so, he started mortgaging his properties.¹³ Unfortunately, the bottom fell out of the housing market and his properties, now all with substantial mortgages, were all "under water."¹⁴ Some renters bailed out of his properties. In 2009, without any forewarning, a major investor withdrew from further investment activity.¹⁵

Finally, as a result of poor decisions by Applicant, various state payroll taxes were not properly withheld in locations where Applicant's company had performed services. In 2009, accounts started to become delinquent. Liens were placed against him and some delinquent accounts were sent to collection or charged off. Despite mounting financial difficulties, Applicant and his wife maintained a good lifestyle: in August 2009, Applicant's wife vacationed in the UK for ten days; in January 2011, he and his wife vacationed in Central America for five days; in April 2011, Applicant's wife vacationed in the Caribbean for one week; and they both vacationed in the UK for an unspecified period in July 2012.¹⁶

¹¹ Tr. at 69.

¹² Tr. at 71.

¹³ Tr. at 71, 75-76; AE C, *supra* note 10, at 2.

¹⁴ Tr. at 76; AE C, *supra* note 10, at 2.

¹⁵ Applicant's Response to the SOR, *supra* note 8, at 2-3.

¹⁶ GE 1, *supra* note 1, at 27; GE 2, *supra* note 7, at 25-26; GE 9 (Letter from Company Security Officer, dated July 12, 2012).

Attorneys and friends advised him to declare bankruptcy, but he refused to consider such an option.¹⁷ Instead, he turned to a realtor and an accountant to seek professional guidance and assistance. In an effort to resolve his delinquent accounts, Applicant opened discussions with all of his creditors, intending to resolve some accounts and engage in resolution efforts on other accounts. He put his properties up for sale. Hoping to rely on his emergency backup plan – his mother-in-law’s reserve of \$375,000 – Applicant could not do so for she had become the victim of a multi-million dollar Ponzi scheme, leaving her unable to assist him financially.

In March 2012, Applicant’s wife submitted a personal financial statement, and in May 2012, Applicant did also. They reflected Applicant’s net monthly income as \$3,517.98,¹⁸ and his wife’s net monthly income as \$4,800.¹⁹ The monthly combined net income for them would be \$8,317.98. He claimed \$2,735 in monthly expenses and \$45 in debt payments, leaving a monthly net remainder of \$782.98 available for discretionary spending or saving.²⁰ She claimed \$2,835 in monthly expenses and \$2,310.59 in debt payments, leaving a monthly net remainder of minus \$345.59 available for discretionary spending or saving.²¹ They both included nearly the same monthly expenses. Therefore, it appears that they may have approximately a combined \$3,227 available for discretionary spending or saving. Circumstances have changed, and Applicant now earns approximately \$2,000 per month from his company, in addition to a pension of \$1,600.²² Neither Applicant nor his wife ever received financial counseling.²³

The SOR identified 22 (not counting the duplicate ¶ 1.I.) purportedly continuing delinquencies, totaling approximately \$1,250,812. Of those 22 accounts, Applicant has resolved or is in the process of resolving 10 of the accounts, and has not yet resolved the remaining 12 accounts. Each account is described below, reflecting both the original and present status, as follows:

(SOR ¶¶ 1.a. and 1.d.): These are both federal tax liens. The first one is a lien in the amount of \$124,090.68 that was filed separately against Applicant and his wife in February 2011, covering unpaid payroll taxes for the last three quarters of 2009.²⁴ Applicant made garnishment payments on the balance when possible, and the balance

¹⁷ AE C, *supra* note 10, at 3.

¹⁸ GE 5 (Personal Financial Statement, undated), attached to Applicant’s Answers to Interrogatories.

¹⁹ GE 6 (Wife’s Personal Financial Statement, undated), attached to her Answers to Interrogatories.

²⁰ GE 5 (Personal Financial Statement), *supra* note 18.

²¹ GE 5 (Personal Financial Statement), *supra* note 18.

²² Tr. at 61-62, 64-65.

²³ Tr. at 137-138.

²⁴ AE G (Notice of Federal Tax Lien, dated February 3, 2011).

was reduced accordingly. It was subsequently declared “uncollectable.”²⁵ The liens on two identified properties were released and discharged in April 2012.²⁶ The second one, a lien in the amount of \$119,214.78, was filed against Applicant and his wife in another state in April 2011, covering the same three quarters of 2009.²⁷ As of December 2011, the remaining balance had decreased to \$99,348.52.²⁸ Applicant intends to satisfy both liens as soon as he can sell the houses, neither of which has a mortgage.²⁹ One account is in deferment as uncollectable and the other account is in the process of being resolved.

(SOR ¶¶ 1.h., 1.i., and 1.b.): These are the first and second mortgages for the same residence. The first one is a first mortgage that had a past due balance of \$389,918 for which foreclosure proceedings had been initiated.³⁰ The other two accounts are actually two versions of the same second mortgage account, with the credit report referring to one as a home improvement loan that was past due in the amount of \$65,000, and the other as a home equity line of credit that was past due in the amount of \$134,543.³¹ Applicant and a buyer agreed to a short sale in April 2012,³² and the mortgage lender approved a short sale in September 2012.³³ The property was apparently sold,³⁴ and the accounts appear to have been resolved.

(SOR ¶ 1.c.): This is a \$150,000 line of credit not associated with any property that became \$149,359 past due, and the account was subsequently charged off.³⁵ Applicant claimed he has been in contact with the creditor, and they are willing to accept an offer in compromise, but since Applicant is not yet in a position to make a significant payment, no documentation has been exchanged.³⁶ The account remains unresolved.

²⁵ Tr. at 58, 60.

²⁶ AE H (Certificate of Discharge of Property From Federal Tax Lien, dated April 13, 2012); AE I (Certificate of Discharge of Property From Federal Tax Lien, dated April 13, 2012).

²⁷ AE F (Notice of Federal Tax Lien, dated April 27, 2011).

²⁸ AE A (Letter from IRS, dated December 23, 2011); AE J (Letter from IRS, dated December 23, 2011). The two exhibits are copies of each other. See also, AE K (E-mail, dated October 3, 2012).

²⁹ Applicant’s Response to the SOR, *supra* note 8, at 1.

³⁰ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 13, 2011), at 11.

³¹ GE 3, *supra* note 30, at 11-12.

³² GE 5 (Short Sale Documents, dated April 9, 2012), attached to Applicant’s Answers to Interrogatories.

³³ AE M (Letter from Second Mortgage Lender, dated September 19, 2012); AE N (Letter from First Mortgage Lender, dated September 19, 2012).

³⁴ GE 6 (Residential Contract For Sale and Purchase, undated), attached to Applicant’s Wife’s Answers to Interrogatories. It should be noted that although he stated he would do so, Applicant did not submit documentation, such as a Settlement Statement (HUD-1), to conclusively prove that that property had been sold.

³⁵ GE 3, *supra* note 30, at 25; Tr. at 81-82; GE 6 (Account Statement, undated), attached to Applicant’s Wife’s Answers to Interrogatories.

³⁶ Tr. at 81; AE W (E-mail, dated October 5, 2012), at 1.

(SOR ¶ 1.e.): This is the mortgage for a rental property in the amount of \$210,375 that was \$10,631 past due.³⁷ Applicant contended that the account was transferred to another company, but was unable to identify that company.³⁸ Applicant and a buyer agreed to a short sale in the amount of \$114,900 and the transaction was scheduled to close on or before May 15, 2012.³⁹ However, there is no documentary evidence that the mortgage lender or the company that subsequently received the account agreed to the short sale and there is no documentary evidence that the property was actually sold. The account has not been resolved.

(SOR ¶ 1.f.): This is the mortgage for a rental property in the amount of \$223,520 that was \$8,538 past due.⁴⁰ Applicant contended that the account was transferred to another company, but was unable to identify that company.⁴¹ Applicant and a buyer agreed to a short sale and the transaction was scheduled to close on or before April 25, 2012.⁴² However, there is no documentary evidence that the mortgage lender or the company that subsequently received the account agreed to the short sale and there is no documentary evidence that the property was actually sold. The account has not been resolved.

(SOR ¶ 1.g.): During 2008 and 2010, Applicant's administrative assistant failed to pay state Q withholding tax, and as of April 2012, the total amount due was \$2,417.29.⁴³ That same month, he entered into a repayment agreement under which he would make monthly electronic fund transfers (EFT) of \$74.⁴⁴ Applicant also engaged the professional services of an accountant to resolve the account as there was some question as to whether the account was accurate.⁴⁵ Although Applicant contended he was making the monthly payments,⁴⁶ he offered no documentation in the form of

³⁷ GE 3, *supra* note 30, at 10.

³⁸ Tr. at 83.

³⁹ AE Z (Residential Contract For Sale and Purchase, undated).

⁴⁰ GE 3, *supra* note 30, at 10.

⁴¹ Tr. at 83.

⁴² GE 6 (Residential Contract For Sale and Purchase, undated), attached to Applicant's Wife's Answers to Interrogatories. It should be noted that Applicant did not submit documentation, such as a HUD-1, to conclusively prove that that property had been sold.

⁴³ GE 5 (Liability Information, dated April 17, 2012), attached to Applicant's Answers to Interrogatories; Tr. at 86. There is evidence that Applicant also failed to pay state Q withholding tax for the same periods with a total amount due, as of January 2011, of \$10,029.25, but that information is not alleged in the SOR. See GE 5 (Tax Information, dated January 14, 2011), attached to Applicant's Answers to Interrogatories.

⁴⁴ GE 5 (EFT Letter, Authorization, and Installment Agreement, dated April 24, 2012), attached to Applicant's Answers to Interrogatories.

⁴⁵ AE AK (Letter from Accountant, undated); Tr. at 85-86.

⁴⁶ Applicant's Response to the SOR, *supra* note 8, at 1.

receipts, cancelled checks, credit card statements, money orders, or account registers, to support his contention. The account has not been resolved.

(SOR ¶ 1.j.): This is the mortgage for a rental property in the amount of \$357,000 that was \$17,138 past due.⁴⁷ The property was sold for \$229,000 in March 2012,⁴⁸ and the mortgage was satisfied in June 2012.⁴⁹ The account has been resolved.

(SOR ¶ 1.k.): This is the mortgage for a rental property with a high credit amount of \$176,400 that was \$9,528 past due.⁵⁰ The property was sold for \$85,000 in January 2012,⁵¹ and the mortgage was satisfied in March 2012.⁵² The account has been resolved.

(SOR ¶ 1.m.): This is the mortgage for a rental property with a high credit amount of \$163,800 that was \$7,992 past due.⁵³ The property was sold for an unspecified amount in January 2012,⁵⁴ and the mortgage was satisfied in March 2012.⁵⁵ The account has been resolved.

(SOR ¶ 1.n.): This is the mortgage for a rental property with a high credit amount of \$206,500 that was \$9,563 past due.⁵⁶ Applicant and a buyer agreed to a short sale in the amount of \$105,000 and the transaction was scheduled to close on or before March 28, 2012.⁵⁷ However, there is no documentary evidence that the mortgage lender agreed to the short sale and, to the contrary, there is evidence that the contract fell through. Applicant and another buyer subsequently agreed to a short sale in the amount of \$114,600 and the transaction was scheduled to close on an unspecified date.⁵⁸ Although Applicant contends the property was sold, there is no documentary evidence that the mortgage lender agreed to the short sale and there is no documentary evidence that the property was actually sold. The account has not been resolved.

⁴⁷ GE 3, *supra* note 30, at 12.

⁴⁸ AE B (HUD-1, dated March 26, 2012).

⁴⁹ AE AA (Satisfaction of Mortgage, dated June 13, 2012).

⁵⁰ GE 3, *supra* note 30, at 12.

⁵¹ GE 6 (HUD-1, dated January 31, 2012), attached to Applicant's Wife's Answers to Interrogatories.

⁵² AE AB (Satisfaction of Mortgage, dated March 13, 2012).

⁵³ GE 3, *supra* note 30, at 12.

⁵⁴ GE 6 (Warranty Deed, dated January 27, 2012), attached to Applicant's Wife's Answers to Interrogatories.

⁵⁵ AE AC (Release of Mortgage, dated March 13, 2012).

⁵⁶ GE 3, *supra* note 30, at 13.

⁵⁷ GE 6 (Residential Contract For Sale and Purchase, undated), attached to Applicant's Wife's Answers to Interrogatories.

⁵⁸ AE AD (Residential Contract For Sale and Purchase, undated).

(SOR ¶ 1.o.): This is the mortgage for a rental property with a high credit amount of \$361,900 that was \$19,582 past due.⁵⁹ Applicant and a buyer agreed to a short sale in the amount of \$269,900 and the transaction was scheduled to close on or before August 21, 2012.⁶⁰ However, there is no documentary evidence that the mortgage lender agreed to the short sale and there is no documentary evidence that the property was actually sold. The account has not been resolved.

(SOR ¶ 1.p.): This is the mortgage for a rental property with a high credit amount of \$134,000 that was \$7,567 past due.⁶¹ Applicant and a buyer purportedly agreed to a short sale in an unspecified amount, but he could not recall if the property was still subject to a short sale or had been sold.⁶² There is no documentary evidence that there is a sales contract, the mortgage lender agreed to a short sale, or that the property was actually sold. The account has not been resolved.

(SOR ¶ 1.q.): This is the bank credit card with a high credit of \$56,070 that was \$9,455 past due, and charged off.⁶³ The creditor made an offer to settle the account for one payment of \$29,005, 24 payments totaling \$31,920, or in full for \$150 per month, but since Applicant is not yet in a position to make a significant payment (of even the \$150 per month), no agreement has been reached.⁶⁴ The account has not been resolved.

(SOR ¶ 1.r.): This is the bank credit card with a high credit of \$55,655 that was \$7,718 past due, and charged off.⁶⁵ Applicant contends that the creditor is waiting for him to make an offer in compromise, but since he is not yet in a position to make a significant payment, no documentation has been exchanged and no offer has been made.⁶⁶ However, he is incorrect, for when the creditor charged off the unpaid balance, it issued Applicant a Form 1099-C, Cancellation of Debt, and Applicant is no longer responsible for the debt to the creditor.⁶⁷ The account has been resolved.

(SOR ¶ 1.s.): This is the bank credit card with a high credit of \$13,314 that was \$2,119 past due, and charged off.⁶⁸ Applicant contends that the creditor is waiting for

⁵⁹ GE 3, *supra* note 30, at 13.

⁶⁰ AE AE (Residential Contract For Sale and Purchase, undated).

⁶¹ GE 3, *supra* note 30, at 13.

⁶² Tr. at 104.

⁶³ GE 3, *supra* note 30, at 14.

⁶⁴ AE P (Letter from Collection Agent, dated May 8, 2012). *But also see*, Tr. at 105, wherein Applicant contends that he is still waiting for an offer and compromise.

⁶⁵ GE 3, *supra* note 30, at 14.

⁶⁶ Tr. at 105.

⁶⁷ AE R (Combined Tax Statement for Year 2011 (Form 1099-C), dated December 31, 2011).

⁶⁸ GE 3, *supra* note 30, at 15.

him to make an offer in compromise, but since Applicant is not yet in a position to make a significant payment, no documentation has been exchanged and no offer has been made.⁶⁹ The account has not been resolved.

(SOR ¶ 1.t.): This is an unspecified type of bank account with a high credit of \$9,221 that was past due. The delinquent account was transferred or sold to a collection agent in 2011.⁷⁰ Applicant was unaware of what type of account it is.⁷¹ Although he had not made any payments on the account as of May 2012,⁷² he now believes that it was paid.⁷³ There is no documentary evidence to support his belief. The account has not been resolved.

(SOR ¶ 1.u.): This is the bank credit card with a high credit of \$9,780 and an unpaid balance of \$11,335 that was \$5,687 past due, and charged off.⁷⁴ Applicant contends that the creditor is waiting for him to make an offer in compromise, but since Applicant is not yet in a position to make a significant payment, no documentation has been exchanged and no offer has been made.⁷⁵ The account has not been resolved.

(SOR ¶ 1.v.): This is the mortgage for a rental property with a high credit amount of \$211,200 that was \$10,781 past due.⁷⁶ The property was sold for \$112,000 in October 2011,⁷⁷ and the mortgage was satisfied in November 2011.⁷⁸ The account has been resolved.

(SOR ¶ 1.w.): This is an unspecified loan with a high credit amount of \$17,902 that was \$19,729 past due in July 2011.⁷⁹ The account was transferred or sold to a collection agent, and that collection agent offered to settle the account in September 2012, for \$7,588.86.⁸⁰ Applicant contends that since he is not yet in a position to make a significant payment, he cannot accept the offer.⁸¹ The account has not been resolved.

⁶⁹ Tr. at 106.

⁷⁰ GE 3, *supra* note 30, at 16.

⁷¹ Tr. at 106.

⁷² GE 5, *supra* note 2, at 166.

⁷³ Tr. at 106.

⁷⁴ GE 3, *supra* note 30, at 18.

⁷⁵ Tr. at 106-107.

⁷⁶ GE 3, *supra* note 30, at 18.

⁷⁷ GE 5 (HUD-1, dated October 26, 2011), attached to Applicant's Answers to Interrogatories.

⁷⁸ AE AH (Satisfaction of Mortgage, dated November 11, 2011).

⁷⁹ GE 3, *supra* note 30, at 23.

⁸⁰ AE O (Letter from Collection Attorney, dated September 5, 2012).

Foreign Preference

Applicant received a monthly pension, much like Social Security, in the amount of \$667.98, from the UK, and it was deposited directly into his local U.S. bank account.⁸² The pension was subsequently reduced to between \$400 and \$600. Applicant applied for Social Security benefits in the United States, and the UK portion is now deducted from his U.S. benefits.⁸³ He receives a total of about \$1,600, divided into \$1,090 from the United States and the remainder from the UK.⁸⁴ He is willing to renounce his UK pension, and that amount would no longer be offset by Social Security.

In May 2001, shortly after he became a naturalized U.S. citizen, Applicant obtained a U.S. passport.⁸⁵ He was subsequently issued a new UK passport in August 2005, and he has retained his UK passport which does not expire until 2015.⁸⁶ Applicant used his UK passport instead of his US passport for convenience to avoid the longer lines for non-UK citizens entering the UK.⁸⁷ Although he had previously surrendered his UK passport to his facility security officer, he retrieved it in July 2012 to use it while traveling in the UK that same month.⁸⁸ Applicant travelled to the UK to see his hospitalized sister and to attend a friend's wedding.⁸⁹ Friends warned him about "foreigners" going to England to see the Olympic Games and the long lines associated with such travel, so he decided to use his UK passport.⁹⁰ Applicant "justified" the use of the UK passport for "easy access only due to Olympic traffic."⁹¹ Both Applicant and his wife pledged their allegiance to the United States upon becoming naturalized citizens, and denied that their actions were associated with any preference for the UK.⁹² He stated: "I am American through and through."⁹³ The UK passports of both Applicant and

⁸¹ Tr. at 107.

⁸² GE 7, *supra* note 6, at 7. It should be noted that the receipt of the UK pension benefits was not alleged in either the SOR or the Amendment to the SOR, and thus cannot form the basis of a denial of a security clearance.

⁸³ Tr. at 64.

⁸⁴ Tr. at 64-65.

⁸⁵ GE 1, *supra* note 1, at 7.

⁸⁶ GE 1, *supra* note 1, at 7; GE 7, *supra* note 6, at 2.

⁸⁷ GE 7, *supra* note 6, at 2.

⁸⁸ GE 9, *supra* note 16.

⁸⁹ Tr. at 52-53.

⁹⁰ Tr. at 53.

⁹¹ Applicant's Response to the Amendment to the SOR, dated August 14, 2012, at 1.

⁹² Tr. at 54-57.

⁹³ Tr. at 56.

his wife were returned to the facility security officer upon their return from the UK.⁹⁴ Applicant is willing to renounce his UK citizenship.⁹⁵

Character References

The director of the metropolitan economic development commission where Applicant's company is located characterized Applicant as "sincere, genuine and trustworthy."⁹⁶ An attorney with a lengthy business relationship with Applicant and his company acknowledged that Applicant has a receivable account with her firm, which she attributed to current economic conditions. She characterized him as a man of integrity.⁹⁷

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."⁹⁸ 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."⁹⁹

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

⁹⁴ GE 10 (Letter from Company Security Officer, dated August 1, 2012).

⁹⁵ GE 7, *supra* note 6, at 2.

⁹⁶ AE D (Character Reference, dated September 24, 2012).

⁹⁷ AE E (Character Reference, dated September 25, 2012).

⁹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁹⁹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”¹⁰⁰ 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.¹⁰¹

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.”¹⁰²

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.”¹⁰³ 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.

¹⁰⁰ “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).

¹⁰¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁰² *Egan*, 484 U.S. at 531

¹⁰³ See Exec. Or. 10865 § 7.

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. The seeds of Applicant's financial problems commenced sometime between 2004 and 2008 when a variety of conditions occurred. During the earlier portion of the period, he allowed his core business to drift when his focus was elsewhere. Later, economic conditions worsened, and the consequences were such that he was unable to continue making his monthly payments on mortgages, credit card accounts, lines of credit, and taxes. Accounts became delinquent and were placed for collection, charged off, or had liens filed. 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*. When *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*, AG ¶ 20(c) may apply. Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.¹⁰⁴

¹⁰⁴ 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 she or she relied on a legally

AG ¶¶ 20(a) and 20(b) partially apply. Applicant's financial problems commenced between 2004 and 2008 when a variety of conditions occurred. He allowed his core business to drift when his focus was elsewhere; economic conditions worsened and his company lost over 50 percent of his anticipated revenue when other companies with which he had been working suddenly curtailed their activities; the value of his rental properties plummeted; renters bailed out; a major investor withdrew from further investment activity; and Applicant made some poor decisions.

While the business downturn and the devastation of the national and local economies were largely beyond Applicant's control, some decisions made by him were clearly within his sole control. He kept his eye on the "brass ring" but failed to understand the full dynamics of the situation. Focusing on his big technology project – to the detriment of his core business – Applicant incurred substantial development expenses and costs. He gambled on success, and leveraged his rental properties to generate additional funds. He chased his losses hoping to cash in with eventual success. Applicant was confident that he was close to a breakthrough, and had to make a business decision of either shutting down his project and losing what he had already put into it, or continuing with his efforts. He needed more time and more money to accomplish his goals, so he chose the latter option. While he remains enthusiastic about his potential achievement, there is little evidence of actual success. Instead, Applicant has delivered hype, hope, and positive expectations, with few specifics.

While Applicant's financial difficulties commenced between 2004 and 2008, they have continued and deteriorated to the point where they cannot be considered infrequent. Whether they occurred under such circumstances that are unlikely to recur is a matter of opinion. The current economic climate was unanticipated and is akin to a hundred year storm or the economic recession of the 1930s. Applicant was either a technology visionary or a poor businessman, or both. His actions and decisions contributed to his financial problems, but did not cause them. However, while some of his decisions may, in retrospect, cast some doubt on his good judgment, they do not cast doubt on his current reliability or trustworthiness. After what appears to be a slow start in attempting to resolve his financial problems, Applicant eventually acted responsibly under the circumstances.

AG ¶ 20(c) does not apply because neither Applicant nor his wife ever received financial counseling. Applicant engaged the services of attorneys, accountants, and realtors to assist him in mitigating his financial losses, and there are indications that some accounts have been resolved or are in the process of being resolved. Nevertheless, it remains unclear if Applicant has more than a rudimentary understanding of the financial issues.

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)).

AG ¶ 20(d) partially applies. At the outset, Applicant is credited with laudable efforts in resolving the financial mess his former senior administrator left him with due to her embezzlement activities. Although not legally required to do so, he accepted the moral obligation and paid his creditors in full. The more recent financial problems have provided him with another opportunity to resolve his financial problems. Applicant contacted his creditors and eventually concluded that he should extricate himself from his burdensome mortgages. During this horrible housing market he put certain properties on the market and sought approval for short sales from his mortgage lenders. Some properties have been successfully sold, and he was absolved from any deficiency balances. Other properties are apparently awaiting short sale approval or actual closings, but since Applicant failed to furnish the necessary documentation to me, I am unable to conclude that those remaining accounts have been resolved. One lien has been placed into a period of deferment and he is, or at least was, making some monthly payments on it. Other delinquent accounts are in line, awaiting his attention.

There is some concern that Applicant has not given his delinquent accounts the timely attention due them, and has instead wasted valuable time and money on other endeavors. It is unclear if he is putting his monthly net remainder towards delinquent debts or using it for other purposes. He was apparently unable to make more substantial debt payments but able to take foreign vacations while debts remained delinquent. Nevertheless, Applicant is finally acting responsibly under the circumstances,¹⁰⁵ and showing reasonableness, prudence, honesty, and adherence to duty or obligation.

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 10(a), *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member* is potentially disqualifying. This includes but is not limited to *possession of a current foreign passport* under AG ¶ 10(a)(1). In May 2001, Applicant became a naturalized U.S. citizen, and obtained a U.S. passport. He obtained a new UK passport in August 2005, and he has retained his UK passport which does not expire until 2015. Applicant used his UK passport instead of his US passport for convenience to avoid the longer lines for non-UK citizens entering the UK. Although he had previously surrendered his UK passport to his facility security officer, he retrieved it in July 2012 to use it while traveling in the UK that same month. The UK passport was returned to the facility

¹⁰⁵ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

security officer upon his return from the UK. As noted above, Applicant pledged his allegiance to the United States upon becoming a naturalized citizen, and denied that his actions were associated with any preference for the UK. He stated: "I am American through and through." By his actions, Applicant exercised the rights and privileges of foreign citizenship after becoming a U.S. citizen. AG ¶¶ 10(a)(1) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(b), the disqualifying condition may be mitigated where *the individual has expressed a willingness to renounce dual citizenship*. Similarly, AG ¶ 11(e) may apply where *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*.

Dual citizenship, by itself, is not an automatic bar to a security clearance. It is only a security concern if the individual has actively exercised the rights and privileges of the foreign citizenship after becoming a U.S. citizen. Applicant, a naturalized U.S. citizen, stated unequivocally that he is willing to renounce his UK citizenship. He explained that his only motivation for using his UK passport was not an indication of a preference for the UK over the United States, but rather solely for his personal convenience in entering the UK. Such actions have security significance. Thus, as to Applicant's dual citizenship, and his possession and use of the UK passport, considering Applicant's explanations, and his subsequent actions, I find ¶¶ 11(b) and 11(e) apply.

As noted above, Applicant also exercised the rights and privileges of UK citizenship after becoming a U.S. citizen by receiving a very small pension from the UK. Applicant explained it was a small amount similar to Social Security available to senior citizens, and he was a qualified recipient. There is no evidence that Applicant was aware at the time he exercised such a UK citizenship right and privilege that it had any U.S. security significance. Applicant was both open and forthright about the pension. The experience does not reflect an attitude by Applicant of greed or entitlement. Considering the relatively small amount of money involved, under the circumstances herein, including the fact that his acceptance of the UK pension was not alleged in the SOR or the Amendment to the SOR, it is of minimal security significance.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:¹⁰⁶

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.

There is some evidence against mitigating Applicant’s conduct. He actively exercised the rights and privileges of foreign citizenship after becoming a U.S. citizen. Also, his handling of the family, investment, and company finances permitted numerous accounts to become delinquent. As a result, accounts were placed for collection, charged off, or became tax liens. He and his wife took foreign vacations while debts remained delinquent.

The mitigating evidence under the whole-person concept is more substantial. As noted above, due to a combination of events, both beyond his control and within his control, Applicant’s financial situation deteriorated. Promising investments were leveraged to generate funds sufficient for Applicant’s business to survive. With the devastated economy, they became albatrosses. Applicant contacted his creditors in an effort to resolve his financial problems. The SOR identified 22 (not counting the duplicate ¶ 1.I.) purportedly continuing delinquencies, totaling approximately \$1,250,812. Of those 22 accounts, Applicant has resolved or is in the process of resolving 10 of the accounts, and has not yet resolved the remaining 12 accounts. He

¹⁰⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

turned to an attorney, an accountant, and a realtor for guidance, and attempted to disengage himself from his delinquent mortgages by seeking mortgage lender approval of short sales. Some were successful, and others may have been. He acted honorably after he and his company were victims of employee embezzlement, and he is acting honorably by choosing to repay his debts and not seeking discharge under bankruptcy. Applicant is a good husband and father, with exceptional expertise in certain technology capabilities. Until the national economy was devastated, he was a successful investor.

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.¹⁰⁷ Applicant has demonstrated a meaningful track record of debt reduction and elimination. 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 and his foreign preference.¹⁰⁸ 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:	For Applicant
Subparagraph 1.l:	Withdrawn
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant

¹⁰⁷ 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).

¹⁰⁸ Although I have concluded that Applicant has mitigated the security concerns cited in the SOR and Amendment to the SOR, this decision should also be considered by Applicant to be a warning that any failure to continue his debt resolution efforts, creating additional delinquent debt, or using his foreign passport in the future, will adversely affect his future eligibility for access to classified information.

Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	For Applicant

Paragraph 2, Guideline C:	FOR APPLICANT
---------------------------	---------------

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

ROBERT ROBINSON GALES
Administrative Judge