



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



In the matter of: )  
 )  
----- ) ISCR Case No. 12-03831  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Christopher Morin, Esquire, Department Counsel  
For Applicant: *Pro se*

01/23/2014

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On January 3, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On March 19, 2013, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on May 21, 2013.<sup>2</sup> On July 9, 2013, the DOD issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all

<sup>1</sup> GE 1 ((SF 86), dated January 3, 2012).

<sup>2</sup> GE 2 (Applicant's Answers to Interrogatories, dated May 21, 2013).

adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on July 19, 2013. In a sworn statement, dated August 29, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 15, 2013. The case was assigned to me on October 21, 2013. A Notice of Hearing was issued on December 3, 2013, and I convened the hearing, as scheduled, on December 18, 2013.<sup>3</sup>

During the hearing, five Government exhibits (GE 1 through GE 5) and eight Applicant exhibits (AE A through AE I) were admitted into evidence without objection. Applicant and one other witness testified. The transcript (Tr.) was received on January 2, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted 19 additional documents, which were marked as exhibits (AE J through AE AB), and admitted into evidence without objection. The record closed on January 2, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted five of the factual allegations pertaining to financial considerations (§§ 1.b., 1.c., 1.e., 1.l., and 1.m.). He denied or failed to address the remaining factual allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor who, since March 2009, has served as a full-time technical trainer. He is also a part-time member of the U.S. Army National Guard (ANG), and was previously employed by other employers in various positions, including welder, security officer, delivery person, and wing fabricator. He currently holds a secret security clearance.<sup>4</sup> A May 2003 high school graduate, Applicant completed some community college and university courses, but he has not received a degree. He married his first wife in September 2005, they separated in 2007, and were divorced in January 2011. He married his second wife in October 2012, they

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<sup>3</sup> The Directive established that notification as to the time and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. See, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential time and location long before the actual Notice of Hearing was issued. Nevertheless, because the period between the issuance of the Notice and the hearing was less than 15 days, I inquired of Applicant if the period of notice was sufficient, and Applicant specifically waived the 15-day notice requirement. See, Tr. at 13-14.

<sup>4</sup> Tr. at 7.

separated in 2013, and are in the process of divorcing.<sup>5</sup> Applicant has a daughter, born in 2007, and his wife is currently pregnant.<sup>6</sup>

### **Military and Civilian Service**

Applicant enlisted in the ANG in March 2002, and was subsequently ordered to active duty on two occasions (September 2003 to December 2003, and August 2005 to June 2007) and deployed in support of Operation Enduring Freedom.<sup>7</sup> During his military service, Applicant was awarded the Army Service Ribbon, the Army Achievement Medal (two awards), the National Defense Service Medal, the Global War on Terrorism Service Medal, the Non-Commissioned Officer Professional Development Ribbon, and the Armed Forces Reserve Medal (with M device).<sup>8</sup> In addition, in his civilian capacity, Applicant was deployed to both Afghanistan (August 2010 to May 2011) and Iraq (May 2011 to November 2011).<sup>9</sup>

### **Financial Considerations**

There was nothing unusual about his finances until about 2006 or 2007, when Applicant was deployed. He had given his wife a power of attorney and she was expected to manage the family finances while he was away. Instead, she opened new accounts and failed to pay the incoming bills.<sup>10</sup> As a result, some accounts became past due or were placed for collection.<sup>11</sup> In 2009, Applicant hired an attorney to assist him in his efforts to resolve his delinquent accounts by dealing with his creditors and setting up repayment plans. Those efforts ceased when Applicant went overseas for his employer. He started making his extra overseas salary and felt he could pay off the entire balances owed rather than making partial payments under repayment plans.<sup>12</sup> Applicant's father agreed to assist him to resolve the fiscal mess with Applicant's extra overseas salary, but that plan soon fell apart.

In 2010, over a six-week period, Applicant's parents, brother, and brother-in-law all were laid off. As a result, Applicant supported his parents, brother, sister, brother-in-law, and his sister's two children. In addition, when his sister filed for divorce, Applicant paid for it. Applicant put food on the table, made the house payments, utility payments,

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<sup>5</sup> Tr. at 112-113.

<sup>6</sup> Tr. at 113-114.

<sup>7</sup> AE K (Certificate of Release or Discharge from Active Duty (DD Form 214), dated December 12, 2003); AE L (DD Form 214), dated June 26, 2007); Tr. at 126.

<sup>8</sup> AE K, *supra* note 7; AE L, *supra* note 7.

<sup>9</sup> Tr. at 128; GE 2, *supra* note 2, at 21).

<sup>10</sup> Tr. at 59, 95; GE 2 (Personal Subject Interview, dated January 18, 2012), at 7.

<sup>11</sup> See, GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 11, 2012), at 5-7, 9-11.

<sup>12</sup> Tr. at 127-129.

insurance payments, and car payments for everybody over a seven-month period.<sup>13</sup> The financial assistance Applicant expended on behalf of his family was overwhelming and resulted in a shortage of available funds, and an inability to address his own accounts. As a result, more accounts became delinquent and were either placed for collection or charged off. One account went to judgment. In addition, when Applicant's divorce process commenced, he was finally made aware of the full extent of his financial problems when his creditors were identified.<sup>14</sup>

On an unspecified, but more recent, date, Applicant hired another attorney to assist him in his efforts to resolve his delinquent accounts by dealing with his creditors and setting up repayment plans, but that attorney's fees were simply too high for Applicant to afford.<sup>15</sup> Applicant also received some informal financial guidance from his father regarding obtaining a credit report and contacting his creditors. In addition, Applicant has now received formal financial counseling from the financial readiness program manager at his local military facility.<sup>16</sup> Applicant has contacted all of his creditors, and has either already paid off or otherwise resolved some accounts, entered into repayment arrangements and is making scheduled payments on other accounts, and disputed other accounts. He started with his oldest debts and started moving towards his newer debts. He is also willing to start payment arrangements with his remaining creditors, as soon as he receives an amount and repayment schedule.<sup>17</sup>

In December 2013, Applicant provided a personal financial statement reflecting some rather garbled financial information. It was a revised version of a personal financial statement he had previously submitted in response to the interrogatories in May 2013. It depicted a monthly net income of \$5,212.04; monthly household, utility, transportation, food expenses, and monthly debt repayments of \$4,667.30; leaving a monthly remainder of \$544.74 available for discretionary savings or expenditures.<sup>18</sup> It is unclear if several of the items listed are accurate or duplicate entries. The more recent personal financial statement also listed \$39,561.64 in stocks and bonds.

The SOR identified 20 purportedly continuing delinquencies. Among those accounts that he either already paid off or otherwise resolved, or entered into repayment arrangements and is making scheduled payments, are the following:

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<sup>13</sup> Tr. at 106-108, 118-121.

<sup>14</sup> GE 2 (Personal Subject Interview), *supra* note 10, at 7.

<sup>15</sup> GE 2 (Personal Subject Interview), *supra* note 10, at 7; GE 2, *supra* note 2, at 21).

<sup>16</sup> Tr. at 122; GE 2 (Personal Subject Interview), *supra* note 10, at 7; AE J (Letter, dated December 30, 2013).

<sup>17</sup> AE J, *supra* note 16; Tr. at 93-94.

<sup>18</sup> GE 2 (Personal Financial Statement, dated May 21, 2013); AE AB (Personal Financial Statement, dated December 31, 2013).

There was a cable television account with an unpaid balance of \$533 that was placed for collection and sold or transferred to collection agent in 2013 **(SOR ¶ 1.b.)**.<sup>19</sup> Applicant had closed the account but neglected to return the cable equipment and still had a small unpaid balance. He eventually returned the equipment and paid \$196.86.<sup>20</sup> Applicant received a letter from the collection agent, on behalf of the original creditor, indicating that there was now a zero balance on the account, and that the account would be removed from the credit reports.<sup>21</sup> The account has been resolved.

There is a secured credit card account with a high credit of \$5,000 and an unpaid balance of \$302, of which \$73 was past due, that was placed for collection in 2013 **(SOR ¶ 1.e.)**.<sup>22</sup> When the account was closed it still had a small balance, but Applicant was not receiving any information or correspondence regarding the account because he had moved and the notices were sent to his old residence. He called the creditor and learned of the outstanding balance, and quickly agreed to a repayment plan under which he agreed to pay the creditor \$25 per month until it is paid off.<sup>23</sup> Applicant has not submitted any documentation to support his contention that he is in a repayment plan or that he has been making the monthly payments. Nevertheless, it appears that the account is in the process of being resolved.

There was a credit card account with a credit limit of \$2,200 and an unspecified past-due balance that was placed for collection and transferred or sold to a debt buyer **(SOR ¶ 1.f.)**.<sup>24</sup> Once he returned from overseas, he entered into a repayment plan, and his final payment came out of his salary check in July 2012.<sup>25</sup> There is now a zero balance.<sup>26</sup> The account has been resolved.

There was a utility account with a past-due balance of \$87 that was placed for collection in 2007 **(SOR ¶ 1.i.)**.<sup>27</sup> Applicant contended that when he moved from one state to another, there apparently was a small remaining balance about which he was unaware, because he paid his apartment complex for his utilities.<sup>28</sup> He made

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<sup>19</sup> GE 4 (Equifax Credit Report, dated June 17, 2013), at 1).

<sup>20</sup> AE Z (Receipt, dated September 20, 2013); Tr. at 42-46.

<sup>21</sup> Tr. at 43-44. Although the document in question was read aloud by Department Counsel, and Applicant was to subsequently submit a copy of the letter to me to be marked as evidence, he failed to submit the document. Nevertheless, because of Department Counsel's comments, I have accepted the contents of the document as evidence.

<sup>22</sup> GE 5 (Equifax Credit Report, dated March 11, 2013), at 1).

<sup>23</sup> Tr. at 50-52.

<sup>24</sup> GE 3, *supra* note 11, at 8; GE 5, *supra* note 22, at 1; GE 4, *supra* note 19, at 2.

<sup>25</sup> AE T (Letter, dated July 30, 2013); AE U (Letter, dated August 1, 2013); Tr. at 53-55.

<sup>26</sup> AE U, *supra* note 25. It should be noted that despite three credit reports in evidence reflecting a zero balance, the SOR incorrectly alleged that, as of one year after the account had been paid off, the account had remained unpaid.

<sup>27</sup> GE 3, *supra* note 11, at 7.

arrangements to pay off the debt, and purportedly made his \$86.95 payment by January 6, 2014.<sup>29</sup> Applicant has not submitted any documentation to support his contention that he has made the agreed payment. Nevertheless, it appears that the account has been resolved.

There was a personal loan account with a high credit and past-due balance of \$426 that was placed for collection and charged off in 2007 **(SOR ¶ 1.k.)**.<sup>30</sup> Applicant and his first wife each had an account with the creditor, and he paid one off, thinking he had also paid off the remaining account as well. While Applicant was overseas, his father received a telephone call from the creditor regarding the remaining account, and the account was paid off in November 2011.<sup>31</sup> The creditor has acknowledged that the account had been paid in full.<sup>32</sup> The account has been resolved.

There was a wireless telephone account with a high credit and past-due balance of \$1,130 that was placed for collection in 2007 **(SOR ¶ 1.n.)**.<sup>33</sup> When Applicant returned from one of his military deployments, he was unable to find a decent-paying position. With mounting bills, he made several efforts to reduce his expenses, but he decided to cancel the account, leaving a small balance unpaid.<sup>34</sup> Applicant eventually paid the collection agent \$1,130.78 in November 2011. The creditor has acknowledged that the account had been paid in full.<sup>35</sup> The account has been resolved.

There was a cable television account with a high credit and past-due balance of \$888 that was placed for collection and sold or transferred to collection agent in 2007 **(SOR ¶ 1.o.)**.<sup>36</sup> The original creditor was apparently sold to another company. Applicant contended he closed the account but neglected to return the cable equipment. He eventually returned two digital converter boxes and was credited with \$560.00. The account was considered satisfied.<sup>37</sup> The account has been resolved.

There was an account with a jewelry store with a high credit of \$605 that was placed for collection and sold to a debt purchaser in 2011 **(SOR ¶ 1.p.)**.<sup>38</sup> Applicant

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<sup>28</sup> Tr. at 67.

<sup>29</sup> AE O (E-mail, dated December 30, 2013).

<sup>30</sup> GE 3, *supra* note 11, at 5. The SOR alleged the past-due balance was \$416.

<sup>31</sup> Tr. at 82-84; GE 2 (Personal Subject Interview), *supra* note 10, at 3.

<sup>32</sup> AE P (Letter, dated October 23, 2003).

<sup>33</sup> GE 3, *supra* note 11, at 5.

<sup>34</sup> Tr. at 90-92.

<sup>35</sup> AE B (Letter, dated November 8, 2011); AE Q (a copy of AE B).

<sup>36</sup> GE 3, *supra* note 11, at 6.

<sup>37</sup> AE S (Equipment Agreement, dated December 26, 2013); AE R (Letter, dated December 26, 2013); GE 2 (Personal Subject Interview), *supra* note 10, at 4; Tr. at 42-43.

<sup>38</sup> GE 3, *supra* note 11, at 7.

eventually paid a third-party collection agent an agreed payoff amount of \$272.23 in November 2011, over a year and one-half before the SOR was issued. The creditor has acknowledged that the account had been paid in full.<sup>39</sup> The account has been resolved.

There was an electric utility account in Applicant's ex-wife's name with a high credit and past-due balance of \$87 that was placed for collection in 2011 (**SOR ¶ 1.q.**)<sup>40</sup> Applicant never resided at the service address, but she did.<sup>41</sup> Nevertheless, Applicant paid the collection agent \$87.88 in November 2011. The creditor has acknowledged that the account had been paid in full.<sup>42</sup> The account has been resolved.

There was an account with a children's book club with a high credit and past-due balance of \$65 that was placed for collection and sold to a debt purchaser in 2012 (**SOR ¶ 1.r.**)<sup>43</sup> Applicant paid the debt purchaser the entire balance during the summer of 2013. The debt purchaser has acknowledged that the account had been paid in full.<sup>44</sup> The account has been resolved.

There was an account with a regional library with a high credit and past-due balance of \$65 that was placed for collection in 2007 (**SOR ¶ 1.s.**)<sup>45</sup> Applicant and the county school district agreed that the late fees would be dropped if Applicant paid to replace the missing books. He paid the agreed amount of \$23.45 in November 2011.<sup>46</sup> The account has been resolved.

There was a cable television account with an unpaid balance of \$183 that was opened by Applicant's ex-wife while he was deployed and placed for collection and sold or transferred to collection agent in 2007 (**SOR ¶ 1.t.**)<sup>47</sup> Applicant contended he paid off the account in 2011 when he resolved other accounts.<sup>48</sup> The January 2012 credit report

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<sup>39</sup> AE N (Letter, dated December 27, 2013); GE 2 (Personal Subject Interview), *supra* note 10, at 3.

<sup>40</sup> GE 3, *supra* note 11, at 8.

<sup>41</sup> Tr. at 72.

<sup>42</sup> AE A (Payment Receipt, dated November 7, 2011); AE W (a copy of AE A). It should be noted that despite Applicant informing the investigator from the U.S. Office of Personnel Management (OPM) that the account had been paid in November 2011, the SOR incorrectly alleged that, as of one and one-half years after the account had been paid off, the account had remained unpaid. See, GE 2 (Personal Subject Interview), *supra* note 10, at 4.

<sup>43</sup> GE 3, *supra* note 11, at 9.

<sup>44</sup> AE M (Payment Receipt, dated December 26, 2013); Tr. at 96-97.

<sup>45</sup> GE 3, *supra* note 11, at 10.

<sup>46</sup> AE X (Receipt, dated November 18, 2011), with handwritten notation; AE C (a copy of AE X); Tr. at 98-99.

<sup>47</sup> GE 3, *supra* note 11, at 8, 11; Tr. at 99-100.

<sup>48</sup> Tr. at 99.

confirms his contention and clearly reflects that the account was paid in November 2011, leaving a zero balance<sup>49</sup> The account has been resolved.

Among those accounts for which Applicant disputed responsibility, claimed an inability to resolve, or claimed resolution, are the following:

There is a cable television account with an unpaid balance of \$37 that was purportedly opened by Applicant's father (an individual with the identical first and last name) while Applicant was deployed and placed for collection and sold or transferred to collection agent in 2010 (**SOR ¶ 1.d.**)<sup>50</sup> Applicant contacted the creditors but they refused to confirm salient information about the account. While Applicant claimed he had disputed the account over a period of months, at the time of the hearing he had not formally done so in writing by demanding validation and verification.<sup>51</sup> He contended his father had actually paid off the balance, but he failed to submit documentation to confirm that contention. The March 2013 credit report still lists the account as unpaid,<sup>52</sup> but the June 2013 credit report no longer lists the account.<sup>53</sup> In the absence of any documentation to confirm that the account is not Applicant's, that he had disputed the account, or that the balance had been paid, I conclude that the account has not been resolved.

There is a credit card account opened by Applicant's ex-wife while he was deployed with a high credit of \$250 or \$395 (depending on which credit report listed the account) and an unspecified balance that was placed for collection, charged off, and sold to a debt purchaser in 2009 (**SOR ¶ 1.g.**)<sup>54</sup> It was resold to another debt purchaser in 2011, which increased the high credit to \$557, and the past-due amount to \$565.<sup>55</sup> The past-due balance was subsequently increased to \$600.<sup>56</sup> Applicant contended the account was included in his ex-wife's bankruptcy discharge, but he failed to submit any documentation to support his contention. He disputed the account,<sup>57</sup> but to date, there has been no resolution of his dispute. In the absence of any documentation to confirm that the account is not Applicant's, that the dispute has been decided, or the account balance has been paid or otherwise resolved, I conclude that the account has not been resolved.

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<sup>49</sup> GE 3, *supra* note 11, at 8.

<sup>50</sup> GE 3, *supra* note 11, at 6; GE 5, *supra* note 22, at 1; Tr. at 46-48.

<sup>51</sup> Tr. at 48-49.

<sup>52</sup> GE 5, *supra* note 22, at 1.

<sup>53</sup> See, GE 4, *supra* note 19.

<sup>54</sup> GE 3, *supra* note 11, at 7.

<sup>55</sup> GE 3, *supra* note 11, at 7.

<sup>56</sup> GE 4, *supra* note 19, at 2.

<sup>57</sup> GE 4, *supra* note 19, at 2; Tr. at 57-61.



There was a bank account with a high credit of \$1,679 that was placed for collection, charged off, and transferred or sold to another credit agent in 2008 (**SOR ¶ 1.h.**).<sup>58</sup> Applicant claimed he was the victim of a fraud or scam, and that the \$1,679 was withdrawn from his bank account without his knowledge or permission.<sup>59</sup> He also initially contended that in an effort to clean up his credit when he was able to do so, he paid the entire amount in January 2011.<sup>60</sup> He subsequently added that the account had been included and discharged under his ex-wife's bankruptcy. Applicant said this was the first delinquent account he addressed before his family's financial problems erupted.<sup>61</sup> The bank no longer has any record of the account, and Applicant is unable to obtain bank records reflecting his payment.<sup>62</sup> Applicant has failed to submit any documentation to support his contentions that the account has been resolved. However, neither of the 2013 credit reports reflects the account with another creditor, collection agent, or debt purchaser. The only current reference to the original creditor reflects a zero balance.<sup>63</sup> I conclude the account has been resolved.

There is a secured loan account with a high credit of \$1,250, and a balance of \$1,035, of which \$465 was past due, that was placed for collection in 2007 (**SOR ¶ 1.i.**).<sup>64</sup> Applicant indicated the loan was an emergency loan in the amount of \$500 for damage to his vehicle, and contended a repayment schedule was set up for automatic payments of \$100 a month to be taken from his military check.<sup>65</sup> Accordingly, he believed the account should have been paid off, and he intended to dispute it, but apparently did not do so.<sup>66</sup> He subsequently learned there had apparently been a glitch in the automatic payments, and he purportedly agreed with the creditor to pay \$700 or \$800 over a period of seven months.<sup>67</sup> He modified his description of the repayment plan and indicated he would pay \$20 per month. Applicant has failed to submit any documentation to support his contentions that there had been a repayment plan in place, that there is a current repayment plan, or that he has made any payments under a repayment plan. In the absence of any documentation to confirm any aspect of Applicant's contentions, I conclude that the account has not been resolved.

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<sup>58</sup> GE 3, *supra* note 11, at 10.

<sup>59</sup> GE 2 (Personal Subject Interview), *supra* note 10, at 5; Tr. at 64.

<sup>60</sup> GE 2 (Personal Subject Interview), *supra* note 10, at 5.

<sup>61</sup> Tr. at 63-65.

<sup>62</sup> Tr. at 65-67.

<sup>63</sup> Tr. at 67; GE 5, *supra* note 22, at 2; GE 4, *supra* note 19, at 2.

<sup>64</sup> GE 3, *supra* note 11, at 9. It should be noted that while the SOR alleged the past-due balance to be \$2,200, and Applicant admitted the allegation, that number is a typographic or administrative error, a fact confirmed by Department Counsel. Tr. at 85-87.

<sup>65</sup> Tr. at 87-88; GE 2 (Personal Subject Interview), *supra* note 10, at 4.

<sup>66</sup> GE 2 (Personal Subject Interview), *supra* note 10, at 4.

<sup>67</sup> Tr. at 88-89.

It is unclear if the remaining accounts alleged in the SOR have been placed in a repayment plan or resolution has yet commenced:

There was a three-month lease, for an apartment renting for \$550 per month, that Applicant and his current wife occupied and vacated. After his wife left him, Applicant notified the management office that he too would be vacating when the third month expired. He had the apartment inspected, and moved out with no indication of any continuing problems.<sup>68</sup> Shortly thereafter, he received a notice of a lawsuit filed against him alleging smoke damage to the unoccupied apartment. He appeared before a judge and was ordered to pay the management office one month's rent of \$713 (**SOR ¶ 1.a.**).<sup>69</sup> Applicant contacted the management office to pay the judgment, but the office refused the \$713 and demanded over \$3,000 (**SOR ¶ 1.c.**).<sup>70</sup> Applicant informally disputed that amount, and after being unable to convince the management office to accept his \$713 payment, the matter was ignored for a little over six months.<sup>71</sup> Applicant requested documentation from the rental office to support the charges of \$3,037, but they were unable to furnish them.<sup>72</sup> There is no indication if Applicant ever formally requested validation from the creditor or disputed the \$3,037 account listing with the credit reporting agencies. After further negotiations, Applicant purportedly offered a repayment plan under which he would pay the management office \$50 per month, and although the management office was unhappy with the plan, it agreed to it. Applicant has failed to submit any documentation to support his contentions that there is a current repayment plan, or that he has made any payments under a repayment plan. In the absence of any documentation to confirm any aspect of Applicant's contentions, I conclude that the account has not been resolved.

There is an automobile finance loan with a high credit of \$13,194 that was transferred or sold to a collection agent and placed for collection in 2011. Applicant's January 2012 credit report has one credit reporting agency (Experian) listing the account with the same high credit and an unpaid balance of \$6,585, while another credit reporting agency (Equifax) listed the account with a high credit of \$7,593 and an unpaid balance of \$6,585 (**SOR ¶ 1.j.**).<sup>73</sup> The account was charged off, and in 2013, the high credit and past-due balance were increased to \$15,876.<sup>74</sup> Applicant claimed that as part of his divorce from his first wife, the account was supposed to be her responsibility, but she failed to make the payments and the vehicle was repossessed and sold by the creditor.<sup>75</sup> Applicant informally disputed the balance. He purportedly spoke to one

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<sup>68</sup> Tr. at 32-34.

<sup>69</sup> Tr. at 33-36; GE 4, *supra* note 19, at 1.

<sup>70</sup> Tr. at 37; GE 4, *supra* note 19, at 1.

<sup>71</sup> Tr. at 38.

<sup>72</sup> Tr. at 41.

<sup>73</sup> GE 3, *supra* note 11, at 6. *See also*, GE 3, *supra* note 11, at 9.

<sup>74</sup> GE 5, *supra* note 22, at 2.

<sup>75</sup> Tr. at 76.

representative of the creditor and they were discussing potential repayment arrangements for the \$6,585 balance, but later spoke to another representative who demanded the larger amount.<sup>76</sup> No formal dispute has yet been filed with the credit reporting agencies. Applicant intended to have his divorce lawyer resolve the issue.<sup>77</sup> In the absence of any documentation to confirm any aspect of Applicant's contentions, I conclude that the account has not been resolved.

### **Character References**

Applicant's military project manager and his former and current direct supervisors, are highly supportive of his application to retain his security clearance. They have characterized him as professional, committed to duty, responsible, hard-working, mission and goal-oriented, respected, and trustworthy.<sup>78</sup> He has "been a source of inspiration to all the military and contractor personnel who observed his personal actions."<sup>79</sup> His mother's employer stressed Applicant's professionalism, trustworthiness, reserved confidence, and integrity.<sup>80</sup> Applicant's mother confirmed Applicant's financial contributions to the family and others, and she characterized him as very trustworthy and honest.<sup>81</sup>

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>82</sup> 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."<sup>83</sup>

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating

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<sup>76</sup> Tr. at 78-79.

<sup>77</sup> Tr. at 81.

<sup>78</sup> AE D (Character Reference, undated); AE E (Character Reference, dated December 12, 2013); AE I (Character Reference, dated December 17, 2013); AE H (Character Reference, dated February 6, 2011).

<sup>79</sup> AE H, *supra* note 78.

<sup>80</sup> AE F (Character Reference, undated).

<sup>81</sup> AE G (Character Reference, dated October 23, 2013).

<sup>82</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>83</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>84</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>85</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>86</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>87</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict

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<sup>84</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>85</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>86</sup> *Egan*, 484 U.S. at 531.

<sup>87</sup> See Exec. Or. 10865 § 7.

guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *inability or unwillingness to satisfy debts* is potentially disqualifying. Similarly, under AG ¶ 19(c), a *history of not meeting financial obligations* may raise security concerns. Commencing in about 2006 or 2007, Applicant started experiencing some financial difficulties. Over the next few years, those difficulties increased to the point where he was unable to make routine monthly payments for a number of accounts. His accounts eventually started becoming delinquent and were placed for collection, charged off, or sold. One account went to judgment. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*. Also, under AG ¶ 20(b), financial security concerns may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*. Evidence that *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.<sup>88</sup> Under AG ¶ 20(e), financial security concerns may be mitigated where *the*

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<sup>88</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶¶ 20(a) and 20(e) partially apply. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were largely beyond Applicant's control. His initial financial problems arose in 2006 or 2007 when he was deployed and gave his wife his power of attorney. Instead of paying the bills, she opened new accounts. The second wave of financial problems occurred while he was deployed in 2010, when over a six-week period, Applicant's parents, brother, and brother-in-law all were laid off. With the funds he had hoped to use to resolve his delinquent accounts, he instead diverted them to support his parents, brother, sister, brother-in-law, and his sister's two children. He also paid for his sister's divorce. Applicant put food on the table, made the house payments, utility payments, insurance payments, and car payments for his entire family over a seven-month period. The financial assistance Applicant expended on behalf of his family was overwhelming and resulted in a shortage of available funds, and an inability to address his own accounts. In addition, he went through one divorce, and is undergoing another divorce. As a result, more accounts became delinquent and were either placed for collection or charged off. One account went to judgment. When Applicant's initial divorce process commenced, he was made aware of the full extent of his financial problems when his creditors were identified.

After several false starts and interruptions, Applicant eventually acted responsibly by addressing his delinquent accounts.<sup>89</sup> He hired an attorney to assist him in his efforts to resolve his delinquent accounts by dealing with his creditors and setting up repayment plans, but cancelled the effort once he started making sufficient salary to do so himself. After the 2010 family issues, he engaged the services of another attorney, but that attorney's fees were simply too high for Applicant to afford. Applicant also received some informal financial guidance from his father regarding obtaining a credit report and contacting his creditors. Applicant subsequently received formal financial

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In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

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

<sup>89</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

counseling from the financial readiness program manager at his local military facility. Applicant contacted all of his creditors, and has either already paid off or otherwise resolved most of the accounts, entered into repayment arrangements and is making scheduled payments on other accounts, and disputed other accounts. Other accounts may have been resolved, but until Applicant submits documentation to support his contentions as to the status of those accounts, I have concluded that they are still unresolved. Several accounts have not yet been resolved, although Applicant has made some efforts to do so, and he is willing to start payment arrangements as soon as he receives an amount and repayment schedule. Applicant commenced his efforts with his oldest debts and moved towards his newer debts. As noted above, Applicant resolved a number of the SOR debts well before the SOR was issued, with others being resolved more recently.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent." However, those financial problems, especially regarding his entire family's financial devastation within one short period, and the difficulties arising from his ex-wife's handling of his finances while he was deployed, occurred under such circumstances that it is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. As noted above, Applicant essentially informally disputed the accuracy of the balances of several accounts, and the responsibility of two accounts. While his contentions and informal disputes may have some merit, until Applicant submits documentation reflecting formal disputes with the creditors and the credit reporting agencies, there is little evidence to substantiate the basis of the disputes. Nevertheless, there are clear indications that Applicant's overall financial problems are under control. His actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>90</sup>

### **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.

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<sup>90</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>91</sup>

There is some evidence against mitigating Applicant's conduct. His handling of his finances permitted a number of accounts to become delinquent. As a result, accounts were placed for collection, charged off, or sold, and one account went to judgment. When given the opportunity to supplement the record with documentation related to specific accounts, Applicant failed to do so for all of those accounts.

The mitigating evidence under the whole-person concept is more substantial. Applicant has been deployed on three different occasions to locations including Afghanistan and Iraq. He is well-respected. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, they were largely beyond his control. Applicant contacted his creditors and collection agents, and sought the assistance of two law firms. While he was unable to commence making payments simultaneously on all of the accounts, Applicant did attempt to enter into repayment plans with his creditors. The result was positive. He resolved a number of accounts, including non-SOR accounts, well before the SOR was even issued. One account is currently in the process of being resolved and two accounts may be in that process. He is either disputing or trying to make arrangements to start resolving the few remaining accounts. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>92</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is

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<sup>91</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>92</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).



no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a “meaningful track record” of debt reduction and elimination. Applicant has made some significant timely efforts to resolve his accounts. Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. – 1.t.:	For Applicant

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge