



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-04241

Appearances

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

07/23/2014

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 September 28, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On August 1, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued him a set of interrogatories. He responded to the interrogatories on August 30, 2013.² On March 21, 2014, the DOD CAF 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*

¹ GE 1 ((SF 86), dated September 28, 2011).

² GE 2 (Applicant's Answers to Interrogatories, dated August 30, 2013).

Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why 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.

It is unclear when Applicant received the SOR. In a sworn statement, dated April 18, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 1, 2014. The case was assigned to me on May 2, 2014. A Notice of Hearing was issued on May 12, 2014, and I convened the hearing, as scheduled, on May 29, 2014.³

During the hearing, four Government exhibits (GE 1 through GE 4) and ten Applicant exhibits (AE A through AE J) were admitted into evidence without objection. Applicant testified. Following a substantial delay, the transcript (Tr.) was finally received on July 16, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as exhibits (AE K through AE AL) and admitted into evidence without objection. The record closed on June 16, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.n., 1.p. through 1.r., 1.u. through 1.w., 1.y., and 1.z.). Applicant's answers and explanations 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 58-year-old employee of a defense contractor, for which, since May 2014, he has served as a mechanic.⁴ He was previously a tractor-trailer owner/operator.⁵ Applicant was unemployed from November 2007 until May 2008, and again from June 2011 until July 2011.⁶ He served on active duty in an enlisted capacity

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

⁴ Tr. at 43-44. Applicant explained that he has been working on the same contract since July 2011, but the contract was awarded to another contractor in May 2014, and Applicant was transitioned to the new employer on that date.

⁵ GE 1, *supra* note 1, at 10-13.

⁶ GE 1, *supra* note 1, at 11-12.

with the U.S. Navy from July 1981 until August 1996, when he took an early retirement option and retired with an honorable discharge.⁷ Applicant held a secret security clearance during an unspecified period while serving on active duty.⁸ He does not currently have a security clearance.⁹

Applicant graduated from high school in June 1975.¹⁰ He has been married on five occasions: from November 1977 until October 1980; January 1988 until June 1990; December 1991 until he was widowed in October 1993; November 1995 until May 1997; and in June 2009.¹¹ He has no children.¹²

Military Awards and Decorations

During his active military service, Applicant was awarded the Navy Achievement Medal (two awards), the Meritorious Unit Commendation, the Navy "E" Ribbon (six awards), the Good Conduct Medal (four awards), the Southwest Asia Service Medal (three awards), the Sea Service Deployment Ribbon (four awards), the U.S. Coast Guard Special Operations Service Ribbon, the National Defense Service Medal, the Joint Meritorious Unit Award, and the Navy Expert Pistol Medal.¹³

Financial Considerations

There was nothing unusual about Applicant's finances until about 2005. Several years earlier, without possessing smart business acumen, and without obtaining business guidance, he had fulfilled a dream of running his own company.¹⁴ At one point, he had three trucks and three employees.¹⁵ A combination of circumstances starting in 2005 had a negative financial impact on his business. Applicant acknowledged making mistakes in his business. As the economy became less stable and work diminished, the cost of fuel, repairs, and general overhead, increased, making it more difficult for him to maintain his monthly payments. He scrambled to keep everything going, but was forced to sell some of his assets and lay off employees to resolve some of his debts.¹⁶ After a couple of years, with mounting bills, unpaid business taxes, and diminished assets, the

⁷ GE 1, *supra* note 1, at 14; AE L (Certificate of Release or Discharge from Active Service (DD Form 214), dated August 31, 1996).

⁸ GE 1, *supra* note 1, at 29-30.

⁹ Tr. at 6.

¹⁰ GE 1, *supra* note 1, at 9.

¹¹ GE 1, *supra* note 1, at 16-19.

¹² Tr. at 45.

¹³ AE L, *supra* note 7.

¹⁴ GE 2, *supra* note 2, at 5; Tr. at 63.

¹⁵ Tr. at 54; GE 2 (Personal Subject Interview, dated November 22, 2011), at 2.

¹⁶ Tr. at 54-56.

business was no longer able to remain viable, and he shut it down. Applicant had lost his trucks, his personal truck, as well as all of his other assets. He sought any type of employment to make some money to pay his bills, for his only other income was his Navy pension of \$990 per month.¹⁷ He never collected unemployment compensation.¹⁸ With insufficient funds to address his bills, his accounts became delinquent and were either placed for collection, charged off, or went to judgment. Taxes remained unpaid. In 2006, Applicant's pick-up truck was repossessed, and his wages were garnished by the Internal Revenue Service (IRS).

In an effort to both earn and save money, Applicant lived with friends and worked any jobs he could find. He mowed lawns with a push mower, pumped septic tanks, and repaired vehicles.¹⁹ He finally obtained a job as a mechanic, remarried, and started rebuilding his life and assets. He filed for hardship with the IRS in 2008 or 2009, but his application was never acknowledged.²⁰ Applicant's problems were intensified in 2009, when he had a stroke and was hospitalized for nearly one week. He subsequently had double hernia surgery as well as back surgery.²¹ Applicant considered filing for bankruptcy, and actually paid an attorney a \$400 deposit to do so, but did not feel it was "the right way to take care of this problem."²² He concluded that the bills were his responsibility, so he terminated the effort, and his intentions are to pay every one of them.²³ Once he started making a regular salary, Applicant approached many of his creditors in an effort to set up repayment arrangements. Applicant's overall repayment strategy was to first resolve his IRS bills, move on to his state tax issues as well as the smaller debts, and then address his remaining delinquent debts.²⁴

In August 2013, Applicant enrolled in two courses related to financial counseling. He took credit counseling and debtor education.²⁵ At some other unspecified time, he spoke with some credit union financial counselors and reviewed his credit report and all of his accounts.²⁶ In June 2014, he met with a relief services assistant with the Navy-Marine Corps Relief Society and set up a budget.²⁷ A review of Applicant's budget reveals a total net family income of \$5,239.95. With routine monthly family living

¹⁷ Tr. at 57.

¹⁸ Tr. at 56.

¹⁹ Tr. at 56.

²⁰ Tr. at 59.

²¹ Tr. at 80.

²² Applicant's Answer to the SOR, at 5; Tr. at 60.

²³ Tr. at 60-61.

²⁴ Applicant's Answer to the SOR, *supra* note 22, at 5; GE 2, *supra* note 2, at 5.

²⁵ AE N (Counseling File, dated August 26, 2013).

²⁶ AE O (Letter, undated).

²⁷ AE M (Budget, dated June 4, 2014).

expenses, including rent or mortgage, utilities, food, and transportation, and debt payments of \$3,971.81, he has approximately \$1,218.14 available for discretionary spending or savings.²⁸

The SOR identified 27 delinquent debts that had been placed for collection, charged off, went to judgment, became tax liens, or resulted in a repossession, as generally reflected by an October 2011 credit report and a July 2013 credit report.²⁹ Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in some instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. While the SOR does not include complete or even partial account numbers, several accounts in the credit reports are listed with only partial account numbers. Those debts listed in the SOR and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

The debts listed in the SOR can be divided into four separate categories: (1) those which have already been resolved, either through settlement or by payment in full; (2) those that are currently being paid under a repayment agreement; (3) those for which repayment plans and settlements have been discussed, but which payments have not yet commenced; and (4) various other accounts where the status is unclear.

The largest number of accounts listed in the SOR fall within the first category - those which have already been resolved, either through settlement or by payment in full. There were six state tax liens filed against Applicant: for \$295 (SOR ¶ 1.b.), \$193 (SOR ¶ 1.c.), \$411 (SOR ¶ 1.d.), \$472 (SOR ¶ 1.e.), \$361 (SOR ¶ 1.f.), and \$218 (SOR ¶ 1.g.). They have all been resolved and the tax liens have been cancelled.³⁰

There were two medical accounts that were placed for collection: for \$75 (SOR ¶ 1.i.), and \$250 (SOR ¶ 1.j.).³¹ Both accounts have been paid in full, and they have been resolved.³²

There was a bank credit card with a high credit of \$4,947 and a past-due balance of \$5,709 that was placed for collection (SOR ¶ 1.n.).³³ The collection agent increased

²⁸ AE M, *supra* note 27.

²⁹ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 25, 2011); GE 4 (Equifax Credit Report, dated July 31, 2013).

³⁰ AE V (Satisfaction of Tax Liens and Cancellation of Tax Liens, various dates, Extracts of GE 3, *supra* note 29, at 6, and explanations of the documents). Identical copies of the Satisfaction of Tax Liens and Cancellation of Tax Liens, without explanations, were admitted as AE E through AE K; Tr. at 28, 30, 37.

³¹ GE 3, *supra* note 29, at 16.

³² AE C (Letter, dated May 28, 2014); AE AI (Letter, dated May 29, 2014), pertaining to SOR ¶ 1.i.; AE D (Letter, dated May 28, 2014); AE X (Letter, dated May 29, 2014), pertaining to SOR ¶ 1.j.; Tr. at 47-49.

³³ GE 3, *supra* note 29, at 10.

the past-due balance to \$6,113.³⁴ Applicant and the collection agent agreed to settle the account for \$500, and that amount was paid, leaving a zero balance.³⁵ The account has been resolved.

There was a utility bill with a past-due balance of \$94 that was placed for collection (SOR ¶ 1.r.).³⁶ The bill was paid in full, leaving a zero balance.³⁷ The account has been resolved.

There was a medical bill with an unpaid balance of \$156 that was placed for collection (SOR ¶ 1.u.).³⁸ The bill was paid in full, leaving a zero balance.³⁹ The account has been resolved.

There was an account with a furniture store with a high credit of \$2,085 and a zero balance (SOR ¶ 1.v.).⁴⁰ Although the SOR alleged the account was 30 days past due, there is no evidence to support the allegation, as the account is not listed in the 2013 Equifax Credit Report (GE 4) or in any of the three subsequent credit reports submitted by Applicant.⁴¹ Furthermore, Applicant contends he paid off the account five, six, or seven years ago, but he submitted no documentation to support his contention.⁴² Nevertheless, it appears that the account has been resolved.

There was a utility bill with a past-due balance of \$300 that was placed for collection (SOR ¶ 1.y.).⁴³ The bill was paid in full, leaving a zero balance.⁴⁴ The account has been resolved.

There was an overdrawn checking account with a past-due balance of \$43 that was placed for collection (SOR ¶ 1.z.) and eventually sold to a debt purchaser.⁴⁵ The bill was paid in full, leaving a zero balance.⁴⁶ The account has been resolved.

³⁴ GE 4, *supra* note 29, at 3.

³⁵ AE AB (Letter, dated June 4, 2014, and Notation, dated June 3, 2014).

³⁶ GE 3, *supra* note 29, at 12, 20.

³⁷ AE B (Letter, dated May 14, 2014); AE AD (Letter dated May 14, 2014). It should be noted that the two AEs are identical.

³⁸ GE 3, *supra* note 29, at 13.

³⁹ AE AG (Payment Transaction History, dated June 3, 2014, and Notation, dated June 5, 2014).

⁴⁰ GE 3, *supra* note 29, at 14.

⁴¹ See AE S (Experian Credit Report, dated May 26, 2014); AE T (TransUnion Credit Report, dated June 4, 2014); AE R (Equifax Credit Report, dated July 4, 2014).

⁴² Tr. at 75.

⁴³ GE 3, *supra* note 29, at 17.

⁴⁴ AE AF (Checking Account History, dated June 10, 2014, and Notation, undated).

The second category of accounts alleged in the SOR - those that are currently being paid under a repayment agreement, is as follows. There were delinquent taxes, later turned into liens, owed to the IRS for the tax years 2001, 2002, 2010, and 2011, allegedly totaling approximately \$18,962 (SOR ¶ 1.a.).⁴⁷ The IRS initially garnished Applicant's savings, which were in an account along with his 83-year-old mother's social security payments, but they later returned the social security payments.⁴⁸ Applicant entered into an installment agreement with the IRS at some point before February 2013, or as he estimated about 16 months before the hearing,⁴⁹ and has been making monthly payments of \$185 since at least February 2013. In so doing, as of June 18, 2014, he has managed to reduce the remaining balance owed to \$14,236.93, including interest and penalties.⁵⁰ The account is in the process of being resolved.

There is a medical bill with a past-due balance of \$1,690 that was placed for collection (SOR ¶ 1.h.).⁵¹ Applicant approached the collection agent and offered to make monthly payments of \$50 because he was not working at the time, and his offer was initially refused.⁵² After the account was sold to a debt purchaser, Applicant made the same offer, and this time the offer was accepted. He made his initial \$50 payment in June 2014, and as of June 6, 2014, the remaining balance is \$1,640.02.⁵³ The account is in the process of being resolved.

The third category of accounts alleged in the SOR - those for which repayment plans and settlements have been discussed, but which payments have not yet commenced, is as follows. There is a satellite television account with a past-due balance of \$631 that was placed for collection (SOR ¶ 1.k.).⁵⁴ Consistent with his earlier expressed repayment plans, Applicant intends to start making monthly payments of \$50 in the middle of November 2014.⁵⁵ Once his initial payment is confirmed, the status of the account will transition to in the process of being resolved.

⁴⁵ GE 3, *supra* note 29, at 17; AE A (Letter, dated April 3, 2014); AE AH (Letter, dated April 3, 2014). It should be noted that the two AEs are identical.

⁴⁶ AE A, *supra* note 45; AE AH, *supra* note 45.

⁴⁷ GE 3, *supra* note 29, at 7-8.

⁴⁸ Tr. at 65.

⁴⁹ Tr. at 51.

⁵⁰ AE U (Letters, various dates, and Notation, dated June 3, 2014); GE 2 (Letter, undated); Tr. at 51.

⁵¹ GE 3, *supra* note 29, at 16.

⁵² Tr. at 46.

⁵³ AE W (Letter, dated June 6, 2014, and Notation, dated June 3, 2014).

⁵⁴ GE 3, *supra* note 29, at 17.

⁵⁵ AE Y (Notation, dated June 8, 2014); AE AJ (Plan, dated June 10, 2014).

There is a telephone account with a past-due balance of \$429 that was placed for collection (SOR ¶ 1.l.).⁵⁶ Consistent with his earlier expressed repayment plans, Applicant intends to start making monthly payments of \$75 in the middle of November 2014.⁵⁷ Once his initial payment is confirmed, the status of the account will transition to in the process of being resolved.

There is a medical account with a past-due balance of \$181 that was placed for collection (SOR ¶ 1.m.).⁵⁸ Applicant intended to make a lump-sum payment of the full amount by the end of July 2014, and contacted the collection agent to inquire if he could obtain a receipt for the proposed payment, but nothing could be worked out.⁵⁹ Once his payment is confirmed, the status of the account will transition to resolved.

There is a credit card account with a past-due balance of \$936 that was placed for collection and later went to judgment (SOR ¶ 1.q.).⁶⁰ Applicant approached the creditor and offered to make monthly payments, but his offer was refused.⁶¹ Consistent with his earlier expressed repayment plans, Applicant intends to start making monthly payments of \$100 when his other remaining accounts have been resolved.⁶² Once his initial payment is confirmed, the status of the account will transition to in the process of being resolved.

There is a telephone account with a past-due balance of \$382 that was placed for collection (SOR ¶ 1.x.).⁶³ Consistent with his earlier expressed repayment plans, Applicant intends to start making monthly payments of \$127.33 at the end of August 2014, with the intention of paying it off by the end November 2014.⁶⁴ Once his initial payment is confirmed, the status of the account will transition to in the process of being resolved.

The fourth category of accounts alleged in the SOR - various other accounts where the status is unclear, is as follows. There is a telephone account with a past-due balance of \$1,077 that was placed for collection (SOR ¶ 1.t.).⁶⁵ Applicant informally disputed the bill because when he enrolled in the service, because of his limited funds,

⁵⁶ GE 3, *supra* note 29, at 13.

⁵⁷ AE Z (Notation, dated June 8, 2014); AE AJ, *supra* note 55.

⁵⁸ GE 3, *supra* note 29, at 14.

⁵⁹ AE AA (Notation, dated June 8, 2014); AE AJ, *supra* note 55.

⁶⁰ GE 3, *supra* note 29, at 8.

⁶¹ Tr. at 69-70.

⁶² AE AJ, *supra* note 55; Tr. at 70-71.

⁶³ GE 3, *supra* note 29, at 15.

⁶⁴ AE AJ, *supra* note 55.

⁶⁵ GE 3, *supra* note 29, at 13.

there was an agreement that there would be a limit of \$150 on its use, and the creditor subsequently ignored the limitation, allowing the balance to increase.⁶⁶ The account was apparently sold to a debt purchaser, and the account in July 2013 reflects a \$1,076 balance (SOR ¶ 1.o.).⁶⁷ Applicant contends the two accounts are actually the same account, but he has been unable to formally dispute them as neither account is listed in his 2014 credit reports.⁶⁸ He has submitted no documentation to support his contentions. Because the most current credit reports do not report the accounts, it remains unclear if they have been resolved.

There was an unspecified account with a bank with a past-due balance of \$4,690 that was placed for collection and charged off (SOR ¶ 1.p.).⁶⁹ Applicant indicated that he has been unable to formally dispute the account as it is not listed in his 2014 credit reports.⁷⁰ Because the most current credit reports do not report the account, it remains unclear if it has been resolved.

There is a satellite television account with a past-due balance of \$999 that was placed for collection (SOR ¶ 1.s.).⁷¹ Applicant claimed he returned equipment to the creditor and received a receipt for the return, but the creditor denied ever receiving the equipment, and Applicant subsequently lost the receipt.⁷² Applicant indicated that he has been unable to formally dispute the account as it is not listed in his 2014 credit reports.⁷³ Because the most current credit reports do not report the account, it remains unclear if it has been resolved.

There was an automobile finance account listed two separate times in Applicant's 2011 credit report, reflecting a high credit of \$28,534 and an unpaid balance of \$5,895, following a repossession, that was charged off, as well as a high credit of \$5,895, a charge-off, and a zero balance (SOR ¶ 1.w.).⁷⁴ The SOR alleged the account had a high credit of \$5,895 that had not been paid. Applicant contends that his vehicle was repossessed and sold at auction, and that the proceeds from the auction were sufficient

⁶⁶ Tr. at 73-74.

⁶⁷ GE 4, *supra* note 29, at 3.

⁶⁸ AE AC (Notation, dated June 3, 2014); *See* AE S, *supra* note 41; *See* AE T, *supra* note 41; *See* AE R, *supra* note 41.

⁶⁹ GE 3, *supra* note 29, at 12.

⁷⁰ AE AK (Notation, dated June 10, 2014); *See* AE S, *supra* note 41; *See* AE T, *supra* note 41; *See* AE R, *supra* note 41.

⁷¹ GE 3, *supra* note 29, at 13.

⁷² Tr. at 67-68.

⁷³ AE AK, *supra* note 70; AE AE (Notation, dated June 3, 2014); *See* AE S, *supra* note 41; *See* AE T, *supra* note 41; *See* AE R, *supra* note 41.

⁷⁴ GE 3, *supra* note 29, at 15.

to satisfy any remainder.⁷⁵ He submitted no documentation to support his contention that the account had been resolved. While the account is listed in his 2013 credit report,⁷⁶ it is not listed in any of the three subsequent credit reports submitted by Applicant.⁷⁷ Because the most current credit reports do not report the account, it remains unclear if it has been resolved.

There is an automobile insurance account with a balance of \$494 that was placed for collection (SOR ¶ 1.aa.).⁷⁸ Applicant claimed he cancelled the coverage less than a month after he obtained the policy when he sold the vehicle. The creditor refused to prorate the balance and insisted on the full amount.⁷⁹ Although he disputed the charges with the creditor over the phone, Applicant has been unable to formally dispute the account as it is not listed in his 2014 credit reports.⁸⁰ Because the most current credit reports do not report the account, it remains unclear if it has been resolved.

Work Performance and Character References

Applicant's immediate supervisor noted that Applicant is the most qualified person on his shift based on the number of qualifications he holds; that he serves as the acting supervisor in his absence; and that Applicant is reliable, dependable, and trustworthy.⁸¹ Applicant's site manager, who has known Applicant for 21 years since they served together in the USN, would trust his life to Applicant.⁸² He also noted in Applicant's performance appraisal that Applicant's can-do attitude, skill level, and teaching level had raised the shop to a level of excellence that is now the standard for all other shops to follow.⁸³ Another co-worker, a former command master chief who has known and/or worked with Applicant for approximately 25 years, noted that Applicant was screened in the USN's Personnel Reliability Program (PRP) - designed to permit only the most trustworthy individuals to have access to nuclear weapons, chemical weapons, and biological weapons, to work with and load nuclear weapons if the situation ever arose. He characterized Applicant as follows.⁸⁴

⁷⁵ AE AK, *supra* note 70; Tr. at 76.

⁷⁶ GE 4, *supra* note 29, at 4.

⁷⁷ See AE S, *supra* note 41; See AE T, *supra* note 41; See AE R, *supra* note 41.

⁷⁸ GE 3, *supra* note 29, at 20.

⁷⁹ Tr. at 79.

⁸⁰ AE AK, *supra* note 70; AE AE, *supra* note 73;2 See AE S, *supra* note 41; See AE T, *supra* note 41; See AE R, *supra* note 41.

⁸¹ AE AL (Character Reference, undated).

⁸² AE AL (Character Reference, undated). This character reference differs from the one in fn 81.

⁸³ AE P (Written Summary of Performance, dated April 1, 2014).

⁸⁴ AE AL (Character Reference, dated June 4, 2014).

He is dependable, displays a positive [attitude] and is well liked in his shop and job site. . . . His character, trustworthiness and dependability are one of the main reasons he was hired for this job. . . . If I had to go to war again I would want [Applicant] with me.

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.”⁸⁵ 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.”⁸⁶

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider 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.”⁸⁷ 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,

⁸⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁸⁷ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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.⁸⁸

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."⁸⁹

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."⁹⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. . . .

⁸⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁸⁹ *Egan*, 484 U.S. at 531.

⁹⁰ See Exec. Or. 10865 § 7.

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. Also, it is potentially disqualifying under AG ¶ 19(g), if there is a *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*. Commencing in 2005, and continuing for several years thereafter, Applicant was unable to continue making his routine monthly payments. Various accounts became delinquent and were either placed for collection, charged off, or went to judgment. Taxes remained unpaid. A pick-up truck was repossessed, and his wages were garnished by the IRS. AG ¶¶ 19(a) and 19(c) apply. However, because there is no evidence to indicate Applicant failed to file income tax returns, but there is evidence that he failed to pay business taxes, AG ¶ 19(g) has not been established.

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*.⁹¹

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's continuing financial difficulties since 2005 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." 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. When the economy became less stable and work diminished, the cost of fuel, repairs, and general overhead, increased, making it more

⁹¹ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

difficult for him to maintain his monthly payments. He scrambled to keep everything going, but was forced to sell some of his assets and lay off employees to resolve some of his debts. Eventually, the business was no longer able to remain viable, and he shut it down. Applicant had lost his trucks, his personal truck, as well as all of his other assets.

Applicant sought any type of employment to make some money to pay his bills, for his only other income was his Navy pension. He lived with friends and worked any jobs he could find. He mowed lawns with a push mower, pumped septic tanks, and repaired vehicles. He finally obtained a job as a mechanic and started rebuilding his life and assets. Applicant's problems were intensified in 2009, when he had a stroke and was hospitalized for nearly one week. He subsequently had double hernia surgery as well as back surgery. Applicant considered filing for bankruptcy, but concluded that the bills were his responsibility, and his intentions are to pay every one of them. Once he started making a regular salary, Applicant approached many of his creditors in an effort to set up repayment arrangements. Applicant's overall repayment strategy was to first resolve his IRS bills, move on to his state tax issues as well as the smaller debts, and then address his remaining delinquent debts.

He enrolled in two courses related to financial counseling, he spoke with some credit union financial counselors and reviewed his credit report and all of his accounts, and he met with a relief services assistant with the Navy-Marine Corps Relief Society and set up a budget. Applicant acted responsibly by addressing nearly all of his delinquent accounts, and working with his creditors.⁹² Of the 27 SOR-debts, the vast majority of those debts have already been resolved, either through settlement or by payment in full. Other debts are in repayment plans, and Applicant has either commenced making the required payments, or is about to do so. The status of the remaining accounts remains unclear, but it appears that Applicant is still attempting to resolve them. With his current job, there are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.⁹³

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):

⁹² "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.

⁹³ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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.⁹⁴

There is some evidence against mitigating Applicant's conduct. Without possessing smart business acumen or experience in the private sector, and without obtaining business guidance, Applicant started his own company. His handling of his finances permitted a number of accounts to become delinquent. As a result, various accounts became delinquent and were either placed for collection, charged off, or went to judgment. Taxes remained unpaid. A pick-up truck was repossessed, and his wages were garnished by the IRS.

The mitigating evidence under the whole-person concept is more substantial. He is a decorated retired member of the USN who participated in deployments and was entrusted with responsibilities under the PRP to work with and load nuclear weapons. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Rather, his problems were largely beyond Applicant's control. His financial difficulties were generated when the economy became less stable and work diminished. The cost of fuel, repairs, and general overhead, increased, making it more difficult for him to maintain his monthly payments. Although he scrambled to keep everything going, he was forced to sell his assets and lay off employees to resolve his debts. Eventually, the business was shut down. Applicant had lost his trucks, his personal truck, as well as all of his other assets.

Applicant sought any type of employment to make some money to pay his bills, for his only other income was his Navy pension. He lived with friends and worked any jobs he could find. He mowed lawns with a push mower, pumped septic tanks, and repaired vehicles. Applicant rejected bankruptcy. The vast majority of his debts have already been resolved, and other debts are in repayment plans. Applicant has either commenced making the required payments, or is about to do so. The status of the remaining accounts remains unclear, but it appears that Applicant is still attempting to resolve them. He obtained financial guidance from various sources. There are clear indications that Applicant's financial problems are under control. Applicant's actions

⁹⁴ 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).

under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment. The entire situation occurred under such circumstances that it is unlikely to recur.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁹⁵

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

Applicant has demonstrated a “meaningful track record” of debt reduction and elimination efforts. 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

⁹⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	For Applicant
Subparagraph 1.z:	For Applicant
Subparagraph 1.aa:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge