



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



In the matter of:)
)
) ISCR Case No. 12-01038
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2013

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists seven debts, totaling \$56,073. He showed poor judgment in his generation of delinquent debts. Even though he earned \$136,627 overseas in 2010, he did not make any payments on his mortgage until November 2010, and he under withheld on his federal income taxes. Although he made some recent progress on resolving his delinquent debts, it is not sufficient. Financial considerations concerns are not mitigated at this time. Eligibility for access to classified information is denied.

Statement of the Case

On April 15, 2011, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (Item 7). On June 15, 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). (Item 1) The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge at the Defense Office of Hearings and Appeals (DOHA) to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On July 18, 2012, Applicant provided a response to the SOR allegations. On August 13, 2012, Applicant clarified that he wanted a decision without a hearing. (file of relevant material (FORM) at 2) A complete copy of the FORM, dated October 17, 2012, was provided to Applicant. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant provided responses to the FORM on December 9, 2012, December 11, 2012, and January 4, 2013. The case was assigned to me on January 14, 2013.

On January 29, 2013, I issued a decision denying Applicant's eligibility for access to classified information. On February 4, 2013, Department Counsel discovered documents dated December 28, 2012, Applicant submitted to DOHA that were misfiled in the hearing office. On February 4, 2013, Department Counsel provided the documents to me, along with a cover letter, and I forwarded them to the Appeal Board because I had lost jurisdiction of Applicant's case when my decision was issued on January 29, 2013. On March 22, 2013, the Appeal Board remanded the case back to me with direction that Applicant's case receive "PRIORITY attention." A copy of Applicant's appeal was not provided to me.

Findings of Fact²

In Applicant's response to the SOR, he admitted all of the debts in the SOR, except for the debt in SOR ¶ 1.e, and he provided extenuating information. (SOR response) His admissions are accepted as factual findings. He denied the debt in SOR ¶ 1.e, emphasizing its listing on his bankruptcy petition as a corporate debt. (SOR response at 9)

Applicant is a 53-year-old construction and carpentry specialist, who has been employed by a defense contractor since April 2011.³ In 1986, he married, and in 1996, he was divorced. In 1997, he married. He has a teenage son and an adult stepson. He has never served in the military.

¹The DOHA transmittal letter is dated October 22, 2012, and Applicant's receipt is dated November 2, 2012. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, the information in this paragraph is from Applicant's SF 86. (Item 7)

Financial Considerations

Applicant's credit reports, his SOR response, and his FORM responses establish seven delinquent debts, totaling \$56,073. Applicant's corporation filed for Chapter 7 bankruptcy in March 2007, and this bankruptcy was terminated in late May 2007.⁴ (SOR ¶ 1.a)

Federal taxes

SOR ¶¶ 1.b is a federal tax lien for \$14,891 filed by the Internal Revenue Service (IRS) in June 2010 and 1.g is a federal tax debt for \$4,231 for tax year 2010—Unresolved.

A January 2007 IRS letter describes a \$145,000 debt owed by Applicant's corporation to the federal Government. Applicant's corporation underpaid corporate quarterly payments from September 30, 2005, to June 30, 2006, on IRS Form 941, which pertains to employee withholding for federal income and Social Security taxes, and his corporation owes \$145,395. (SOR response, Tab D) The IRS letter is addressed to Applicant's corporation in care of Applicant. This IRS letter lists the following quarterly debts:

3 rd Qtr 2005	\$74,152	4 th Qtr 2005	\$42,443
1 st Qtr 2006	\$16,517	2 nd Qtr 2006	\$10,309

Applicant had ten employees in his construction corporation. (SOR response 3 at 7) He received the IRS notice of intent to levy \$145,395, and he had three meetings with the IRS. (SOR response 3 at 8) In March 2007, the IRS issued a lien against Applicant's corporation for \$131,662 in unpaid taxes. (Item 11; FORM at 7 n. 34 (citing *lexis.com*) Corporate federal tax debt is not listed in Applicant's corporate bankruptcy as a liability, and it is not alleged in the SOR as raising a security concern.⁵ Applicant

⁴Applicant's bankruptcy petition was "terminated," as individuals, not corporations, are entitled to a "discharge" under federal bankruptcy law. See 11 U.S.C. § 727(a)(1) ("The court shall grant the debtor, unless (1) the debtor is not an individual."); FORM at 6 n. 25) Small corporations may use a Chapter 7 bankruptcy to liquidate assets and debts. Use of a Chapter 7 bankruptcy usually results in liquidation of the corporation.

⁵Applicant's SOR does not allege that Applicant owes a \$145,000 debt to the federal Government because he under-withheld employee payments for income and Social Security taxes, and his SOR does not allege security concerns under the alcohol consumption guideline. He was charged with driving while under the influence of alcohol in April 1984, September 1985, and September 1999. (SOR response, Alcohol Tab at I-5, I-6) In July 2002, he was arrested for driving under the influence of alcohol. *Id.* at I-7. In his SF-86, he did not indicate he was terminated from employment for alcohol consumption; however, in a response to an interrogatory, he disclosed he was terminated from employment for having alcohol on his breath when he returned overseas from R & R (rest and relaxation or rest and recreation) leave. Compare Items 5 at 75 and 7 at 23 with SOR response, Alcohol Tab at I-2. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

contends that the \$145,395 federal tax debt was reduced to and included in his personal IRS tax debt of about \$20,000, which is listed in the SOR. (SOR response at 8)⁶ He states he paid the IRS \$4,300, is continuing to pay the IRS monthly, and now owes the IRS \$16,451. (SOR response at 8; SOR response, Tabs E and F) A February 4, 2012 IRS letter indicates Applicant owes the IRS \$20,451 for the following quarters in the listed amounts:

2005: \$5,986 2nd Qtr 2006: \$6,309 4th Qtr 2006: \$4,113 2010: \$4,044

(Item 12, Tab J at I-144) The \$145,395 IRS debt has a different IRS number than the \$20,451 IRS debt. *Compare* SOR response, Tab D (tax debt account number ends in “437”) with SOR response, Tab F (tax debt account number ends in “944”).

On June 22, 2011, Applicant agreed to pay the IRS \$500 monthly. (SOR response, Tabs H, J) He made seven \$500 payments on June 30, 2011; August 1, 2011; September 1, 2011; October 3, 2011; November 1, 2011; January 10, 2012; and February 1, 2012. (Item 4 at 3; Item 12, Tab H; SOR response, Tab Q at 38, 42-43, 45, 48)⁷ For the tax period ending on December 31, 2005, Applicant owed \$5,992, and \$3,000 of the \$3,500 in tax payments were applied to tax year 2005. (Item 4 at 4) He owed additional taxes of \$6,316 for the tax period ending on March 31, 2006; he owed \$4,118 for the tax period ending on June 30, 2006; and he owed \$4,048 for the tax period ending December 31, 2010. (Item 4 at 4) On July 9, 2012, the IRS indicated the ending balance owed was \$16,672. (Item 4 at 4) Applicant’s July 18, 2012 SOR response indicates he is “continuing to make restitution monthly” to the IRS; however, he did not provide any evidence of payments after February 1, 2012. (Item 4 at 1; SOR response at 8) His FORM responses provided updated proof of payments to the state

(a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Consideration of the \$145,000 federal tax debt (because it is a non-SOR allegation) in this decision is strictly limited to these five circumstances. The alcohol-related allegations are not considered for any purpose.

⁶Applicant provided his IRS form 1040s for tax years 2008, 2009, 2010 (SOR response Tab Q at 23-31) He provided his complete 2011 federal tax return. (SOR response, Tab J, T at 12-28) His 2011 federal tax return shows: wages and salaries of \$32,730; overseas income of \$16,258; \$0 tax; \$1,000 tax paid; and \$1,000 refund due from the IRS. (SOR response, Tab T at 12-13)

⁷Applicant’s 2011 federal tax return includes the following supplemental information:

Taxpayer was a shareholder of a company named The company closed its doors and is no longer in business. Certain payroll taxes were not remitted to the IRS and [Applicant] is making payments against this company obligation. In 2011 [Applicant] remitted \$2,500 to the IRS.

(SOR response, Tab T at 28)

tax authority; however, he did not provide updated information about his federal tax payments. (FORM responses)

State tax debts

SOR ¶¶ 1.c is a state tax lien for \$2,940 filed in November 2008; 1.d is a State tax lien for \$7,171 filed in April 2007; and 1.h is a State tax debt for \$535 for tax year 2009—**Payment Plan**.

In March 2007, the state released a state tax lien for \$16,021 that was filed in October 2006. (Item 12, Tab G and Financial Tab) On April 23, 2007, the state approved Applicant's request for termination of his corporate business. (Item 12, Tabs G and G.1 at I-65 (reflecting balance due to state as of September 12, 2011, for tax period 2009 alone as \$535.00))

In October 2011, Applicant submitted a payment installment plan request to the state. (Item 12, Tab G.1 at I-62, I-63) On November 29, 2011, the state noted the balance due was \$10,502, and his proposed payment plan was denied because his reported monthly expenses (\$4,975) were greater than his reported income (\$0.00). (Item 12, Tab G.1 at I-54, I-58, I-63) On December 13, 2011, Applicant wrote the state that he did not have any income because he lost his employment in March 2011, as he did not have a security clearance. (Item 12, Tab G.1 at I-53, I-55)

On May 30, 2012, the state wrote that Applicant's state tax debt was \$10,659; the state accepted his payment plan of \$250 a month; and his first payment was due on July 1, 2012. (SOR response, Tab I at 1, 2) He provided documentation showing \$250 payments to the State on July 5, August 1, September 4, October 1, November 2, and December 3, 2012. (December 9, 2012 FORM response at state tax Tabs; SOR response, Tab I at 3)

Collection debt

SOR ¶ 1.e is a collection debt for \$22,223—**Established Payment Plan**. Applicant listed the debt on Schedule F of his 2007 bankruptcy filing as one of the corporate debts of his construction corporation. (SOR response, Tab I at 1) There is no indication that the creditor received anything from the corporate liquidation. The corporate assets were \$108,430 in accounts receivable and some office equipment. (SOR response, Tab I at Schedule B) Corporate liabilities were \$501,961. (SOR response, Tab I at Summary of Schedules) He contended that the collection debt for \$22,223 was a corporate liability, and he was not personally responsible for it. (Item 12, Financial Tab)

In his SOR Response, Applicant said a representative of the creditor told him that Applicant (he probably meant the creditor) had documentation that he had signed a personal guarantee for the loan. (SOR response at 9) Applicant said he requested, but did not receive, documentation of his personal guarantee from the creditor. (SOR response at 9) He asked his CPA if he was responsible for the \$22,223 collection debt,

and his accountant advised Applicant that if it was a corporate debt, he is not personally responsible for paying the debt. His accountant did not state the debt actually was a corporate debt. (SOR response at 9; December 9, 2012 FORM response at paragraph 3c and Tab B) Applicant said he would pay the \$22,223 collection debt, if he was responsible for it. (SOR response 3 at 9)

On December 12, 2012, Applicant offered to settle the \$22,223 collection debt by paying 25% of the debt through payments. (December 11, 2012 FORM response) He said the creditor counter-offered to settle the debt for a single \$5,000 payment. (December 11, 2012 FORM response) Applicant said he would ask his relatives for a loan, and he would call the creditor on December 11, 2012. (December 11, 2012 FORM response)

On December 17, 2012, Applicant informed the creditor that he was unable to borrow the money for a lump-sum payment, and he offered to pay \$100 monthly. He reiterated that he believed he did not personally guarantee the loan and that it was a business debt. (December 28, 2012 FORM response at 2) On December 19, 2012, the creditor counter-offered with two payment plans: (1) pay \$1,000 monthly for three months beginning on December 28, 2012; or (2) pay \$100 monthly for 45 months beginning on December 28, 2012. (December 28, 2012 FORM response at 2, 5) On December 21, 2012, Applicant paid the creditor \$1,000. (December 28, 2012 FORM response at 2, 6)

Mortgage debt

SOR ¶ 1.f is a mortgage account that is past due in the amount of \$4,082—**Unresolved**. Applicant purchased his residence in June 1984 for \$80,000. (SOR response, Tab Q at 8) He did not describe when or why he borrowed additional funds secured by his residence.

In 2010, Applicant applied for a loan modification. On September 30, 2010, the creditor offered mortgage terms to Applicant and noted his delinquent interest from December 1, 2009 to November 1, 2010 was \$20,214; delinquent escrow owed was \$5,977 for a total delinquency of \$26,191. (SOR response, Tab M) In November 2010, his mortgage was \$374,111; his interest rate was 6.375%; and under the new mortgage, his new interest rate would range from 2% (first five years) to 4.375% (at year eight), and the new monthly payment at 2% interest, including escrow fees, was \$2,129. (SOR response, Tab M) The 2010 mortgage modification was apparently successful, as Applicant provided a November 5, 2011 checking account statement showing a mortgage payment of \$2,041. (SOR response, Tab Q at 51-52)

On November 22, 2011, Applicant paid his mortgage creditor \$2,041. (SOR response, Tab Q at 52) His mortgage was current on November 30, 2011. (SOR response, Tab Q at 63) On December 12, 2011, Applicant applied for a loan modification. He indicated his mortgage balance was \$356,382 with a monthly payment

of \$2,041.⁸ His net monthly remainder was negative \$5,331; on five credit cards he owed: \$23,264; \$7,412; \$461; \$1,658; and \$1,808; he had \$55 in his checking account and \$40 in his savings account; and he and his spouse's total annual income is \$12.

On December 8, 2012, Applicant received an email from the mortgage creditor indicating the file was complete for a loan modification, and the file was in review. (December 9, 2012 FORM response at Tab E) On December 8, 2012, the creditor offered to suspend the foreclosure process if Applicant made payments of \$1,802 on January 1, 2013, February 1, 2013, and March 1, 2013. (December 11, 2012 FORM response) The mortgage modification documentation he provided does not specify the amount of the mortgage or mortgage payment after the three-month-foreclosure abeyance. (December 11, 2012 FORM response) On December 18, 2012, Applicant signed an agreement to pay the creditor as requested in creditor's December 8, 2013 letter. (December 28, 2012 FORM response at 2, 7) On January 3, 2013, Applicant made a \$1,802 payment to the creditor. (January 4, 2013 FORM response)

Employment and income

Between 1980 and 1995, Applicant worked for a variety of construction companies. (SOR response) Between 1995 and 2006, he ran his own construction corporation. (SOR response; Item 6) In 2003, Applicant's construction corporation had a disagreement with a customer over the scope of work to be performed and about payments, including a \$285,000 "draw," which was needed to finance labor and equipment for the project. (Item 4 at 6-7) In 2005, Applicant's lawsuit was settled for \$171,000. Applicant's lawyer received \$51,300, and his corporation received \$119,700, which Applicant described as a "death sentence" because of the corporation's bills. (Item 4 at 6-7)

After the lawsuit, Applicant was unable to obtain performance and payment bonds, and it became very difficult to obtain construction contracts. (Item 4 at 6-7) From 2005 to 2006, Applicant received slow and inadequate payments, which caused him to fall behind on his tax payments. (Item 4 at 7 and Attachments A, B; SOR ¶ 1.b (IRS lien for \$14,891); SOR ¶ 1.d (state tax lien for \$7,171)).

Applicant worked from May 2006 to May 2007 for another construction corporation, and in 2008, he was unemployed. (SOR response at 9, Item 7 at 21) From 2009 to early 2011, he worked in several construction jobs in Iraq and Afghanistan, and he was unemployed when he was between jobs. (SOR response at 10-13; Item 7 at 15-20) He was deployed to Afghanistan from February 2010 to July 2010 and from September 2010 to March 2011. (SOR response, Tab T at 26) He provided information about his positive construction contributions in Afghanistan and support of the Marine Corps missions. (SOR responses, Tabs D, E and L)

⁸Unless stated otherwise, the information in this paragraph is from Applicant's SOR response. (Tab Q at 6 (Financial Worksheet)).

Applicant's February 16, 2011 Social Security statement shows the following taxed Medicare earnings for the tax years 2000 to 2009:

2000: \$73,035	2001: \$107,740	2002: \$105,769	2003: \$94,230
2004: \$102,097	2005: \$100,000	2006: \$85,929	2007: \$34,222
2008: \$20,284 ⁹	2009: \$30,158 ¹⁰		

(SOR response, Tab W)

In 2010, Applicant's wages and salaries totaled \$136,627, and he was able to deduct \$81,252 because he was overseas, reducing his adjusted gross income (AGI) to \$52,375. (SOR responses, Tabs E, H, Q at 23) In 2010, one corporation paid him \$133,732 in wages and salary. (SOR response, Tab Q) He only withheld \$820 of his \$136,627 income, and his taxes were \$5,940, resulting in \$5,120 owed to the IRS. (SOR response, Tab Q at 24)

Applicant's IRS form 1040 tax return for tax year 2011 shows wages of \$32,730 and adjusted gross income of \$13,472. (SOR response, Tab T at 12) Applicant's bank statements for 2011 show the following deposits:

August 2011	\$2,200	SOR response, Tab Q at 48
September 2011	\$2,840	SOR response, Tab Q at 45
September 2011	\$455	SOR response, Tab Q at 60
October 2011	\$2,990	SOR response, Tab Q at 41
October 2011	\$0	SOR response, Tab Q at 54
November 2011	\$940	SOR response, Tab Q at 36
November 2011	\$265	SOR response, Tab Q at 58
December 2011	\$840	SOR response, Tab Q at 34
December 2011	\$4,465	SOR response, Tab Q at 51

Applicant has been employed from February 2, 2012, to December 9, 2012, as a construction estimator. (December 9, 2012 FORM response at paragraph 4a) Applicant's November 23, 2012 income statement showed hourly pay of \$40.77 per hour and annual pay year to date of \$69,635. (December 9, 2012 FORM response at Tab D) In 2012, he withheld \$6,376 for federal income taxes and \$3,151 for state taxes. (December 9, 2012 FORM response at Tab D)

The FORM provides a good discussion of the rationale for the security concerns at issue. The FORM reads, "Applicant states he continues to make monthly payments to the IRS. According to Item 5, however, he has not made payments since February 1, 2012." (FORM at 8) The FORM also highlights the absence of evidence of, "any basis for [Applicant's] conclusion [that the \$22,223 collection debt was a corporate and not a

⁹His wages and salaries were \$78,732, and he deducted \$71,832 for income earned overseas. (SOR response, Tab Q at 30)

¹⁰His wages and salaries were \$51,727, and he deducted \$15,187 for income earned overseas. (SOR response, Tab Q at 27)

personal debt]. Most importantly, he provides no documentation to support his belief that he does not remain personally responsible for the debt.” (FORM at 9)

The FORM advised Applicant of his right to submit “objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.” (FORM at 15) An October 22, 2012 letter from the DOHA Director encouraged Applicant to submit material on his behalf to DOHA. Applicant’s FORM response included bank statements showing payments to address his state tax debt and one mortgage payment; however, there was no documentation showing payments to address his federal tax debt after February 1, 2012. The only documentation about his belief that the \$22,223 collection debt was a corporate and not a personal debt is a statement that his accountant believes he is not responsible for the debt, if it is a corporate debt. On January 4, 2013, he said he “will continue to make” his payments to the IRS, the state, his mortgage creditor, and to the creditor holding the \$22,223 collection debt. (January 2, 2013 FORM response)

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 (4th 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 his 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 SOR response, and his FORM responses. Applicant's SOR lists seven debts, totaling \$56,073. Some of his SOR debts have been delinquent for more than five years. He owes delinquent state and federal taxes, and his mortgage debt is in rehabilitation rather than current status. 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 limited application of all five mitigating conditions. Although he did not describe receipt of any formal financial counseling, it is evident that he understands budgeting, loans, and financial matters. He successfully ran a construction corporation with at least 10 employees for several years. He showed some good faith¹¹ when he admitted responsibility for his SOR debts, and

¹¹The 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].

he made some progress and payments to some creditors. Applicant's financial situation was damaged by his unemployment, the reduction in real estate values, and the collapse of his corporation in 2007, which are circumstances largely beyond his control.

Applicant is credited with mitigating the financial concern in SOR ¶ 1.a. Applicant's corporation filed for Chapter 7 bankruptcy in March 2007, and this bankruptcy was terminated in late May 2007. The corporate assets were \$108,430 in accounts receivables and some office equipment. Corporate liabilities were \$501,961. Applicant's bankruptcy petition was "terminated;" however, small corporations may use a Chapter 7 bankruptcy to liquidate assets and debts and to assist in termination of the corporation. Applicant's use of the Chapter 7 bankruptcy was reasonable and not done in bad faith.

Applicant is credited with mitigating three state tax debts: (1) SOR ¶ 1.c for \$2,940 filed in 2008; (2) SOR ¶ 1.d for \$7,171 filed in 2007; and (3) SOR ¶ 1.h for \$535 for 2009. In March 2007, the state released a state tax lien for \$16,021 that was filed in October 2006. On May 30, 2012, the state wrote that his debt was \$10,659 and the state accepted his payment plan of \$250 a month. On July 5, August 1, September 4, October 1, November 2, and December 3, 2012, Applicant made \$250 payments to the state. These six payments are sufficient to establish a track record of payments, addressing his state tax debt.

Applicant has made minimal progress resolving his federal income tax debts. In 2010, Applicant's wages and salaries totaled \$136,627, and he was able to deduct \$81,252 from his income for tax purposes because he was overseas, substantially reducing his federal taxes and increasing his after-tax income. In 2010, he only withheld \$820 of his \$136,627 income for federal income taxes, and his taxes were \$5,940, resulting in \$5,120 owed. He was aware that he had delinquent federal income taxes from 2005 and 2006. In 2010, he did not make any payments to address his delinquent federal tax debts. He made seven \$500 payments between June 30, 2011 and February 1, 2012. The amount of his federal income tax debt is unclear, as he may owe a substantial debt from his 2005-2006 failure to withhold sufficient federal tax and Social Security funds for his employees at his corporation. He did not provide sufficient proof to establish his \$145,395 federal corporate tax debt was reduced to and included in his personal IRS tax debt of about \$16,451.

Applicant did not establish that he acted responsibly under the circumstances. He did not provide a credible plan for resolving several of his delinquent SOR debts. He made some payments to the IRS, then he apparently stopped making payments, even though he has been employed since February 2012. On December 21, 2012, he made a \$1,000 payment to the creditor in SOR ¶ 1.e (\$22,223) and established a payment plan. He now owes two, \$1,000 monthly payments to the creditor, and the debt will be resolved. He has made sufficient progress to mitigate the debt in SOR ¶ 1.e. On September 30, 2010, the creditor in SOR ¶ 1.f offered significantly improved mortgage

(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)).

terms to Applicant and noted delinquent interest from December 1, 2009, to November 1, 2010, is \$20,214; delinquent escrow owed is \$5,977; and total delinquency is \$26,191. He did not make payments to his mortgage creditor for most of 2010, even though his wages and salaries from 2010 totaled \$136,627. He recently started a three-month mortgage loan rehabilitation plan; however, this is an inadequate track record to show he will accept the ultimate payment plan and systematically make payments. He did not provide proof that he continuously maintained contact with all of his creditors.¹² There is insufficient evidence that his financial problems are being resolved and are under control. AG ¶ 20(e) does not fully apply because he failed to provide documented proof to substantiate the basis of any disputed debts or evidence of actions to resolve disputed debts sufficient to show any disputes were reasonable. The file lacks evidence that he has acted responsibly on the debts in SOR ¶¶ 1.b, 1.f, and 1.g.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Although the rationale for reinstating Applicant's clearance is insufficient to support a security clearance at this time, there are several factors tending to support approval of his access to classified information. He is a 53-year-old construction and carpentry specialist. In 1997, he married. He has a teenage son and an adult stepson. He has never served in the military. Circumstances largely beyond his control damaged

¹²"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n. 9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

his finances, including the collapse of his corporation in 2007, the decline in the real estate market, and his unemployment. He is sufficiently mature to understand and comply with his security responsibilities. He has substantial experience with budgeting, borrowing, and other financial issues. He made seven \$500 payments between June 30, 2011, and February 1, 2012, to address his delinquent federal taxes. From July 5, 2012, to December 3, 2012, he made six \$250 payments in compliance with his payment plan to the state taxing authority, establishing a track record of paying his state tax debt. Over the last two years, he renegotiated his mortgage, and he made some mortgage payments. On December 21, 2012, he made a \$1,000 payment to the creditor in SOR ¶ 1.e, establishing a payment plan. If he makes two, \$1,000 monthly payments to the creditor, this debt will be resolved. His single substantial payment is sufficient progress to mitigate the debt in SOR ¶ 1.e. In January 2013, he made a payment to the mortgage creditor to rehabilitate his delinquent mortgage, and his foreclosure was placed in abeyance. He used bankruptcy to assist in the liquidation of his construction corporation. He deserves some credit for volunteering to support the U.S. Government as an employee of a contractor. He supported the U.S. military in Iraq and Afghanistan. These factors show some responsibility, rehabilitation, and mitigation.

The whole-person factors against reinstatement of Applicant's clearance are more substantial at this time. In 2010, Applicant's wages and salaries totaled \$136,627, and he was able to deduct \$81,252 from his income for tax purposes because he was overseas. In 2010, he only withheld \$820 of his \$136,627 income for federal income taxes, and his taxes were \$5,940, resulting in \$5,120 owed in addition to his delinquent federal income taxes from 2005 and 2006. In 2010, he did not make any payments to address his delinquent federal tax debts. The amount of his federal income tax debt is unclear, as he may owe \$145,395 from his 2005-2006 failure to withhold sufficient funds for his corporate employees' federal and Social Security taxes. He did not provide sufficient proof to establish his \$145,395 federal corporate tax debt was reduced to and included in his personal IRS tax debt of about \$16,451. From December 1, 2009 to November 1, 2010, Applicant's failure to pay his mortgage creditor generated \$20,214 in delinquent interest and \$5,977 in delinquent escrow for taxes and insurance. He did not make payments to his mortgage creditor for most of 2010, even though his wages and salaries in 2010 totaled \$136,627. There is insufficient documentary evidence of variations in his income to cause him to make such minimal progress resolving his delinquent federal income taxes and mortgage debt. He did not provide sufficient documentary proof that he disputed any debts. Applicant failed to make sufficient progress establishing his financial responsibility to fully mitigate security concerns.

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 concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge